Texas Historical Statutes Project

1979 Supplement
Volume 1

Alcoholic Beverage Code
Business and Commerce
Education Code
Family Code
Human Resources Code
Natural Resources Code
Parks and Wildlife Code
Penal Code
Code of Criminal Procedure
Tax Code (Property Tax)
Taxation
Water Code

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West's Texas Statutes and Codes

SUPERSEDED

1979 Supplement

to

Compact Edition

Volume 1

Constitution

Codes and Indexes

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PREFACE

This 1979 Supplement to West's Texas Statutes and Codes, Compact Edition, includes the text of all the general and permanent laws of the State of Texas enacted at the Regular Session of the 64th Legislature (1975), the Regular and First Called Sessions of the 65th Legislature (1977), the Second Called Session of the 65th Legislature (1978), the Regular Session of the 66th Legislature (1979) and the text of changes in the Texas Constitution as adopted by the people at the Elections held on April 22, 1975, November 8, 1977, November 7, 1978, and November 6, 1979.

The laws in West's Texas Statutes and Codes are under the same classification as Vernon's Annotated Texas Statutes and Vernon's Texas Codes Annotated. Therefore, the user of this Supplement may go from any article or section herein to the same article or section in the annotated editions, where the complete constructions of the laws by the state and federal courts, historical data relative to the origin and development of the law, and other helpful research aids, are conveniently available.

New Codes

Included are the complete texts, as amended, of four new Codes adopted during the period covered by this Supplement under the Texas Legislative Council's statutory revision program, authorized by Civil Statutes, Art. 5429b–1:

Alcoholic Beverage Code, enacted by Acts 1977, 65th Leg., ch. 194;

Human Resources Code, enacted by Acts 1979, 66th Leg., ch. 842;

Natural Resources Code, enacted by Acts 1977, 65th Leg., ch. 871;

Parks and Wildlife Code, enacted by Acts 1975, 64th Leg., ch. 545.

Disposition Tables, providing a means of tracing repealed subject matter into the new Codes, and detailed descriptive word Indexes, facilitating the search for specific provisions therein, are included following the text of each of the above new Codes.

In addition, included is the complete text of Title 1 of the Tax Code, enacted by Acts 1979, 66th Leg., ch. 841. Title 1, known as the Property Tax Code, was also adopted as part of the Legislative Council's statutory revision program.

PREFACE

Special Law Tables

Special laws pertaining to education and water, enacted or amended in 1975, 1977 and 1979, are tabulated following the Education and Water Codes.

Indexes

The index references following each Code and the Civil Statutes cover both new and amendatory laws. With respect to new laws the coverage is complete. For amendatory laws, references are added only when the existing Compact Edition references are inadequate to cover the changed provisions.

THE PUBLISHER

January, 1980

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EFFECTIVE DATES

The following table shows the date of adjournment and the effective date of ninety day bills enacted at sessions of the legislature beginning with the year 1945:

Year	Session	Adjournment Date	Effective Date
1945	Regular	June 5, 1945	September 4, 1945
1947	Regular	June 6, 1947	September 5, 1947
1949	Regular	June 6, 1949	September 5, 1949
1951	Regular	June 8, 1951	September 7, 1951
1953	Regular	May 27, 1953	August 26, 1953
1954	1st C.S.	May 13, 1954	August 12, 1954
1955	Regular	June 7, 1955	September 6, 1955
1957	Regular	May 23, 1957	August 22, 1957
1957	1st C.S.	November 12, 1957	February 11, 1958
1957	2nd C.S.	December 3, 1957	March 4, 1958
1959	Regular	May 12, 1959	August 11, 1959
1959	1st C.S.	June 16, 1959	September 15, 1959
1959	2nd C.S.	July 16, 1959	October 15, 1959
1959	3rd C.S.	August 6, 1959	November 5, 1959
1961	Regular	May 29, 1961	August 28, 1961
1961	1st C.S.	August 8, 1961	November 7, 1961
1961	2nd C.S.	August 14, 1961	November 13, 1961
1962	3rd C.S.	February 1, 1962	May 3, 1962
1963	Regular	May 24, 1963	August 23, 1963
1965	Regular	May 31, 1965	August 30, 1965
1966	1st C.S.	February 23, 1966	*
1967	Regular	May 29, 1967	August 28, 1967
1968	1st C.S.	July 3, 1968	*
1969	Regular	June 2, 1969	September 1, 1969
1969	1st C.S.	August 26, 1969	*
1969	2nd C.S.	September 9, 1969	December 9, 1969
1971	Regular	May 31, 1971	August 30, 1971
1971	1st C.S.	June 4, 1971	September 3, 1971
1972	2nd C.S.	March 30, 1972	June 29, 1972
1972	3rd C.S.	July 7, 1972	*
1972	4th C.S.	October 17, 1972	January 16, 1973
1973	Regular	May 28, 1973	August 27, 1973
1973	1st C.S.	December 20, 1973	*
1975	Regular	June 2, 1975	September 1, 1975
1977	Regular	May 30, 1977	August 29, 1977
1977	1st C.S.	July 21, 1977	*
1978	2nd C.S.	August 8, 1978	November 7, 1978
1979	Regular	May 28, 1979	August 27, 1979

* The laws enacted at this session were all emergency acts.

*

CITE THIS BOOK

Thus:

West's Texas Const. Art. ——, § ——
West's Texas Alcoholic Beverage Code, § ——
West's Texas Business and Commerce Code, § ——
West's Texas Education Code, § ——
West's Texas Family Code, § ——
West's Texas Human Resources Code, § ——
West's Texas Natural Resources Code, § ——
West's Texas Parks and Wildlife Code, § ——
West's Texas Penal Code, § ——
West's Texas Code of Criminal Procedure, Art. ——
West's Texas Tax Code, § ——
West's Texas Taxation—General, Art. ——
West's Texas Water Code, § ——
West's Texas Business Corporation Act, Art. ——
West's Texas Election Code, Art. ——
West's Texas Insurance Code, Art. ——
West's Texas Probate Code, § ——
West's Texas Civil Statutes, Art. ——

*

CONSTITUTION

OF THE

STATE OF TEXAS 1876

PROPOSED AMENDMENTS

ARTICLE III

LEGISLATIVE DEPARTMENT

REQUIREMENTS AND LIMITATIONS

§ 47. Lotteries and Gift Enterprises

Sec. 47. (a) The Legislature shall pass laws prohibiting lotteries and gift enterprises in this State.

(b) The Legislature by law may authorize and regulate bingo games conducted by a church, synagogue, religious society, volunteer fire department, nonprofit veterans organization, fraternal organization, or nonprofit organization supporting medical research or treatment programs. A law enacted under this subsection must permit the qualified voters of any county, justice precinct, or incorporated city or town to determine from time to time by a majority vote of the qualified voters voting on the question at an election whether bingo games may be held in the county, justice precinct, or city or town. The law must also require that:

(1) all proceeds from the games are spent in Texas for charitable purposes of the organizations;

(2) the games are limited to one location as defined by law on property owned or leased by the church, synagogue, religious society, volunteer fire department, nonprofit veterans organization, fraternal organization, or nonprofit organization supporting medical research or treatment programs; and

(3) the games are conducted, promoted, and administered by members of the church, synagogue, religious society, volunteer fire department, nonprofit veterans organization, fraternal organization, or nonprofit organization supporting medical research or treatment programs.

(c) The law enacted by the Legislature authorizing bingo games must include:

(1) a requirement that the entities conducting the games report quarterly to the Comptroller of Public Accounts about the amount of proceeds that the entities collect from the games and the purposes for which the proceeds are spent; and

(2) criminal or civil penalties to enforce the reporting requirement.

Proposed by Senate Joint Resolution No. 18, § 1, Acts 1979, 66th Leg., p. 3221. For submission to the people in November, 1980.

§ 52f. Private Roads; Construction and Maintenance by Counties of 5,000 or Less

Sec. 52f. A county with a population of 5,000 or less, according to the most recent federal census, may construct and maintain private roads if it imposes a reasonable charge for the work. The Legislature by general law may limit this authority. Revenue received from private road work may be used only for the construction, including right-of-way acquisition, or maintenance of public roads.

Proposed by House Joint Resolution, No. 121, § 1, Acts 1979, 66th Leg., p. 3231. For submission to the people in November, 1980.

ARTICLE IV

EXECUTIVE DEPARTMENT

§ 14a. Fiscal Control Over Expenditure of Funds; Budget Execution Committee

Sec. 14a. The legislature by general law, or by rider in a general appropriations act not inconsistent with general law, may authorize or direct the governor, with the approval of the budget execution committee, to exercise fiscal control over the expenditure of appropriated funds, excluding funds constitutionally dedicated to specific purposes, in the manner, to the extent, and subject to the conditions and limitations provided by the law or rider. The law or rider is not subject to Article II of this constitution.

The budget execution committee shall be composed of the governor, as chairman, the lieutenant governor, as vice-chairman, the speaker of the house of representatives, the chairman and vice-chairman of the senate finance committee, and the chairman and vice-chairman of the committee on appropriations of the house of representatives.

Proposed by House Joint Resolution No. 86, § 1, Acts 1979, 66th Leg., p. 3228. For submission to the people in November, 1980.

ARTICLE V

JUDICIAL DEPARTMENT

§ 1. Judicial Power; Courts in Which Vested

Sec. 1. The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.

Proposed by Senate Joint Resolution No. 36, § 1, Acts 1979, 66th Leg., p. 3223. For submission to the people in November, 1980.

§ 2. Supreme Court; Justices; Sections; Eligibility; Election; Vacancies

Sec. 2. The Supreme Court shall consist of the Chief Justice and eight Justices, any five of whom shall constitute a quorum, and the concurrence of five shall be necessary to a decision of a case; provided, that when the business of the court may require, the court may sit in sections as designated by the court to hear argument of causes and to consider applications for writs of error or other preliminary matters. No person shall be eligible to serve in the office of Chief Justice or Justice of the Supreme Court unless the person is licensed to practice law in this state and is, at the time of election, a citizen of the United States and of this state, and has attained the age of thirty-five years, and has been a practicing lawyer, or a lawyer and judge of a court of record together at least ten years. Said Justices shall be elected (three of them each two years) by the qualified voters of the state at a general election; shall hold their offices six years, or until their successors are elected and qualified; and shall each receive such compensation as shall be provided by law. In case of a vacancy in the office of the Chief Justice or any Justice of the Supreme Court, the Governor shall fill the vacancy until the next general election for state officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the state. The Justices of the Supreme Court who may be in office at the time this amendment takes effect shall continue in office until the expiration of their term of office under the present Constitution, and until their successors are elected and qualified.

Proposed by Senate Joint Resolution No. 36, § 2, Acts 1979, 66th Leg., p. 3223. For submission to the people in November, 1980.

§ 3. Jurisdiction of Supreme Court; Writs; Clerk

Sec. 3. The Supreme Court shall exercise the judicial power of the state except as otherwise provided in this Constitution. Its jurisdiction shall be co-extensive with the limits of the State and its determinations shall be final except in criminal law matters. Its appellate jurisdiction shall be final and shall extend to all cases except in criminal law matters and as otherwise provided in this Constitution or by law. The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law, and under such regulations as may be prescribed by law, the said courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs, as may be necessary to enforce its jurisdiction. The Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State.

The Supreme Court shall also have power, upon affidavit or otherwise as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction.

The Supreme Court shall appoint a clerk, who shall give bond in such manner as is now or may hereafter, be required by law, and he may hold his office for four years and shall be subject to removal by said court for good cause entered of record on the minutes of said court who shall receive such compensation as the Legislature may provide.

Proposed by Senate Joint Resolution No. 36, § 3, Acts 1979, 66th Leg., p. 3223. For submission to the people in November, 1980.

§ 5. Jurisdiction of Court of Criminal Appeals; Terms of Court; Clerk

Sec. 5. The Court of Criminal Appeals shall have final appellate jurisdiction coextensive with the limits of the state, and its determinations shall be final, in all criminal cases of whatever grade, with such exceptions and under such regulations as may be provided in this Constitution or as prescribed by law.

The appeal of all cases in which the death penalty has been assessed shall be to the Court of Criminal Appeals. The appeal of all other criminal cases shall be to the Courts of Appeal as prescribed by law. In addition, the Court of Criminal Appeals may, on its own motion, review a decision of a Court of Appeals in a criminal case as provided by law. Discretionary review by the Court of Criminal Appeals is not a matter of right, but of sound judicial discretion.

Subject to such regulations as may be prescribed by law, the Court of Criminal Appeals and the Judges thereof shall have the power to issue the writ of habeas corpus, and, in criminal law matters, the writs of mandamus, procedendo, prohibition, and certiorari. The Court and the Judges thereof shall have the power to issue such other writs as may be necessary to protect its jurisdiction or enforce its judgments. The court shall have the power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction.

The Court of Criminal Appeals may sit for the transaction of business at any time during the year and each term shall begin and end with each calendar year. The Court of Criminal Appeals shall appoint a clerk of the court who shall give bond in such

manner as is now or may hereafter be required by law, and who shall hold his office for a term of four years unless sooner removed by the court for good cause entered of record on the minutes of said court.

The Clerk of the Court of Criminal Appeals who may be in office at the time when this Amendment takes effect shall continue in office for the term of his appointment.

Proposed by Senate Joint Resolution No. 36, § 4, Acts 1979, 66th Leg., p. 3224. For submission to the people in November, 1980.

§ 6. Courts of Civil Appeals; Transfer of Causes; Terms of Judges

Sec. 6. The Legislature shall divide the State into such Supreme judicial districts as the population and business may require, and shall establish a Court of Appeals in each of said districts, which shall consist of a Chief Justice and at least two Associate Justices, who shall have the qualifications as herein prescribed for Justices of the Supreme Court. The Court of Appeals may sit in sections as authorized by law. The concurrence of a majority of the judges sitting in a section is necessary to decide a case. Said Court of Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error. Said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law.

Each of said Courts of Appeals shall hold its sessions at a place in its district to be designated by the Legislature, and at such time as may be prescribed by law. Said Justices shall be elected by the qualified voters of their respective districts at a general election, for a term of six years and shall receive for their services the sum provided by law. Each Court of Appeals shall appoint a clerk in the same manner as the clerk of the Supreme Court which clerk shall receive such compensation as may be fixed by law.

On the effective date of this amendment, the Justices of the present Courts of Civil Appeals become the Justices of the Courts of Appeals for the term of office to which elected or appointed as Justices of the Courts of Civil Appeals, and the Supreme Judicial Districts become the Supreme Judicial Districts for the Courts of Appeals. All constitutional and statutory references to the Courts of Civil Appeals shall be construed to mean the Courts of Appeals.

Proposed by Senate Joint Resolution No. 36, § 5, Acts 1979, 66th Leg., p. 3224. For submission to the people in November, 1980.

§ 16. County Courts; Jurisdiction; Appeals; Disqualification of Judge

Sec. 16. The County Court shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the Justices Court as the same is now or may hereafter be prescribed by law, and when the fine to be imposed shall exceed $200, and they shall have concurrent jurisdiction with the Justice Court in all civil cases when the matter in controversy shall exceed in value $200, and not exceed $500, exclusive of interest, unless otherwise provided by law, and concurrent jurisdiction with the District Court when the matter in controversy shall exceed $500, and not exceed $1,000, exclusive of interest, but shall not have jurisdiction of suits for the recovery of land. They shall have appellate jurisdiction in cases civil and criminal of which Justices Courts have original jurisdiction, but of such civil cases only when the judgment of the court appealed from shall exceed $20, exclusive of cost, under such regulations as may be prescribed by law. In all appeals from Justices Courts there shall be a trial de novo in the County Court, and appeals may be prosecuted from the final judgment rendered in such cases by the County Court, as well as all cases civil and criminal of which the County Court has exclusive or concurrent or original jurisdiction as may be prescribed by law and this Constitution.

The County Court shall have the general jurisdiction of a Probate Court; they shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the settlement, partition and distribution of estates of deceased persons and to apprentice minors, as provided by law; and the County Court, or judge thereof, shall have power to issue writs of injunctions, mandamus and all writs necessary to the enforcement of the jurisdiction of said Court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the County Court, or any other Court or tribunal inferior to said Court. The County Court shall not have criminal jurisdiction in any county where there is a Criminal District Court, unless expressly conferred by law, and in such counties appeals from Justices Courts and other inferior courts and tribunals in criminal cases shall be to the Criminal District Court, under such regulations as may be prescribed by law; and in all such cases an appeal shall lie from such District Court as may be prescribed by law and this Constitution. When the judge of the County Court is disqualified in any case pending in the County Court the parties interested may, by consent, appoint a proper person to try said case, or upon their failing to do so a competent person may be appointed to try the same in the county where it is pending in such manner as may be prescribed by law.

Proposed by Senate Joint Resolution No. 36, § 6, Acts 1979, 66th Leg., p. 3225. For submission to the people in November, 1980.

§ 26. Criminal Cases; Appeals by State

Sec. 26. The State shall have no right of appeal in criminal cases, except as provided by this section. In addition to the rights of appeal provided to an accused by law and subject to the guarantees of the

Bill of Rights of this constitution, both the State and the accused shall have the right, in a criminal case, to an interlocutory appeal, as provided by law, from a ruling of the trial court at a pretrial hearing as to the constitutionality of a particular statute or from a pretrial ruling of the trial court on a motion to quash, dismiss, or set aside an indictment or a motion to suppress evidence.

Proposed by House Joint Resolution No. 97, § 1, Acts 1979, 66th Leg., p. 3228. For submission to the people in November, 1980.

ARTICLE VIII

TAXATION AND REVENUE

§ 18. Equalization of Valuations; Classification of Lands; Single Appraisal and Single Board of Equalization

Sec. 18. (a) The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation, and may also provide for the classification of all lands with reference to their value in the several counties.

(b) A single appraisal within each county of all property subject to ad valorem taxation by the county and all other taxing units located therein shall be provided by general law. The Legislature, by general law, may authorize appraisals outside a county when political subdivisions are situated in more than one county or when two or more counties elect to consolidate appraisal services.

(c) The Legislature, by general law, shall provide for a single board of equalization for each appraisal entity consisting of qualified persons residing within the territory appraised by that entity. Members of the board of equalization may not be elected officials of the county or of the governing body of a taxing unit.

(d) The Legislature shall prescribe by general law the methods, timing, and administrative process for implementing the requirements of this section.

Proposed by House Joint Resolution No. 98, § 1, Acts 1979, 66th Leg., p. 3229. For submission to the people in November, 1980.

ARTICLE XV

IMPEACHMENT

§ 9. Removal of Public Officers by Governor; Special Session to Consider Removal

Sec. 9. (a) In addition to the other procedures provided by law for removal of public officers, the governor who appoints an officer may remove the officer with the advice and consent of two-thirds of the members of the senate present.

(b) If the legislature is not in session when the governor desires to remove an officer, the governor shall call a special session of the senate for consideration of the proposed removal. The session may not exceed two days in duration.

Proposed by Senate Joint Resolution No. 8, § 1, Acts 1979, 66th Leg., p. 3219. For submission to the people in November, 1980.

ARTICLE XVI

GENERAL PROVISIONS

§ 15. Separate and Community Property of Husband and Wife

Sec. 15. All property, both real and personal, of a spouse owned or claimed before marriage, and that acquired afterward by gift, devise or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of the spouses, in relation to separate and community property; provided that persons about to marry and spouses, without the intention to defraud pre-existing creditors, may by written instrument from time to time partition between themselves all or part of their property, then existing or to be acquired, or exchange between themselves the community interest of one spouse or future spouse in any property for the community interest of the other spouse or future spouse in other community property then existing or to be acquired, whereupon the portion or interest set aside to each spouse shall be and constitute a part of the separate property and estate of such spouse or future spouse; and the spouses may from time to time, by written instrument, agree between themselves that the income or property from all or part of the separate property then owned by one of them, or which thereafter might be acquired, shall be the separate property of that spouse; and if one spouse makes a gift of property to the other that gift is presumed to include all the income or property which might arise from that gift of property.

Proposed by House Joint Resolution No. 54, § 1, Acts 1979, 66th Leg., p. 3227. For submission to the people in November, 1980.

§ 16. Corporations with Banking and Discounting Privileges

Sec. 16. (a) The Legislature shall by general laws, authorize the incorporation of corporate bodies with banking and discounting privileges, and shall provide for a system of State supervision, regulation and control of such bodies which will adequately protect and secure the depositors and creditors thereof.

No such corporate body shall be chartered until all of the authorized capital stock has been subscribed and paid in full in cash. Except as may be permitted by the Legislature pursuant to Subsection (b) of this Section 16, such body corporate shall not be authorized to engage in business at more than one place which shall be designated in its charter.

No foreign corporation, other than the national banks of the United States domiciled in this State, shall be permitted to exercise banking or discounting privileges in this State.

(b) If it finds that the convenience of the public will be served thereby, the Legislature may authorize State and national banks to establish and operate unmanned teller machines within the county or city of their domicile. Such machines may perform all banking functions. Banks which are domiciled within a city lying in two or more counties may be

permitted to establish and operate unmanned teller machines within both the city and the county of their domicile. The Legislature shall provide that a bank shall have the right to share in the use of these teller machines, not situated at a banking house, which are located within the county or the city of the bank's domicile, on a reasonable, nondiscriminatory basis, consistent with anti-trust laws. Banks may share the use of such machines within the county or city of their domicile with savings and loan associations and credit unions which are domiciled in the same county or city.

Proposed by Senate Joint Resolution No. 35, § 1, Acts 1979, 66th Leg., p. 3222. For submission to the people in November, 1980.

*

CONSTITUTION

OF THE

STATE OF TEXAS 1876

Adopted February 15, 1876

As amended to November 6, 1979

ARTICLE I

BILL OF RIGHTS

§ 11a. Multiple Convictions; Denial of Bail

Sec. 11a. Any person (1) accused of a felony less than capital in this State, who has been theretofore twice convicted of a felony, the second conviction being subsequent to the first, both in point of time of commission of the offense and conviction therefor, (2) accused of a felony less than capital in this State, committed while on bail for a prior felony for which he has been indicted, or (3) accused of a felony less than capital in this State involving the use of a deadly weapon after being convicted of a prior felony, after a hearing, and upon evidence substantially showing the guilt of the accused of the offense in (1) or (3) above or of the offense committed while on bail in (2) above, may be denied bail pending trial, by a district judge in this State, if said order denying bail pending trial is issued within seven calendar days subsequent to the time of incarceration of the accused; provided, however, that if the accused is not accorded a trial upon the accusation under (1) or (3) above or the accusation and indictment used under (2) above within sixty (60) days from the time of his incarceration upon the accusation, the order denying bail shall be automatically set aside, unless a continuance is obtained upon the motion or request of the accused; provided, further, that the right of appeal to the Court of Criminal Appeals of this State is expressly accorded the accused for a review of any judgment or order made hereunder, and said appeal shall be given preference by the Court of Criminal Appeals.

[Amended Nov. 8, 1977.]

ARTICLE III

LEGISLATIVE DEPARTMENT

REQUIREMENTS AND LIMITATIONS

Section

48–a, 48–b. Repealed.
49–d–1. Additional Texas Water Development Bonds.
50c. Farm and Ranch Real Estate Loans; Guarantee.
51–b. Repealed.
51–e, 51–f. Repealed.

§ 24. Compensation and Expenses of Members of Legislature; Duration of Sessions

Sec. 24. Members of the Legislature shall receive from the Public Treasury a salary of Six Hundred Dollars ($600) per month. Each member shall also receive a per diem of Thirty Dollars ($30) for each day during each Regular and Special Session of the Legislature. No Regular Session shall be of longer duration than one hundred and forty (140) days.

In addition to the per diem the Members of each House shall be entitled to mileage at the same rate as prescribed by law for employees of the State of Texas.

[Amended April 22, 1975.]

REQUIREMENTS AND LIMITATIONS

§§ 48–a, 48–b. Repealed. April 22, 1975

See, now, art. 16, § 67.

§ 49–b. Veterans' Land Program

Sec. 49–b. By virtue of prior Amendments to this Constitution, there has been created a governmental agency of the State of Texas performing governmental duties which has been designated the Veterans' Land Board. Said Board shall continue to function for the purposes specified in all of the prior Constitutional Amendments except as modified herein. Said Board shall be composed of the Commissioner of the General Land Office and two (2) citizens of the State of Texas, one (1) of whom shall be well versed in veterans' affairs and one (1) of whom shall be well versed in finances. One (1) such citizen member shall, with the advice and consent of the Senate, be appointed biennially by the Governor to serve for a term of four (4) years; but the members serving on said Board on the date of adoption hereof shall complete the terms to which they were appointed. In the event of the resignation or death of any such citizen member, the Governor shall appoint a replacement to serve for the unexpired portion of the term to which the deceased or resigning member

had been appointed. The compensation for said citizen members shall be as is now or may hereafter be fixed by the Legislature; and each shall make bond in such amount as is now or may hereafter be prescribed by the Legislature.

The Commissioner of the General Land Office shall act as Chairman of said Board and shall be the administrator of the Veterans' Land Program under such terms and restrictions as are now or may hereafter be provided by law. In the absence or illness of said Commissioner, the Chief Clerk of the General Land Office shall be the Acting Chairman of said Board with the same duties and powers that said Commissioner would have if present.

The Veterans' Land Board may provide for, issue and sell not to exceed Seven Hundred Million Dollars ($700,000,000) in bonds or obligations of the State of Texas for the purpose of creating a fund to be known as the Veterans' Land Fund, Five Hundred Million Dollars ($500,000,000) of which have heretofore been authorized. Such bonds or obligations shall be sold for not less than par value and accrued interest; shall be issued in such forms, denominations, and upon such terms as are now or may hereafter be provided by law; shall be issued and sold at such times, at such places, and in such installments as may be determined by said Board; and shall bear a rate or rates of interest as may be fixed by said Board but the weighted average annual interest rate, as that phrase is commonly and ordinarily used and understood in the municipal bond market, of all the bonds issued and sold in any installment of any bonds may not exceed the rate specified in Section 65 of this Article. All bonds or obligations issued and sold hereunder shall, after execution by the Board, approval by the Attorney General of Texas, registration by the Comptroller of Public Accounts of the State of Texas, and delivery to the purchaser or purchasers, be incontestable and shall constitute general obligations of the State of Texas under the Constitution of Texas; and all bonds heretofore issued and sold by said Board are hereby in all respects validated and declared to be general obligations of the State of Texas. In order to prevent default in the payment of principal or interest on any such bonds, the Legislature shall appropriate a sufficient amount to pay the same.

In the sale of any such bonds or obligations, a preferential right of purchase shall be given to the administrators of the various Teacher Retirement Funds, the Permanent University Funds, and the Permanent School Funds.

Said Veterans' Land Fund shall consist of any lands heretofore or hereafter purchased by said Board, until the sale price therefor, together with any interest and penalties due, have been received by said Board (although nothing herein shall be construed to prevent said Board from accepting full payment for a portion of any tract), and of the moneys attributable to any bonds heretofore or hereafter issued and sold by said Board which moneys so attributable shall include but shall not be limited to the proceeds from the issuance and sale of such bonds; the moneys received from the sale or resale of any lands, or rights therein, purchased with such proceeds; the moneys received from the sale or resale of any lands, or rights therein, purchased with other moneys attributable to such bonds; the interest and penalties received from the sale or resale of such lands, or rights therein; the bonuses, income, rents, royalties, and any other pecuniary benefit received by said Board from any such lands; sums received by way of indemnity or forfeiture for the failure of any bidder for the purchase of any such bonds to comply with his bid and accept and pay for such bonds or for the failure of any bidder for the purchase of any lands comprising a part of said Fund to comply with his bid and accept and pay for any such lands; and interest received from investments of any such moneys. The principal and interest on the bonds heretofore and hereafter issued by said Board shall be paid out of the moneys of said Fund in conformance with the Constitutional provisions authorizing such bonds; but the moneys of said Fund which are not immediately committed to the payment of principal and interest on such bonds, the purchase of lands as herein provided, or the payment of expenses as herein provided may be invested in bonds or obligations of the United States until such funds are needed for such purposes.

All moneys comprising a part of said Fund and not expended for the purposes herein provided shall be a part of said Fund until there are sufficient moneys therein to retire fully all of the bonds heretofore or hereafter issued and sold by said Board, at which time all such moneys remaining in said Fund, except such portion thereof as may be necessary to retire all such bonds which portion shall be set aside and retained in said Fund for the purpose of retiring all such bonds, shall be deposited to the credit of the General Revenue Fund to be appropriated to such purposes as may be prescribed by law. All moneys becoming a part of said Fund thereafter shall likewise be deposited to the credit of the General Revenue Fund.

When a Division of said Fund (each Division consisting of the moneys attributable to the bonds issued and sold pursuant to a single Constitutional authorization and the lands purchased therewith) contains sufficient moneys to retire all of the bonds secured by such Division, the moneys thereof, except such portion as may be needed to retire all of the bonds secured by such Division which portion shall be set aside and remain a part of such Division for the purpose of retiring all such bonds, may be used for the purpose of paying the principal and the interest thereon, together with the expenses herein authorized, of any other bonds heretofore or hereafter issued and sold by said Board. Such use shall be a matter for the discretion and direction of said Board; but there may be no such use of any such moneys contrary to the rights of any holder of any of the bonds issued and sold by said Board or violative of any contract to which said Board is a party.

The Veterans' Land Fund shall be used by said Board for the purpose of purchasing lands situated in the State of Texas owned by the United States or any governmental agency thereof, owned by the

Texas Prison System or any other governmental agency of the State of Texas, or owned by any person, firm, or corporation. All lands thus purchased shall be acquired at the lowest price obtainable, to be paid for in cash, and shall be a part of said Fund. Such lands heretofore or hereafter purchased and comprising a part of said Fund are hereby declared to be held for a governmental purpose, although the individual purchasers thereof shall be subject to taxation to the same extent and in the same manner as are purchasers of lands dedicated to the Permanent Free Public School Fund.

The lands of the Veterans' Land Fund shall be sold by said Board in such quantities, on such terms, at such prices, at such rates of interest and under such rules and regulations as are now or may hereafter be provided by law to veterans who served not less than ninety (90) continuous days, unless sooner discharged by reason of a service-connected disability, on active duty in the Army, Navy, Air Force, Coast Guard or Marine Corps of the United States after September 16, 1940, and who, upon the date of filing his or her application to purchase any such land is a citizen of the United States, is a bona fide resident of the State of Texas, and has not been dishonorably discharged from any branch of the Armed Forces above-named and who at the time of his or her enlistment, induction, commissioning, or drafting was a bona fide resident of the State of Texas, or who has resided in Texas at least five (5) years prior to the date of filing his or her application, and provided that in the event of the death of an eligible Texas Veteran after the veteran has filed with the Board an application and contract of sale to purchase through the Board the tract selected by him or her and before the purchase has been completed, then the surviving spouse may complete the transaction. The unmarried surviving spouses of veterans who died in the line of duty may also apply to purchase a tract through the Board provided the deceased veterans meet the requirements set out in this Article with the exception that the deceased veterans need not have served ninety (90) continuous days and provided further that the deceased veterans were bona fide residents of the State of Texas at the time of enlistment, induction, commissioning, or drafting. The foregoing notwithstanding, any lands in the Veterans' Land Fund which have been first offered for sale to veterans and which have not been sold may be sold or resold to such purchasers, in such quantities, and on such terms, and at such prices and rates of interest, and under such rules and regulations as are now or may hereafter be provided by law.

Said Veterans' Land Fund, to the extent of the moneys attributable to any bonds hereafter issued and sold by said Board may be used by said Board, as is now or may hereafter be provided by law, for the purpose of paying the expenses of surveying, monumenting, road construction, legal fees, recordation fees, advertising and other like costs necessary or incidental to the purchase and sale, or resale, of any lands purchased with any of the moneys attributable to such additional bonds, such expenses to be added to the price of such lands when sold, or resold, by said Board; for the purpose of paying the expenses of issuing, selling, and delivering any such additional bonds; and for the purpose of meeting the expenses of paying the interest or principal due or to become due on any such additional bonds.

All of the moneys attributable to any series of bonds hereafter issued and sold by said Board (a "series of bonds" being all of the bonds issued and sold in a single transaction as a single installment of bonds) may be used for the purchase of lands as herein provided, to be sold as herein provided, for a period ending eight (8) years after the date of sale of such series of bonds; provided, however, that so much of such moneys as may be necessary to pay interest on bonds hereafter issued and sold shall be set aside for that purpose in accordance with the resolution adopted by said Board authorizing the issuance and sale of such series of bonds. After such eight (8) year period, all of such moneys shall be set aside for the retirement of any bonds hereafter issued and sold and to pay interest thereon, together with any expenses as provided herein, in accordance with the resolution or resolutions authorizing the issuance and sale of such additional bonds, until there are sufficient moneys to retire all of the bonds hereafter issued and sold, at which time all such moneys then remaining a part of said Veterans' Land Fund and thereafter becoming a part of said Fund shall be governed as elsewhere provided herein.

This Amendment being intended only to establish a basic framework and not to be a comprehensive treatment of the Veterans' Land Program, there is hereby reposed in the Legislature full power to implement and effectuate the design and objects of this Amendment, including the power to delegate such duties, responsibilities, functions, and authority to the Veterans' Land Board as it believes necessary.

Should the Legislature enact any enabling laws in anticipation of this Amendment, no such law shall be void by reason of its anticipatory nature.

This Amendment shall become effective upon its adoption.

[Amended Nov. 8, 1977.]

§ 49-d-1. Additional Texas Water Development Bonds

(a) The Texas Water Development Board shall upon direction of the Texas Water Quality Board, or any successor agency designated by the Legislature, issue additional Texas Water Development Bonds up to an additional aggregate principal amount of $200,000,000 to provide grants, loans, or any combination of grants and loans for water quality enhancement purposes as established by the Legislature. The Texas Water Quality Board or any successor agency designated by the Legislature may make such grants and loans to political subdivisions or bodies politic and corporate of the State of Texas, including municipal corporations, river authorities, conservation and reclamation districts, and districts created or organized or authorized to be created or

organized under Article XVI, Section 59, or Article III, Section 52, of this Constitution, State agencies, and interstate agencies and compact commissions to which the State of Texas is a party, and upon such terms and conditions as the Legislature may authorize by general law. The bonds shall be issued for such terms, in such denominations, form and installments, and upon such conditions as the Legislature may authorize.

(b) The proceeds from the sale of such bonds shall be deposited in the Texas Water Development Fund to be invested and administered as prescribed by law.

(c) The bonds authorized in this Section 49-d-1 and all bonds authorized by Sections 49-c and 49-d of Article III shall bear interest at not more than 6% per annum and mature as the Texas Water Development Board shall prescribe, subject to the limitations as may be imposed by the Legislature.

(d) The Texas Water Development Fund shall be used for the purposes heretofore permitted by, and subject to the limitations in Sections 49-c, 49-d and 49-d-1; provided, however, that the financial assistance may be made pursuant to the provisions of Sections 49-c, 49-d and 49-d-1 subject only to the availability of funds and without regard to the provisions in Section 49-c that such financial assistance shall terminate after December 31, 1982.

(e) Texas Water Development Bonds are secured by the general credit of the State and shall after approval by the Attorney General, registration by the Comptroller of Public Accounts of the State of Texas, and delivery to the purchasers, be incontestable and shall constitute general obligations of the State of Texas under the Constitution of Texas.

(f) Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be void by reason of their anticipatory character.

[Adopted Nov. 2, 1976.]

§ 50c. Farm and Ranch Real Estate Loans; Guarantee

Sec. 50c. (a) The legislature may provide that the commissioner of agriculture shall have the authority to provide for, issue, and sell general obligation bonds of the State of Texas in an amount not to exceed $10 million. The bonds shall be called "Farm and Ranch Loan Security Bonds" and shall be executed in such form, denominations, and on such terms as may be prescribed by law. The bonds shall bear interest rates fixed by the Legislature of the State of Texas.

(b) All money received from the sale of Farm and Ranch Loan Security Bonds shall be deposited in a fund hereby created with the State Treasurer to be known as the "Farm and Ranch Loan Security Fund." This fund shall be administered without further appropriation by the commissioner of agriculture in the manner prescribed by law.

(c) The Farm and Ranch Loan Security Fund shall be used by the commissioner of agriculture under provisions prescribed by the legislature for the purpose of guaranteeing loans used for the purchase of farm and ranch real estate, for acquiring real estate mortgages or deeds of trust on lands purchased with guaranteed loans, and to advance to the borrower a percentage of the principal and interest due on those loans; provided that the commissioner shall require at least six percent interest be paid by the borrower on any advance of principal and interest. The legislature may authorize the commissioner to sell at foreclosure any land acquired in this manner, and proceeds from that sale shall be deposited in the Farm and Ranch Loan Security Fund.

(d) The legislature may provide for the investment of money available in the Farm and Ranch Loan Security Fund and the interest and sinking fund established for the payment of bonds issued by the commissioner of agriculture. Income from the investment shall be used for purposes prescribed by the legislature.

(e) While any of the bonds authorized by this section or any interest on those bonds is outstanding and unpaid, there is hereby appropriated out of the first money coming into the treasury in each fiscal year not otherwise appropriated by this constitution an amount that is sufficient to pay the principal and interest on the bonds that mature or become due during the fiscal year less the amount in the interest and sinking fund at the close of the prior fiscal year.

[Adopted Nov. 6, 1979.]

§ 51-b. Repealed. Nov. 7, 1978

§§ 51-e, 51-f. Repealed. April 22, 1975

See, now, art. 16, § 67.

§ 52. Counties, Cities, Towns or Other Political Corporations or Subdivisions; Lending Credit; Grants

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) Any defined district created under this section that is authorized to issue bonds or otherwise lend its credit for the purposes stated in Subdivisions (1) and (2) of Subsection (b) of this section may engage in fire-fighting activities and may issue bonds or otherwise lend its credit for fire-fighting purposes as provided by law and this constitution.

[Amended Nov. 7, 1978.]

ARTICLE IV

EXECUTIVE DEPARTMENT

§ 26. Notaries Public

Sec. 26. (a) The Secretary of State shall appoint a convenient number of Notaries Public for the state who shall perform such duties as now are or may be prescribed by law. The qualifications of Notaries Public shall be prescribed by law.

(b) The terms of office of Notaries Public shall be not less than two years nor more than four years as provided by law.

[Amended Nov. 6, 1979, eff. Jan. 1, 1980.]

Section 2 of H.J.R. No. 108, Acts 1979, 66th Leg., p. 3230, proposing the amendment to this section proposed the addition of a temporary provision to the Texas Constitution to read:
"TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by H.J.R. No. 108, 66th Legislature, Regular Session, 1979.
"(b) The constitutional amendment takes effect January 1, 1980.
"(c) Each person who was appointed a notary public before January 1, 1980, continues to serve as a notary public for the term for which the person was appointed.
"(d) This temporary provision expires January 1, 1982."

ARTICLE V

JUDICIAL DEPARTMENT

§ 1. Judicial Power; Courts in Which Vested

Sec. 1. The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Civil Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.

[Amended Nov. 8, 1977.]

§ 1-a. Retirement, Censure, Removal and Compensation of Justices and Judges; State Commission on Judicial Conduct; Procedure

[See Compact Edition, Volume 1 for text of (1)]

(2) The name of the State Judicial Qualifications Commission is changed to the State Commission on Judicial Conduct. The Commission consists of eleven (11) members, to wit: (i) two (2) Justices of Courts of Civil Appeals; (ii) two (2) District Judges; (iii) two (2) members of the State Bar, who have respectively practiced as such for over ten (10) consecutive years next preceding their selection; (iiii) four (4) citizens, at least thirty (30) years of age, not licensed to practice law nor holding any salaried public office or employment; and (v) one (1) Justice of the Peace; provided that no person shall be or remain a member of the Commission, who does not maintain physical residence within this State, or who resides in, or holds a judgeship within or for, the same Supreme Judicial District as another member of the Commission, or who shall have ceased to retain the qualifications above specified for his respective class of membership, except that the Justice of the Peace shall be selected at large without regard to whether he resides or holds a judgeship in the same Supreme Judicial District as another member of the Commission. Commissioners of classes (i) and (ii) above shall be chosen by the Supreme Court with advice and consent of the Senate, those of class (iii) by the Board of Directors of the State Bar under regulations to be prescribed by the Supreme Court with advice and consent of the Senate, those of class (iiii) by appointment of the Governor with advice and consent of the Senate, and the commissioner of class (v) by appointment of the Supreme Court from a list of five (5) names submitted by the executive committee of the Justice of the Peace and Constables Association of Texas, with the advice and consent of the Senate. The initial term of the commissioner of class (v) and the fourth commissioner of class (iiii) added by this amendment terminates on November 19, 1979. Each person holding office as a member of the Commission on the effective date of this amendment continues to hold the office for the term for which he was appointed.

[See Compact Edition, Volume 1 for text of (3) and (4)]

(5) The Commission may hold its meetings, hearings and other proceedings at such times and places as it shall determine but shall meet at Austin at least once each year. It shall annually select one of its members as Chairman. A quorum shall consist of six (6) members. Proceedings shall be by majority vote of those present, except that recommendations for retirement, censure, suspension, or removal of any person holding an office named in Paragraph A of Subsection (6) of this Section shall be by affirmative vote of at least six (6) members.

(6) A. Any Justice or Judge of the Appellate Courts and District and Criminal District Courts, and any County Judge, and any Judge of a County Court at Law, a Court of Domestic Relations, a Juvenile Court, a Probate Court, or a Corporation or Municipal Court, and any Justice of the Peace, and any Judge or presiding officer of any special court created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent conduct, which is clearly inconsistent with the proper performance of his said duties or casts public discredit upon the judiciary or administration of justice; or any person holding such office may be censured, in lieu of removal from office, under procedures provided for by the Legislature. Any person holding an office named in this subsection may be suspended from office with or without pay by the Commission immediately on being indicted by a State or Federal grand jury for a felony offense; or, on the filing of a sworn complaint charging a person holding such office with willful and persistent conduct which is clearly inconsistent with the proper performance of his duties or which casts public discredit on the judiciary or on the administration of justice, the Commission, after giving the person notice and an opportunity to appear before the Commission, may recommend to the Supreme Court the suspension of such person from office. The Supreme Court, after considering the record of such appearance and the recommendation of the Commission, may suspend the person from office with or without pay, pending final disposition of the charge.

[See Compact Edition, Volume 1, for text of (6) B]

(7) The Commission shall keep itself informed as fully as may be of circumstances relating to the misconduct or disability of particular persons holding an office named in Paragraph A of Subsection (6) of

this Section, receive complaints or reports, formal or informal, from any source in this behalf and make such preliminary investigations as it may determine. Its orders for the attendance or testimony of witnesses or for the production of documents at any hearing or investigation shall be enforceable by contempt proceedings in the District Court or by a Master.

(8) After such investigation as it deems necessary, the Commission may in its discretion issue a private or public reprimand, or if the Commission determines that the situation merits such action, it may institute formal proceedings and order a formal hearing to be held before it concerning the public censure, removal, or retirement of a person holding an office named in Paragraph A of Subsection (6) of this Section, or it may in its discretion request the Supreme Court to appoint an active or retired District Judge or Justice of a Court of Civil Appeals, or retired Judge or Justice of the Court of Criminal Appeals or the Supreme Court, as a Master to hear and take evidence in any such matter, and to report thereon to the Commission. The Master shall have all the power of a District Judge in the enforcement of orders pertaining to witnesses, evidence, and procedure. If, after formal hearing, or after considering the record and report of a Master, the Commission finds good cause therefor, it shall issue an order of public censure or it shall recommend to the Supreme Court the removal, or retirement, as the case may be, of the person in question holding an office named in Paragraph A of Subsection (6) of this Section and shall thereupon file with the Clerk of the Supreme Court the entire record before the Commission.

(9) The Supreme Court shall review the record of the proceedings on the law and facts and in its discretion may, for good cause shown, permit the introduction of additional evidence and shall order public censure, retirement or removal, as it finds just and proper, or wholly reject the recommendation. Upon an order for involuntary retirement for disability or an order for removal, the office in question shall become vacant. The Supreme Court, in an order for involuntary retirement for disability or an order for removal, may prohibit such person from holding judicial office in the future. The rights of an incumbent so retired to retirement benefits shall be the same as if his retirement had been voluntary.

(10) All papers filed with and proceedings before the Commission or a Master shall be confidential, unless otherwise provided by law, and the filing of papers with, and the giving of testimony before, the Commission, Master or the Supreme Court shall be privileged, unless otherwise provided by law; provided that upon being filed in the Supreme Court the record loses its confidential character. However, the Commission may issue a public statement through its executive director or its Chairman at any time during any of its proceedings under this Section when sources other than the Commission cause notoriety concerning a Judge or the Commission itself and the Commission determines that the best interests of a Judge or of the public will be served by issuing the statement.

[See Compact Edition, Volume 1, for text of (11)]

(12) No person holding an office named in Paragraph A of Subsection (6) of this Section shall sit as a member of the Commission in any proceeding involving his own suspension, censure, retirement or removal. A recommendation of the Commission for the suspension, censure, retirement, or removal of a Justice of the Supreme Court shall be determined by a tribunal of seven (7) Court of Civil Appeals Justices selected by lot to serve in place of the Supreme Court.

[See Compact Edition, Volume 1 for text of (13)]

[Amended Nov. 8, 1977.]

§ 4. Court of Criminal Appeals; Judges

Sec. 4. The Court of Criminal Appeals shall consist of eight Judges and one Presiding Judge. The Judges shall have the same qualifications and receive the same salaries as the Associate Justices of the Supreme Court, and the Presiding Judge shall have the same qualifications and receive the same salary as the Chief Justice of the Supreme Court. The Presiding Judge and the Judges shall be elected by the qualified voters of the state at a general election and shall hold their offices for a term of six years. In case of a vacancy in the office of a Judge of the Court of Criminal Appeals, the Governor shall, with the advice and consent of the Senate, fill said vacancy by appointment until the next succeeding general election.

For the purpose of hearing cases, the Court of Criminal Appeals may sit in panels of three Judges, the designation thereof to be under rules established by the court. In a panel of three Judges, two Judges shall constitute a quorum and the concurrence of two Judges shall be necessary for a decision. The Presiding Judge, under rules established by the court, shall convene the court en banc for the transaction of all other business and may convene the court en banc for the purpose of hearing cases. The court must sit en banc during proceedings involving capital punishment and other cases as required by law. When convened en banc, five Judges shall constitute a quorum and the concurrence of five Judges shall be necessary for a decision. The Court of Criminal Appeals may appoint Commissioners in aid of the Court of Criminal Appeals as provided by law.

[Amended Nov. 8, 1977.]

§ 5. Jurisdiction of Court of Criminal Appeals; Terms of Court; Clerk

Sec. 5. The Court of Criminal Appeals shall have appellate jurisdiction co-extensive with the limits of the state in all criminal cases of whatever grade, with such exceptions and under such regulations as may be prescribed by law.

Subject to such regulations as may be prescribed by law, regarding criminal law matters, the Court of Criminal Appeals and the Judges thereof shall have

the power to issue the writs of habeas corpus, mandamus, procedendo, prohibition, certiorari, and such other writs as may be necessary to protect its jurisdiction or enforce its judgments. The court shall have the power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction.

The Court of Criminal Appeals may sit for the transaction of business at any time during the year and each term shall begin and end with each calendar year. The Court of Criminal Appeals shall appoint a clerk of the court who shall give bond in such manner as is now or may hereafter be required by law, and who shall hold his office for a term of four years unless sooner removed by the court for good cause entered of record on the minutes of said court.

The Clerk of the Court of Criminal Appeals who may be in office at the time when this Amendment takes effect shall continue in office for the term of his appointment.

[Amended Nov. 8, 1977.]

§ 6. Courts of Civil Appeals; Transfer of Cases; Terms of Judges

Sec. 6. The Legislature shall as soon as practicable after the adoption of this amendment divide the State into not less than two nor more than three Supreme judicial districts and thereafter into such additional districts as the increase of population and business may require, and shall establish a Court of Civil Appeals in each of said districts, which shall consist of a Chief Justice and at least two Associate Justices, who shall have the qualifications as herein prescribed for Justices of the Supreme Court. The Court of Civil Appeals may sit in sections as authorized by law. The concurrence of a majority of the judges sitting in a section is necessary to decide a case. Said Court of Civil Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all civil cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error.

Each of said Courts of Civil Appeals shall hold its sessions at a place in its district to be designated by the Legislature, and at such time as may be prescribed by law. Said Justices shall be elected by the qualified voters of their respective districts at a general election, for a [a] term of six years and shall receive for their services the sum of three thousand five hundred dollars per annum, until otherwise provided by law. Said courts shall have such other jurisdiction, original and appellate as may be prescribed by law. Each Court of Civil Appeals shall appoint a clerk in the same manner as the clerk of the Supreme Court which clerk shall receive such compensation as may be fixed by law.

Until the organization of the Courts of Civil Appeals and Criminal Appeals, as herein provided for, the jurisdiction, power and organization and location of the Supreme Court, the Court of Appeals and the Commission of Appeals shall continue as they were before the adoption of this amendment.

All civil cases which may be pending in the Court of Appeals shall as soon as practicable after the organization of the Courts of Civil Appeals be certified to, and the records thereof transmitted to the proper Courts of Civil Appeals to be decided by said courts. At the first session of the Supreme Court the Court of Criminal Appeals and such of [of] the Courts of Civil Appeals which may be hereafter created under this article after the first election of the Judges of such courts under this amendment. The terms of office of the Judges of each court shall be divided into three classes and the Justices thereof shall draw for the different classes. Those who shall draw class No. 1 shall hold their offices two years, those drawing class No. 2 shall hold their offices for four years and those who may draw class No. 3 shall hold their offices for six years, from the date of their election and until their successors are elected and qualified, and thereafter each of the said Judges shall hold his office for six years, as provided in this Constitution.

[Amended Nov. 7, 1978.]

§ 16. County Courts; Jurisdiction; Appeals to Court of Civil Appeals and Court of Criminal Appeals; Disqualification of Judge

Sec. 16. The County Court shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the Justices Court as the same is now or may hereafter be prescribed by law, and when the fine to be imposed shall exceed $200, and they shall have concurrent jurisdiction with the Justice Court in all civil cases when the matter in controversy shall exceed in value $200, and not exceed $500, exclusive of interest, unless otherwise provided by law, and concurrent jurisdiction with the District Court when the matter in controversy shall exceed $500, and not exceed $1,000, exclusive of interest, but shall not have jurisdiction of suits for the recovery of land. They shall have appellate jurisdiction in cases civil and criminal of which Justices Courts have original jurisdiction, but of such civil cases only when the judgment of the court appealed from shall exceed $20, exclusive of cost, under such regulations as may be prescribed by law. In all appeals from Justices Courts there shall be a trial de novo in the County Court, and appeals may be prosecuted from the final judgment rendered in such cases by the County Court, as well as all cases civil and criminal of which the County Court has exclusive or concurrent or original jurisdiction of civil appeals in civil cases to the Court of Civil Appeals and in such criminal cases to the Court of Criminal Appeals, with such exceptions and under such regulations as may be prescribed by law.

The County Court shall have the general jurisdiction of a Probate Court; they shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business apper-

taining to deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the settlement, partition and distribution of estates of deceased persons and to apprentice minors, as provided by law; and the County Court, or judge thereof, shall have power to issue writs of injunctions, mandamus and all writs necessary to the enforcement of the jurisdiction of said Court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the County Court, or any other Court or tribunal inferior to said Court. The County Court shall not have criminal jurisdiction in any county where there is a Criminal District Court, unless expressly conferred by law, and in such counties appeals from Justices Courts and other inferior courts and tribunals in criminal cases shall be to the Criminal District Court, under such regulations as may be prescribed by law; and in all such cases an appeal shall lie from such District Court to the Court of Criminal Appeals. When the judge of the County Court is disqualified in any case pending in the County Court the parties interested may, by consent, appoint a proper person to try said case, or upon their failing to do so a competent person may be appointed to try the same in the county where it is pending in such manner as may be prescribed by law.

[Amended Nov. 7, 1978.]

§ 19. Justices of the Peace; Jurisdiction; Appeals; Ex Officio Notaries Public; Times and Places of Holding Court

Sec. 19. Justices of the peace shall have jurisdiction in criminal matters of all cases where the penalty or fine to be imposed by law may not be more than for two hundred dollars, and exclusive jurisdiction in civil matters of all cases where the amount in controversy is two hundred dollars or less, exclusive of interest, unless exclusive original jurisdiction is given to the District or County Courts, and concurrent jurisdiction with the County Courts when the matter in controversy exceeds two hundred dollars and does not exceed five hundred dollars, exclusive of interest, unless exclusive jurisdiction is given to the County Courts, and, as provided by law, when the matter in controversy exceeds five hundred dollars, concurrent jurisdiction with both the County Courts and the District Courts in an amount not to exceed one thousand dollars exclusive of interest, unless exclusive jurisdiction is given to the County Courts or the District Courts; and such other jurisdiction, criminal and civil, as may be provided by law, under such regulations as may be prescribed by law; and appeals to the County Courts shall be allowed in all cases decided in Justices' Courts where the judgment is for more than twenty dollars exclusive of costs; and in all criminal cases under such regulations as may be prescribed by law. And the justices of the peace shall be ex officio notaries public. And they shall hold their courts at such times and places as may be provided by law.

[Amended Nov. 7, 1978.]

ARTICLE VIII

TAXATION AND REVENUE

Section
1-d-1. Open-Space Land.
1-f. Ad Valorem Tax Relief.
21. Increase in Total Property Taxes; Notice and Hearing; Calculation.
22. Appropriations from State Tax Revenues; Rate of Growth.
23. Statewide Appraisal of Real Property; Enforcement of Uniform Standards and Procedures for Appraisal.

§ 1. Equality and Uniformity; Tax in Proportion to Value; Occupational Taxes; Income Tax; Exemption of Household Goods and Personal Property Homestead

Sec. 1. Taxation shall be equal and uniform. All real property and tangible personal property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law. The Legislature may provide for the taxation of intangible property and may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. It may also tax incomes of both natural persons and corporations other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax. The Legislature by general law shall exempt household goods not held or used for the production of income and personal effects not held or used for the production of income, and the Legislature by general law may exempt all or part of the personal property homestead of a family or single adult, "personal property homestead" meaning that personal property exempt by law from forced sale for debt, from ad valorem taxation. The occupation tax levied by any county, city or town for any year on persons or corporations pursuing any profession or business, shall not exceed one half of the tax levied by the State for the same period on such profession or business.

[Amended Nov. 7, 1978, eff. Jan. 1, 1979.]

§ 1-b. Residence Homestead Exemption

Sec. 1-b.

[See Compact Edition, Volume 1 for text of (a)]

(b) From and after January 1, 1973, the governing body of any county, city, town, school district, or other political subdivision of the State may exempt by its own action not less than Three Thousand Dollars ($3,000) of the market value of residence homesteads of persons, married or unmarried, including those living alone, who are under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance or its successor or of married or unmarried persons sixty-five (65) years of age or older, including those living alone, from all ad valorem taxes thereafter levied by the political subdivision. As an alternative, upon receipt of a petition signed by twenty percent (20%) of the voters who voted in the last preceding election held by the political subdivision, the governing body of the subdivision shall

call an election to determine by majority vote whether an amount not less than Three Thousand Dollars ($3,000) as provided in the petition, of the market value of residence homesteads of disabled persons or of persons sixty-five (65) years of age or over shall be exempt from ad valorem taxes thereafter levied by the political subdivision. An eligible disabled person who is sixty-five (65) years of age or older may not receive both exemptions from the same political subdivision in the same year but may choose either if the subdivision has adopted both. Where any ad valorem tax has theretofore been pledged for the payment of any debt, the taxing officers of the political subdivision shall have authority to continue to levy and collect the tax against the homestead property at the same rate as the tax so pledged until the debt is discharged, if the cessation of the levy would impair the obligation of the contract by which the debt was created. An exemption adopted under this subsection based on assessed value is increased, effective January 1, 1979, to an amount that, when converted to market value, provides the same reduction in taxes, except that the market value exemption shall be rounded to the nearest $100.

(c) Five Thousand Dollars ($5,000) of the market value of the residence homestead of a married or unmarried adult, including one living alone, is exempt from ad valorem taxation for general elementary and secondary public school purposes. In addition to this exemption, the legislature by general law may exempt an amount not to exceed Ten Thousand Dollars ($10,000) of the market value of the residence homestead of a person who is disabled as defined in Subsection (b) of this section and of a person sixty-five (65) years of age or older from ad valorem taxation for general elementary and secondary public school purposes. The legislature by general law may base the amount of and condition eligibility for the additional exemption authorized by this subsection for disabled persons and for persons sixty-five (65) years of age or older on economic need. An eligible disabled person who is sixty-five (65) years of age or older may not receive both exemptions from a school district but may choose either. An eligible person is entitled to receive both the exemption required by this subsection for all residence homesteads and any exemption adopted pursuant to Subsection (b) of this section, but the legislature shall provide by general law whether an eligible disabled or elderly person may receive both the additional exemption for the elderly and disabled authorized by this subsection and any exemption for the elderly or disabled adopted pursuant to Subsection (b) of this section. Where ad valorem tax has previously been pledged for the payment of debt, the taxing officers of a school district may continue to levy and collect the tax against the value of homesteads exempted under this subsection until the debt is discharged if the cessation of the levy would impair the obligation of the contract by which the debt was created. The legislature shall provide for formulas to protect school districts against all or part of the revenue loss incurred by the implementation of Article VIII, Sections 1-b(c), 1-b(d), and 1-d-1, of this constitution. The legislature by general law may define residence homestead for purposes of this section.

(d) Except as otherwise provided by this subsection, if a person receives the residence homestead exemption prescribed by Subsection (c) of this section for homesteads of persons sixty-five (65) years of age or older, the total amount of ad valorem taxes imposed on that homestead for general elementary and secondary public school purposes may not be increased while it remains the residence homestead of that person or that person's spouse who receives the exemption. However, those taxes may be increased to the extent the value of the homestead is increased by improvements other than repairs or improvements made to comply with governmental requirements.

[Amended Nov. 7, 1978, eff. Jan. 1, 1979.]

§ 1-d-1. Open-Space Land

Sec. 1-d-1. (a) To promote the preservation of open-space land, the legislature shall provide by general law for taxation of open-space land devoted to farm or ranch purposes on the basis of its productive capacity and may provide by general law for taxation of open-space land devoted to timber production on the basis of its productive capacity. The legislature by general law may provide eligibility limitations under this section and may impose sanctions in furtherance of the taxation policy of this section.

(b) If a property owner qualifies his land for designation for agricultural use under Section 1-d of this article, the land is subject to the provisions of Section 1-d for the year in which the designation is effective and is not subject to a law enacted under this Section 1-d-1 in that year.

[Adopted Nov. 7, 1978, eff. Jan. 1, 1979.]

§ 1-f. Ad Valorem Tax Relief

Sec. 1-f. The legislature by law may provide for the preservation of cultural, historical, or natural history resources by:

(1) granting exemptions or other relief from state ad valorem taxes on appropriate property so designated in the manner prescribed by law; and

(2) authorizing political subdivisions to grant exemptions or other relief from ad valorem taxes on appropriate property so designated by the political subdivision in the manner prescribed by general law.

[Adopted Nov. 8, 1977.]

§ 2. Occupation Taxes; Equality and Uniformity; Exemptions from Taxation

Sec. 2. (a) All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the legislature may, by general laws, exempt from taxation public property used for public purposes; actual places of religious worship, also any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of

such church or religious society, and which yields no revenue whatever to such church or religious society; provided that such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; places of burial not held for private or corporate profit; solar or wind-powered energy devices; all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools and property used exclusively and reasonably necessary in conducting any association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a State or National organization of like character; also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions of purely public charity; and all laws exempting property from taxation other than the property mentioned in this Section shall be null and void.

[See Compact Edition, Volume 1 for text of (b)]

[Amended Nov. 7, 1978.]

§ 21. Increase in Total Property Taxes; Notice and Hearing; Calculation

Sec. 21. (a) Subject to any exceptions prescribed by general law, the total amount of property taxes imposed by a political subdivision in any year may not exceed the total amount of property taxes imposed by that subdivision in the preceding year unless the governing body of the subdivision gives notice of its intent to consider an increase in taxes and holds a public hearing on the proposed increase before it increases those total taxes. The legislature shall prescribe by law the form, content, timing, and methods of giving the notice and the rules for the conduct of the hearing.

(b) In calculating the total amount of taxes imposed in the current year for the purposes of Subsection (a) of this section, the taxes on property in territory added to the political subdivision since the preceding year and on new improvements that were not taxable in the preceding year are excluded. In calculating the total amount of taxes imposed in the preceding year for the purposes of Subsection (a) of this section, the taxes imposed on real property that is not taxable by the subdivision in the current year are excluded.

(c) The legislature by general law shall require that, subject to reasonable exceptions, a property owner be given notice of a revaluation and of the amount of taxes that will result from the reappraised value if neither the tax rate nor the ratio of assessment in effect in the preceding year is reduced. The notice must be given before the procedures required in Subsection (a) are instituted.

[Adopted Nov. 7, 1978, eff. Jan. 1, 1979.]

§ 22. Appropriations from State Tax Revenues; Rate of Growth

Sec. 22. (a) In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state's economy. The legislature shall provide by general law procedures to implement this subsection.

(b) If the legislature by adoption of a resolution approved by a record vote of a majority of the members of each house finds that an emergency exists and identifies the nature of the emergency, the legislature may provide for appropriations in excess of the amount authorized by Subsection (a) of this section. The excess authorized under this subsection may not exceed the amount specified in the resolution.

(c) In no case shall appropriations exceed revenues as provided in Article III, Section 49a, of this constitution. Nothing in this section shall be construed to alter, amend, or repeal Article III, Section 49a, of this constitution.

[Adopted Nov. 7, 1978, eff. Jan. 1, 1979.]

§ 23. Statewide Appraisal of Real Property; Enforcement of Uniform Standards and Procedures for Appraisal

Sec. 23. (a) There shall be no statewide appraisal of real property for ad valorem tax purposes; however, this shall not preclude formula distribution of tax revenues to political subdivisions of the state.

(b) Administrative and judicial enforcement of uniform standards and procedures for appraisal of property for ad valorem tax purposes, as prescribed by general law, shall originate in the county where the tax is imposed, except that the legislature may provide by general law for political subdivisions with boundaries extending outside the county.

[Adopted Nov. 7, 1978, eff. Jan. 1, 1979.]

ARTICLE XVI

GENERAL PROVISIONS

Section
62, 63. Repealed. April 22, 1975.
67. State and Local Retirement Systems.

§ 21. Public Printing and Binding; Repairs and Furnishings; Contracts

Sec. 21. All stationery, printing, fuel used in the legislature and departments of the government other than the judicial department, printing and binding of the laws, journals, and department reports, and all other printing and binding and the repairing and furnishing of the halls and rooms used during meetings of the legislature and in committees, except proclamations and such products and services as may be done by handicapped individuals employed in nonprofit rehabilitation facilities providing sheltered

employment to the handicapped in Texas, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price and under such regulations as shall be prescribed by law. No member or officer of any department of the government shall in any way have a financial interest in such contracts, and all such contracts or programs involving the state use of the products and services of handicapped individuals shall be subject to such requirements as might be established by the legislature.

[Amended Nov. 7, 1978.]

§ 59. Conservation and Development of Natural Resources; Conservation and Reclamation Districts

[See Compact Edition, Volume 1 for text of (a) to (e)]

(f) A conservation and reclamation district created under this section to perform any or all of the purposes of this section may engage in fire-fighting activities and may issue bonds or other indebtedness for fire-fighting purposes as provided by law and this constitution.

[Amended Nov. 7, 1978.]

§§ 62, 63. Repealed. April 22, 1975

See, now, § 67 of this article.

§ 67. State and Local Retirement Systems

Sec. 67. (a) General Provisions. (1) The legislature may enact general laws establishing systems and programs of retirement and related disability and death benefits for public employees and officers. Financing of benefits must be based on sound actuarial principles. The assets of a system are held in trust for the benefit of members and may not be diverted.

(2) A person may not receive benefits from more than one system for the same service, but the legislature may provide by law that a person with service covered by more than one system or program is entitled to a fractional benefit from each system or program based on service rendered under each system or program calculated as to amount upon the benefit formula used in that system or program. Transfer of service credit between the Employees Retirement System of Texas and the Teacher Retirement System of Texas also may be authorized by law.

(3) Each statewide benefit system must have a board of trustees to administer the system and to invest the funds of the system in such securities as the board may consider prudent investments. In making investments, a board shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. The legislature by law may further restrict the investment discretion of a board.

(4) General laws establishing retirement systems and optional retirement programs for public employees and officers in effect at the time of the adoption of this section remain in effect, subject to the general powers of the legislature established in this subsection.

(b) State Retirement Systems. (1) The legislature shall establish by law a Teacher Retirement System of Texas to provide benefits for persons employed in the public schools, colleges, and universities supported wholly or partly by the state. Other employees may be included under the system by law.

(2) The legislature shall establish by law an Employees Retirement System of Texas to provide benefits for officers and employees of the state and such state-compensated officers and employees of appellate courts and judicial districts as may be included under the system by law.

(3) The amount contributed by a person participating in the Employees Retirement System of Texas or the Teacher Retirement System of Texas shall be established by the legislature but may not be less than six percent of current compensation. The amount contributed by the state may not be less than six percent nor more than 10 percent of the aggregate compensation paid to individuals participating in the system. In an emergency, as determined by the governor, the legislature may appropriate such additional sums as are actuarially determined to be required to fund benefits authorized by law.

(c) Local Retirement Systems. (1) The legislature shall provide by law for:

(A) the creation by any city or county of a system of benefits for its officers and employees;

(B) a statewide system of benefits for the officers and employees of counties or other political subdivisions of the state in which counties or other political subdivisions may voluntarily participate; and

(C) a statewide system of benefits for officers and employees of cities in which cities may voluntarily participate.

(2) Benefits under these systems must be reasonably related to participant tenure and contributions.

(d) Judicial Retirement System. (1) Notwithstanding any other provision of this section, the system of retirement, disability, and survivors' benefits heretofore established in the constitution or by law for justices, judges, and commissioners of the appellate courts and judges of the district and criminal district courts is continued in effect. Contributions required and benefits payable are to be as provided by law.

(2) General administration of the Judicial Retirement System of Texas is by the Board of Trustees of the Employees Retirement System of Texas under such regulations as may be provided by law.

(e) Anticipatory Legislation. Legislation enacted in anticipation of this amendment is not void because it is anticipatory.

[Adopted April 22, 1975.]

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§ 1.01. Purpose of Code

(a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, 1963 (Article 5429b–1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent alcoholic beverage law more accessible and understandable, by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

[Acts 1977, 65th Leg., p. 393, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 1.02. Construction of Code

The Code Construction Act (Article 5429b–2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

[Acts 1977, 65th Leg., p. 393, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 1.03. Public Policy

This code is an exercise of the police power of the state for the protection of the welfare, health, peace, temperance, and safety of the people of the state. It shall be liberally construed to accomplish this purpose.

[Acts 1977, 65th Leg., p. 393, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 1.04. Definitions

In this code:

(1) "Alcoholic beverage" means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

(2) "Consignment sale" means:

(A) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person receiving the beverages has the right at any time to relinquish possession to them or to return them to the shipper and in which title to the beverages remains in the shipper;

(B) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person designated as the receiver merely acts as an intermediary for the shipper or seller and the actual receiver;

(C) the delivery of alcoholic beverages to a factor or broker;

(D) any method employed by a shipper or seller by which a person designated as the purchaser of alcoholic beverages does not in fact purchase the beverages;

(E) any method employed by a shipper or seller by which a person is placed in actual or constructive possession of an alcoholic beverage without acquiring title to the beverage; or

(F) any other type of transaction which may legally be construed as a consignment sale.

(3) "Distilled spirits" means alcohol, spirits of wine, whiskey, rum, brandy, gin, or any liquor produced in whole or in part by the process of distillation, including all dilutions or mixtures of them.

(4) "Illicit beverage" means an alcoholic beverage:

(A) manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, stored, possessed, imported, or transported in violation of this code;

(B) on which a tax imposed by the laws of this state has not been paid and to which the

tax stamp, if required, has not been affixed; or

(C) possessed, kept, stored, owned, or imported with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse, store, or transport in violation of this code.

(5) "Liquor" means any alcoholic beverage containing alcohol in excess of four percent by weight, unless otherwise indicated. Proof that an alcoholic beverage is alcohol, spirits of wine, whiskey, liquor, wine, brandy, gin, rum, ale, malt liquor, tequila, mescal, habanero, or barreteago, is prima facie evidence that it is liquor.

(6) "Person" means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

(7) "Wine and vinous liquor" means the product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, or berries.

(8) "Hotel" means the premises of an establishment:

(A) where, in consideration of payment, travelers are furnished food and lodging;

(B) in which are located at least 10 adequately furnished completely separate rooms with adequate facilities so comfortably disposed that persons usually apply for and receive overnight accommodations in the establishment, either in the course of usual and regular travel or as a residence; and

(C) which operates a regular dining room constantly frequented by customers each day.

(9) "Applicant" means a person who submits or files an original or renewal application with the county judge, commission, or administrator for a license or permit.

(10) "Commission" means the Texas Alcoholic Beverage Commission.

(11) "Permittee" means a person who is the holder of a permit provided for in this code, or an agent, servant, or employee of that person.

(12) "Ale" or "malt liquor" means a malt beverage containing more than four percent of alcohol by weight.

(13) "Mixed beverage" means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage permit, the holder of a daily temporary mixed beverage permit, the holder of a caterer's permit, the holder of a mixed beverage late hours permit, the holder of a private club registration permit, or the holder of a private club late hours permit.

(14) "Barrel" means, as a standard of measure, a quantity of beer equal to 31 standard gallons.

(15) "Beer" means a malt beverage containing one-half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight, and does not include a beverage designated by label or otherwise by a name other than beer.

(16) "Licensee" means a person who is the holder of a license provided in this code, or any agent, servant, or employee of that person.

(17) "Manufacturer" means a person engaged in the manufacture or brewing of beer, whether located inside or outside the state.

(18) "Original package," as applied to beer, means a container holding one barrel, one-half barrel, one-quarter barrel, or one-eighth barrel of beer in bulk, or any box, crate, carton, or other device used in packing beer that is contained in bottles or other containers.

(19) "Premises" has the meaning given it in Section 11.49 of this code.

(20) "Citizen of Texas" and "citizen of this state" mean a person who is a citizen of both the United States and Texas.

[Acts 1977, 65th Leg., p. 393, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 1.05. General Penalty

(a) A person who violates a provision of this code for which a specific penalty is not provided is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $1,000 or by confinement in the county jail for not more than one year or by both.

(b) The term "specific penalty," as used in this section, means a penalty which might be imposed as a result of a criminal prosecution.

[Acts 1977, 65th Leg., p. 395, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 1.06. Code Exclusively Governs

Unless otherwise specifically provided by the terms of this code, the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be governed exclusively by the provisions of this code.

[Acts 1977, 65th Leg., p. 395, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 1.07. Resident Aliens

(a) For purposes of any provision of this code that requires an applicant for a license or permit to be a United States citizen or Texas citizen, regardless of whether it applies to an individual, a percentage of stockholders of a corporation, or members of a partnership, firm, or association, an individual who is not

a United States citizen but who legally resides in the state is treated as a United States citizen and a citizen of Texas.

(b) If it is required that an individual have resided in the state for a specified period of time, an alien legally residing in the state satisfies the requirement if he has legally resided in the state for the prescribed period of time. If an alien becomes a United States citizen while residing in Texas, any continuous period of time he legally resided in the state immediately before becoming a citizen is included in computing his period of continuous residence in the state.

[Added by Acts 1979, 66th Leg., p. 1971, ch. 777, § 18, eff. Aug. 27, 1979.]

TITLE 2. ADMINISTRATION OF CODE

CHAPTER 5. ALCOHOLIC BEVERAGE COMMISSION

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SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

§ 5.01. Texas Alcoholic Beverage Commission

(a) The Texas Alcoholic Beverage Commission is an agency of the state.

(b) The commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless it is continued in existence as provided by that Act, the commission is abolished and this code expires on September 1, 1987.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1965, ch. 777, § 2, eff. Aug. 27, 1979.]

§ 5.02. Members of Commission; Appointment

(a) The commission is composed of three members, who are appointed by the governor with the advice and consent of the senate.

(b) Each member must be a Texas resident, must have resided in the state for at least five years next preceding his appointment and qualification, and must be a qualified voter in the state at the time of his appointment and qualification.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.03. Terms of Office

The members of the commission hold office for staggered terms of six years, with the term of one member expiring every two years. Each member holds office until his successor is appointed and has qualified. A member may be appointed to succeed himself.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.04. Chairman

The governor shall designate one member of the commission as chairman.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.05. Relationship With Alcoholic Beverage Business Prohibited

(a) No person may be appointed to or serve on the commission, or hold an office under the commission, or be employed by the commission, who:

(1) has any financial connection with a person engaged in an alcoholic beverage business;

(2) holds stocks or bonds in an alcoholic beverage business; or

(3) has a pecuniary interest in an alcoholic beverage business.

(b) No member of the commission, or anyone holding an office under the commission, or any employee of the commission, may receive a commission or profit from or have an interest in the sale or purchase of alcoholic beverages.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.06. Commission Office

The office of the commission shall be in the city of Austin.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.07. Commission Meetings

(a) The commission may meet in the city of Austin at times it determines.

(b) A majority of the members constitutes a quorum for the transaction of business or for the exercise of any of the powers or duties of the commission.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.08. Per Diem, Expenses

Members of the commission receive per diem of $10 a day, for not more than 60 days a year, plus actual expenses, while attending commission meetings or otherwise engaged in the performance of their duties.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.09. Annual Report

In January each year, the commission shall report to the governor concerning its administration of this code.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.10. Employees; Compensation; Bonds

(a) The commission or administrator may employ clerks, stenographers, inspectors, chemists, and other employees necessary to properly enforce this code.

(b) The commission or administrator shall determine the duties of all employees. The employees shall be compensated as provided by legislative appropriation.

(c) The commission may require an employee to give bond for the faithful performance of his duties in an amount it considers adequate and under conditions it considers proper.

[Acts 1977, 65th Leg., p. 398, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.11. Administrator

The commission shall appoint an administrator to serve at its will and, subject to its supervision, administer this code. Unless the commission orders otherwise, the administrator shall be manager, secretary, and custodian of all records. The administrator shall devote his entire time to the office and shall receive a salary as appropriated by the legislature. The administrator shall execute a bond in the sum of $10,000, payable to the state, and conditioned as the commission requires.

[Acts 1977, 65th Leg., p. 398, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.12. Concurrent Duties of Administrator

The commission shall specify the duties and powers of the administrator by printed rules and regulations entered in its minutes. When this code imposes concurrent powers or duties on the commission and the administrator, the commission shall designate those powers and duties which it delegates to the administrator. An order, decision, or judgment rendered and entered by the administrator in a matter in which he has been authorized to act is not subject to change, review, or revision by the commission. A concurrent power or duty which has not been specifically delegated to the administrator by the commission's order is retained by the commission, and an order, decision, or judgment rendered and entered by the commission in a matter in which the commission has retained authority is not subject to change, review, or revision by the administrator.

[Acts 1977, 65th Leg., p. 398, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.13. Assistant Administrator

The administrator shall appoint an assistant administrator. The assistant administrator must meet the same qualifications as the administrator. The assistant administrator shall take the constitutional oath of office and make a bond in the same amount and on the same conditions as the administrator's bond. In the absence of the administrator, or in case of his inability to act, the assistant administrator shall perform the duties conferred on the administrator by law or delegated to the administrator by the commission. If there is a vacancy in the office of administrator, the assistant administrator shall perform the duties of the administrator until an administrator has been appointed by the commission. At other times he shall perform those duties and have those functions, powers, and authority as may be delegated to him by the administrator.

[Acts 1977, 65th Leg., p. 398, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.14. Inspectors and Representatives

The commission or administrator may commission as many inspectors and representatives as are necessary to enforce this code. Each inspector and representative shall take the constitutional oath of office, which shall be filed in the office of the commission. Each commissioned inspector and representative has all the powers of a peace officer coextensive with the boundaries of the state. Each commissioned inspector and representative shall make and execute a bond as required by the commission.

[Acts 1977, 65th Leg., p. 398, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.15. Assistant Attorneys General

The attorney general shall appoint as many as six assistant attorneys general, as the commission determines necessary, to enable the commission to more efficiently enforce this code. The attorney general

and the assistant attorneys general shall prosecute all suits requested by the commission and defend all suits against the commission. The commission shall provide the assistant attorneys general with necessary stenographers and office space. The assistant attorneys general shall be paid by the commission out of funds appropriated to it for the administration of this code. Their compensation shall be on the same basis as assistant attorneys general devoting their time to general state business.
[Acts 1977, 65th Leg., p. 399, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.16. Representation in Appeal to Commission

No member of the legislature or other person may appear for compensation in a representational capacity in an appeal to the commission unless he first files an affidavit supplied by the commission and makes a full disclosure of whom he represents and of the fact that he is being compensated for doing so. The commission shall provide appropriate forms, and these records are a public record of the commission.
[Acts 1977, 65th Leg., p. 399, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.17. Suits Against the Commission: Venue

In all suits against the commission, except appeals governed by Section 11.67 or 32.18 of this code, venue is in Travis County.
[Acts 1977, 65th Leg., p. 399, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 5.18 to 5.30 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES

§ 5.31. General Powers and Duties

The commission may exercise all powers, duties, and functions conferred by this code, and all powers incidental, necessary, or convenient to the administration of this code. It shall inspect, supervise, and regulate every phase of the business of manufacturing, importing, exporting, transporting, storing, selling, advertising, labeling, and distributing alcoholic beverages, and the possession of alcoholic beverages for the purpose of sale or otherwise. It may prescribe and publish rules necessary to carry out the provisions of this code.
[Acts 1977, 65th Leg., p. 399, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.32. May Require Reports

The commission may require the filing of reports and other data by persons engaged in the alcoholic beverage business which the commission finds necessary to accomplish the purposes of this code.
[Acts 1977, 65th Leg., p. 399, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.33. Regulate Licensees and Permittees

The commission shall supervise and regulate licensees and permittees and their places of business in matters affecting the public. This authority is not limited to matters specifically mentioned in this code.
[Acts 1977, 65th Leg., p. 399, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.34. Delegation of Authority

The commission may authorize its agents, servants, and employees to carry out, under its direction, the provisions of this code.
[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.35. Issuance of Permits and Licenses

The commission may grant, refuse, suspend, or cancel alcoholic beverage permits and licenses as provided in this code.
[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.36. Investigation of Violations

(a) The commission shall investigate violations of this code and of other laws relating to alcoholic beverages, and shall cooperate in the prosecution of offenders before any court of competent jurisdiction. The commission may seize alcoholic beverages manufactured, sold, kept, imported, or transported in violation of this code and apply for the confiscation of the beverages if required to do so by this code.

(b) A law enforcement agency of this state or of any of its political subdivisions shall furnish to the commission without charge any criminal history information in its files or available to it from any source. Information obtained by the commission under this subsection may be used only for the enforcement and administration of this code.
[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1970, ch. 777, § 14, eff. Aug. 27, 1979.]

§ 5.37. Collection of Taxes at Source

(a) If the federal government provides a method of collecting liquor taxes at the source, the commission may enter contracts and comply with regulations, even to the extent of abrogating provisions of this code which are inconsistent with federal law or regulations, in order to receive the portion of the taxes allocated to the state. The taxes received shall be distributed as provided in this code.

(b) The commission may acquire by gift, grant, or purchase, port of entry or other facilities for the administration of the Alcoholic Beverage Code, including the collection of taxes and confiscation of unlawful containers and illicit beverages. The commission may enter into agreements with agencies of the United States or other persons, if in the judgment of the commission, it will benefit the state to place facilities under its control through lease or sale from the United States or other persons. The commission may expend funds for the purpose of rehabilitating, renewing, restoring, extending, enlarging, improving, or performing routine maintenance on facilities under its control.

(c) For the purpose of complying with Chapter 455, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 678f, Vernon's Texas Civil Statutes),[1] the commission is considered to be a public authority and unless the commission requests facilities to be obtained in accordance with Chapter 258, Acts of the 48th Legislature, Regular Session, 1943, as amended (Article 666b, Vernon's Texas Civil Statutes),[2] the provisions of that Act do not apply to the acquisition of facilities under this Act.

[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 612, ch. 287, § 1, eff. May 24, 1979.]

[1] Repealed; see, now, Civil Statutes, art. 601b, § 5.01 et seq.
[2] Repealed; see, now, Civil Statutes, art. 601b, § 6.01 et seq.

§ 5.38. Quality and Purity of Beverages

The commission shall require by rule that any alcoholic beverage sold in this state conform in all respects to its advertised quality. The commission shall promulgate and enforce rules governing the labeling and advertising of all alcoholic beverages sold in the state, and shall adopt and enforce a standard of quality, purity, and identity of all alcoholic beverages. The commission shall promulgate and enforce necessary rules to safeguard the public health and to insure sanitary conditions in the manufacturing, refining, blending, mixing, purifying, bottling, rebottling, and sale of alcoholic beverages.

[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.39. Regulation of Liquor Containers

The commission shall adopt rules to standardize the size of containers in which liquor may be sold in the state and relating to representations required or allowed to be displayed on or in the containers. To accommodate the alcoholic beverage industry's conversion to the metric system, the commission shall adopt rules permitting the importation and sale of liquor in metric-sized containers as well as in containers sized according to the United States standard gallon system.

[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.40. Regulation of Beer Container Deposits

If the commission finds it necessary to effectuate the purposes of this code, it may adopt rules to provide a schedule of deposits required to be obtained on beer containers delivered by a licensee.

[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.41. Alcohol Used for Scientific Purposes, Etc.

The commission shall license and regulate the use of alcohol and liquor for scientific, pharmaceutical, and industrial purposes. The commission shall provide by rule for the withdrawal of alcohol or liquor for those purposes from warehouses or denaturing plants, and shall prescribe the manner in which the alcohol or liquor may be used, tax free, for scientific research, in hospitals or sanitoriums, in industrial plants, or for other manufacturing purposes.

[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.42. Penalty for Violation of Rule

A person who violates a valid rule of the commission is guilty of a misdemeanor and on conviction is punishable by the penalty prescribed in Section 1.05 of this code.

[Acts 1977, 65th Leg., p. 401, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.43. Who May Hold Hearing; Rules of Evidence

The commission or administrator may designate a member of the commission or other representative to conduct and make a record of any hearing authorized by this code. The commission or administrator may render a decision on the basis of the record or the proposal for decision if one is required under the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes) as if the administrator or entire commission had conducted the hearing. The commission may prescribe its rules of procedure.

[Acts 1977, 65th Leg., p. 401, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.44. Subpoena of Witnesses; Witness Fees; Contempt

(a) The commission or administrator, or an inspector or representative of the commission under the direction of the commission, for the purposes of this code, may:

(1) issue subpoenas;

(2) compel the attendance of witnesses;

(3) administer oaths;

(4) certify to official acts;

(5) take depositions inside or outside the state, as provided by law;

(6) compel the production of pertinent books, accounts, records, documents, and testimony; and

(7) certify to copies of documents as being true copies on file in the official records of the commission.

(b) If a witness in attendance before the commission or before an authorized representative refuses without reasonable cause to be examined or answer a legal or pertinent question, or to produce a book, record, or paper when ordered by the commission to do so, the commission may apply to the district court for a rule or order returnable in not less than two nor more than five days, directing the witness to show cause before the judge why he should not be punished for contempt. The commission may apply to the district court of any county where the witness is in attendance, on proof by affidavit of the fact, unless the order of contempt is sought under the

Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), in which case the commission shall apply to a district court of Travis County in conformity with that Act. On return of the order, the judge hearing the matter shall examine the witness under oath, and the witness shall be given an opportunity to be heard. If the judge determines that the witness has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record, or paper which he was ordered to bring or produce, he may forthwith punish the offender as for contempt of court.

(c) Subpoenas are served and witness fees and mileage paid as in civil cases in the district court in the county to which the witness is called, unless the proceeding for which the service or payment is made is pursuant to the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), in which case the service or payment shall be made as provided in that Act. Witnesses subpoenaed at the instance of the commission shall be paid their fees and mileage by the commission out of funds appropriated for that purpose.
[Acts 1977, 65th Leg., p. 401, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1970, ch. 777, § 15, eff. Aug. 27, 1979.]

§ 5.441. Fees and Expenses Paid Members or Employees of Commission

(a) If a member of the commission, the administrator, or an employee of the commission is called to attend a federal or state judicial proceeding inside or outside the state and the attendance relates to the individual's duties with the commission, the individual shall pay to the state treasurer any witness fees he receives. The treasurer shall deposit the fees in the state treasury to the credit of an appropriation made to the commission for payment of fees and mileage of witnesses called by the commission.

(b) An employee of the commission who travels inside or outside the state on official business as the designated representative of the administrator is entitled to reimbursement for meals, lodging, and travel at the same rate as is applicable to members of the commission.
[Added by Acts 1979, 66th Leg., p. 1971, ch. 777, § 16, eff. Aug. 27, 1979.]

§ 5.45. Proof of Document

(a) In a suit by the state or the commission or in which either is a party, a transcript from the papers, books, records, or proceedings of the commission purporting to contain a true statement of accounts between the commission or the state and any person, or a copy of a rule, order, audit, bond, contract, or other instrument relating to a transaction between the commission and a person, when certified by the administrator or chairman of the commission to be a true copy of the original on file with the commission and authenticated under the seal of the commission, is admissible as prima facie evidence of the existence and validity of the original document and entitled to the same credibility as the original document. If a suit is brought on a bond or other written instrument, and the person alleged to have executed the instrument denies by a sworn pleading to have executed the instrument, the court shall require the production and proof of the instrument.

(b) A member of the commission or the administrator may execute a certificate under the seal of the commission setting forth the terms of an order, rule, bond, or other instrument referred to in this section. In the case of an order or rule, the certificate may state that the order or rule was adopted, promulgated, and published and filed with the commission and was in force at any date or during any period of time. In the case of a bond or other instrument, the certificate may state that it was executed and filed with the commission and was in force at any date or during any period of time. The certificate is prima facie evidence of the facts stated in it and is admissible as evidence in any action, civil or criminal, involving the facts contained in the certificate without further proof of those facts.
[Acts 1977, 65th Leg., p. 402, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.46. Security for Costs

No security for costs may be required of a representative of the commission in a matter in which the representative protests the issuance of a license or permit in a hearing conducted by the county judge.
[Acts 1977, 65th Leg., p. 402, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.47. Records of Violations

Records of all violations of this code by permittees and licensees, records introduced and made public at hearings, and decisions resulting from the hearings relating to the violations shall be kept on file at the office of the commission in the city of Austin. The records are open to the public.
[Acts 1977, 65th Leg., p. 402, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.48. Private Records

(a) "Private records," as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permittee or licensee.

(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless in-

troduced in evidence in a hearing before the commission or before a court in this state or the United States.
[Acts 1977, 65th Leg., p. 402, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.49. Printed Copies of Code

The commission from time to time may have as many copies of this code printed in pamphlet form for distribution as it finds necessary.
[Acts 1977, 65th Leg., p. 402, ch. 194, § 1, eff. Sept. 1, 1977.]

TITLE 3. LICENSES AND PERMITS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 11.01. Permit Required

(a) No person who has not first obtained a permit of the type required for the privilege exercised may, in a wet area, do any of the following:

(1) manufacture, distill, brew, sell, possess for the purpose of sale, import into this state, export from this state, transport, distribute, warehouse, or store liquor;

(2) solicit or take orders for liquor; or

(3) for the purpose of sale, bottle, rectify, blend, treat, fortify, mix, or process liquor.

(b) A person may manufacture, distill, brew, sell, import, export, transport, distribute, warehouse, store, possess, possess for the purpose of sale, bottle, rectify, blend, treat, fortify, mix, or process liquor, or possess equipment or material designed for or capable of use for manufacturing liquor, if the right or privilege of doing so is granted by this code.

(c) A right or privilege granted by this section as an exception to prohibitions contained elsewhere in this code may be exercised only in the manner provided. An act done by a person which is not permitted by this code is unlawful.
[Acts 1977, 65th Leg., p. 404, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.02. Separate Permit Required

A separate permit shall be obtained and a separate fee paid for each outlet of liquor in the state.
[Acts 1977, 65th Leg., p. 404, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.03. Nature of Permit

A permit issued under this code is a purely personal privilege and is subject to revocation as provided in this code. It is not property, is not subject to execution, does not pass by descent or distribution, and except as otherwise provided in this code, ceases on the death of the holder.
[Acts 1977, 65th Leg., p. 404, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.04. Must Display Permit

All permits shall be displayed in a conspicuous place at all times on the licensed premises.
[Acts 1977, 65th Leg., p. 404, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.05. Unauthorized Use of Permit

No permittee may consent to or allow the use or display of his permit by a person other than the person to whom the permit was issued.
[Acts 1977, 65th Leg., p. 404, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.06. Privileges Limited to Licensed Premises

No person may use a permit or exercise any privileges granted by the permit except at the place, address, premises, or location for which the permit is issued, except as otherwise provided by this code.

[Acts 1977, 65th Leg., p. 405, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.07. Duplicate or Corrected Permit

If a permit is lost, destroyed, or needs to be changed, the commission may issue a duplicate or corrected permit.

[Acts 1977, 65th Leg., p. 405, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.08. Change of Location

If a permittee desires to change the location of his place of business, he may file an application for a change of location with the commission. The application shall be on a form prescribed by the commission. The commission or administrator may deny the application on any ground for which an original application may be denied. The application is subject to protest and hearing in the same manner as an original application for a permit.

[Acts 1977, 65th Leg., p. 405, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.09. Expiration of Permit

A permit issued under this code expires one year after the date it is issued except as otherwise provided by this code.

[Acts 1977, 65th Leg., p. 405, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.10. Succession on Death, Bankruptcy, Etc.

On the death of the permittee or of a person having an interest in the permit, or on bankruptcy, receivership, or partnership dissolution, the receiver or successor in interest may apply to the county judge of the county where the licensed premises are located for certification that he is the receiver or successor in interest. On certification, unless good cause for refusal is shown, the commission or administrator shall grant permission, by letter or otherwise, for the receiver or successor in interest to operate the business during the unexpired portion of the permit. The permit may not be renewed, but the receiver or successor in interest may apply for an original permit or license. A receiver or successor in interest operating for the unexpired portion of the permit is subject to the provisions of this code relating to suspension or cancellation of a permit.

[Acts 1977, 65th Leg., p. 405, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 11.11 to 11.30 reserved for expansion]

SUBCHAPTER B. APPLICATION FOR AND ISSUANCE OF PERMITS

§ 11.31. Application for Permit

All permits shall be applied for and obtained from the commission. This section does not apply to wine and beer retailer's permits, except those for railway cars or excursion boats, or to wine and beer retailer's off-premise permits.

[Acts 1977, 65th Leg., p. 405, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.32. Renewal Application

Renewal applications shall be made under oath and shall contain all information required by the commission or administrator showing that the applicant is qualified to hold the permit. The application shall be accompanied by the required bond and state fee. The commission or administrator may issue a renewal permit if it is found that the applicant is qualified.

[Acts 1977, 65th Leg., p. 405, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.33. Application Forms

All permit application forms shall be provided by the commission.

[Acts 1977, 65th Leg., p. 406, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.34. Consolidated Application

(a) An applicant for a wholesaler's, class B wholesaler's, rectifier's, brewer's, distiller's, or winery permit may consolidate in a single application his application for that permit and his application for:

(1) private storage;

(2) storage in a public bonded warehouse;

(3) a private carrier's permit; and

(4) any other permit he is qualified to receive.

(b) An applicant who files a consolidated application must pay the fee prescribed in this code for each permit included in the application.

[Acts 1977, 65th Leg., p. 406, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2116, ch. 819, § 2, eff. June 13, 1979.]

§ 11.35. Payment of Fee

Each permit application must be accompanied by a cashier's check or money order for the amount of the state fee, payable to the order of the state treasurer.

[Acts 1977, 65th Leg., p. 406, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.36. Refund of Fee

The commission may not refund a permit fee except when the permittee is prevented from continuing in business because of a local option election or when an application for a permit is rejected by the commission or administrator. As much of the proceeds from permit fees as is necessary may be appropriated for that purpose.

[Acts 1977, 65th Leg., p. 406, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.37. Certification of Wet or Dry Status

(a) The county clerk of the county in which an application for a permit is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the permit is sought is prohibited by any valid order of the commissioners court.

(b) The city secretary or clerk of the city in which an application for a permit is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the permit is sought is prohibited by charter or ordinance.

[Acts 1977, 65th Leg., p. 406, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.38. Local Fee Authorized

(a) The governing body of a city or town may levy and collect a fee not to exceed one-half the state fee for each permit issued for premises located within the city or town. The commissioners court of a county may levy and collect a fee equal to one-half of the state fee for each permit issued for premises located within the county. Those authorities may not levy or collect any other fee or tax from the permittee except general ad valorem taxes, the hotel occupancy tax levied under Chapter 63, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 1269j–4.1, Vernon's Texas Civil Statutes), and the local sales and use tax levied under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes).

(b) The commission or administrator may cancel a permit if it finds that the permittee has not paid a fee levied under this section. A permittee who sells an alcoholic beverage without first having paid a fee levied under this section commits a misdemeanor punishable by a fine of not less than $10 nor more than $200.

(c) Nothing in this code shall be construed as a grant to any political subdivision of the authority to regulate permittees except by collecting the fees authorized in this section and exercising those powers granted to political subdivisions by other provisions of this code.

(d) The following are exempt from the fee authorized in this section:

(1) agent's, airline beverage, industrial, carrier's, private carrier's, private club registration, local cartage, storage, and temporary wine and beer retailer's permits;

(2) a wine and beer retailer's permit issued for a dining, buffet, or club car; and

(3) a mixed beverage permit during the three-year period following the issuance of the permit.

[Acts 1977, 65th Leg., p. 406, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2117, ch. 819, § 3, eff. June 13, 1979.]

§ 11.39. Applicant to Publish Notice

(a) Every applicant for a pharmacist's medicinal, brewer's, distiller's, mixed beverage, winery, wholesaler's, class B wholesaler's, wine bottler's, or package store permit shall give notice of the application by publication at his own expense in two consecutive issues of a newspaper of general circulation published in the city or town in which his place of business is located. If no newspaper is published in the city or town, the notice shall be published in a newspaper of general circulation published in the county where the applicant's business is located. If no newspaper is published in the county, the notice shall be published in a qualified newspaper published in the closest neighboring county and circulated in the county of the applicant's residence.

(b) The notice shall be printed in 10-point boldface type and shall include:

(1) the type of permit to be applied for;

(2) the exact location of the place of business for which the permit is sought;

(3) the names of each owner of the business and, if the business is operated under an assumed name, the trade name together with the names of all owners; and

(4) if the applicant is a corporation, the names and titles of all officers.

(c) An applicant for a renewal permit is not required to publish notice.

(d) This section does not apply to an applicant for a daily temporary mixed beverage permit or a caterer's permit.

[Acts 1977, 65th Leg., p. 407, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2117, ch. 819, § 4, eff. June 13, 1979.]

§ 11.40. Notice to County Judge

The commission shall give notice of all permit applications to the county judge of the county in which the applicant's place of business is located, unless the county judge waives the required notice in writing. Notice is not required in the case of an application for a wine and beer retailer's, wine and beer retailer's off-premise, temporary wine and beer retailer's, carrier's, private carrier's, airline beverage, industrial, agent's, manufacturer's, agent's, bonded warehouse, or storage permit.

[Acts 1977, 65th Leg., p. 407, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.41. Recommendation of Local Officials

(a) When a person applies for a permit, the commission or administrator shall give due consideration to the recommendations of the mayor, chief of police, city marshal, or city attorney of the city or town in which the premises sought to be licensed are located and of the county judge, sheriff, or county or district attorney of the county in which the premises

sought to be licensed are located. If a protest against the issuance of a permit is made to the commission by any of these officers and it is found on a hearing or finding of facts that the issuance of the permit would be in conflict with the provisions of this code, the commission or administrator shall enter an order setting forth the reasons for refusal. A copy of the order shall be immediately mailed or delivered to the applicant.

(b) In the granting or withholding of a permit to sell alcoholic beverages at retail, the commission or administrator may give consideration to a recommendation made in writing by the commissioners court of the county in which the applicant proposes to conduct his business or by a representative of the commission.

[Acts 1977, 65th Leg., p. 408, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.42. Statement of Stock Ownership

The commission at any time may require an officer of a corporation holding a permit to file a sworn statement showing the actual owners of the stock of the corporation, the amount of stock owned by each, the officers of the corporation, and any information concerning the qualifications of the officers or stockholders.

[Acts 1977, 65th Leg., p. 408, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.43. Discretion to Grant or Refuse Permit

The commission and administrator have discretionary authority to grant or refuse to issue an original or renewal permit under the provisions of this subchapter or any other applicable provision of this code.

[Acts 1977, 65th Leg., p. 408, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.44. Premises Ineligible for Permit or License

If an order of suspension against a permit or license is pending or unexpired, or if the commission has initiated action to cancel or suspend a permit or license, no permit or license may be issued for or transferred to the same licensed premises.

[Acts 1977, 65th Leg., p. 408, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.45. "Applicant" Defined

The word "applicant," as used in Sections 11.46 through 11.48 of this code, also includes, as of the date of the application, each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock. This section shall not be construed as prohibiting anything permitted by Section 22.06, 24.05, or 102.05 of this code.

[Acts 1977, 65th Leg., p. 408, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.46. General Grounds for Refusal

(a) The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists:

(1) the applicant has been convicted in a court of competent jurisdiction of the violation of any provision of this code during the two years immediately preceding the filing of his application;

(2) three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for the conviction of a felony;

(3) within the six-month period immediately preceding his application the applicant violated or caused to be violated a provision of this code or a rule or regulation of the commission which involves moral turpitude, as distinguished from a technical violation of this code or of the rule;

(4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(5) the applicant is indebted to the state for any taxes, fees, or payment of penalty imposed by this code or by rule of the commission;

(6) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad;

(7) the applicant is less than 18 years of age;

(8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency;

(9) the applicant is in the habit of using alcoholic beverages to excess or is physically or mentally incapacitated;

(10) the applicant will sell liquor unlawfully in a dry area or in a manner contrary to law or will knowingly permit an agent, servant, or employee to do so;

(11) the applicant is not a United States citizen or has not been a citizen of Texas for a period of three years immediately preceding the filing of his application, unless he was issued a permit or renewal permit on or before September 1, 1948, and has at some time been a United States citizen;

(12) the applicant does not have an adequate building available at the address for which the permit is sought;

(13) the applicant is residentially domiciled with a person whose permit or license has been cancelled for cause within the 12 months immediately preceding the date of his present application;

(14) the applicant has failed or refused to furnish a true copy of his application to the commission's district office in the district in which the premises for which the permit is sought are located; or

(15) during the six months immediately preceding the filing of the application the premises for which the permit is sought have been operated, used, or frequented for a purpose or in a manner that is lewd, immoral, or offensive to public decency.

(b) The commission or administrator shall refuse to issue an original permit authorizing the retail sale of alcoholic beverages unless the applicant for the permit files with the application a certificate issued by the comptroller of public accounts stating that the applicant holds, or has applied for and satisfies all legal requirements for the issuance of, a sales tax permit, if required, for the place of business for which the alcoholic beverage permit is sought.

[Acts 1977, 65th Leg., p. 408, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1965, ch. 777, § 3, eff. Aug. 27, 1979.]

§ 11.47. Refusal of Permit: Interest in Beer Establishment

The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that the applicant or a person with whom he is residentially domiciled has a financial interest in a permit or license authorizing the sale of beer at retail, except as is authorized by Section 22.06, 24.05, or 102.05 of this code. This section does not apply to an applicant for a permit which authorizes the sale of mixed beverages.

[Acts 1977, 65th Leg., p. 409, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.48. Refusal of Package Store or Mixed Beverage Permit

(a) The commission or administrator may refuse to issue an original or renewal mixed beverage permit with or without a hearing if it has reasonable grounds to believe and finds that the applicant, directly or indirectly, or through a subsidiary, affiliate, agent, or employee, or through an officer, director, or firm member, owns an interest of any kind in the premises, business, or permit of a package store.

(b) The commission or administrator may refuse to issue an original or renewal package store permit with or without a hearing if it has reasonable grounds to believe and finds that the applicant, directly or indirectly, through a subsidiary, affiliate, agent, or employee, or through an officer, director, or firm member, owns an interest of any kind in the premises, business, or permit of a mixed beverage establishment.

(c) This section does not apply to anything permitted by Section 102.05 of this code.

[Acts 1977, 65th Leg., p. 409, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.49. Premises Defined; Designation of Licensed Premises

(a) In this code, "premises" means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.

(b) (1) Subject to the approval of the commission or the administrator, and except as provided in Subsection (c) of this section, an applicant for a permit or license may designate a portion of the grounds, buildings, vehicles, and appurtenances to be excluded from the licensed premises. (2) If such a designation has been made and approved as to the holder of a license or permit authorizing the sale of alcoholic beverages at retail or as to a private club registration permit, the sharing of space, employees, business facilities, and services with another business entity (including the permittee's lessor, which, if a corporation, may be a domestic or foreign corporation, but excluding a business entity holding any type of winery permit, a manufacturer's license, or a general, local, or branch distributor's license), does not constitute a subterfuge or surrender of exclusive control in violation of Section 109.53 of this code or the use or display of the license for the benefit of another in violation of Subdivision (15) of Subsection (a) of Section 61.71 of this code. This subsection shall not apply to original or renewal package store permits, wine only package store permits, local distributor's permits, or any type of wholesaler's permits.

(c) An applicant for an original or renewal package store permit, wine only package store permit, local distributor's permit, or any type of wholesaler's permit may not take advantage of the right conferred by Subsection (b) of this section except as permitted in Section 11.50 or 109.53 of this code.

(d) Any package store, wine only package store, wholesaler's, or local distributor's permittee who is injured in his business or property by another person (other than a person in his capacity as the holder of a wine and beer retailer's permit, wine and beer retailer's off-premise permit, private club registration permit, or mixed beverage permit or any person in the capacity of lessor of the holder of such a permit) by reason of anything prohibited in this section or Section 109.53 of this code is entitled to the same remedies available to a package store permittee under Section 109.53 of this code. Except for actions brought against a person in his capacity as the holder of or as the lessor of the holder of a wine and beer retailer's permit, wine and beer retailer's off-premise permit, mixed beverage permit, or pri-

vate club registration permit, the statute of limitations for any action brought under this section or Section 109.53 of this code for any cause of action arising after the effective date of this Act is four years unless a false affidavit has been filed with the commission in which event the statute of limitations is 10 years for all purposes.

(e) When a designation under Subsection (b) of this section is made by a wine and beer retailer or a beer retailer, selling primarily for off-premise consumption, or by a wine and beer retailer's off-premise permittee, no more than 20 percent of the retail floor and display space of the entire premises may be included in the licensed premises, and all the retail floor and display space in the licensed premises must be compact and contiguous and may not be gerrymandered. However, the retail floor and display space included in the licensed premises may be in two separate locations within the retail premises if the total retail floor and display space included in the licensed premises does not exceed 20 percent of the floor and display space of the entire premises and each of the two portions of floor and display space included in the licensed premises is itself compact and contiguous and not gerrymandered. In addition to the one or two separate locations of retail floor and display space on the premises, the licensed premises may include the cash register and check-out portions of the premises provided that (1) no alcoholic beverages are displayed in the check-out or cash register portion of the premises, and (2) the area of the check-out and cash register portions of the premises are counted towards the total of 20 percent of the retail floor and display space that may be dedicated to the sale and display of wine and beer. A storage area that is not accessible or visible to the public may be included in the licensed premises but shall not be considered retail floor and display space for purposes of this section. The commission or administrator shall adopt rules to implement this subsection and to prevent gerrymandering.

[Acts 1977, 65th Leg., p. 410, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1443, ch. 634, § 1, eff. Aug. 27, 1979.]

Section 5 of the 1979 amendatory act provided:

"This Act takes effect immediately, except that Section 11.49(d), Alcoholic Beverage Code, as it applies to injury caused by a wine only package store permittee takes effect September 1, 1980."

§ 11.491. Change of License or Permit

Text of section added effective until September 1, 1980

(a) Any licensee or permittee who wishes to obtain a different license or permit to replace a current one for the same location and who is qualified to hold the license or permit desired may obtain the different license or permit as provided by this section without having to file an original application as otherwise provided by this code.

(b) The licensee or permittee shall file with the commission an application for a change of license or permit. The application may be filed in lieu of a renewal application for the current license or permit or it may be filed before a renewal application is due.

(c) The application must be made on a form prescribed by the commission. It must show that the applicant is eligible to hold the license or permit sought. The commission shall consider and pass on the application in the same manner as it would consider and pass on a renewal application for the current license or permit of the applicant. Procedures applicable to the application for an original license or permit but not ordinarily applicable to a renewal application do not apply.

(d) The applicant shall submit with the application the fee required for the license or permit sought.

(e) If the commission or administrator finds that the applicant is eligible to hold the license or permit sought, the commission or administrator shall issue the license or permit to take effect on the expiration of the license or permit it is to replace unless the applicant has requested in the application that it take effect immediately on approval, in which case the issuance of the new license or permit cancels the existing one. The licensee or permittee is not entitled to a refund for the unexpired portion of the cancelled license or permit.

(f) An application under this section may not be filed after August 31, 1980. This section expires September 1, 1980, except that it continues in effect for the consideration and disposition of applications filed before September 1, 1980.

[Added by Acts 1979, 66th Leg., p. 1444, ch. 634, § 2, eff. Aug. 27, 1979.]

§ 11.50. Licensing a Portion of a Building as Premises

(a) This section applies to a package store permit which was issued on or before April 1, 1971, and which was in good standing, not under suspension, and in actual operation and doing business on that date, unless temporarily prevented from operation by a natural disaster. This section does not apply to a permit if a change in the size or location of the licensed premises has occurred subsequent to April 1, 1971, or if after that date a change in ownership has occurred, by majority stock transfer or otherwise, except by devise or descent where the holder of the permit died on or after April 1, 1971.

(b) Notwithstanding any other provision of this code, the holder of a package store permit to which this section applies may continue to operate a package store on premises comprising a portion of a building if not later than November 28, 1971, he clearly defined the licensed premises by isolating it from the remainder of the building by the erection

of a wall or screen so that the licensed premise is accessible from the remainder of the building only through a door or archway, eight feet or less in width, in the wall or screen. The door or archway must be kept closed during the hours in which it is not legal to sell liquor.

(c) If the right to continue operation under this exception terminates for any reason, the right shall not revive.

[Acts 1977, 65th Leg., p. 410, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 11.51 to 11.60 reserved for expansion]

SUBCHAPTER C. CANCELLATION AND SUSPENSION OF PERMITS

§ 11.61. Cancellation or Suspension of Permit

(a) As used in Subsection (b) of this section, the word "permittee" also includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock. This section shall not be construed as prohibiting anything permitted under Section 22.06, 24.05, or 102.05 of this code.

(b) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true:

(1) the permittee has been finally convicted of a violation of this code;

(2) the permittee violated a provision of this code or a rule of the commission;

(3) the permittee was finally convicted of a felony while holding an original or renewal permit;

(4) the permittee made a false or misleading statement in connection with his original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the commission, its officers, or employees;

(5) the permittee is indebted to the state for taxes, fees, or payment of penalties imposed by this code or by a rule of the commission;

(6) the permittee is not of good moral character or his reputation for being a peaceable and law-abiding citizen in the community where he resides is bad;

(7) the place or manner in which the permittee conducts his business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency;

(8) the permittee is not maintaining an acceptable bond;

(9) the permittee maintains a noisy, lewd, disorderly, or unsanitary establishment or has supplied impure or otherwise deleterious beverages;

(10) the permittee is insolvent or mentally or physically unable to carry on the management of his establishment;

(11) the permittee is in the habit of using alcoholic beverages to excess;

(12) the permittee knowingly misrepresented to a customer or the public any liquor sold by him;

(13) the permittee was intoxicated on the licensed premises;

(14) the permittee sold or delivered an alcoholic beverage to an intoxicated person or allowed an intoxicated person to remain on the premises;

(15) the permittee possessed on the licensed premises an alcoholic beverage that he was not authorized by his permit to purchase and sell;

(16) a package store or wine only package store permittee transported or shipped liquor, or caused it to be transported or shipped, into a dry state or a dry area within this state;

(17) the permittee is residentially domiciled with a person who has a financial interest in an establishment engaged in the business of selling beer at retail, other than a mixed beverage establishment, except as authorized by Section 22.06, 24.05, or 102.05 of this code;

(18) the permittee is residentially domiciled with a person whose permit or license was cancelled for cause within the 12-month period preceding his own application;

(19) the permittee is not a citizen of the United States or has not been a citizen of Texas for a period of three years immediately preceding the filing of his application, unless he was issued an original or renewal permit on or before September 1, 1948, and has been a United States citizen at some time; or

(20) the permittee permitted a person to open a container of alcoholic beverage or possess an open container of alcoholic beverage on the licensed premises unless a mixed beverage permit has been issued for the premises.

(c) The commission or administrator may refuse to renew or, after notice and hearing, suspend for not more than 60 days or cancel a permit if the commission or administrator finds that the permittee:

(1) no longer holds a sales tax permit, if required, for the place of business covered by the alcoholic beverage permit; or

(2) is shown on the records of the comptroller of public accounts as being subject to a final

determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended), or is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes).

[Acts 1977, 65th Leg., p. 410, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1967, ch. 777, §§ 4, 5, eff. Aug. 27, 1979.]

§ 11.611. Conviction of Offense Relating to Discrimination

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing that:

(1) the permittee has been finally convicted of any offense under state or federal law or a municipal ordinance prohibiting the violation of an individual's civil rights or the discrimination against an individual on the basis of the individual's race, color, creed, or national origin; and

(2) the offense was committed on the licensed premises or in connection with the operation of the permittee's business.

[Added by Acts 1979, 66th Leg., p. 1440, ch. 632, § 1, eff. Aug. 27, 1979.]

§ 11.62. Hearing for Cancellation or Suspension of Permit

The commission or administrator may, on the motion of either, set a date for a hearing to determine if a permit should be cancelled or suspended. The commission or administrator shall set a hearing on the petition of the mayor, chief of police, city marshal, or city attorney of the city or town in which the licensed premises are located or of the county judge, sheriff, or county or district attorney of the county in which the licensed premises are located. The petition must be supported by the sworn statement of at least one credible person. The commission or administrator shall give the permittee notice of the hearing and of his right to appear and show cause why the permit should not be cancelled.

[Acts 1977, 65th Leg., p. 412, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.63. Notice of Hearing

At least 10 days' notice shall be given when a hearing is provided by this code. A notice of hearing for the refusal, cancellation, or suspension of a license or permit may be served personally by a representative of the commission or sent by registered or certified mail addressed to the licensee or permittee.

[Acts 1977, 65th Leg., p. 412, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.64. Alternatives to Suspension, Cancellation

(a) When the commission or administrator is authorized to suspend a permit or license under this code, the commission or administrator shall give the permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended. The commission or administrator shall determine the amount of the penalty and in doing so shall consider the economic impact a suspension would have on the permittee or licensee. The amount of the civil penalty may not be less than $150 for each day the permit or license was to have been suspended. If the licensee or permittee does not pay the penalty before the sixth day after the commission or administrator notifies him of the amount, he loses the opportunity to pay it and the commission or administrator shall impose the suspension.

(b) In the case of a violation of this code by a permittee or a retail dealer's off-premise licensee, the commission or administrator may relax any provision of the code relating to the suspension or cancellation of the permit or license and assess a sanction the commission or administrator finds just under the circumstances, and the commission or administrator may reinstate the license or permit at any time during the period of suspension on payment by the permittee or licensee of a fee of not less than $75 nor more than $500, if the commission or administrator finds that any of the circumstances described in Subsection (c) of this section exists.

(c) The following circumstances justify the application of Subsection (b) of this section:

(1) that the violation could not reasonably have been prevented by the permittee or licensee by the exercise of due diligence;

(2) that the permittee or licensee was entrapped;

(3) that an agent, servant, or employee of the permittee or licensee violated this code without the knowledge of the permittee or licensee;

(4) that the permittee or licensee did not knowingly violate this code; or

(5) that the violation was a technical one.

(d) Fees and civil penalties received by the commission under this section shall be deposited in the confiscated liquor fund.

[Acts 1977, 65th Leg., p. 413, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1180, ch. 453, § 1, eff. Sept. 1, 1977.]

§ 11.65. Notice of Cancellation or Suspension

A notice of cancellation or suspension of a license or permit shall be given to the licensee or permittee personally or by registered or certified mail. Cancellation or suspension takes effect when the notice is given or delivered.

[Acts 1977, 65th Leg., p. 412, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.66. Suspension or Cancellation Against Retailer

Except for a violation of the credit or cash law, a penalty of suspension or cancellation of the license or permit of a retailer shall be assessed against the permit or license for the premises where the offense was committed.

[Acts 1977, 65th Leg., p. 413, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.67. Appeal From Cancellation, Suspension, or Refusal of License or Permit

(a) An appeal from an order of the commission or administrator refusing, cancelling, or suspending a permit or license may be taken to the district court of the county in which the applicant, licensee, or permittee resides or in which the owner of involved real or personal property resides.

(b) The appeal shall be under the substantial evidence rule and against the commission alone as defendant. The rules applicable to ordinary civil suits apply, with the following exceptions, which shall be construed literally:

(1) the appeal shall be perfected and filed within 30 days after the date the order, decision, or ruling of the commission or administrator becomes final and appealable;

(2) the case shall have precedence over all other causes of a different nature;

(3) the case shall be tried before a judge within 10 days from the date it is filed;

(4) neither party is entitled to a jury; and

(5) the order, decision, or ruling of the commission or administrator may be suspended or modified by the court pending a trial on the merits, but the final judgment of the district court may not be modified or suspended pending appeal.

[Acts 1977, 65th Leg., p. 413, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.68. Activities Prohibited During Suspension

No permittee may sell, offer for sale, distribute, or deliver any alcoholic beverage while his permit is suspended.

[Acts 1977, 65th Leg., p. 413, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.69. Disposal of Beverages in Bulk

The commission may provide by rule the manner and time in which a person whose license or permit is suspended or cancelled or a receiver or successor in interest of a deceased, insolvent, or bankrupt permittee or licensee may dispose of in bulk the alcoholic beverages on hand at the termination of the use of the permit or license.

[Acts 1977, 65th Leg., p. 413, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.70. Liability of Surety

(a) If a permittee or a person having an interest in a permit is finally convicted of the violation of a provision of this code or of a rule or regulation of the commission, or if a permit is cancelled by the commission and no appeal is pending, the commission may institute action in its own name, for the benefit of the state, on the bond supporting the permit. If the cancellation or conviction is proved, the court shall render judgment in favor of the commission for all fines, costs, and 15 percent of the face value of the bond.

(b) If a permittee fails to seasonably remit any money due the state, the surety on his bond is liable for the amount of money due the state plus a penalty of 15 percent of the face value of the bond.

(c) A suit for the collection of any of the amounts specified in this section shall be brought in a court of competent jurisdiction in Travis County.

(d) Nothing in this code shall be construed as imposing on a surety a greater liability than the total amount of the bond less any portion of the bond which has been extinguished by a prior recovery.

[Acts 1977, 65th Leg., p. 413, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.71. Surety May Terminate Liability

A surety under the bond of a permittee may terminate its liability by giving 30 days' written notice of termination, served personally or by registered mail on the principal and the commission. The surety is discharged from all liability under the bond for any act or omission of the principal occurring after the expiration of 30 days from the date the notice is served. If the principal fails to duly file a new bond in the same amount and with the same conditions as the original bond before the expiration of the 30-day period, his permit shall terminate when the 30-day period expires.

[Acts 1977, 65th Leg., p. 414, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 12. BREWER'S PERMIT

Section

12.01. Authorized Activities.
12.02. Fee.
12.03. Ale or Malt Liquor for Export.
12.04. Continuance of Operation After Local Option Election.

§ 12.01. Authorized Activities

The holder of a brewer's permit may:

(1) manufacture, bottle, package, and label malt liquor;

(2) import ale and malt liquor acquired from a holder of a nonresident brewer's permit; and

(3) sell the ale and malt liquor only to wholesale permit holders in this state or to qualified persons outside the state.

[Acts 1977, 65th Leg., p. 414, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 12.02. Fee

The annual state fee for a brewer's permit is $1,000.

[Acts 1977, 65th Leg., p. 414, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 12.03. Ale or Malt Liquor for Export

Regardless of any other provision of this code, a holder of a brewer's permit may manufacture and package malt beverages, or import them from outside the state, for shipment out of the state, even though the alcohol content, containers, packages, or labels make the beverages illegal to sell within the state. The permittee may export the beverages out of the state or deliver them at his premises for shipment out of the state without being liable for any state tax on beer, ale, or malt liquor sold for resale in the state.

[Acts 1977, 65th Leg., p. 414, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 12.04. Continuance of Operation After Local Option Election

The right of a brewer's permittee to continue operation after a prohibitory local option election is covered by Section 251.75 of this code.

[Acts 1977, 65th Leg., p. 414, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 13. NONRESIDENT BREWER'S PERMIT

Section
13.01. Permit Required.
13.02. Fee.
13.03. Nonresident Seller's Permit Required.

§ 13.01. Permit Required

A nonresident brewer's permit is required for any brewer located outside the state before his ale or malt liquor may be imported into Texas or offered for sale in Texas.

[Acts 1977, 65th Leg., p. 415, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 13.02. Fee

The annual state fee for a nonresident brewer's permit is $1,000.

[Acts 1977, 65th Leg., p. 415, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 13.03. Nonresident Seller's Permit Required

The holder of a nonresident brewer's permit is also required to hold a nonresident seller's permit.

[Acts 1977, 65th Leg., p. 415, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 14. DISTILLER'S PERMIT

Section
14.01. Authorized Activities.
14.02. Fee.
14.03. Continuance of Operation After Local Option Election.

§ 14.01. Authorized Activities

(a) The holder of a distiller's permit may:

(1) manufacture and rectify distilled spirits, except alcohol, and bottle, package, and label them;

(2) sell the distilled spirits in this state to holders of wholesaler's permits and to qualified persons outside the state; and

(3) import distilled spirits, to be used only for manufacturing purposes, from holders of nonresident seller's permits.

(b) The privileges granted to a distiller are confined strictly to distilled spirits manufactured and rectified under his permit.

[Acts 1977, 65th Leg., p. 415, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 14.02. Fee

The annual state fee for a distiller's permit is $1,000.

[Acts 1977, 65th Leg., p. 415, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 14.03. Continuance of Operation After Local Option Election

The right of a distiller's permittee to continue in operation after a prohibitory local option election is covered by Section 251.76 of this code.

[Acts 1977, 65th Leg., p. 415, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 15. RECTIFIER'S PERMIT

Section
15.01. Authorized Activities.
15.02. Fee.

§ 15.01. Authorized Activities

The holder of a rectifier's permit may:

(1) rectify, purify, and refine distilled spirits and wines other than vermouth by any process other than distillation;

(2) mix wines, distilled spirits, or other liquors;

(3) bottle, label, and package his finished products;

(4) sell his finished products to wholesale permit holders in this state or to qualified persons outside the state; and

(5) import distilled spirits only from holders of nonresident seller's permits for rectification purposes but not for resale.

[Acts 1977, 65th Leg., p. 415, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 15.02. Fee

The annual state fee for a rectifier's permit is $1,000.

[Acts 1977, 65th Leg., p. 416, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 16. WINERY PERMIT

Section
16.01. Authorized Activities.
16.02. Fee.
16.03. Importation for Blending.
16.04. Federal Permit Required.
16.05. Location of Premises.

§ 16.01. Authorized Activities

The holder of a winery permit may:

(1) manufacture, bottle, label, and package wine containing not more than 24 percent alcohol by volume;

(2) manufacture and import grape brandy for fortifying purposes only and to be used only on his licensed premises;

(3) sell wine in this state to holders of wholesaler's permits, winery permits, and wine bottler's permits;

(4) sell wine to ultimate consumers in unbroken packages for off-premises consumption in an amount not to exceed 25,000 gallons annually;

(5) sell the wine outside this state to qualified persons; and

(6) blend wines.

[Acts 1977, 65th Leg., p. 416, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2116, ch. 819, § 1, eff. June 13, 1979.]

Subsections 13(b) and (c) of the 1979 amendatory act provided:

"(b) Each class A winery permit, class B winery permit, and farm winery permit in existence on the effective date of this Act is converted to a winery permit subject to the provisions of Chapter 16, Alcoholic Beverage Code, as if the permit had originally been issued under that chapter as amended by this Act. Each of those permits expires on the date it would have expired had this Act not been in effect.

"(c) The Texas Alcoholic Beverage Commission shall treat an application for an original or renewal class A winery permit, class B winery permit, or farm winery permit that is pending on the effective date of this Act as an original or renewal application, respectively, for a winery permit. Such an application is sufficient if it was sufficient according to the law that governed it at the time the application was made or if it is sufficient under the Alcoholic Beverage Code as it exists after this Act takes effect, except that the commission shall require the applicant to submit any additional state fee that may be due before issuance of the original or renewal permit."

§ 16.02. Fee

The annual state fee for a winery permit is $50.

[Acts 1977, 65th Leg., p. 416, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2116, ch. 819, § 1, eff. June 13, 1979.]

§ 16.03. Importation for Blending

The holder of a winery permit may, for blending purposes only, import wines or grape brandy. The wine or grape brandy may be purchased only from the holders of nonresident seller's permits. The state tax on wines imported for blending purposes does not accrue until the wine has been used for blending purposes and the resultant product placed in containers for sale.

[Acts 1977, 65th Leg., p. 416, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2116, ch. 819, § 1, eff. June 13, 1979.]

§ 16.04. Federal Permit Required

A winery permit may be granted only on presentation of a winemaker's and blender's basic permit of the federal alcohol tax unit.

[Acts 1977, 65th Leg., p. 416, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2116, ch. 819, § 1, eff. June 13, 1979.]

§ 16.05. Location of Premises

A winery permit may be issued for licensed premises in a dry area, but the permittee may not sell wine in a dry area. If the premises are in a dry area, the permittee may sell wine in this state to permit holders authorized to sell wine to the ultimate consumer in unbroken packages for off-premises consumption in an amount not to exceed 25,000 gallons annually and to holders of wholesaler's permits, winery permits, and wine bottler's permits.

[Added by Acts 1979, 66th Leg., p. 2116, ch. 819, § 1 eff. June 13, 1979.]

CHAPTER 17. CLASS B WINERY PERMIT [REPEALED]

§§ 17.01 to 17.03. Repealed by Acts 1979, 66th Leg., p. 2119, ch. 819, § 13, eff. June 13, 1979

The repealed sections, relating to a class B winery permit, were derived from Acts 1977, 65th Leg., p. 416, ch. 194, § 1.

CHAPTER 18. WINE BOTTLER'S PERMIT

Section
18.01. Authorized Activities.
18.02. Fee.
18.03. Permanent Record.

§ 18.01. Authorized Activities

The holder of a wine bottler's permit may:

(1) purchase and import wine only from the holders of nonresident seller's permits or their agents who are holders of manufacturer's agent's permits;

(2) purchase wine in this state from holders of wholesaler's, winery, or wine bottler's permits;

(3) bottle, rebottle, label, package, and sell wine to permit holders in this state authorized to purchase and sell wine; and

(4) sell wine to qualified persons outside the state.

[Acts 1977, 65th Leg., p. 417, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2117, ch. 819, § 5, eff. June 13, 1979.]

§ 18.02. Fee

The annual state fee for a wine bottler's permit is $150.

[Acts 1977, 65th Leg., p. 417, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 18.03. Permanent Record

A holder of a wine bottler's permit shall keep a permanent record of each purchase and sale of wine. The record shall include the name of the person from whom the wine is purchased or to whom it is sold, the number of gallons purchased or sold, and the percentage of alcohol of the wine by volume.

[Acts 1977, 65th Leg., p. 417, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 19. WHOLESALER'S PERMIT

Section
19.01. Authorized Activities.
19.02. Fee.
19.03. Promotional Activities.
19.04. Miniature Containers.

§ 19.01. Authorized Activities

The holder of a wholesaler's permit may:

(1) purchase and import liquor from distillers, brewers, wineries, wine bottlers, rectifiers, and manufacturers who are holders of nonresident seller's permits or from their agents who hold manufacturer's agents permits;

(2) purchase liquor from other wholesalers in the state;

(3) sell liquor in the original containers in which it is received to retailers and wholesalers in this state authorized to sell the liquor; and

(4) sell liquor to qualified persons outside the state.

[Acts 1977, 65th Leg., p. 417, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 19.02. Fee

The annual state fee for a wholesaler's permit is $1,250.

[Acts 1977, 65th Leg., p. 418, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 19.03. Promotional Activities

The holder of a wholesaler's permit or his agent may enter the licensed premises of a mixed beverage permittee or private club registration permittee to determine the brands offered for sale and suggest or promote the sale of other brands, to the extent authorized by Section 102.07 of this code. The holder or his agent may not accept a direct order from a mixed beverage permittee except for wine or malt liquor.

[Acts 1977, 65th Leg., p. 418, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 19.04. Miniature Containers

In addition to other authorized containers, a wholesaler's permittee may import, sell, offer for sale, and possess for the purpose of resale distilled spirits, wine, and vinous liquors in containers of not less than one ounce nor more than two ounces. Liquor in containers of that size may be sold to:

(1) package store permittees for resale to airline beverage permittees, as provided in Section 34.05 of this code; and

(2) local distributor's permittees.

[Acts 1977, 65th Leg., p. 418, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 20. GENERAL CLASS B WHOLESALER'S PERMIT

Section
20.01. Authorized Activities.
20.02. Fee.

§ 20.01. Authorized Activities

The holder of a general class B wholesaler's permit may:

(1) purchase and import malt and vinous liquors from brewers, wineries, rectifiers, and wine manufacturers and wine bottlers who are the holders of nonresident seller's permits or their agents who are holders of manufacturer's agent permits;

(2) purchase malt and vinous liquors from holders of brewer's permits or other wholesalers in the state;

(3) sell the malt and vinous liquors in the original containers in which they are received to retailers and wholesalers authorized to sell them in this state, including holders of local distributor's permits, mixed beverage permits, and daily temporary mixed beverage permits; and

(4) sell the malt and vinous liquors to qualified persons outside the state.

[Acts 1977, 65th Leg., p. 418, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 20.02. Fee

The annual state fee for a general class B wholesaler's permit is $200.

[Acts 1977, 65th Leg., p. 418, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 21. LOCAL CLASS B WHOLESALER'S PERMIT

Section
21.01. Authorized Activities.
21.02. Fee.

§ 21.01. Authorized Activities

The holder of a local class B wholesaler's permit may:

(1) purchase and import malt and vinous liquors from brewers, wineries, rectifiers, and wine manufacturers and bottlers who are holders of nonresident seller's permits and from their agents who are holders of manufacturer's agent permits;

(2) purchase malt and vinous liquors from holders of brewer's permits and from other wholesalers in the state; and

(3) sell the malt and vinous liquors, in the original containers in which he receives them, to general and local class B wholesaler's permittees and, in his county of residence, to local distributor's permittees and retailers, including mixed beverage permittees and daily temporary mixed beverage permittees.

[Acts 1977, 65th Leg., p. 419, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 21.02. Fee

The annual state fee for a local class B wholesaler's permit is $50.

[Acts 1977, 65th Leg., p. 419, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 22. PACKAGE STORE PERMIT

Section
22.01. Authorized Activities.
22.02. Fee.
22.03. Deliveries to Customers.
22.04. Limitation on Package Store Interests.
22.05. Consolidation of Permits.
22.06. Prohibited Interests.
22.07. Violation When License Also Held.
22.08. Transfer of Beverages.
22.09. Limit on Single Transaction.
22.10. Opening Containers Prohibited.
22.11. Consumption on Premises Prohibited.
22.12. Breach of Peace.

§ 22.01. Authorized Activities

The holder of a package store permit may:

(1) purchase liquor in this state from the holder of a winery, wholesaler's, class B wholesaler's, or wine bottler's permit;

(2) sell liquor in unbroken original containers on or from his licensed premises at retail to consumers for off-premises consumption only and not for the purpose of resale, except that if the permittee is a hotel, the permittee may deliver unbroken packages of liquor to bona fide guests of the hotel in their rooms for consumption in their rooms;

(3) sell malt and vinous liquors in original containers of not less than six ounces; and

(4) sell liquor to holders of airline beverage permits as provided in Section 34.05 of this code.

[Acts 1977, 65th Leg., p. 419, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2117, ch. 819, § 6, eff. June 13, 1979.]

§ 22.02. Fee

(a) The annual state fee for a package store permit in a city or town is based on the population of the city or town according to the last preceding federal census as follows:

Population	Fee
25,000 or less	$125
25,001 to 75,000	175
75,001 or more	250

(b) The annual fee for a package store permit outside a city or town is $125, except as provided in Subsection (c) of this section.

(c) The annual fee for a package store permit within two miles of the corporate limits of a city or town is the same as the fee required in the city or town.

[Acts 1977, 65th Leg., p. 420, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.03. Deliveries to Customers

(a) The holder of a package store permit or wine only package store permit issued for a location within a city or town or within two miles of the corporate limits of a city or town, who also holds a local cartage permit, may make deliveries of and collections for alcoholic beverages off the premises in areas where the sale of the beverages is legal. The permittee must travel by the most direct route and may make deliveries and collections only within the city or town or within two miles of its corporate limits, and only in response to bona fide orders placed by the customer, either in person at the premises, in writing, by mail, or by telegraph or telephone. This section shall not be construed as preventing a holder of a package store permit or wine only package store permit from delivering alcoholic beverages to the holder of a carrier's permit for transportation to persons authorized to purchase the beverages.

(b) The holder of a package store permit who also holds a local cartage permit may transport alcoholic beverages to a commercial airline in a regional airport located all or partly in an adjoining county if the airport is governed by a board, commission, or authority, some of whose members reside in the county where the package store is located.

[Acts 1977, 65th Leg., p. 420, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.04. Limitation on Package Store Interests

(a) No person may hold or have an interest, directly or indirectly, in more than five package stores or in their business or permit.

(b) For the purpose of this section:

(1) a person has an interest in any permit in which his spouse has an interest; and

(2) as to a corporate permittee, the stockholders, managers, officers, agents, servants, and employees of the corporation have an interest in the permit, business, and package stores of the corporation.

(c) The limitations prescribed in this section do not apply to an original or renewal package store permit issued before May 1, 1949, and in effect on that date. The commission or administrator shall renew each permit of that type on proper application if the applicant is otherwise qualified. If a person who holds or has an interest in more than five package store permits under the authority of this subsection has one of the permits cancelled, voluntarily or for cause, he may not obtain an additional permit in lieu of the cancelled permit. No person who has more than five package store permits may place any of the permits in suspense with the commission.

(d) This section does not apply to the stockholders, managers, officers, agents, servants, or employees of a corporation operating hotels, with respect to package stores operated by the corporation in hotels.

[Acts 1977, 65th Leg., p. 420, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.05. Consolidation of Permits

If one person or two or more persons related within the first degree of consanguinity have a majority of the ownership in two or more legal entities holding package store permits, they may consolidate the package store businesses into a single legal entity. That single legal entity may then be issued permits for all the package stores, notwithstanding any other provision of this code. After the consolidation, none of the permits may be transferred to another county.

[Acts 1977, 65th Leg., p. 421, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.06. Prohibited Interests

(a) Except as otherwise provided in Section 102.05 of this code and in Subsection (b) of this section, no person who holds a package store permit or owns an interest in a package store may have a direct or indirect interest in any of the following:

(1) a manufacturer's, retail dealer's on-premise, or general, branch, or local distributor's license;

(2) a wine and beer retailer's, wine and beer retailer's off-premise, or mixed beverage permit; or

(3) the business of any of the permits or licenses listed in Subdivisions (1) and (2) of this subsection.

(b) A package store permit and a retail dealer's off-premise license may be issued to the same person.

[Acts 1977, 65th Leg., p. 421, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 347, ch. 158, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1445, ch. 634, § 3, eff. Aug. 27, 1979.]

§ 22.07. Violation When License Also Held

If a person holding a package store permit who also holds a retail dealer's off-premise license for the same location violates a provision of this code or a rule or regulation of the commission, the violation is a ground for the suspension or cancellation of both the package store permit and the retail dealer's off-premise license for the premises where the violation was committed.

[Acts 1977, 65th Leg., p. 421, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.08. Transfer of Beverages

The owner of more than one package store who is also the holder of a local cartage permit may transfer alcoholic beverages between any of his licensed premises in the same county between the hours of 7 a. m. and 9 p. m. on any day when the sale of those beverages is legal, subject to rules prescribed by the commission.

[Acts 1977, 65th Leg., p. 421, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.09. Limit on Single Transaction

A package store permittee may not sell more than five gallons of vinous liquor in a single transaction.

[Acts 1977, 65th Leg., p. 421, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.10. Opening Containers Prohibited

No person may break or open a container containing liquor or beer or possess an opened container of liquor or beer on the premises of a package store.

[Acts 1977, 65th Leg., p. 421, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.11. Consumption on Premises Prohibited

No person may sell, barter, exchange, deliver, or give away any drink or drinks of alcoholic beverages from a container that has been opened or broken on the premises of a package store.

[Acts 1977, 65th Leg., p. 422, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.12. Breach of Peace

The commission or administrator may suspend or cancel a package store permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

[Acts 1977, 65th Leg., p. 422, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 23. LOCAL DISTRIBUTOR'S PERMIT

Section
23.01. Authorized Activities.
23.02. Fee.
23.03. Eligibility for Permit.
23.04. May Transfer Beverages.
23.05. Size of Containers.
23.06. Size of Delivery.

§ 23.01. Authorized Activities

(a) The holder of a local distributor's permit may:

(1) purchase alcoholic beverages from wholesalers authorized to sell them for resale, but may purchase only those brands available for general distribution to all local distributor's permittees;

(2) sell and distribute the alcoholic beverages to mixed beverage and private club registration permittees; and

(3) rent or sell to mixed beverage and private club registration permittees any equipment, fixtures, or supplies used in the selling or dispensing of distilled spirits.

(b) A local distributor's permittee may purchase liquor only from a wholesaler's, general class B wholesaler's, or local class B wholesaler's permittee and may purchase only the types of liquor the particular wholesaler is authorized by his permit to sell.

[Acts 1977, 65th Leg., p. 422, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1181, ch. 453, § 2, eff. Sept. 1, 1977.]

§ 23.02. Fee

The annual state fee for a local distributor's permit is $50. The fee is in addition to and subject to the same conditions as the fee paid for the holder's package store permit.

[Acts 1977, 65th Leg., p. 422, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 23.03. Eligibility for Permit

The commission or the administrator may issue a local distributor's permit only to a holder of a package store permit.

[Acts 1977, 65th Leg., p. 422, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 23.04. May Transfer Beverages

If the holder of a local distributor's permit also holds a local cartage permit, he may transfer alcoholic beverages:

(1) to any place where the sale of alcoholic beverages is legal in the city or county where his premises are located; and

(2) to a regional airport located all or partly in an adjoining county if the airport is governed by a board, commission, or authority, some of whose members reside in the county where the local distributor's premises are located.

[Acts 1977, 65th Leg., p. 422, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1181, ch. 453, § 3, eff. Sept. 1, 1977.]

§ 23.05. Size of Containers

(a) A holder of a local distributor's permit may not sell distilled spirits to the holder of a mixed beverage or private club permit in individual containers containing less than one fluid ounce.

(b) A holder of a local distributor's permit may sell to holders of mixed beverage permits distilled spirits, wine, and vinous liquor in containers containing not less than one ounce nor more than two ounces or in any other container authorized by this code.

[Acts 1977, 65th Leg., p. 423, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 23.06. Size of Delivery

A holder of a local distributor's permit may not deliver less than two and four-tenths gallons of distilled spirits in a single delivery.

[Acts 1977, 65th Leg., p. 423, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 24. WINE ONLY PACKAGE STORE PERMIT

Section
24.01. Authorized Activities.
24.02. Fee.
24.03. Deliveries and Collections.
24.04. Designation of Place of Storage.
24.05. Prohibited Interests.
24.06. Violation When License Also Held.
24.07. When License Also Held: Hours of Sale, Etc.
24.08. Limit on Single Transaction.
24.09. Opening Containers Prohibited.
24.10. Beverage From Opened Container.
24.11. Breach of Peace.

§ 24.01. Authorized Activities

The holder of a wine only package store permit may:

(1) purchase ale, wine, and vinous liquors in this state from the holder of a winery, wine bottler's, wholesaler's or class B wholesaler's permit; and

(2) sell those beverages to consumers at retail on or from the licensed premises in unbroken original containers of not less than six ounces for off-premises consumption only and not for the purpose of resale.

[Acts 1977, 65th Leg., p. 423, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2118, ch. 819, § 7, eff. June 13, 1979.]

§ 24.02. Fee

(a) The annual state fee for a wine only package store permit in a city or town is based on the population of the city or town according to the last preceding federal census as follows:

Population	Fee
2,000 or less	$ 5.00
2,001 to 5,000	7.50

Population	Fee
5,001 to 10,000	10.00
10,001 or more	12.50

(b) The annual state fee for a wine only package store permit outside a city or town is $5, except as provided in Subsection (c) of this section.

(c) The annual state fee for a wine only package store permit within two miles of the corporate limits of an incorporated city or town is the same as the fee required in the incorporated city or town.

[Acts 1977, 65th Leg., p. 423, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.03. Deliveries and Collections

The holder of a wine only package store permit may make deliveries to and collections from customers as provided in Section 22.03 of this code.

[Acts 1977, 65th Leg., p. 424, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.04. Designation of Place of Storage

The owner of more than one wine only package store who is also the holder of a local cartage permit may designate one of his places of business as a place of storage. He may transfer alcoholic beverages to and from his place of storage and his other stores in the same county, subject to rules prescribed by the commission.

[Acts 1977, 65th Leg., p. 424, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.05. Prohibited Interests

(a) No person who holds a wine only package store permit or owns an interest in a wine only package store may have a direct or indirect interest in any of the following:

(1) a manufacturer's, retail dealer's on-premise, or general, branch, or local distributor's license;

(2) a wine and beer retailer's or wine and beer retailer's off-premise permit; or

(3) the business of any of the permits or licenses listed in Subdivisions (1) and (2) of this section.

(b) A person may hold both a wine only package store permit and a retail dealer's off-premise license.

[Acts 1977, 65th Leg., p. 424, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1445, ch. 634, § 4, eff. Aug. 27, 1979.]

§ 24.06. Violation When License Also Held

If a person holding a wine only package store permit who also holds a retail dealer's off-premise license for the same location violates a provision of this code or a rule or regulation of the commission, the violation is a ground for the suspension or cancellation of both the wine only package store permit and the retail dealer's off-premise license for the premises where the violation was committed.

[Acts 1977, 65th Leg., p. 424, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.07. When License Also Held: Hours of Sale, Etc.

A holder of a wine only package store permit who also holds a retail dealer's off-premise license for the same location may remain open and sell ale, wine, vinous liquors, and beer, for off-premises consumption only, on any day and during the same hours that the holder of a wine and beer retailer's permit may sell ale, beer, and wine, except that he may not sell wine or vinous liquor containing more than 14 percent alcohol by volume on a Sunday or after 10 p. m. on any day.

[Acts 1977, 65th Leg., p. 424, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.08. Limit on Single Transaction

A wine only package store permittee may not sell more than five gallons of ale, wine, and vinous liquors in a single transaction.

[Acts 1977, 65th Leg., p. 424, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.09. Opening Containers Prohibited

No person may break or open a container of liquor or beer or possess an opened container of liquor or beer on the premises of a wine only package store.

[Acts 1977, 65th Leg., p. 424, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.10. Beverage From Opened Container

No person may sell, barter, exchange, deliver, or give away a drink of alcoholic beverage from a container that has for any reason been opened or broken on the premises of a wine only package store.

[Acts 1977, 65th Leg., p. 425, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.11. Breach of Peace

The commission or administrator may suspend or cancel a wine only package store permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

[Acts 1977, 65th Leg., p. 425, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 25. WINE AND BEER RETAILER'S PERMIT

Section

25.01. Authorized Activities.
25.02. Fee.
25.03. Railway Cars and Excursion Boats: Permits, Fees.
25.04. Issuance, Cancellation, and Suspension of Permit.
25.05. Hearings on Permit Application: Notice and Attendance.
25.06. Denial of Original Application.
25.07. Fingerprints.

Section
25.08. Permit: Contents; Photograph.
25.09. Possession of Certain Beverages Prohibited.
25.10. Application of Other Code Provisions.

§ 25.01. Authorized Activities

The holder of a wine and beer retailer's permit may sell for consumption on or off the premises where sold, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume and not more than 14 percent by volume.

[Acts 1977, 65th Leg., p. 425, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.02. Fee

Except as provided in Section 25.03 of this code, the annual state fee for a wine and beer retailer's permit is $30.

[Acts 1977, 65th Leg., p. 425, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.03. Railway Cars and Excursion Boats: Permits, Fees

(a) A wine and beer retailer's permit may be issued for railway dining, buffet, or club cars on the payment of an annual state fee of $5 for each car.

(b) A wine and beer retailer's permit may be issued for a regularly scheduled excursion boat which is licensed by the United States Coast Guard to carry passengers on the navigable waters of the state and which has a tonnage of not less than 35 tons, a length of not less than 55 feet, and a passenger capacity of not less than 45 passengers. The annual state fee for the permit is $35.

(c) Application for a permit for a railway car or an excursion boat and payment of the required fee shall be made directly to the commission.

(d) A permit for a railway car or an excursion boat is inoperative in a dry area.

[Acts 1977, 65th Leg., p. 425, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.04. Issuance, Cancellation, and Suspension of Permit

(a) A wine and beer retailer's permit is issued by the commission or administrator. The qualification of applicants and the application for and issuance of the permit are governed by the same provisions which apply to the application for and issuance of a retail dealer's on-premise license.

(b) The provisions of this code applicable to the cancellation and suspension of a retail dealer's on-premise license also apply to the cancellation and suspension of a wine and beer retailer's permit.

[Acts 1977, 65th Leg., p. 426, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.05. Hearings on Permit Application: Notice and Attendance

(a) On receipt of an original application for a wine and beer retailer's permit, the county judge shall give notice of all hearings before him concerning the application to the commission, the sheriff, and the chief of police of the incorporated city in which, or nearest which, the premises for which the permit is sought are located.

(b) The individual natural person applying for the permit or, if the applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who will be primarily responsible for the management of the premises shall attend any hearing involving the application.

[Acts 1977, 65th Leg., p. 426, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.06. Denial of Original Application

(a) The county judge shall deny an original application for a wine and beer retailer's permit if he finds that the applicant, or the applicant's spouse, during the three years immediately preceding the application, was finally convicted of a felony or one of the following offenses:

(1) prostitution;

(2) a vagrancy offense involving moral turpitude;

(3) bookmaking;

(4) gambling or gaming;

(5) an offense involving controlled substances as defined in the Texas Controlled Substances Act or other dangerous drugs;

(6) a violation of this code resulting in the cancellation of a license or permit, or a fine of not less than $500;

(7) more than three violations of this code relating to minors;

(8) bootlegging; or

(9) an offense involving firearms or a deadly weapon.

(b) The county judge shall also deny an original application for a permit if he finds that three years have not elapsed since the termination of a sentence, parole, or probation served by the applicant or the applicant's spouse because of a felony conviction or conviction of any of the offenses described in Subsection (a) of this section.

(c) The commission shall refuse to issue a renewal of a wine or beer retailer's permit if it finds:

(1) that the applicant, or the applicant's spouse, has been convicted of a felony or one of the offenses listed in Subsection (a) of this section at any time during the three years immediately preceding the filing of the application for renewal; or

(2) that three years have not elapsed since the termination of a sentence, parole, or probation served by the applicant, or the applicant's spouse, of a felony conviction or conviction of any of the offenses described in Subsection (a) of this section.

(d) In this section the word "applicant" includes the individual natural person holding or applying for the permit or, if the holder or applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who is primarily responsible for the management of the premises.
[Acts 1977, 65th Leg., p. 426, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.07. Fingerprints

(a) An applicant for an original wine and beer retailer's permit shall submit to the county judge of the county in which the applicant desires to engage in business a complete set of fingerprints of the individual natural person applying for the permit or, if the applicant is not an individual natural person, a complete set of fingerprints of the individual partner, officer, trustee, or receiver who is to be primarily responsible for the management of the premises.

(b) The county judge shall, no later than the next calendar day after receiving the prints, forward them by mail to the Texas Department of Public Safety. The department shall classify the prints and check them against their fingerprint files and shall certify their findings concerning the criminal record of the applicant, or the lack of record, to the county judge. No permit may be issued until the certification is made to the county judge.

(c) The sheriff of any county, or any district office of the commission, shall take the fingerprints of an applicant for a permit without charge on forms approved by and furnished by the Texas Department of Public Safety and shall immediately deliver them to the county judge of the county where the applicant desires to engage in business.
[Acts 1977, 65th Leg., p. 427, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.08. Permit: Contents; Photograph

Each wine and beer retailer's permit shall contain the name and photograph of the individual natural person holding the permit or, if the holder is not an individual natural person, the name and photograph of the individual partner, officer, trustee, or receiver who is primarily responsible for the management of the premises. The photograph may not be more than two years old and shall be furnished by the permittee. The commission may prescribe the size and nature of the photograph, the manner of furnishing it, and the method of affixing it to the permit.
[Acts 1977, 65th Leg., p. 427, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.09. Possession of Certain Beverages Prohibited

No wine and beer retailer's permittee, nor officer of the permittee, may possess distilled spirits or liquor containing alcohol in excess of 14 percent by volume on the licensed premises.
[Acts 1977, 65th Leg., p. 427, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.10. Application of Other Code Provisions

Sections 61.78, 61.81, 61.82, and 61.84 of this code also apply to a wine and beer retailer's permit. The restrictions in this code relating to beer as to the application of local restrictions, sales to minors and intoxicated persons, age of employees, and the use of blinds or barriers apply to the sale of alcoholic beverages by a wine and beer retailer's permittee.
[Acts 1977, 65th Leg., p. 427, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 26. WINE AND BEER RETAILER'S OFF-PREMISE PERMIT

Section
26.01. Authorized Activities.
26.02. Fee.
26.03. Issuance, Cancellation, and Suspension of Permit.
26.04. Application of Other Code Provisions.

§ 26.01. Authorized Activities

The holder of a wine and beer retailer's off-premise permit may sell for off-premises consumption only, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 14 percent by volume.
[Acts 1977, 65th Leg., p. 428, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 26.02. Fee

The annual state fee for a wine and beer retailer's off-premise permit is $15.
[Acts 1977, 65th Leg., p. 428, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 26.03. Issuance, Cancellation, and Suspension of Permit

(a) A wine and beer retailer's off-premise permit is issued by the commission or administrator. The qualifications of applicants and the application for and issuance of the permit are governed by the same provisions which apply to the application for and issuance of a retail dealer's off-premise license.

(b) The provisions of this code applicable to the cancellation and suspension of a retail dealer's off-premise license also apply to the cancellation and suspension of a wine and beer retailer's off-premise permit.
[Acts 1977, 65th Leg., p. 428, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 26.04. Application of Other Code Provisions

Sections 61.78, 61.81, 61.82, and 61.84 of this code also apply to a wine and beer retailer's off-premise permit. The restrictions in this code relating to beer as to the application of local restrictions, sales to minors and intoxicated persons, and age of employees apply to the sale of alcoholic beverages by a wine and beer retailer's off-premise permittee.
[Acts 1977, 65th Leg., p. 428, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 27. TEMPORARY WINE AND BEER RETAILER'S PERMIT

Section
27.01. Authorized Activities.
27.02. Fee.
27.03. Duration of Permit.
27.04. Required Basic Permit.
27.05. Issuance and Use of Permit; Rules and Regulations.
27.06. Cancellation or Suspension of Basic Permit.

§ 27.01. Authorized Activities

The holder of a temporary wine and beer retailer's permit may sell for consumption on or off the premises where sold, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 14 percent by volume. The permit does not authorize the sale of those beverages outside the county for which it is issued.

[Acts 1977, 65th Leg., p. 428, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 27.02. Fee

The state fee for a temporary wine and beer retailer's permit is $5. No refund shall be allowed for the surrender or nonuse of the permit.

[Acts 1977, 65th Leg., p. 429, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 27.03. Duration of Permit

A temporary wine and beer retailer's permit may be issued for a period of not more than four days.

[Acts 1977, 65th Leg., p. 429, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 27.04. Required Basic Permit

A temporary wine and beer retailer's permit may be issued only to a holder of a wine and beer retailer's permit or mixed beverage permit.

[Acts 1977, 65th Leg., p. 429, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 27.05. Issuance and Use of Permit; Rules and Regulations

(a) Temporary wine and beer retailer's permits are issued by the administrator, the commission, or an authorized representative of the commission. The commission shall adopt rules and regulations governing the issuance and use of temporary wine and beer retailer's permits.

(b) The permits shall be issued only for the sale of authorized alcoholic beverages at picnics, celebrations, or similar events.

(c) The administrator or commission may refuse to issue a permit if there is reason to believe the issuance of the permit would be detrimental to the public.

[Acts 1977, 65th Leg., p. 429, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 27.06. Cancellation or Suspension of Basic Permit

The basic permit under which a temporary wine and beer retailer's permit was issued may be cancelled or suspended for a violation on the premises covered by the temporary permit that would result in the cancellation or suspension of the basic permit if committed on the premises covered by the basic permit.

[Acts 1977, 65th Leg., p. 429, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 28. MIXED BEVERAGE PERMIT

Section
28.01. Authorized Activities.
28.02. Fee.
28.03. Information Required of Applicants.
28.04. Change in Corporate Control.
28.05. Renewal of Permit by Descendant or Surviving Spouse.
28.06. Possession of Alcoholic Beverage Not Covered by Invoice.
28.07. Purchase and Transportation of Alcoholic Beverages.
28.08. Refilling Containers Prohibited.
28.09. Invalidation of Stamp.
28.10. Consumption Restricted to Premises.
28.11. Breach of Peace.
28.12. Sale of Malt Beverages to Permittee.

§ 28.01. Authorized Activities

(a) The holder of a mixed beverage permit may sell, offer for sale, and possess mixed beverages, including distilled spirits, for consumption on the licensed premises:

(1) from sealed containers containing not less than one fluid ounce nor more than two fluid ounces or of any legal size; and

(2) from unsealed containers.

(b) The holder of a mixed beverage permit for an establishment in a hotel may deliver mixed beverages, including wine and beer, to individual rooms of the hotel or to any other location in the hotel building or grounds, except a parking area or the licensed premises of another alcoholic beverage establishment, without regard to whether the place of delivery is part of the licensed premises. A permittee in a hotel may allow a patron or visitor to enter or leave the licensed premises, even though the patron or visitor possesses an alcoholic beverage, if the beverage is in an open container and appears to be possessed for present consumption.

(c) The holder of a mixed beverage permit may also:

(1) purchase wine, beer, ale, and malt liquor containing alcohol of not more than 21 percent by volume in containers of any legal size from any permittee or licensee authorized to sell those beverages for resale; and

(2) sell the wine, beer, ale, and malt liquor for consumption on the licensed premises.

[Acts 1977, 65th Leg., p. 429, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1182, ch. 453, § 4, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 111, ch. 70, § 1, eff. Aug. 27, 1979.]

§ 28.02. Fee

The annual state fee for a mixed beverage permit is $2,000 for an original permit, $1,500 for the first annual renewal, $1,000 for the second annual renewal, and $500 for each subsequent annual renewal.
[Acts 1977, 65th Leg., p. 430, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.03. Information Required of Applicants

In addition to the information required of applicants for permits under this code, the applicant for a mixed beverage permit must file with his original and renewal application a sworn statement in a form prescribed by the commission or administrator containing the following information:

(1) the name and residential address of the lessor of the premises;

(2) the name and address of the lessee of the premises;

(3) the amount of monthly rental on the premises and the date of expiration of the lease;

(4) whether the lease or rental agreement includes furniture and fixtures;

(5) whether the business is to be operated under a franchise and, if so, the name and address of the franchisor;

(6) the name and address of the accountant of the business;

(7) a list of all bank accounts, including account numbers, used in connection with the business; and

(8) any information required by the commission or administrator relevant to the determination of all persons having a financial interest of any kind in the granting of the mixed beverage permit.

[Acts 1977, 65th Leg., p. 430, ch. 194, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1713, ch. 681, § 1.

Acts 1977, 65th Leg., p. 1713, ch. 681, § 1, purports to add art. 666–11b to Penal Code (1925), without reference to repeal of the Liquor Control Act by Acts 1977, 65th Leg., p. 557, ch. 194, § 2. As so added, art. 666–11b reads:

"(a) The Commission or Administrator shall refuse to issue an original or renewal permit authorizing the retail sale of alcoholic beverages unless the applicant for the permit files with his application a certificate issued by the Comptroller of Public Accounts stating that the applicant holds, or has applied for and satisfies all legal requirements for the issuance of, a sales tax permit, if required, for the place of business for which the alcoholic beverage permit is sought.

"(b) The Commission or Administrator may suspend for not more than sixty (60) days or cancel a permit under this Act if the Commission or Administrator finds, after notice and hearing, that the permittee:

"(1) no longer holds a sales tax permit, if required, for the place of business covered by the alcoholic beverage permit; or

"(2) is shown on the records of the Comptroller or Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended), or is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes)."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 28.04. Change in Corporate Control

(a) A mixed beverage permit held by a corporation may not be renewed if the commission or administrator finds that legal or beneficial ownership of over 50 percent of the stock of the corporation has changed since the time the original permit was issued.

(b) The commission or administrator may adopt reasonable rules and regulations in accordance with the provisions of this section.

(c) A corporation which is barred from renewing a permit because of this section may file an application for an original permit and may be issued an original permit if otherwise qualified.

(d) This section does not apply to a change in corporate control:

(1) brought about by the death of a shareholder if his surviving spouse or descendants are his successors in interest; or

(2) brought about when legal or beneficial ownership of over 50 percent of the stock of the corporation has been transferred to a person who possesses the qualifications required of other applicants for permits and is an officer of the corporation or has been an officer of the corporation since the original permit was issued.

[Acts 1977, 65th Leg., p. 430, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.05. Renewal of Permit by Descendant or Surviving Spouse

If the surviving spouse or surviving descendant of a holder of a mixed beverage permit qualifies as the successor in interest to the permit as provided in Section 11.10 of this code, the descendant or surviving spouse may continue to renew the permit by paying a renewal fee equal to the fee the permittee would be required to pay had he lived.

[Acts 1977, 65th Leg., p. 431, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.06. Possession of Alcoholic Beverage Not Covered by Invoice

(a) No holder of a mixed beverage permit, nor any officer, agent, or employee of a holder, may possess or permit to be possessed on the premises for which the permit is issued any alcoholic beverage which is not covered by an invoice from the supplier from whom the alcoholic beverage was purchased.

(b) A person who violates Subsection (a) of this section commits a misdemeanor punishable by a fine of not more than $1,000 or by confinement in the county jail for no more than 30 days or by both.

(c) No holder of a mixed beverage permit, nor any officer, agent, or employee of a holder, may knowingly possess or permit to be possessed on the licensed premises any alcoholic beverage which is not covered by an invoice from the supplier from whom the alcoholic beverage was purchased.

(d) A person who violates Subsection (c) of this section commits a misdemeanor punishable by a fine of not less than $500 nor more than $1,000 and by confinement in the county jail for not less than 30 days nor more than two years. The commission or administrator shall cancel the permit of any permittee found by the commission or administrator, after notice and hearing, to have violated or to have been convicted of violating Subsection (c) of this section.

[Acts 1977, 65th Leg., p. 431, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.07. Purchase and Transportation of Alcoholic Beverages

(a) All distilled spirits sold by a holder of a mixed beverage permit must be purchased in this state from a holder of a local distributor's permit.

(b) If a holder of a mixed beverage permit is in an area where there are no local distributors, he may purchase alcoholic beverages in any area where local distributors are located and may transport them to his premises provided that he is also a holder of a beverage cartage permit. The transporter may acquire the alcoholic beverages only on the written order of the holder of the mixed beverage permit. The alcoholic beverages must be accompanied by a written statement furnished and signed by the local distributor showing the name and address of the consignee and consignor, the origin and destination of the shipment, and any other information required by the commission or administrator. The person in charge of the alcoholic beverages while they are being transported shall exhibit the written statement to any representative of the commission or any peace officer on demand, and the statement shall be accepted by the representative or officer as prima facie evidence of the lawful right to transport the alcoholic beverages.

(c) If a mixed beverage permittee holds a beverage cartage permit and his premises are located in a regional airport governed by a board, commission, or authority composed of members from two or more counties, and there is no local distributor at the airport, the mixed beverage permittee may purchase alcoholic beverages from any local distributor in a trade area served by the airport and transport them to his licensed premises. The transportation of the beverages must be in accordance with Subsection (b) of this section.

[Acts 1977, 65th Leg., p. 431, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1182, ch. 453, § 5, eff. Sept. 1, 1977.]

§ 28.08. Refilling Containers Prohibited

No holder of a mixed beverage permit may refill with any substance a container which contained distilled spirits on which the tax prescribed in Section 201.03 of this code has been paid.

[Acts 1977, 65th Leg., p. 432, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.09. Invalidation of Stamp

(a) A holder of a mixed beverage permit or any person employed by the holder who empties a bottle containing distilled spirits on which the tax prescribed in Section 201.03 of this code has been paid, shall immediately after emptying the bottle invalidate the identification stamp on the bottle in the manner prescribed by rule or regulation of the commission or administrator.

(b) Each holder of a mixed beverage permit shall provide at all service counters where distilled spirits are poured from bottles the necessary facilities for the invalidation of identification stamps on bottles so that persons emptying distilled spirits bottles may immediately invalidate the identification stamps on them.

(c) If an empty distilled spirits bottle has locked on it an automatic measuring and dispensing device of a type approved by the commission or administrator, which prevents the refilling of the bottle without unlocking the device and removing it from the bottle, the identification stamp is not required to be invalidated until immediately after the device has been unlocked and removed from the bottle.

(d) A holder of a mixed beverage permit or any of his officers, agents, or employees who is found in possession of an empty distilled spirits bottle which contained distilled spirits on which the tax pre-

scribed in Section 201.03 of this code has been paid and on which the identification stamp has not been invalidated in accordance with this section commits a separate offense for each bottle so possessed.
[Acts 1977, 65th Leg., p. 432, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.10. Consumption Restricted to Premises

(a) Except as permitted by Subsection (b) of this section and by Subsection (b) of Section 28.01, a mixed beverage permittee may not sell an alcoholic beverage to another mixed beverage permittee or to any other person except for consumption on the seller's licensed premises.

(b) A mixed beverage permittee may not permit any person to take any alcoholic beverage purchased on the licensed premises from the premises where sold, except that a person who orders wine with food and has a portion of the open container remaining may remove the open container of wine from the premises.
[Acts 1977, 65th Leg., p. 432, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.11. Breach of Peace

The commission or administrator may suspend or cancel a mixed beverage permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.
[Acts 1977, 65th Leg., p. 432, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.12. Sale of Malt Beverages to Permittee

The sale of malt beverages to a mixed beverage permittee by a local distributor's permittee or by a licensee authorized to sell them for resale is subject to the provisions of Section 61.73 of this code.
[Acts 1977, 65th Leg., p. 433, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 29. MIXED BEVERAGE LATE HOURS PERMIT

Section
29.01. Authorized Activities.
29.02. Fee.
29.03. Application of Provisions Regulating Mixed Beverage Permits.

§ 29.01. Authorized Activities

The holder of a mixed beverage late hours permit may sell mixed beverages on Sunday between the hours of 1:00 a. m. and 2 a. m. and on any other day between the hours of 12 midnight and 2 a. m. if the premises covered by the permit are in an area where the sale of mixed beverages during those hours is authorized by this code.
[Acts 1977, 65th Leg., p. 433, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 29.02. Fee

The annual state fee for a mixed beverage late hours permit is $100.
[Acts 1977, 65th Leg., p. 433, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 29.03. Application of Provisions Regulating Mixed Beverage Permits

All provisions of this code which apply to a mixed beverage permit also apply to a mixed beverage late hours permit.
[Acts 1977, 65th Leg., p. 433, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 30. DAILY TEMPORARY MIXED BEVERAGE PERMIT

Section
30.01. Authorized Activities.
30.02. Fee.
30.03. Issuance of Permit.
30.04. Purchase of Distilled Spirits.
30.05. Application of Provisions Regulating Mixed Beverage Permits.
30.06. Adoption of Rules.

§ 30.01. Authorized Activities

The holder of a daily temporary mixed beverage permit may sell mixed beverages for consumption on the premises for which the permit is issued.
[Acts 1977, 65th Leg., p. 433, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 30.02. Fee

The state fee for a daily temporary mixed beverage permit is $25 per day.
[Acts 1977, 65th Leg., p. 433, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 30.03. Issuance of Permit

(a) The commission may, in its discretion, issue on a temporary basis a daily temporary mixed beverage permit. A daily temporary mixed beverage permit may be issued only to a holder of a mixed beverage permit. A daily temporary mixed beverage permit may be issued only for the temporary sale of authorized alcoholic beverages at picnics, celebrations, or similar events.

(b) The provisions of this code which apply to the application for and issuance of other permits do not apply to the application and issuance of a daily temporary mixed beverage permit.
[Acts 1977, 65th Leg., p. 433, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1971, ch. 777, § 17, eff. Aug. 27, 1979.]

§ 30.04. Purchase of Distilled Spirits

Distilled spirits sold under a daily temporary mixed beverage permit must be purchased from the holder of a local distributor's permit.

[Acts 1977, 65th Leg., p. 434, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 30.05. Application of Provisions Regulating Mixed Beverage Permits

All provisions of this code applicable to a mixed beverage permit also apply to a daily temporary mixed beverage permit unless there is a special provision to the contrary.

[Acts 1977, 65th Leg., p. 434, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 30.06. Adoption of Rules

The commission may adopt rules which it determines to be necessary to implement and administer the provisions of this chapter, including limitations on the number of times during any calendar year a qualified organization may be issued a permit.

[Acts 1977, 65th Leg., p. 434, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 31. CATERER'S PERMIT

Section

31.01. Authorized Activities.
31.02. Fee.
31.03. Issuance of Permit.
31.04. Application of Provisions Regulating Mixed Beverage Permits.

§ 31.01. Authorized Activities

The holder of a caterer's permit may sell mixed beverages on a temporary basis at a place other than the premises for which the holder's mixed beverage permit is issued, but only in an area where the sale of mixed beverages has been authorized by a local option election.

[Acts 1977, 65th Leg., p. 434, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 31.02. Fee

The annual state fee for a caterer's permit is $250.

[Acts 1977, 65th Leg., p. 434, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 31.03. Issuance of Permit

(a) A caterer's permit may be issued only to the holder of a mixed beverage permit.

(b) The commission shall adopt rules and regulations governing the application for and the issuance and use of caterer's permits.

(c) The provisions of this code which apply to the application for and issuance of other permits do not apply to the application for and issuance of a caterer's permit.

[Acts 1977, 65th Leg., p. 434, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 31.04. Application of Provisions Regulating Mixed Beverage Permits

(a) A caterer's permit is auxiliary to the primary mixed beverage permit held by the permittee.

(b) The restrictions and regulations which apply to the sale of mixed beverages on the licensed premises also apply to the sale under the authority of a caterer's permit, and any act that is prohibited on the licensed premises is also prohibited when the permittee is operating other than on the licensed premises under a caterer's permit.

(c) Any act which if done on the licensed premises would be a ground for cancellation or suspension of the mixed beverage permit is a ground for cancellation of both the mixed beverage permit and the caterer's permit if done when the permittee is operating away from the licensed premises under the authority of the caterer's permit.

(d) All receipts from the sale of mixed beverages under the authority of the caterer's permit shall be treated for tax purposes as if they were made under the authority of the primary permit.

(e) If the primary permit ceases to be valid for any reason, the caterer's permit ceases to be valid.

(f) All provisions of this code applicable to the primary permit and not inconsistent with this chapter apply to a caterer's permit.

[Acts 1977, 65th Leg., p. 434, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 32. PRIVATE CLUB REGISTRATION PERMIT

Section

32.01. Authorized Activities.
32.02. Fee.
32.03. Qualifications for Permit.
32.04. Applications for Permits; Renewals.
32.05. Locker System.
32.06. Pool System.
32.07. Display of Permit.
32.08. Purchase and Transportation of Alcoholic Beverages.
32.09. Temporary Members.
32.10. Guests.
32.11. Fraternal and Veterans Organizations.
32.12. Inspection of Premises.
32.13. Inspection of Books and Records.
32.14. Unregistered Clubs; Prohibited Activities.
32.15. Removal of Beverages From Premises.
32.16. Unauthorized Membership.
32.17. Cancellation or Suspension of Permit; Grounds.
32.18. Appeals From Orders of Commission or Administrator.
32.19. Aiding or Abetting Violation.

§ 32.01. Authorized Activities

A private club registration permit authorizes alcoholic beverages belonging to members of the club to be:

(1) stored, possessed, and mixed on the club premises; and

(2) served for on-premises consumption only to members of the club and their families and guests, by the drink or in sealed, unsealed, or broken containers of any legal size.

[Acts 1977, 65th Leg., p. 435, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.02. Fee

(a) Each private club registration permittee shall pay an annual state fee for each separate place of business.

(b) The permit fee shall be based on the highest number of members in good standing during the year for which the permit fee is to be paid according to the following rates:

0 to 250—$ 500	651 to 750—$1,500
251 to 350—$ 700	751 to 850—$1,700
351 to 450—$ 900	851 to 950—$1,900
451 to 550—$1,100	951 to 1,000—$2,000
551 to 650—$1,300	Over 1,000 —$2 per member

(c) All fees collected pursuant to this section shall be deposited in the general revenue fund.

(d) No later than 90 days before the expiration of the year for which the permit fee is paid, the permit holder may submit an amended application with as much additional fee as is required under the amended return.

[Acts 1977, 65th Leg., p. 435, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.03. Qualifications for Permit

(a) A private club registration permit may only be issued to a club which meets the requirements of this section.

(b) The club must be an association of persons, whether unincorporated or incorporated under the laws of this state, for the promotion of some common object.

(c) Members of the club must be passed on and elected by a committee or board made up of members of the club, and no employee of the club shall be eligible to serve on the membership committee or board.

(d) No application for membership may be approved until the application has been filed with the chairman of the membership committee or board and approved by the chairman. The committee or board may authorize the chariman or a designated agent to issue preliminary memberships without the approval of the committee or board for a period not exceeding three days on the request of an applicant for membership. A preliminary member has all of the privileges of membership in the club. If the committee or board does not approve the application before the expiration of the preliminary membership, the club shall pay to the state the fee required of temporary members under Section 32.09 of this code. The club shall remit the fees and record and report preliminary memberships as the commission or the administrator prescribes.

(e) At least 50 members of the club must reside in the county in which the premises of the club are located, or at least 100 members must reside in an area comprised of the county in which the premises of the club is located and an adjacent county or counties.

(f) The club must own, lease, or rent a building, or space in a building of such extent and character as in the judgment of the commission is suitable and adequate for the club's members and their guests.

(g) The club must provide regular food service adequate for its members and their guests.

(h) The club's total annual membership fees, dues, or other income, excluding proceeds from the disposition of alcoholic beverages but including service charges, must be sufficient to defray the annual rental of its leased or rented premises or, if the premises are owned by the club, sufficient to meet the taxes, insurance, and repairs and the interest on any mortgage on the premises.

(i) The club's affairs and management must be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting.

(j) No member or any officer, agent, or employee of the club may be paid or receive any money as salary or other compensation, directly or indirectly, from the disposition of alcoholic beverages to members of the club and their guests, other than charges for the service of the beverages.

[Acts 1977, 65th Leg., p. 436, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1971, ch. 777, § 19, eff. Aug. 27, 1979.]

§ 32.04. Applications for Permits; Renewals

(a) A private club which meets the requirements set forth in Section 32.03 of this code may apply for a private club registration permit on forms furnished by the commission and containing all information necessary to insure compliance with the provisions of this code.

(b) Each applicant shall furnish a true copy of his application to the commission's district office in the district in which the premises sought to be covered by the permit are located prior to the filing of the original application with the commission at Austin.

(c) Applications for a renewal permit shall be filed with the commission within 30 days prior to the expiration of the current permit.

[Acts 1977, 65th Leg., p. 437, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.05. Locker System

The locker system of storage is a system whereby the club rents a locker to a member in which he may store alcoholic beverages for consumption by himself and his guests. All alcoholic beverages stored at a club under the locker system must be purchased and owned by the member individually.

[Acts 1977, 65th Leg., p. 437, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.06. Pool System

(a) The pool system of storage may be used in any area. Under this system all members of a pool participate equally in the original purchase of all alcoholic beverages. The replacement of all alcoholic beverages shall be paid for either by money assessed equally from each member and collected in advance or by the establishment of an alcoholic beverages replacement account in which a designated percentage of each charge for the service of alcoholic beverages, as determined by the club's governing body, is deposited.

(b) If an alcoholic beverages replacement account is used:

(1) each service check shall have printed on it the percentage of the service charge that is to be deposited in the alcoholic beverages replacement account;

(2) no money other than the designated percentage of service charges may be deposited in the replacement account;

(3) the replacement of alcoholic beverages may be paid for only from money in the replacement account;

(4) the club's governing body may transfer from the replacement account to the club's general operating account any portion of the replacement account that the governing body determines is in excess of the amount that will be needed to purchase replacement alcoholic beverages, but it may make only one transfer in a calendar month; and

(5) the club shall maintain a monthly record of the total amount of alcoholic beverage service charges collected, the amount deposited in the replacement account, the amount used to purchase alcoholic beverages, and the amount transferred to the club's general operating account.

[Acts 1977, 65th Leg., p. 437, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1968, ch. 777, § 8, eff. Aug. 27, 1979.]

§ 32.07. Display of Permit

A private club registration permit shall be displayed in a conspicuous place at all times on the licensed premises.

[Acts 1977, 65th Leg., p. 437, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.08. Purchase and Transportation of Alcoholic Beverages

(a) All distilled spirits sold by a club holding a private club registration permit must be purchased in this state from a holder of a local distributor's permit.

(b) If the club holding the permit is in an area where there are no local distributors, alcoholic beverages may be purchased in any area where local distributors are located and may be transported to the club premises if the club also holds a beverage cartage permit. The transporter may acquire the alcoholic beverages only on the written order of an officer or manager of the club holding the permit. The alcoholic beverages must be accompanied by a written statement furnished and signed by the local distributor showing the name and address of the consignee and consignor, the origin and destination of the shipment, and any other information required by the commission or administrator. The person in charge of the alcoholic beverages while they are being transported shall exhibit the written statement to any representative of the commission or any peace officer on demand, and the statement shall be accepted by the representative or officer as prima facie evidence of the lawful right to transport the alcoholic beverages.

(c) If a private club registration permittee holds a beverage cartage permit and his premises are located in a regional airport governed by a board, commission, or authority composed of members from two or more counties, and there is no local distributor at the airport, the private club registration permittee may purchase alcoholic beverages from any local distributor in a trade area served by the airport and transport them to his licensed premises. The transportation of the beverages must be in accordance with Subsection (b) of this section.

[Acts 1977, 65th Leg., p. 437, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1182, ch. 453, § 6, eff. Sept. 1, 1977.]

§ 32.09. Temporary Members

(a) The manager or other person in charge of the club premises may allow a person to enter the club if he possesses a valid temporary membership card which has no erasures or changes and which has the temporary dates in a prominent position on the card. A temporary member may enjoy the club's services and privileges for a period of not more than three days per invitation. A temporary member may bring not more than three guests to the club and must remain in their presence while they are at the club.

(b) At the time of his admission the temporary member shall pay the club a fee of $2, which shall represent the fee payable by the permittee to the state. All fees and payments from temporary members shall be collected in cash or through credit cards approved by the commission or administrator.

(c) Temporary memberships shall be governed by rules promulgated by the commission consistent with the provisions of this section.

[Acts 1977, 65th Leg., p. 438, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 68, ch. 42, § 1, eff. Aug. 27, 1979.]

§ 32.10. Guests

(a) Guests shall be limited to those who accompany a member or temporary member onto the premises or for whom a member, other than a temporary member, has made prior arrangements with the management of the club.

(b) Except as provided in Subsection (c) of this section no guest shall be permitted to pay, by cash or otherwise, for any service of alcoholic beverages. Any charge for a service rendered to a guest by the club must be billed by the club to the member or temporary member sponsoring the guest. A club shall bill a member other than a temporary member for the service of guests in the club's regular billing cycle.

(c) The manager of a hotel who is a member of a private club located within the hotel building may issue a guest card to a patron of the hotel who is staying in the hotel overnight or longer. The guest may not be allowed to pay, by cash or otherwise, at the time of service in the private club. The charge for service shall be billed to the hotel manager's account in the hotel and shall be collected by the hotel manager along with other hotel charges, including the charge for using the hotel room, when the patron leaves the hotel. The hotel records shall be available for inspection at the request of the commission. If the club operates under the locker system a guest shall be served from the locker rented to the manager of the hotel.

(d) The commission shall promulgate rules necessary to implement the provisions of this section.

[Acts 1977, 65th Leg., p. 438, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 68, ch. 42, § 2, eff. Aug. 27, 1979.]

§ 32.11. Fraternal and Veterans Organizations

(a) In this section:

(1) "Fraternal organization" means:

(A) any chapter, aerie, parlor, lodge, or other local unit of an American national fraternal organization or Texas state fraternal organization that, as the owner, lessee, or occupant, has operated an establishment for fraternal purposes for at least one year. If an American national fraternal organization, it must actively operate in not fewer than 31 states and have at least 300 local units in those 31 states, and must have been in active, continuous existence for at least 20 years. If a Texas state fraternal organization, it must actively operate in at least two counties of the state and have at least 10 local units in those two counties, and must have been in active, continuous existence for at least five years; or

(B) a hall association or building association of a local unit described in Paragraph (A), all the capital stock of which is owned by the local unit or the members of the local unit, and which operates the clubroom facilities of the local unit.

(2) "Veterans organization" means an organization composed of members or former members of the armed forces of the United States which is organized for patriotic and public service purposes, including the American Legion, Veterans of Foreign Wars, Disabled American Veterans, Jewish War Veterans, American GI Forum, Catholic War Veterans, or any veterans organization chartered by the United States Congress.

(b) The permit fee imposed by Section 32.02 of this code and the provisions of Sections 32.03 and 32.10 of this code requiring regular food service and prohibiting guests from paying in cash do not apply to a fraternal or veterans organization. Those organizations are also exempt from Sections 32.05 and 32.06 of this code, and the members of the organization may use any club funds owned by them jointly, including revenue from the service of alcoholic beverages, to replenish their joint stock of alcoholic beverages.

(c) The requirement that the fraternal or veterans organization hold a private club registration permit is satisfied by the issuance of a certificate by the commission that states that the organization meets the requirements of this section.

(d) All other provisions of this code apply to fraternal and veterans organizations.

[Acts 1977, 65th Leg., p. 439, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.12. Inspection of Premises

The acceptance of a private club registration permit constitutes an express agreement and consent on the part of the private club that any authorized representative of the commission or any peace officer has the right and privilege to freely enter the club premises at any time to conduct an investigation or to inspect the premises for the purpose of performing a duty imposed by this code.

[Acts 1977, 65th Leg., p. 439, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.13. Inspection of Books and Records

All books and records pertaining to the operation of any permittee club, including a current listing, correct to the last day of the preceding month, of all members of the club who have liquor stored on the club premises under either the locker or pool system, shall be made available to the commission or its authorized representatives on request.

[Acts 1977, 65th Leg., p. 439, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.14. Unregistered Clubs; Prohibited Activities

(a) No permittee, licensee, or any other person shall deliver, transport, or carry an alcoholic bever-

age to, into, or on the premises of any establishment, location, room, or place purporting to be a club, or holding itself out to the public or any person as a club or private club, unless the club holds a private club registration permit.

(b) No person may store, possess, mix, or serve by the drink or in broken or unsealed containers an alcoholic beverage on the premises of any establishment, location, room, or place purporting to be a club or private club unless the club holds a private club registration permit.

(c) An alcoholic beverage stored or possessed on the premises of any establishment, location, room, or place purporting to be a club, or holding itself out to the public or any person as a club or private club, is declared to be an illicit beverage and subject to seizure without a warrant unless a private club registration permit has been issued for the premises, location, room, or place.

[Acts 1977, 65th Leg., p. 440, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.15. Removal of Beverages From Premises

A private club, irrespective of location or system of storage of alcoholic beverages, may not permit any person to remove any alcoholic beverages from the club premises.

[Acts 1977, 65th Leg., p. 440, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.16. Unauthorized Membership

No private club registration permittee may allow its average membership to exceed that authorized by its permit.

[Acts 1977, 65th Leg., p. 440, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.17. Cancellation or Suspension of Permit; Grounds

(a) The commission or administrator may cancel or suspend for a period of time not exceeding 60 days, after notice and hearing, an original or renewal private club registration permit on finding that the permittee club has:

(1) sold, offered for sale, purchased, or held title to any liquor so as to constitute an open saloon;

(2) refused to allow an authorized agent or representative of the commission or a peace officer to come on the club premises for the purposes of inspecting alcoholic beverages stored on the premises or investigating compliance with the provisions of this code;

(3) refused to furnish the commission or its agent or representative when requested any information pertaining to the storage, possession, serving, or consumption of alcoholic beverages on club premises;

(4) permitted or allowed any alcoholic beverages stored on club premises to be served or consumed at any place other than on the club premises;

(5) failed to maintain an adequate building at the address for which the private club registration permit was issued;

(6) caused, permitted, or allowed any member of a club in a dry area to store any liquor on club premises except under the locker system;

(7) caused, permitted, or allowed any person to consume or be served any alcoholic beverage on the club premises:

(A) at any time on Sunday between the hours of 1:15 a. m. and 12 noon or on any other day at any time between the hours of 12:15 a. m. and 7 a. m., if the club does not have a private club late hours permit; or

(B) at any time on Sunday between the hours of 2 a. m. and 12 noon or on any other day at any time between the hours of 2 a. m. and 7 a. m., if the club has a private club late hours permit; or

(8) violated or assisted, aided or abetted the violation of any provision of this code.

(b) As used in Subsection (a)(1) of this section, the term "open saloon" means any place where an alcoholic beverage manufactured in whole or in part by distillation, or liquor composed or compounded in part of distilled spirits, is sold or offered for sale for beverage purposes by the drink or in broken or unsealed containers, or a place where any of the liquors are sold or offered for sale for on-premises consumption.

[Acts 1977, 65th Leg., p. 440, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.18. Appeals From Orders of Commission or Administrator

An appeal from an order of the commission or administrator refusing, cancelling, or suspending a private club registration permit shall be taken to the district court of the county in which the private club is located. The proceeding on appeal shall be under the substantial evidence rule. The rules applicable to ordinary civil suits apply, with the following exceptions, which shall be construed literally:

(1) all appeals shall be perfected and filed within 30 days after the order, decision, or ruling of the commission or administrator becomes final and appealable;

(2) the proceedings shall have precedence over all other causes of a different nature;

(3) all causes shall be tried before the judge within 10 days from the filing, and neither party shall be entitled to a jury; and

(4) the order, decision, or ruling of the commission or administrator may be suspended or modified by the district court pending a trial on the merits, but the final judgment of the dis-

trict court shall not be modified or suspended pending appeal.

[Acts 1977, 65th Leg., p. 441, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.19. Aiding or Abetting Violation

A person who commits, assists, aids, or abets a violation of this chapter commits an offense.

[Acts 1977, 65th Leg., p. 441, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 33. PRIVATE CLUB LATE HOURS PERMIT

Section
33.01. Authorized Activities.
33.02. Fee.
33.03. Application of Code Provisions.

§ 33.01. Authorized Activities

The holder of a private club late hours permit may allow persons to consume or be served alcoholic beverages on club premises on Sunday between the hours of 1:00 a. m. and 2 a. m. and on any other day between the hours of 12 midnight and 2 a. m. if the licensed premises are in an area where consumption or service of alcoholic beverages in a public place during those hours is authorized by this code.

[Acts 1977, 65th Leg., p. 441, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 33.02. Fee

The annual state fee for a private club late hours permit is $500.

[Acts 1977, 65th Leg., p. 441, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 33.03. Application of Code Provisions

All provisions of this code which apply to a private club registration permit also apply to a private club late hours permit.

[Acts 1977, 65th Leg., p. 442, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 34. AIRLINE BEVERAGE PERMIT

Section
34.01. Authorized Activities.
34.02. Fee.
34.03. Eligibility for Permit.
34.04. Taxes.
34.05. Sale of Liquor to Permittee.
34.06. Inapplicable Provision.

§ 34.01. Authorized Activities

The holder of an airline beverage permit may:

(1) sell or serve alcoholic beverages in or from any size container on a commercial passenger airplane operated in compliance with a valid license, permit, or certificate issued under the authority of the United States or of this state, even though the plane, in the course of its flight, may cross an area in which the sale of alcoholic beverages is prohibited; and

(2) store alcoholic beverages in sealed containers of any size at any airport regularly served by the permittee, in accordance with rules and regulations promulgated by the commission.

[Acts 1977, 65th Leg., p. 442, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 34.02. Fee

The annual fee for an airline beverage permit is $1,000.

[Acts 1977, 65th Leg., p. 442, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 34.03. Eligibility for Permit

The commission or administrator may issue an airline beverage permit to any corporation operating a commercial airline in or through the state. Application and payment of the fee shall be made directly to the commission.

[Acts 1977, 65th Leg., p. 442, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 34.04. Taxes

(a) The taxes imposed by this code shall be paid on all alcoholic beverages on a commercial passenger aircraft departing from an airport in this state, in accordance with rules and regulations prescribed by the commission.

(b) The preparation and service of alcoholic beverages by the holder of an airline beverage permit is exempt from the tax imposed by the Limited Sales, Excise and Use Tax Act. An airline beverage service fee of five cents is imposed on each individual serving of an alcoholic beverage served by the permittee inside the state. The fee accrues at the time the container containing an alcoholic beverage is delivered to the passenger. The permittee may absorb the cost of the fee or may collect it from the passenger. The permittee shall remit the fees to the commission each month under a reporting system prescribed by the commission.

[Acts 1977, 65th Leg., p. 442, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 34.05. Sale of Liquor to Permittee

(a) Only the holder of a package store permit may sell liquor to the holder of an airline beverage permit. For the purposes of this code, a sale of liquor to a holder of an airline beverage permit shall be considered as a sale at retail to a consumer.

(b) The holder of a package store permit may sell liquor in any size container authorized by Section 101.46 of this code to holders of an airline beverage permit, and may purchase liquor in any size container for resale from the holders of a wholesaler's permit. A holder of a wholesaler's permit may import, sell, offer for sale, or possess for resale to package store permittees to resell to holders of airline beverage permittees liquor in any authorized size containers.

[Acts 1977, 65th Leg., p. 442, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 34.06. Inapplicable Provision

Section 109.53 of this code does not apply to an airline beverage permit.

[Acts 1977, 65th Leg., p. 443, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 35. AGENT'S PERMIT

Section
35.01. Authorized Activities.
35.02. Fee.
35.03. Evidence of Agency or Employment Required.
35.04. Certain Employees Exempt.
35.05. Samples.
35.06. Ineligibility for Manufacturer's Agent's Permit.
35.07. Unauthorized Representation.

§ 35.01. Authorized Activities

The holder of an agent's permit may:

(1) represent permittees other than retailers within this state who are authorized to sell liquor to retail dealers in the state; and

(2) solicit and take orders for the sale of liquor from authorized permittees.

[Acts 1977, 65th Leg., p. 443, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 35.02. Fee

The annual state fee for an agent's permit is $5.

[Acts 1977, 65th Leg., p. 443, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 35.03. Evidence of Agency or Employment Required

An agent's permit may not be issued to a person until he shows to the satisfaction of the commission that he has been employed by or authorized to act as the agent of the holder of a permit as described by Section 35.01 of this code.

[Acts 1977, 65th Leg., p. 443, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 35.04. Certain Employees Exempt

An agent's permit is not required for an employee of a permit holder who sells liquor but remains on the licensed premises when making the sale.

[Acts 1977, 65th Leg., p. 443, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 35.05. Samples

The holder of an agent's permit may not transport or carry liquor as samples, but may carry or display empty sample containers.

[Acts 1977, 65th Leg., p. 443, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 35.06. Ineligibility for Manufacturer's Agent's Permit

A person holding an agent's permit may not be issued a manufacturer's agent's permit.

[Acts 1977, 65th Leg., p. 443, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 35.07. Unauthorized Representation

A holder of an agent's permit in soliciting or taking orders for the sale of liquor may not represent himself to be an agent of any person other than the person designated in his permit application.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 36. MANUFACTURER'S AGENT'S PERMIT

Section
36.01. Authorized Activities.
36.02. Fee.
36.03. Authorization by Principal Required.
36.04. Ineligibility for Agent's Permit.
36.05. Samples.
36.06. Solicitation From Holder of Mixed Beverage or Private Club Permit.
36.07. Unauthorized Representation.
36.08. Restriction as to Source of Supply.

§ 36.01. Authorized Activities

The holder of a manufacturer's agent's permit may:

(1) represent only the holders of nonresident seller's permits; and

(2) solicit and take orders for the sale of liquor from permittees authorized to import liquor for the purpose of resale.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 36.02. Fee

The annual state fee for a manufacturer's agent's permit is $5.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 36.03. Authorization by Principal Required

A manufacturer's agent's permit may not be issued to a person until he shows to the satisfaction of the commission that he has been authorized to act as agent of the principal he proposes to represent.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 36.04. Ineligibility for Agent's Permit

A holder of a manufacturer's agent's permit may not be issued an agent's permit.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 36.05. Samples

The holder of a manufacturer's agent's permit may not transport or carry liquor as samples, but may carry or display empty sample containers.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 36.06. Solicitation From Holder of Mixed Beverage or Private Club Permit

A holder of a manufacturer's agent's permit may not solicit business directly or indirectly from a

holder of a mixed beverage permit or a private club registration permit unless he is accompanied by the holder of a wholesaler's permit or the wholesaler's agent.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 36.07. Unauthorized Representation

A holder of a manufacturer's agent's permit in soliciting or taking orders for the sale of liquor may not represent himself as an agent of a person other than the person designated in his permit application.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 36.08. Restriction as to Source of Supply

A manufacturer's agent's permittee may not represent a person with respect to an alcoholic beverage unless the person represented is the primary American source of supply of the beverage as defined in Section 37.10 of this code.

[Acts 1977, 65th Leg., p. 445, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 37. NONRESIDENT SELLER'S PERMIT

Section

37.01. Authorized Activities.
37.02. Fee.
37.03. Permit Required.
37.04. Interest in Brewer's Permit.
37.05. Appointment of Agent for Service of Notice.
37.06. Designation of Agents.
37.07. Prohibited Activities.
37.08. Cancellation or Suspension: Notice to Importers.
37.09. Restriction on Importation.
37.10. Restriction as to Source of Supply.
37.11. Submission of Samples and Labels.
37.12. Inspection of Records, Documents, Etc.
37.13. Solicitation From Holder of Mixed Beverage or Private Club Permit.
37.14. Monthly Reports.

§ 37.01. Authorized Activities

The holder of a nonresident seller's permit may:

(1) solicit and take orders for liquor from permittees authorized to import liquor into this state;

(2) ship liquor into this state, or cause it to be shipped into this state, in consummation of sales made to permittees authorized to import liquor into the state.

[Acts 1977, 65th Leg., p. 445, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.02. Fee

The annual state fee for a nonresident seller's permit is $100.

[Acts 1977, 65th Leg., p. 445, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.03. Permit Required

A nonresident seller's permit is required of any distillery, winery, importer, broker, or person who sells liquor to permittees authorized to import liquor into this state, regardless of whether the sale is consummated inside or outside the state.

[Acts 1977, 65th Leg., p. 445, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.04. Interest in Brewer's Permit

A person who holds a nonresident seller's permit may have an interest in the business, assets, corporate stock, or permit of a person who holds a brewer's permit.

[Acts 1977, 65th Leg., p. 445, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.05. Appointment of Agent for Service of Notice

(a) No person may be issued a nonresident seller's permit until he shows that he has filed a certificate with the secretary of state certifying that he has appointed a resident of this state as his agent for the purposes of this section. The certificate shall contain the name, street address, and business of the agent.

(b) A notice of a hearing for the refusal, cancellation, or suspension of a permit may be served on any of the following:

(1) the agent designated in the certificate on file with the secretary of state;

(2) any person authorized to sell liquor in this state as agent of the permittee; or

(3) the permittee or, if the permittee is a corporation, any officer of the corporation.

(c) If a permittee fails to maintain a designated agent, notice of a hearing may be served on the secretary of state. In that case, the secretary of state shall forward the notice to the permittee by registered mail, return receipt requested, and the receipt shall be prima facie evidence of service on the permittee.

(d) Provisions of this code generally applicable to hearings for the refusal, cancellation, or suspension of a permit also to apply to proceedings relating to the refusal, cancellation, or suspension of a nonresident seller's permit.

[Acts 1977, 65th Leg., p. 445, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.06. Designation of Agents

Every holder of a nonresident seller's permit shall designate, in the manner required by the commission and on forms prescribed by it, those persons authorized as agents to represent the permittee in this state. The failure to do so is a violation of this code.

[Acts 1977, 65th Leg., p. 446, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.07. Prohibited Activities

No holder of a nonresident seller's permit, nor any officer, director, agent, or employee of the holder, nor any affiliate of the holder, regardless of whether the affiliation is corporate or by management, direction, or control, may do any of the following:

(1) hold or have an interest in the permit, business, assets, or corporate stock of a person authorized to import liquor into this state for the purpose of resale unless the interest was acquired on or before January 1, 1941, or unless the permittee is a Texas corporation holding a manufacturer's license and a brewer's permit issued before April 1, 1971;

(2) fail to make or file a report with the commission as required by a rule of the commission;

(3) sell liquor for resale inside this state that fails to meet the standards of quality, purity, and identity prescribed by the commission;

(4) advertise any liquor contrary to the laws of this state or to the rules of the commission, or sell liquor for resale in this state in violation of advertising or labeling rules of the commission;

(5) sell liquor for resale inside this state or cause it to be brought into the state in a size of container prohibited by this code or by rule of the commission;

(6) solicit or take orders for liquor from a person not authorized to import liquor into this state for the purpose of resale;

(7) induce, persuade, or influence, or attempt to induce, persuade, or influence, a person to violate this code or a rule of the commission, or conspire with a person to violate this code or a rule of the commission; or

(8) exercise a privilege granted by a nonresident seller's permit while an order or suspension against the permit is in effect.

[Acts 1977, 65th Leg., p. 446, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.08. Cancellation or Suspension: Notice to Importers

When a nonresident seller's permit is cancelled or suspended, the commission shall immediately notify in writing all permittees authorized to import liquor into the state.

[Acts 1977, 65th Leg., p. 447, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.09. Restriction on Importation

No person who holds a permit authorizing the importation of liquor, nor his agent or employee, may purchase or order liquor for importation from any person other than a nonresident seller's permittee. An importer may not purchase or order liquor from a nonresident seller's permittee whose permit is under suspension after the importer has received notice of the suspension.

[Acts 1977, 65th Leg., p. 447, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.10. Restriction as to Source of Supply

(a) No holder of a nonresident seller's permit may solicit, accept, or fill an order for distilled spirits or wine from a holder of any type of wholesaler's permit unless the nonresident seller is the primary American source of supply for the brand of distilled spirits or wine that is ordered.

(b) In this section, "primary American source of supply" means the distiller, the producer, the owner of the commodity at the time it becomes a marketable product, the bottler, or the exclusive agent of any of those. To be the "primary American source of supply" the nonresident seller must be the first source, that is, the manufacturer or the source closest to the manufacturer, in the channel of commerce from whom the product can be secured by American wholesalers.

[Acts 1977, 65th Leg., p. 447, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.11. Submission of Samples and Labels

(a) Before a nonresident seller's permittee may ship distilled spirits into this state, he shall furnish the commission samples of each brand, properly labeled and in the containers in which they are to be sold. He shall submit with the samples applications for label approval for each brand.

(b) The commission or its authorized agents shall test the contents and examine the label and container of the samples and determine whether they meet all requirements of state law and of the rules of the commission. If the label, container, and contents are found to be in compliance, the commission shall issue the permittee a certificate to that effect.

(c) As to distilled spirits imported directly from the distiller, bottler, or the exclusive agent of either, or distilled spirits distilled or bottled by the nonresident seller or by a distiller or bottler for whom the nonresident seller is the exclusive agent, if the samples are approved under Subsection (b) of this section, the permittee is not required to submit additional samples unless there is a change in the label, contents, or style or size of the container, or unless he is directed to do so by the commission.

(d) As to all other distilled spirits, samples must be furnished to the commission for each brand and size in each proposed shipment into the state, together with a sworn statement of the quantity and sizes to be shipped, the permittee to whom the spirits are to be shipped, and the person or firm from whom they are to be shipped. The permittee may not ship the distilled spirits until he has in his possession a certificate of approval from the commission.

(e) Until January 1, 1980, the submission of samples and applications for label and container approval shall not be required for any distilled spirit imported direct from the distiller, bottler, or the exclusive agent of the distiller or bottler, or for any distilled spirit distilled or bottled by the holder of a

nonresident seller's permit or by a distiller or bottler for whom he is the exclusive agent if a certificate of approval has previously been granted and the only change in container size is to the metric system container most nearly equivalent to a previously approved United States standard gallon system container, and the only change in label is the substitution of the metric measure for the formerly used statement of quantity content. This subsection expires January 1, 1980.

[Acts 1977, 65th Leg., p. 447, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1182, ch. 453, § 7, eff. Sept. 1, 1977.]

Section 15 of the 1977 amendatory act provided:

"(a) Except as provided in Subsection (b) of this section, this Act takes effect on September 1, 1977.

"(b) Senate Bill No. 731, Acts of the 65th Legislature, Regular Session, 1977, takes effect immediately."

§ 37.12. Inspection of Records, Documents, Etc.

(a) In this section, "officer" means a representative of the commission, the attorney general, or an assistant or representative of the attorney general.

(b) If an officer wishes to examine the books, accounts, records, minutes, letters, memoranda, documents, checks, telegrams, constitution and bylaws, or other records of a nonresident seller's permittee, he shall make a written request to the permittee or his duly authorized manager or representative or, if the permittee is a corporation, to any officer of the corporation. An officer may examine the records as often as he considers necessary.

(c) When a request for an examination is made, the person to whom it is directed shall immediately allow the officer to conduct the examination, and the person shall answer under oath any question asked by the officer relating to the records.

(d) The officer may investigate the organization, conduct, and management of any nonresident seller's permittee and may make copies of any records which in the officer's judgment may show or tend to show that the permittee has violated state law or the terms of his permit.

(e) An officer may not make public any information obtained under this section except to a law enforcement officer of this state or in connection with an administrative or judicial proceeding in which the state or commission is a party concerning the cancellation or suspension of a nonresident seller's permit, the collection of taxes due under state law, or the violation of state law.

(f) The commission shall cancel or suspend a nonresident seller's permit in accordance with this code if a permittee or his authorized representative fails or refuses to permit an examination authorized by this section or to permit the making of copies of any document as provided by this section, without regard to whether the document is inside or outside the state, or if the permittee or his authorized representative fails or refuses to answer a question of an officer incident to an examination or investigation in progress.

[Acts 1977, 65th Leg., p. 448, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.13. Solicitation From Holder of Mixed Beverage or Private Club Permit

A holder of a nonresident seller's permit may not solicit business directly or indirectly from a holder of a mixed beverage permit or a private club registration permit unless he is accompanied by the holder of a wholesaler's permit or the wholesaler's agent.

[Acts 1977, 65th Leg., p. 448, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.14. Monthly Reports

The commission shall promulgate rules requiring holders of nonresident seller's permits to file monthly reports of liquor sold to persons within this state. The reports shall be supported by copies of invoices. The commission shall prescribe and furnish forms for this purpose.

[Acts 1977, 65th Leg., p. 448, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 38. INDUSTRIAL PERMIT

Section

38.01. Authorized Activities.
38.02. Exemptions.
38.03. Prohibited Acts.
38.04. Fee.
38.05. Other Code Provisions Inapplicable.
38.06. Activities Tax Free.

§ 38.01. Authorized Activities

The holder of an industrial permit may import, transport, and use alcohol or denatured alcohol for the manufacture and sale of any of the following products:

(1) denatured alcohol;

(2) patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;

(3) flavoring extracts, syrups, condiments, and food products; and

(4) scientific, chemical, mechanical, and industrial products, or products used for scientific, chemical, mechanical, industrial, or medicinal purposes.

[Acts 1977, 65th Leg., p. 449, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 38.02. Exemptions

The following persons or entities are exempt from the requirement of obtaining an industrial permit:

(1) a pharmacist for the filling of prescriptions issued by a physician in the legitimate practice of medicine;

(2) a state institution;

(3) a bona fide or chartered school, college, or university when using alcohol for a scientific or laboratory use; and

(4) a hospital, sanatorium, or other bona fide institution for the treatment of the sick.

[Acts 1977, 65th Leg., p. 449, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 38.03. Prohibited Acts

(a) No person may purchase, transport, or use alcohol for any purpose enumerated in this chapter without an industrial permit, unless the person is exempt under Section 38.02 of this code from the requirement of obtaining a permit.

(b) No person may sell, possess, or divert any of the products enumerated in Subdivisions (1) through (4) of Section 38.01 of this code for beverage purposes or under circumstances from which he might reasonably deduce that the intention of the purchaser is to use those products for beverage purposes.

[Acts 1977, 65th Leg., p. 449, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 38.04. Fee

The annual state fee for an industrial permit is $10.

[Acts 1977, 65th Leg., p. 449, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 38.05. Other Code Provisions Inapplicable

No provisions of this code other than this chapter apply to alcohol intended for industrial, medicinal, mechanical, or scientific purposes.

[Acts 1977, 65th Leg., p. 449, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 38.06. Activities Tax Free

The taxes imposed by this code do not apply to activities authorized in Section 38.01 of this code.

[Acts 1977, 65th Leg., p. 449, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 39. MEDICINAL PERMIT

SUBCHAPTER A. GENERAL PROVISIONS

Section
39.01. Authorized Activities.
39.02. Qualifications for Permit.
39.03. Rules.
39.04. Fee.
39.05. Certificate to Accompany Application.

SUBCHAPTER B. PROHIBITED ACTIVITIES

39.21. Prescriptions.
39.22. Records, Reports, and Information.
39.23. Standards.
39.24. Sale for Medicinal Purposes Only.
39.25. Consumption on Premises Prohibited.
39.26. Amount Sold to One Person.
39.27. Number of Prescriptions Limited.
39.28. Limitation on Amount Possessed.
39.29. From Whom Purchased.
39.30. Compensation of Physicians Prohibited.
39.31. Sales to Minors.
39.32. Sale to Intoxicated Person.

SUBCHAPTER C. SUSPENSION OR CANCELLATION OF PERMIT

Section
39.41. Change of Location.
39.42. Breach of Peace.

SUBCHAPTER A. GENERAL PROVISIONS

§ 39.01. Authorized Activities

The holder of a medicinal permit may buy or dispense liquor at his pharmacy for medicinal purposes only.

[Acts 1977, 65th Leg., p. 450, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.02. Qualifications for Permit

To be qualified to receive a medicinal permit:

(1) a person must be the owner of a pharmacy properly qualified as a pharmacy under state law;

(2) the applicant's pharmacy must be a bona fide pharmacy continuously operated for not less than two years;

(3) the applicant's pharmacy must have been continuously located for not less than two years in the particular justice precinct or incorporated city or town in which it is located at the time the permit is sought;

(4) the applicant's pharmacy must have been registered with the state board of pharmacy for two years immediately preceding the date of application for the permit;

(5) the applicant's pharmacy must have employed at all times a registered pharmacist during the two years immediately preceding the date of application for the permit; and

(6) the applicant's pharmacy must not have operated under a permit which was cancelled during the past two years.

[Acts 1977, 65th Leg., p. 450, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.03. Rules

The board, by rule, may require the keeping of whatever records it considers necessary to properly enforce the provisions of this code.

[Acts 1977, 65th Leg., p. 451, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.04. Fee

The annual state fee for a medicinal permit is $10 if the permittee's pharmacy is located in a dry area and is the same as the annual state fee for a package store permit if the permittee's pharmacy is located in a wet area.

[Acts 1977, 65th Leg., p. 451, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.05. Certificate to Accompany Application

Each applicant for a medicinal permit shall present with his application a certificate issued by the state board of pharmacy showing the registra-

tion record of his pharmacy with that board during the preceding two years.
[Acts 1977, 65th Leg., p. 451, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 39.06 to 39.20 reserved for expansion]

SUBCHAPTER B. PROHIBITED ACTIVITIES

§ 39.21. Prescriptions

(a) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor except upon a prescription properly issued by the holder of a physician's permit.

(b) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor on a prescription which does not meet the specifications required by this code.

(c) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor more than once on any prescription.

(d) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor on a prescription dated more than three days prior to the date when the prescription is presented for filling.

(e) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor on a prescription knowing that the prescription was written without a physical examination of the patient by the doctor prescribing the liquor.

(f) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor to any person knowing that the prescription was issued to a patient under a name other than his true name.

(g) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor on a prescription bearing any false statement or information.

(h) No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor without having first obtained physical possession of and carefully examining the prescription on which the sale is made.

(i) No holder of a medicinal permit or any of his agents or employees may prepare a prescription for liquor.

(j) No holder of a medicinal permit or any of his agents or employees may fail to attach to each container of liquor sold a label in the English language bearing the full name and address of the pharmacy making the sale, the name and address of the prescribing physician, the full name and address of the patient to whom the sale is made, the directions for use, the signature of the pharmacist filling the prescription, and the number of the prescription.
[Acts 1977, 65th Leg., p. 451, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.22. Records, Reports, and Information

(a) No holder of a medicinal permit or any of his agents or employees may fail to preserve and keep for two years any prescription on which liquor has been sold. The permittee shall make these prescriptions available at all times for inspection by a representative of the commission, peace officer, or county or district attorney.

(b) No holder of a medicinal permit or any of his agents or employees may fail to make and keep for two years any other record required by the commission, or may fail to produce that record on demand of a representative of the commission, peace officer, or county or district attorney.

(c) No holder of a medicinal permit or any of his agents or employees may fail to make a report required by the commission within the time required, or make or cause to be made a report so required which is false in any particular.

(d) No holder of a medicinal permit or any of his agents or employees may fail or refuse to divulge any information concerning the purchase, storage, or disposal of liquor to a representative of the commission, peace officer, or county or district attorney.

(e) No holder of a medicinal permit or any of his agents or employees may fail to produce on demand a prescription for each container of liquor disposed of or unaccounted for.
[Acts 1977, 65th Leg., p. 452, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.23. Standards

No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor not meeting the standards established by the United States Pharmacopoeia or the National Formulary.
[Acts 1977, 65th Leg., p. 452, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.24. Sale for Medicinal Purposes Only

No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor for other than medicinal purposes.
[Acts 1977, 65th Leg., p. 452, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.25. Consumption on Premises Prohibited

No holder of a medicinal permit or any of his agents or employees may permit any liquor to be consumed on the pharmacy premises.
[Acts 1977, 65th Leg., p. 452, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.26. Amount Sold to One Person

No holder of a medicinal permit or any of his agents or employees may sell or dispense more than one pint of liquor to a person in one day.
[Acts 1977, 65th Leg., p. 452, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.27. Number of Prescriptions Limited

No holder of a medicinal permit or any of his agents or employees may in any one week sell or dispense liquor on prescriptions exceeding the number of prescriptions filled during that week for other medicines, excluding narcotics. For the purposes of this section a week begins Sunday at midnight.
[Acts 1977, 65th Leg., p. 452, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.28. Limitation on Amount Possessed

No holder of a medicinal permit or any of his agents or employees may have in his physical possession more than 10 gallons of liquor at one time.
[Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.29. From Whom Purchased

No holder of a medicinal permit or any of his agents or employees may purchase or acquire stocks of liquor from any person who is not the holder of a wholesaler's permit in this state.
[Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.30. Compensation of Physicians Prohibited

No holder of a medicinal permit or any of his agents or employees may compensate or guarantee any income to a physician in this state for writing a prescription for liquor.
[Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.31. Sales to Minors

No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor to a person under 18 years of age unless that minor presents with his prescription the written consent of his parent or guardian. The person making the sale shall file the written consent with the prescription.
[Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.32. Sale to Intoxicated Person

No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor to a person showing evidence of intoxication.
[Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 39.33 to 39.40 reserved for expansion]

SUBCHAPTER C. SUSPENSION OR CANCELLATION OF PERMIT

§ 39.41. Change of Location

The commission or administrator shall cancel the medicinal permit of a pharmacy owner if the pharmacy for which the permit was issued moves from the place where it was located when the permit was issued into an incorporated city or town, into a different incorporated city or town, or into a different justice precinct.
[Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.42. Breach of Peace

The commission or administrator may suspend or cancel a medicinal permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the pharmacy premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the pharmacy premises or on premises under his control.
[Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 40. PHYSICIAN'S PERMIT

Section
40.01. Authorized Activities.
40.02. Fee.
40.03. Eligibility for Permit.
40.04. Prescription Forms.
40.05. Prohibited Activities.

§ 40.01. Authorized Activities

The holder of a physician's permit may write prescriptions for liquor for medical purposes in accordance with the restrictions set forth in this chapter.
[Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 40.02. Fee

The annual state fee for a physician's permit is $1.
[Acts 1977, 65th Leg., p. 454, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 40.03. Eligibility for Permit

(a) A physician licensed by the State Board of Medical Examiners to administer internal medicine to human beings may obtain a physician's permit. Each applicant for a permit must present with the application a certificate issued by the State Board of Medical Examiners showing his qualification to hold a permit.

(b) No person who has been convicted of a violation of this code or who has had a permit authorized by this code cancelled within two years preceding the date of filing an application for a permit may be issued a physician's permit.
[Acts 1977, 65th Leg., p. 454, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 40.04. Prescription Forms

(a) The commission shall adopt rules determining the form of and manner of furnishing prescription forms. No person may prescribe liquor on any form not obtained from the commission or in a manner not meeting the requirements specified in this chapter.

(b) A prescription, when issued, must contain the following information:

(1) the date of issuance;

(2) the name and address of the issuing physician;

(3) the name, address, sex, and age of the patient and the diagnosis of the disease or ailment of the patient;

(4) the amount and type of liquor prescribed;

(5) the directions for use by the patient; and

(6) the signature of the issuing physician.

(c) The commission may adopt regulations regarding the printing and issuance of prescription blanks, the keeping of records of prescriptions issued, the making of reports, and the disposal of unused, mutilated, or defaced blanks which it deems necessary to require physicians to strictly conform to the provisions of this chapter.

[Acts 1977, 65th Leg., p. 454, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 40.05. Prohibited Activities

No physician may:

(1) prescribe liquor for any purpose unless he holds a physician's permit;

(2) prescribe liquor for other than medicinal purposes;

(3) issue prescriptions for liquor to any person without first making a physical examination of the patient to determine the disease or ailment afflicting him;

(4) issue a prescription which does not contain all the information required by this chapter written in the English language;

(5) accept any sort of compensation or guarantee as to income or material benefit from a holder of a medicinal permit for writing a prescription;

(6) prescribe more than one pint of liquor for a person in any one day;

(7) prescribe liquor for any person showing evidence of intoxication;

(8) prescribe liquor for any person under any name other than the true name of the person for whom the liquor is intended;

(9) prescribe liquor for any person under the age of 18 years unless he has the written consent of the person's parent or guardian;

(10) issue more than 100 prescriptions for liquor in any period of 90 days, beginning from the date designated by the physician in any order for prescription forms placed with the commission;

(11) fail or refuse to make and keep for a period of two years any record of prescriptions issued for liquor as required by the commission;

(12) fail to make reports required by the commission; or

(13) fail to divulge information or produce records of the issuance of prescriptions when requested to do so by a representative of the commission or by any peace officer or any county or district attorney.

[Acts 1977, 65th Leg., p. 454, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 41. CARRIER PERMIT

Section
41.01. Authorized Activities.
41.02. Fee.
41.03. Eligibility for Permit.
41.04. Required Information.

§ 41.01. Authorized Activities

(a) The holder of a carrier permit may transport liquor into and out of this state and between points within the state.

(b) The holder may transport liquor from one wet area to another wet area across a dry area if that course of transportation is necessary or convenient.

[Acts 1977, 65th Leg., p. 455, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 41.02. Fee

The annual state fee for a carrier permit is $5.

[Acts 1977, 65th Leg., p. 455, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 41.03. Eligibility for Permit

A carrier permit may be issued to:

(1) a water carrier;

(2) an airline;

(3) a railway; or

(4) a common carrier operating under a certificate of convenience and necessity issued by the Railroad Commission of Texas or under a certificate issued by the Interstate Commerce Commission.

[Acts 1977, 65th Leg., p. 455, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 41.04. Required Information

The holder of a carrier permit shall furnish information required by the commission concerning the transportation of liquor.

[Acts 1977, 65th Leg., p. 455, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 42. PRIVATE CARRIER PERMIT

Section
42.01. Authorized Activities.
42.02. Fee.
42.03. Application of Motor Carrier Laws.
42.04. Vehicles Used for Transporting Liquor.
42.05. Transportation of Ale and Malt Liquor: Rules.

§ 42.01. Authorized Activities

(a) The holder of a private carrier permit who is also a holder of a brewer's, distiller's, winery, rectifier's, wholesaler's, class B wholesaler's, or wine bot-

tler's permit may transport liquor from the place of purchase to his place of business and from the place of sale or distribution to the purchaser in vehicles owned or leased in good faith by the holder if the transportation is for a lawful purpose.

(b) The holder of a private carrier permit may transport liquor from one wet area to another wet area across a dry area if that course of transportation is necessary or convenient.

[Acts 1977, 65th Leg., p. 456, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2118, ch. 819, § 8, eff. June 13, 1979.]

§ 42.02. Fee

The annual state fee for a private carrier permit is $5.

[Acts 1977, 65th Leg., p. 456, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 42.03. Application of Motor Carrier Laws

A person desiring to transport liquor for hire must first secure a certificate or permit from the Railroad Commission in accordance with the applicable motor carrier laws, and he shall comply with the provisions of the motor carrier laws when engaging in the business of transporting liquor for hire.

[Acts 1977, 65th Leg., p. 456, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 42.04. Vehicles Used for Transporting Liquor

(a) Each application for a private carrier permit must contain a full description of the motor vehicles used by the applicant for transporting liquor as well as all other information required by the commission.

(b) Each vehicle used for the transportation of liquor within the state shall have printed or painted on it the designation required by the commission.

(c) A permittee may not transport liquor in any vehicle which is not fully described in his application for a permit.

[Acts 1977, 65th Leg., p. 456, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 42.05. Transportation of Ale and Malt Liquor: Rules

The commission may issue rules prescribing the manner in which ale and malt liquor may be transported in the state by private carrier's permittees who also hold class B wholesaler's permits.

[Acts 1977, 65th Leg., p. 456, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 43. LOCAL CARTAGE PERMIT

Section
43.01. Authorized Activities.
43.02. Fee.
43.03. Permit Required.
43.04. Eligibility for Permit.
43.05. Vehicles Used by Permittee.
43.06. Certain Transportation Prohibited.
43.07. Violation of Code, Rule.

§ 43.01. Authorized Activities

(a) A warehouse or transfer company that holds a local cartage permit may transport liquor for hire inside the corporate limits of any city or town in the state.

(b) A package store, wine only package store, or local distributor's permittee who also holds a local cartage permit may transfer alcoholic beverages in accordance with Sections 22.08, 23.04, and 24.04 of this code.

[Acts 1977, 65th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 43.02. Fee

The annual state fee for a local cartage permit is $5.

[Acts 1977, 65th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 43.03. Permit Required

No person may transport liquor for hire inside a city or town unless he holds a local cartage permit. No person may transport liquor in violation of the motor carrier laws of this state.

[Acts 1977, 65th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 43.04. Eligibility for Permit

The commission may issue a local cartage permit to a warehouse or transfer company or to a holder of a package store, wine only package store, or local distributor's permit.

[Acts 1977, 65th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 43.05. Vehicles Used by Permittee

(a) No local cartage permittee may transport liquor unless:

(1) a description of each vehicle used in the transportation, as required by the commission, has been submitted to the commission; and

(2) each vehicle has been plainly marked or lettered to indicate that it is being used for the transportation of liquor by a local cartage permittee.

(b) The transportation of liquor by a permittee in a vehicle not described and marked in accordance with this section is a violation of this code and is a ground for the cancellation of the permit.

[Acts 1977, 65th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 43.06. Certain Transportation Prohibited

No holder of a local cartage permit may for hire transport liquor between incorporated cities or towns in this state.

[Acts 1977, 65th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 43.07. Violation of Code, Rule

If a holder of a local cartage permit who also holds a package store permit or wine only package store permit violates any provision of this code or any rule

or regulation of the commission, the violation is a ground for the suspension or cancellation of any or all permits or licenses held by that person for the premises where the offense was committed.
[Acts 1977, 65th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 44. BEVERAGE CARTAGE PERMIT

Section
44.01. Authorized Activities.
44.02. Fee.
44.03. Eligibility for Permit.

§ 44.01. Authorized Activities

A beverage cartage permit authorizes the holder of a mixed beverage or private club registration permit to transfer alcoholic beverages from the place of purchase to the licensed premises as provided in this code.
[Acts 1977, 65th Leg., p. 458, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 44.02. Fee

The annual state fee for a beverage cartage permit is $10.
[Acts 1977, 65th Leg., p. 458, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 44.03. Eligibility for Permit

The commission may issue a beverage cartage permit to the holder of a mixed beverage or private club registration permit.
[Acts 1977, 65th Leg., p. 458, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 45. STORAGE PERMIT

Section
45.01. Authorized Activities.
45.02. Fee.
45.03. Eligibility for Permit; Restrictions; Exceptions.

§ 45.01. Authorized Activities

The holder of a storage permit may store liquor in a public bonded warehouse for which a permit has been issued or in a private warehouse owned and operated by the holder.
[Acts 1977, 65th Leg., p. 458, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 45.02. Fee

There is no fee for a storage permit.
[Acts 1977, 65th Leg., p. 458, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 45.03. Eligibility for Permit; Restrictions; Exceptions

(a) A storage permit may be issued to a holder of a brewer's, distiller's, winery, rectifier's, wholesaler's, class B wholesaler's, or wine bottler's permit.

(b) A permit must be obtained for each place of storage.

(c) A storage permit may not be issued for a location outside the county in which the permittee's business is located.

(d) No storage permit may be issued for a location in a dry area.

(e) A permit is not required for the storage of stock in trade on the licensed premises.
[Acts 1977, 65th Leg., p. 458, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 46. BONDED WAREHOUSE PERMIT

Section
46.01. Authorized Activities.
46.02. Fee.
46.03. Qualifications for Permit.
46.04. Storage Information.

§ 46.01. Authorized Activities

The holder of a bonded warehouse permit may store liquor for any permittee who holds a permit authorizing its storage in a public bonded warehouse.
[Acts 1977, 65th Leg., p. 459, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 46.02. Fee.

The annual state fee for a bonded warehouse permit is $100.
[Acts 1977, 65th Leg., p. 459, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 46.03. Qualifications for Permit

A bonded warehouse permit may be issued to any public bonded warehouse not located in a dry area which derives at least 50 percent of its gross revenue in a bona fide manner during each three-month period from the storage of goods or merchandise other than liquor.
[Acts 1977, 65th Leg., p. 459, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 46.04. Storage Information

The holder of a bonded warehouse permit shall furnish such information concerning the liquor stored and withdrawn as may be required by the commission.
[Acts 1977, 65th Leg., p. 459, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPER 47. LOCAL INDUSTRIAL ALCOHOL MANUFACTURER'S PERMIT

Section
47.01. Authorized Activities.
47.02. Fee.
47.03. Transportation.
47.04. Storage Facility.
47.05. Plant Plan Requirements.
47.06. Exemption for State Institutions.
47.07. Local Option Status of Area.

§ 47.01. Authorized Activities

The holder of a local industrial alcohol manufacturer's permit may:

(1) manufacture, rectify, and refine industrial alcohol, which term as used in this chapter means an alcohol which is produced for industrial purposes only and is not fit for human consumption;

(2) denature alcohol produced under the permit;

(3) sell denatured or industrial alcohol produced under the permit to holders of local industrial alcohol manufacturer's permits or industrial permits and to qualified persons outside the state; and

(4) blend industrial alcohol produced under the permit with petroleum distillates and sell or use the resulting product as a motor fuel.

[Added by Acts 1979, 66th Leg., p. 1074, ch. 504, § 1, eff. June 7, 1979.]

§ 47.02. Fee

The annual state fee for a local industrial alcohol manufacturer's permit is $100.

[Added by Acts 1979, 66th Leg., p. 1074, ch. 504, § 1, eff. June 7, 1979.]

§ 47.03. Transportation

(a) A local industrial alcohol manufacturer's permittee may transport the alcohol produced under the local industrial alcohol manufacturer's permit by railway tank car, barge, or motor truck if the tank car, barge, or motor truck is owned by him or leased in good faith.

(b) The permittee must comply with all applicable state and federal laws regulating transportation.

(c) The permittee may not transport alcohol under the authority of this section unless, at the time the transportation occurs, the tank car, barge, or motor truck is fully described in a sworn statement on file with the commission.

(d) The permittee may transport the alcohol to a wet area by crossing a dry area if that route is necessary or convenient.

[Added by Acts 1979, 66th Leg., p. 1074, ch. 504, § 1, eff. June 7, 1979.]

§ 47.04. Storage Facility

(a) A local industrial alcohol manufacturer's permit applicant or permittee may request in the permit application or in writing after the permit is issued that the commission or administrator authorize the permittee to store alcohol at a storage facility under the permittee's control that is located off the licensed premises. The permittee shall supply any information regarding the storage that the commission or administrator requires.

(b) A request under this section may include a request that the permittee be permitted to transport the alcohol to the storage facility by pipeline or other means.

(c) If the request is granted, the commission or administrator may attach any conditions regarding the use of the facility or transportation of alcohol to the facility that the commission or administrator considers proper.

(d) A storage facility authorized under this section is treated as a part of the licensed premises for the purpose of the permittee's consent to inspection under Section 101.04 of this code.

[Added by Acts 1979, 66th Leg., p. 1074, ch. 504, § 1, eff. June 7, 1979.]

§ 47.05. Plant Plan Requirements

If the plant plans submitted by the applicant establish to the satisfaction of the commission that the plant is not capable of producing alcohol for beverage purposes and if no change in the plant is made without commission approval, the permit for which application is made shall be considered to be an industrial permit as that term is used in Section 109.53 of this code.

[Added by Acts 1979, 66th Leg., p. 1074, ch. 504, § 1, eff. June 7, 1979.]

§ 47.06. Exemption for State Institutions

A state institution is exempt from these provisions of the code when manufacturing industrial alcohol for scientific or laboratory use.

[Added by Acts 1979, 66th Leg., p. 1074, ch. 504, § 1, eff. June 7, 1979.]

§ 47.07. Local Option Status of Area

Whether an area is wet or dry under the local option laws does not affect the eligibility of an applicant to hold a permit under this chapter.

[Added by Acts 1979, 66th Leg., p. 1074, ch. 504, § 1, eff. June 7, 1979.]

SUBTITLE B. LICENSES

CHAPTER 61. PROVISIONS GENERALLY APPLICABLE TO LICENSES

SUBCHAPTER A. GENERAL PROVISIONS

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61.02. Nature of License; Succession on Death, Bankruptcy, Etc.
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61.85. Disposal of Stock on Termination of License.

SUBCHAPTER A. GENERAL PROVISIONS

§ 61.01. License Required

No person may manufacture or brew beer for the purpose of sale, import it into this state, distribute or sell it, or possess it for the purpose of sale without having first obtained an appropriate license or permit as provided in this code. Each licensee shall display his license at all times in a conspicuous place at the licensed place of business.

[Acts 1977, 65th Leg., p. 460, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.02. Nature of License; Succession on Death, Bankruptcy, Etc.

(a) A license issued under this code is a purely personal privilege and is subject to revocation as provided in this code. It is not property, is not subject to execution, does not pass by descent or distribution, and ceases on the death of the holder.

(b) On the death of the licensee or of a person having an interest in the license, or on bankruptcy, receivership, or partnership dissolution, the receiver or successor in interest may apply to the county judge of the county where the licensed premises are located for certification that he is the receiver or successor in interest. On certification, unless good cause for refusal is shown, the commission or administrator shall grant permission, by letter or otherwise, for the receiver or successor in interest to operate the business during the unexpired portion of the license. The license may not be renewed, but the receiver or successor in interest may apply for an original license. A receiver or successor in interest operating for the unexpired portion of the license is subject to the provisions of this code relating to the suspension or cancellation of a license.

[Acts 1977, 65th Leg., p. 460, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.03. Duration and Expiration of License

No license may be issued for a term longer than one year. Any license except a branch, importer's, importer's carrier's, or temporary license expires one year after the date on which it is issued.

[Acts 1977, 65th Leg., p. 461, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.04. License Not Assignable

No holder of a license may assign his license to another person.

[Acts 1977, 65th Leg., p. 461, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.05. Name of Business

No person may conduct a business engaged in the manufacture, distribution, importation, or sale of beer as owner or part owner except under the name to which the license covering his place of business is issued.

[Acts 1977, 65th Leg., p. 461, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.06. Privileges Limited to Licensed Premises; Deliveries

No person licensed to sell beer, except a manufacturer or distributor, may use or display a license or exercise a privilege granted by the license except at the licensed premises. Deliveries of beer and collections may be made off the licensed premises in areas where the sale of beer is legal inside the county where the license is issued, but only in response to orders placed by the customer in person at the licensed premises or by mail or telephone to the licensed premises.

[Acts 1977, 65th Leg., p. 461, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.07. Agent for Service

Each manufacturer, distributor, or person shipping or delivering beer into this state shall file a certificate with the secretary of state designating the name, street address, and business of his agent on whom process may be served. If a certificate is not filed, service may be had on the secretary of state in any cause of action arising out of a violation of this code, and the secretary of state shall send any citation served on him by registered mail, return receipt requested, to the person for whom the citation is intended. The receipt is prima facie evidence of service on the person.

[Acts 1977, 65th Leg., p. 461, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.08. Statement of Stock Ownership

The commission at any time may require an officer of a corporation holding a license to file a sworn statement showing the actual owners of the stock of the corporation, the amount of stock owned by each, the officers of the corporation, and any information concerning the qualifications of the officers or stockholders.

[Acts 1977, 65th Leg., p. 461, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.09. Change of Location

If a licensee desires to change his place of business, he may do so by applying to the county judge on a form prescribed by the commission and obtaining his consent. The application may be subject to protest and hearing in the same way as an application for an original license. The county judge may deny the application for any cause for which an original license application may be denied. No additional license fee for the unexpired term of the license shall be required in the case of an application for a change of location.

[Acts 1977, 65th Leg., p. 462, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.10. Replacement of License

If a license is mutilated or destroyed, the commission or administrator may issue another license as a replacement in a manner acceptable to the commission or administrator.

[Acts 1977, 65th Leg., p. 462, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.11. Warning Sign Required

(a) Each holder of a license shall display in a prominent place on his premises a sign, at least 6 inches high and 14 inches wide, stating: FELONY. STATE LAW PRESCRIBES A MAXIMUM PENALTY OF TEN YEARS' IMPRISONMENT AND A FINE NOT TO EXCEED $5,000 FOR CARRYING WEAPONS WHERE ALCOHOLIC BEVERAGES ARE SOLD, SERVED, OR CONSUMED.

(b) A licensee who violates this section commits a misdemeanor punishable by a fine of not more than $25.

[Acts 1977, 65th Leg., p. 462, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.12. Restriction on Consumption

No licensee except a holder of a license authorizing on-premises consumption of beer may permit beer to be consumed on the premises where it is sold.

[Acts 1977, 65th Leg., p. 462, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 61.13 to 61.30 reserved for expansion]

SUBCHAPTER B. APPLICATION AND ISSUANCE OF LICENSES

§ 61.31. Application for License

(a) A person may file an application for a license to manufacture, distribute, or sell beer in termtime or vacation with the county judge of the county in which he desires to conduct business. He shall file the application in duplicate.

(b) The county judge shall set the application for a hearing to be held not less than 5 nor more than 10 days after the application is filed.

(c) Each applicant for an original license, other than a branch or temporary license, shall pay a hearing fee of $5 to the county clerk at the time of the hearing. The county clerk shall deposit the fee in the county treasury. The applicant is liable for no other fee except the annual license fee prescribed by this code.

(d) No person may sell beer during the pendency of his original license application. No official may advise a person to the contrary.

[Acts 1977, 65th Leg., p. 462, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.32. Hearing by County Judge

(a) On hearing an application, if the county judge finds that all facts stated in the application are true and no legal ground to refuse a license exists, he shall enter an order certifying those findings and give the applicant a copy of the order. If the county judge finds otherwise, he shall enter an order accordingly.

(b) If the county judge enters an order favorable to the applicant, the applicant shall present a copy of the order to the assessor and collector of taxes of the county and pay that officer the appropriate license fee. The assessor and collector of taxes then shall report to the commission on a form prescribed by the commission, certifying that the application was approved and that all required fees have been paid and furnishing any other information the commission requires. The assessor and collector of taxes shall attach a copy of the original application to the report.

(c) In the case of an application to sell beer at retail, the county judge shall give due consideration to any recommendations made by representatives of the commission, the sheriff or county or district attorney of the county where the license is sought, or the mayor or chief of police of the incorporated city where the applicant seeks to conduct business.

[Acts 1977, 65th Leg., p. 462, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.33. Action by Commission or Administrator

(a) On receiving a report from the assessor and collector of taxes under Section 61.32(b) of this code, the commission or administrator shall issue the appropriate license if the commission or administrator finds that the applicant is entitled to a license. The license shall show the class of business the applicant is authorized to conduct, the amount of fees paid, the address of the place of business, the date the license is issued and the date it expires, and any other information the commission considers proper.

(b) The commission or administrator may refuse to issue a license after receiving the report of the assessor and collector of taxes if the commission or administrator possesses information from which it is determined that any statement in the license application is false or misleading or that there is other legal reason why a license should not be issued. If the commission or administrator refuses to issue a license, it or he shall enter an order accordingly and the applicant is entitled to a refund of any license fee he paid the assessor and collector of taxes in connection with the application.

[Acts 1977, 65th Leg., p. 463, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.34. Appeal From Denial

(a) If the county judge, commission, or administrator denies an application, the applicant may appeal within 30 days from the date the order becomes final and appealable to the district court of the county where the application was made. The appeal is governed by Section 11.67 of this code, and the court may hear the appeal in termtime or vacation.

(b) If the judgment of the district court is in favor of the applicant, regardless of whether an appeal is taken, a copy of the judgment shall be presented to the assessor and collector of taxes of the county where the application was made. The assessor and collector of taxes shall accept the fees required by this code and proceed as provided under Section 61.32 of this code as if the county judge had approved the application.

(c) If a license is issued on the basis of a district court judgment and that judgment is reversed on appeal, the mandate of the appellate court automatically invalidates the license and the applicant is entitled to a proportionate refund of fees for the unexpired portion of the license. As much of the proceeds from license fees collected under this subtitle as is necessary may be appropriated for the payment of those refunds.

(d) A person appealing from an order under this section shall give bond for all costs incident to the appeal and shall be required to pay those costs if the judgment on appeal is unfavorable to the applicant, but not otherwise. No bond is required on appeals filed on behalf of the state.

[Acts 1977, 65th Leg., p. 463, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.35. License Fees

(a) A separate license fee is required for each place of business that manufactures, imports, or sells beer.

(b) All license fees, except those for temporary licenses, shall be deposited as provided in Section 205.02 of this code. The assessor and collector of taxes shall make statements of the amounts collected by him under this code to the commission at the times and in the manner required by the commission or administrator.

(c) No licensee may obtain a refund on the surrender or nonuse of a license except as provided by this code.

(d) If a licensee engaged in selling beer is prevented from continuing in business by a local option election, he is entitled to a refund of a proportionate amount of the license fees he has paid covering the unexpired term of his license. As much of the proceeds derived under the provisions of this subtitle as is necessary may be appropriated for that purpose.

[Acts 1977, 65th Leg., p. 464, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.36. Local Fee Authorized

(a) The governing body of an incorporated city or town may levy and collect a fee not to exceed one-half of the state fee for each license, except a temporary or agent's beer license, issued for premises located within the city or town. The commissioners court of a county may levy and collect a fee equal to one-half the state fee for each license, except a temporary or agent's beer license, issued for premises located within the county. Those authorities may not levy or collect any other fee or tax from the licensee except general ad valorem taxes, the hotel occupancy tax levied under Chapter 63, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 1269j–4.1, Vernon's Texas Civil Statutes), and the local sales and use tax levied under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes).

(b) The commission or administrator may cancel a license if it finds the permittee has not paid a fee levied by a city under this section. A licensee who sells an alcoholic beverage without first having paid a fee levied under this section commits a misdemeanor punishable by a fine of not less than $10 nor more than $200.

(c) Nothing in this code shall be construed as a grant to any political subdivision of the authority to regulate licensees except by collecting the fees authorized in this section and exercising those powers granted to political subdivisions by other provisions of this code.

[Acts 1977, 65th Leg., p. 464, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.37. Certification of Wet or Dry Status

(a) The county clerk of the county in which an application for a license is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the license is sought is prohibited by any valid order of the commissioners court.

(b) The city secretary or clerk of the city in which an application for a license is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the license is sought is prohibited by charter or ordinance.

[Acts 1977, 65th Leg., p. 464, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.38. Notice of Application

(a) When an application for a license to manufacture or distribute beer is filed, the county clerk shall post at the courthouse door a written notice containing the substance of the application and the date set for hearing.

(b) When an original application to sell beer at retail at a location previously licensed is filed, the county clerk shall post at the courthouse door a written notice containing the substance of the application and the date set for hearing.

(c) When an original application to sell beer at retail at a location not previously licensed is filed, the county clerk shall publish notice for two consecutive issues in a newspaper of general circulation published in the city or town in which the applicant's place of business is to be located. If no newspaper of general circulation is published in that city or town, the notice shall be published in a newspaper of general circulation in the county where the applicant's business is to be located. If no newspaper of general circulation is published in that county, the notice shall be published in a newspaper which is published in the closest neighboring county and is circulated in the county where the license is sought. The notice shall be in 10-point boldface type and shall set forth the type of license applied for; the exact location of the business; the name of the owner or owners; the trade name, if operating under an assumed name; and in the case of a corporate applicant, the names and titles of all officers of the corporation. At the time the application is filed, the applicant shall deposit with the clerk the cost of publishing notice, which the clerk shall use to pay for the publication.

[Acts 1977, 65th Leg., p. 465, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.39. May Contest Application

Any person may contest the facts stated in an application for a license to distribute, manufacture, or sell beer at retail, or the applicant's right to secure a license, if he gives security for all costs which may be incurred in the contest if the case should be decided in favor of the applicant. No security for costs may be required of an officer of a county or incorporated city or town.

[Acts 1977, 65th Leg., p. 465, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.40. Premises Ineligible for License

Section 11.44 of this code, which describes certain premises that are ineligible for a license, applies to licenses issued under this subtitle.

[Acts 1977, 65th Leg., p. 465, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.41. Second License at Same Location; Effect on Existing License

No license may be issued for a premises, location, or place of business for which a license is in effect unless the holder of the existing license has shown to the satisfaction of the commission that he will no longer exercise any privilege granted by the existing license at that location. If the holder of the existing license desires to transfer the license to another location, he may apply for a transfer of location in accordance with this code. If the holder of the existing license has made a declaration required by the commission that he will no longer use the license, he may not manufacture or sell beer or possess it for the purpose of sale until the license has been reinstated. The holder may apply to the county judge for the reinstatement of his license in the same manner and according to the same procedure as in the case of an original license application. The county judge or the commission or administrator may deny reinstatement of the license for any cause for which an original license application may be denied.

[Acts 1977, 65th Leg., p. 465, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.42. Mandatory Grounds for Refusal: Distributor or Retailer

(a) The county judge shall refuse to approve an application for a license as a distributor or retailer if he has reasonable grounds to believe and finds that:

(1) the applicant is under 18 years of age;

(2) the applicant is indebted to the state for any taxes, fees, or penalties imposed by this code or by rule of the commission;

(3) the place or manner in which the applicant for a retail dealer's license may conduct his business warrants a refusal of a license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;

(4) the applicant is in the habit of using alcoholic beverages to excess or is mentally or physically incompetent;

(5) the applicant is not a United States citizen or has not been a citizen of Texas for a period of three years immediately preceding the filing of his application, unless he was issued an original

or renewal license on or before September 1, 1948;

(6) the applicant was finally convicted of a felony during the two years immediately preceding the filing of his application;

(7) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad; or

(8) as to a corporation, it is not incorporated under the laws of this state, or at least 51 percent of the corporate stock is not owned at all times by persons who individually are qualified to obtain a license, except that this subdivision does not apply to a holder of any renewal of a distributor's license which was in effect on January 1, 1953, or to an applicant for a beer retailer's on-premise license for a railway car.

(b) The county judge, commission, or administrator shall refuse to approve or issue an original retail dealer's or retail dealer's on-premise license unless the applicant for the license files with the application a certificate issued by the comptroller of public accounts stating that the applicant holds, or has applied for and satisfies all legal requirements for the issuance of, a sales tax permit for the place of business for which the license is sought.

[Acts 1977, 65th Leg., p. 466, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1967, ch. 777, § 6, eff. Aug. 27, 1979.]

§ 61.43. Discretionary Grounds for Refusal: Distributor or Retailer

The county judge may refuse to approve an application for a license as a distributor or retailer if he has reasonable grounds to believe and finds that:

(1) the applicant has been finally convicted in a court of competent jurisdiction for the violation of a provision of this code during the two years immediately preceding the filing of his application;

(2) two years has not elapsed since the termination, by pardon or otherwise, of a sentence imposed for conviction of a felony;

(3) the applicant has violated or caused to be violated a provision of this code or a rule or regulation of the commission, for which a suspension was not imposed, during the 12-month period immediately preceding the filing of his application;

(4) the applicant failed to answer or falsely or incorrectly answered a question in his original or renewal application;

(5) the applicant for a retail dealer's license does not have an adequate building available at the address for which the license is sought;

(6) the applicant or a person with whom he is residentially domiciled had an interest in a license or permit which was cancelled or revoked within the 12-month period immediately preceding the filing of his application;

(7) the applicant failed or refused to furnish a true copy of his application to the commission's district office in the district in which the premises sought to be licensed are located;

(8) the premises on which beer is to be sold for on-premises consumption does not have running water, if it is available, or does not have separate free toilets for males and females, properly identified, on the premises for which the license is sought;

(9) the applicant for a retail dealer's license will conduct his business in a manner contrary to law or in a place or manner conducive to a violation of the law; or

(10) the place, building, or premises for which the license is sought was used for selling alcoholic beverages in violation of the law at any time during the six months immediately preceding the filing of the application or was used, operated, or frequented during that time for a purpose or in a manner which was lewd, immoral, offensive to public decency, or contrary to this code.

[Acts 1977, 65th Leg., p. 466, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.44. Refusal of Distributor's or Retailer's License: Prohibited Interests

(a) The county judge may refuse to approve an application for a license as a distributor or retailer if he has reasonable grounds to believe and finds that:

(1) the applicant has a financial interest in an establishment authorized to sell distilled spirits, except as authorized in Section 22.06, 24.05, or 102.05 of this code;

(2) a person engaged in the business of selling distilled spirits has a financial interest in the business to be conducted under the license sought by the applicant, except as authorized in Section 22.06, 24.05, or 102.05 of this code; or

(3) the applicant is residentially domiciled with a person who has a financial interest in an establishment engaged in the business of selling distilled spirits, except as authorized in Section 22.06, 24.05, or 102.05 of this code.

(b) The county judge may refuse to approve an application for a retail dealer's license if he has reasonable grounds to believe and finds that:

(1) the applicant has a real interest in the business or premises of the holder of a manufacturer's or distributor's license; or

(2) the premises sought to be licensed are owned in whole or part by the holder of a manufacturer's or distributor's license.

[Acts 1977, 65th Leg., p. 467, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.45. Refusal of Retailer's or Distributor's License: Prohibited Interest in Premises

(a) The county judge may refuse to approve an application for a retail dealer's license if he has reasonable grounds to believe and finds that:

(1) the applicant owns or has an interest in the premises covered by a manufacturer's or distributor's license; or

(2) the holder of a manufacturer's or distributor's license owns or has an interest in the premises sought to be licensed.

(b) The county judge may refuse to approve an application for a distributor's license if he has reasonable grounds to believe and finds that:

(1) the applicant owns or has an interest in the premises covered by a retail dealer's license; or

(2) a holder of a retail dealer's license owns or has an interest in the premises sought to be licensed.

[Acts 1977, 65th Leg., p. 467, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.46. Manufacturer's License: Grounds for Refusal

(a) This section applies to any applicant for a manufacturer's license, including a domestic corporation or foreign corporation qualified to do business in Texas, administrator or executor, or other person. This section does not apply to a holder of a subsequent renewal of a manufacturer's license which was in effect on January 1, 1953.

(b) The county judge shall refuse to approve an application for a manufacturer's license if he has reasonable grounds to believe and finds that the applicant has failed to state under oath that it will engage in the business of brewing and packaging beer in this state within three years after the issuance of its original license in sufficient quantities as to make its operation that of a bona fide brewing manufacturer.

(c) In the case of a corporate applicant, the statement shall be sworn to and subscribed by one of the corporation's principal officers.

[Acts 1977, 65th Leg., p. 468, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.47. Retail License: Refusal by Commission or Administrator

If the county judge approves an application for a license as a retail dealer, the commission or administrator may refuse to issue a license for any reason which would have been a ground for the county judge to have refused to approve the application.

[Acts 1977, 65th Leg., p. 468, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.48. Renewal Application

An application to renew a license shall be filed in writing with the assessor and collector of taxes of the county in which the licensed premises are located no earlier than 30 days before the license expires but not after it expires. The application shall be signed by the applicant and shall contain complete information required by the commission showing that the applicant is not disqualified from holding a license. The application shall be accompanied by the appropriate license fee plus a filing fee of $2. The assessor and collector of taxes shall deposit the $2 filing fee in the county treasury and shall account for it as a fee of office. No applicant for a renewal may be required to pay any fee other than license fees and the filing fee unless he is required by the commission or administrator to submit to a renewal hearing before the county judge.

[Acts 1977, 65th Leg., p. 468, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.49. Renewal Application Transmitted to Commission

When the renewal application has been filed in accordance with Section 61.48 of this code, the assessor and collector of taxes shall transmit to the commission the original copy of the application plus a certification that all required fees have been paid for the ensuing license period. On receiving the application and certification, the commission or administrator may in its discretion issue a renewal license or reject the application and require the applicant to file an application with the county judge and submit to a hearing as is required in the case of an original application. When an application for renewal is rejected, the applicant is entitled to a refund of any license fee that was paid to the assessor and collector of taxes at the time the renewal application was filed.

[Acts 1977, 65th Leg., p. 468, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.50. Renewal of Retail Dealer's License: Grounds for Refusal

The commission or administrator, without a hearing, may refuse to issue a renewal of a retail dealer's license and require the applicant to make an original application if it is found that circumstances exist which would warrant the refusal of an original application under any pertinent provision of this code.

[Acts 1977, 65th Leg., p. 468, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.51. Premises Defined; Designation of Licensed Premises

"Premises" is defined in Section 11.49 of this code. The designating of licensed premises by license applicants is also covered by that section.

[Acts 1977, 65th Leg., p. 469, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 61.52 to 61.70 reserved for expansion]

SUBCHAPTER C. CANCELLATION AND SUSPENSION OF LICENSES

§ 61.71. Grounds for Cancellation or Suspension: Retail Dealer

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;

(2) was finally convicted for violating a penal provision of this code;

(3) was finally convicted of a felony while holding an original or renewal license;

(4) made a false statement or a misrepresentation in his original application or a renewal application;

(5) knowingly sold, served, or delivered beer to a person under 18 years of age;

(6) sold, served, or delivered beer to a person showing evidence of intoxication;

(7) sold, served, or delivered beer at a time when its sale is prohibited;

(8) entered or offered to enter an agreement, condition, or system which would constitute the sale or possession of alcoholic beverages on consignment;

(9) possessed on the licensed premises, or on adjacent premises directly or indirectly under his control, an alcoholic beverage not authorized to be sold on the licensed premises, or permitted an agent, servant, or employee to do so, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

(10) does not have at his licensed premises running water, if it is available, and separate toilets for both sexes which are properly identified;

(11) permitted a person on the licensed premises to engage in conduct which is lewd, immoral, or offensive to public decency;

(12) employed a person under 18 years of age to sell, handle, or dispense beer, or to assist in doing so, in an establishment where beer is sold for on-premises consumption;

(13) conspired with a person to violate Section 101.41–101.43, 101.68, 102.11–102.15, 104.04, 108.-01, or 108.04–108.06 of this code, or a rule promulgated under Section 5.40 of this code, or accepted a benefit from an act prohibited by any of those sections or rules;

(14) refused to permit or interfered with an inspection of the licensed premises by an authorized representative of the commission or a peace officer;

(15) permitted the use or display of his license in the conduct of a business for the benefit of a person not authorized by law to have an interest in the license;

(16) maintained blinds or barriers at his place of business in violation of this code;

(17) conducted his business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;

(18) consumed an alcoholic beverage or permitted one to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited by this code;

(19) purchased beer for the purpose of resale from a person other than the holder of a manufacturer's or distributor's license;

(20) acquired an alcoholic beverage for the purpose of resale from another retail dealer of alcoholic beverages;

(21) owned an interest of any kind in the business or premises of the holder of a distributor's license;

(22) purchased, sold, offered for sale, distributed, or delivered an alcoholic beverage, or consumed an alcoholic beverage or permitted one to be consumed on the licensed premises while his license was under suspension;

(23) purchased, possessed, stored, sold, or offered for sale beer in or from an original package bearing a brand or trade name of a manufacturer other than the brand or trade name shown on the container;

(24) habitually uses alcoholic beverages to excess, is mentally incompetent, or is physically unable to manage his establishment;

(25) imported beer into this state except as authorized by Section 107.07 of this code;

(26) occupied premises in which the holder of a manufacturer's or distributor's license had an interest of any kind;

(27) knowingly permitted a person who had an interest in a permit or license which was cancelled for cause to sell, handle, or assist in selling or handling alcoholic beverages on the licensed premises within one year after the cancellation;

(28) was financially interested in a place of business engaged in the selling of distilled spirits or permitted a person having an interest in that type of business to have a financial interest

in the business authorized by his license, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

(29) is residentially domiciled with or related to a person engaged in selling distilled spirits, except as permitted by Section 22.06, 24.05, or 102.05 of this code, so that there is a community of interests which the commission or administrator finds contrary to the purposes of this code; or

(30) is residentially domiciled with or related to a person whose license has been cancelled within the preceding 12 months so that there is a community of interests which the commission or administrator finds contrary to the purposes of this code.

(b) Subdivisions (9), (28), (29), and (30) of Subsection (a) of this section do not apply to a licensee whose business is located in a hotel in which an establishment authorized to sell distilled spirits in unbroken packages is also located if the licensed premises of the businesses do not coincide or overlap.

(c) The grounds listed in Subsection (a) of this section, except the ground contained in Subdivision (2), also apply to each member of a partnership or association and, as to a corporation, to the president, manager, and owner of the majority of the corporate stock. This subsection shall not be construed as prohibiting anything permitted by Section 22.06, 24.05, or 102.05 of this code.

(d) The grounds set forth in Subdivisions (1), (4)–(14), (16), (18), (19), (21), (23), and (26), of Subsection (a) of this section, also apply to an agent, servant, or employee of the licensee.

[Acts 1977, 65th Leg., p. 469, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.711. Retail Dealer: Conviction of Offense Relating to Discrimination

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found after notice and hearing that:

(1) the licensee has been finally convicted of any offense under a state or federal law or a municipal ordinance prohibiting the violation of an individual's civil rights or the discrimination against an individual on the basis of the individual's race, color, creed, or national origin; and

(2) the offense was committed on the licensed premises or in connection with the operation of the licensee's business.

[Added by Acts 1979, 66th Leg., p. 1441, ch. 632, § 2, eff. Aug. 27, 1979.]

§ 61.712. Grounds for Cancellation or Suspension: Sales Tax

The commission or administrator may refuse to renew or, after notice and hearing, suspend for not more than 60 days or cancel a license if the commission or administrator finds that the licensee:

(1) no longer holds a sales tax permit, if required, for the place of business covered by the license; or

(2) is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended), or is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes).

[Added by Acts 1979, 66th Leg., p. 1968, ch. 777, § 7(a), eff. Aug. 27, 1979.]

Subsection 7(b) of the 1979 Act provided:

"If Senate Bill No. 865 [should read "No. 685" (ch. 632)] or House Bill No. 1444, 66th Legislature, Regular Session, is enacted and adds a Section 61.711 to the Alcoholic Beverage Code, the section of the code added by Subsection (a) of this section is redesignated as Section 61.712."

§ 61.72. Suspension or Cancellation: Retailer: Premises

Except for a violation of the credit or cash law, a penalty of suspension or cancellation of the license of a retail dealer shall be assessed against the license for the premises where the offense was committed.

[Acts 1977, 65th Leg., p. 471, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.73. Retail Dealer: Credit Purchase or Dishonored Check

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee purchased beer or the containers or original packages in which it is contained or packaged except by cash payment to the seller on or before delivery. No holder of either type of license may use a maneuver, device, subterfuge, or shift by which credit is accepted, including payment or attempted payment by a postdated check or draft. Credit for the return of unbroken or undamaged containers or original packages previously paid for by the purchaser may be accepted as cash by the seller in an amount not more than the amount originally paid for them by the purchaser.

(b) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee gave a check, as maker or endorser, or a draft, as drawer or endorser, as full or partial payment for

beer or the containers or packages in which it is contained or packaged, which is dishonored when presented for payment.
[Acts 1977, 65th Leg., p. 471, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.74. Grounds for Cancellation or Suspension: Distributor

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal general, local, or branch distributor's license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;

(2) was finally convicted for violating a penal provision of this code;

(3) was finally convicted of a felony while holding an original or renewal license;

(4) violated Section 101.41–101.43, 101.68, 102.11–102.15, 104.04, 108.01, or 108.04–108.06 of this code, or a rule or regulation promulgated under Section 5.40 of this code;

(5) failed to comply with a requirement of the commission relating to the keeping of records or making of reports;

(6) failed to pay any tax due the state on any beer he sold, stored, or transported;

(7) refused to permit or interfered with an inspection of his licensed premises, vehicles, books, or records by an authorized representative of the commission;

(8) consummated a sale of beer outside the county or counties in which he was authorized to sell beer by his license;

(9) purchased, sold, offered for sale, distributed, or delivered beer while his license was under suspension;

(10) permitted the use of his license in the operation of a business conducted for the benefit of a person not authorized by law to have an interest in the business;

(11) made a false or misleading representation or statement in his original application or a renewal application;

(12) habitually uses alcoholic beverages to excess, is mentally incompetent, or is physically unable to manage his establishment;

(13) misrepresented any beer sold by him to a retailer or to the public;

(14) knowingly sold or delivered beer to a person under 18 years of age; or

(15) purchased, possessed, stored, sold, or offered for sale beer in an original package bearing a brand or trade name of a manufacturer other than the brand or trade name of the manufacturer shown on the container.

(b) Each ground specified in Subsection (a) of this section also applies to each member of a partnership or association and, as to a corporation, to the president, manager, and owner of the majority of the corporate stock. The grounds specified in Subdivisions (7)–(9) and (13)–(15) also apply to an agent, servant, or employee of the licensee.
[Acts 1977, 65th Leg., p. 471, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1972, ch. 777, § 20, eff. Aug. 27, 1979.]

§ 61.75. Suspension of Manufacturer's License

If a manufacturer violates a provision of this code or a rule of the commission, the commission or administrator may order the manufacturer to cease and desist from the violation and may suspend its license, after notice and hearing, until the licensee obeys the order.
[Acts 1977, 65th Leg., p. 472, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.76. Suspension Instead of Cancellation

When a cause for the cancellation of a license is prescribed by this code, the commission or administrator has the discretionary authority to suspend the license for not more than 60 days rather than to cancel the license.
[Acts 1977, 65th Leg., p. 472, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.761. Alternatives to Suspension, Cancellation

Section 11.64 of this code relates to alternatives to the suspension or cancellation of a license.
[Added by Acts 1977, 65th Leg., p. 1183, ch. 453, § 8, eff. Sept. 1, 1977.]

§ 61.77. Certain Acts Also Violations of Code

Any act of omission or commission which is a ground for cancellation or suspension of a license under Section 61.71, 61.74, or 61.75 of this code is also a violation of this code, punishable as provided in Section 1.05 of this code, except that the penalty for making a false statement in an application for a license or in a statement, report, or other instrument to be filed with the commission, which is required to be sworn, is provided in Section 101.69 of this code.
[Acts 1977, 65th Leg., p. 472, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.78. Violator Not Excused by Cancellation or Suspension

The cancellation or suspension of a license does not excuse the violator from the penalties provided in this code.
[Acts 1977, 65th Leg., p. 472, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.79. Notice of Hearing: Refusal, Cancellation, or Suspension of License

Section 11.63 of this code relates to notice of a hearing for the refusal, cancellation, or suspension of a license.

[Acts 1977, 65th Leg., p. 473, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.80. Hearing for Cancellation or Suspension of License

The commission or administrator, on the motion of either, may set a date for a hearing to determine if a license should be cancelled or suspended. The commission or administrator shall set a hearing on the petition of the mayor or chief of police of the city or town in which the licensed premises are located or of the county judge, sheriff, or county attorney of the county in which the licensed premises are located. The commission or administrator shall notify the licensee of the hearing and of his right to appear and show cause why his license should not be cancelled or suspended.

[Acts 1977, 65th Leg., p. 473, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.81. Appeal From Cancellation, Suspension, or Refusal of License

Section 11.67 of this code applies to an appeal from a decision or order of the commission or administrator refusing, cancelling, or suspending a license.

[Acts 1977, 65th Leg., p. 473, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.82. May Not Restrain Suspension Order

No suit of any nature may be maintained in a court of this state to restrain the commission or administrator or any other officer from enforcing an order of suspension issued by the commission or administrator.

[Acts 1977, 65th Leg., p. 473, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.83. Cancellation or Suspension: When Effective

The manner in which the suspension or cancellation of a license takes effect is governed by Section 11.65 of this code.

[Acts 1977, 65th Leg., p. 473, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.84. Activities Prohibited During Cancellation or Suspension

(a) No person whose license is cancelled may sell or offer for sale beer for a period of one year immediately following the cancellation, unless the order of cancellation is superseded pending trial or unless he prevails in a final judgment rendered on an appeal prosecuted in accordance with this code.

(b) No person may sell or offer for sale an alcoholic beverage which he was authorized to sell under a license after the license has been suspended. If it is established to the satisfaction of the commission or administrator at a hearing that an alcoholic beverage was sold on or from a licensed premise during a period of suspension, the commission or administrator may cancel the license.

[Acts 1977, 65th Leg., p. 473, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.85. Disposal of Stock on Termination of License

(a) A person whose license is cancelled or forfeited may, within 30 days of the cancellation or forfeiture, make a bulk sale or disposal of any stock of beer on hand at the time of the cancellation or forfeiture.

(b) The authority of the commission to promulgate rules relating to the disposal of beverages in bulk on the suspension or cancellation of a license or on the death, insolvency, or bankruptcy of a licensee is covered by Section 11.69 of this code.

[Acts 1977, 65th Leg., p. 473, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 62. MANUFACTURER'S LICENSE

Section

62.01. Authorized Activities.
62.02. Fee.
62.03. Statement of Intention.
62.04. Renewal of License During Preliminary Stages of Operation.
62.05. Records.
62.06. Issuance of Brewer's Permit.
62.07. Importation of Beer: Containers, Use of Tank Cars.
62.08. Warehouses; Delivery Trucks.
62.09. Beer for Export.
62.10. Repealed.
62.11. Continuance of Operation After Local Option Election.
62.12. Sales by Certain Manufacturers.

§ 62.01. Authorized Activities

The holder of a manufacturer's license may:

(1) manufacture or brew beer and distribute and sell it in this state to the holders of general, local, and branch distributor's licenses and to qualified persons outside the state;

(2) dispense beer for consumption on the premises; and

(3) bottle and can beer and pack it into containers for resale in this state, regardless of whether the beer is manufactured or brewed in this state or in another state and imported into Texas.

[Acts 1977, 65th Leg., p. 474, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 53, ch. 33, § 1, eff. Aug. 27, 1979.]

§ 62.02. Fee

(a) Each person who establishes, operates, or maintains one or more licensed manufacturing es-

tablishments in this state under the same general management or ownership shall pay an annual state fee as follows:

(1) the fee for the first establishment is $500;

(2) the fee for the second establishment is $1,000;

(3) the fee for the third, fourth, and fifth establishments is $2,850 for each establishment; and

(4) the fee for each establishment in excess of five is $5,600.

(b) For the purposes of this section, two or more establishments are under the same general management or ownership if:

(1) they bottle the same brand of beer or beer brewed by the same manufacturer; or

(2) the persons (regardless of domicile) who establish, operate, or maintain the establishments are controlled or directed by one management or by an association of ultimate management.

[Acts 1977, 65th Leg., p. 474, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.03. Statement of Intention

(a) Each applicant for a manufacturer's license shall file with his application a sworn statement that he will be engaged in the business of brewing and packaging beer in Texas in quantities sufficient to make of his operation that of a bona fide brewing manufacturer within three years of the issuance of his original license. If the applicant is a corporation, the statement must be signed by one of its principal officers. The county judge shall not approve an application unless it is accompanied by the required sworn statement.

(b) This section does not apply to the holder of a manufacturer's license which was in effect on January 1, 1953.

[Acts 1977, 65th Leg., p. 474, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.04. Renewal of License During Preliminary Stages of Operation

(a) A renewal of a manufacturer's license may not be denied during the two-year period following the issuance of the original license on the ground that the licensee has not brewed and packaged beer in this state if the licensee is engaged in good faith in constructing a brewing plant on the licensed premises or is engaged in one of the following preparatory stages of construction:

(1) preliminary engineering;

(2) preparing drawings and specifications;

(3) conducting engineering, architectural, or equipment studies; or

(4) preparing for the taking of bids from contractors.

(b) During the three-year period following the issuance of a manufacturer's license, as long as the licensee is engaged in construction or in a preliminary stage of construction enumerated in Subsection (a) of this section, the commission shall issue each renewal license to take effect immediately on the expiration of the expiring license and shall not require the licensee to make an original application.

(c) After two years and 11 months has expired following the issuance of an original manufacturer's license, the commission shall not issue a renewal license if it finds that the licensee has not complied with his sworn statement filed with his original application or that he has not begun construction of a plant or initiated any of the preliminary stages of construction enumerated in Subsection (a) unless the commission also finds that the applicant has been prevented from doing so by causes beyond his reasonable control. If the commission finds that the licensee has been prevented from complying by causes beyond his reasonable control, it may grant one additional renewal for the licensee to comply with the terms of his sworn statement. Otherwise, the commission shall deny the renewal application and may not grant a subsequent original application by the licensee for a period of two years following the date of the denial.

(d) This section does not apply to the holder of a license that was in effect on January 1, 1953.

[Acts 1977, 65th Leg., p. 475, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.05. Records

(a) The holder of a manufacturer's license shall make and keep a record of each day's production or receipt of beer and of every sale of beer, including the name of each purchaser. Each transaction shall be recorded on the day it occurs. The licensee shall make and keep any other records that the commission or administrator requires.

(b) All required records shall be kept available for inspection by the commission or its authorized representative during reasonable office hours for at least two years.

(c) The failure to make or keep a record as required by this section, the making of a false entry in the record, or the failure to make an entry as required by this section is a violation of this code.

[Acts 1977, 65th Leg., p. 475, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.06. Issuance of Brewer's Permit

A holder of a manufacturer's license is entitled to be issued an original or renewal brewer's permit for the same location on application to the commission and payment of the required fee.

[Acts 1977, 65th Leg., p. 475, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.07. Importation of Beer: Containers, Use of Tank Cars

The holder of a manufacturer's license may import beer into this state in barrels or other containers in accordance with the provisions of this code. No person may ship beer into the state in tank cars.
[Acts 1977, 65th Leg., p. 476, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.08. Warehouses; Delivery Trucks

(a) The holder of a manufacturer's or distributor's license may maintain or engage necessary warehouses for storage purposes in areas where the sale of beer is lawful and may make deliveries from the warehouses without obtaining licenses for them. The licensee may not import beer from outside the state directly or indirectly to an unlicensed warehouse.

(b) A warehouse or railway car in which orders for the sale of beer are taken or money from the sale of beer is collected is a separate place of business for which a license is required.

(c) A truck operated by a licensed distributor for the sale and delivery of beer to a licensed retail dealer at the dealer's place of business is not a separate place of business for which a license is required.

(d) The commission shall promulgate rules governing the transportation of beer, the sale of which is to be consummated at a licensed retailer's place of business.
[Acts 1977, 65th Leg., p. 476, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 53, ch. 33, § 2, eff. Aug. 27, 1979.]

§ 62.09. Beer for Export

Regardless of any other provision of this code, a holder of a manufacturer's license may brew and package malt beverages or import them from outside the state, for shipment out of the state, even though the alcohol content, containers, packages, or labels make the beverages illegal to sell within the state. The licensee may export the beverages out of state or deliver them at his premises for shipment out of the state without being liable for any state tax on beer, ale, or malt liquor sold for resale in the state.
[Acts 1977, 65th Leg., p. 476, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.10. Repealed by Acts 1979, 66th Leg., p. 56, ch. 33, § 12, eff. Aug. 27, 1979

The repealed section, relating to sale of beer to private clubs, was derived from Acts 1977, 65th Leg., p. 476, ch. 194, § 1.

§ 62.11. Continuance of Operation After Local Option Election

The right of a manufacturer's licensee to continue operation after a prohibitory local option election is covered by Section 251.75 of this code.
[Acts 1977, 65th Leg., p. 476, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.12. Sales by Certain Manufacturers

(a) A manufacturer's licensee whose annual production of beer in this state does not exceed 75,000 barrels may sell beer produced under the license to those permittees, licensees, and persons to whom a general distributor's licensee may sell beer under Section 64.01(2) of this code. With regard to such a sale, the manufacturer has the same authority and is subject to the same requirements as apply to a sale made by a general distributor's licensee.

(b) The authority granted by this section is additional to that granted by Section 62.01 of this code.
[Added by Acts 1979, 66th Leg., p. 55, ch. 33, § 11, eff. Aug. 27, 1979.]

CHAPTER 63. NONRESIDENT MANUFACTURER'S LICENSE

Section
63.01. Authorized Activities.
63.02. Fee.
63.03. Liability for Taxes; Bond.
63.04. Application of Code Provisions and Rules.

§ 63.01. Authorized Activities

The holder of a nonresident manufacturer's license may transport beer into Texas only to holders of importer's licenses. The nonresident manufacturer's licensee may transport the beer in carriers or vehicles operated by holders of carrier's permits or in motor vehicles owned or leased by the nonresident manufacturer. The beer must be shipped in barrels or other containers in accordance with the provisions of this code and may not be shipped into the state in tank cars.
[Acts 1977, 65th Leg., p. 476, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1969, ch. 777, § 11, eff. Aug. 27, 1979.]

§ 63.02. Fee

The annual state fee for a nonresident manufacturer's license is $500. No county or city is entitled to a fee for the issuance of the license.
[Acts 1977, 65th Leg., p. 477, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 63.03. Liability for Taxes; Bond

The holder of a nonresident manufacturer's license that transports beer into Texas in a motor vehicle owned or leased by him is not primarily responsible for the payment of the taxes on the beer, which remains the responsibility of the holder of the importer's license. However, the nonresident manufacturer shall furnish the commission with a bond in an amount which, in the commission's judgment, will protect the revenue of the state from the tax due on the beer over any six-week period.
[Acts 1977, 65th Leg., p. 477, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 63.04. Application of Code Provisions and Rules

A holder of a nonresident manufacturer's license is subject to all applicable provisions of this code and all applicable rules of the commission which apply to holders of manufacturer's licenses, including rules relating to the quality, purity, and identity of beer and to protecting the public health. The commission may suspend or cancel a nonresident manufacturer's license and apply penalties in the same manner as it does with respect to a manufacturer's license.

[Acts 1977, 65th Leg., p. 477, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 64. GENERAL DISTRIBUTOR'S LICENSE

Section
64.01. Authorized Activities.
64.02. Fee.
64.03. Sale of Beer to Private Clubs.
64.04. Records.
64.05. Persons Ineligible for License.
64.06. Warehouses; Delivery Trucks.
64.07. May Share Premises.

§ 64.01. Authorized Activities

(a) The holder of a general distributor's license may:

(1) receive beer in unbroken original packages from manufacturers and from general, local, or branch distributors;

(2) distribute or sell beer in the unbroken original packages in which it is received to general, branch, or local distributors, to local distributor permittees, to permittees or licensees authorized to sell to ultimate consumers, to private club registration permittees, to authorized outlets located on any installation of the national military establishment, or to qualified persons for shipment and consumption outside the state; and

(3) serve free beer for consumption on the licensed premises.

(b) All sales made under the authority of this section except sales to general, local, or branch distributor's licensees must be made in accordance with Sections 61.73 and 102.31 of this code.

[Acts 1977, 65th Leg., p. 477, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 53, ch. 33, § 3, eff. Aug. 27, 1979.]

§ 64.02. Fee

The annual state fee for a general distributor's license is $200.

[Acts 1977, 65th Leg., p. 477, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 64.03. Sale of Beer to Private Clubs

The holder of a general distributor's license may sell and deliver beer to private clubs located in wet areas without having to secure a prior order. All sales made under the authority of this section must be made in accordance with Sections 61.73 and 102.31 of this code.

[Acts 1977, 65th Leg., p. 477, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 64.04. Records

(a) Each holder of a general, local, or branch distributor's license shall make and keep a daily record of every receipt of beer and of every sale of beer, including the name of each purchaser. Each transaction shall be recorded on the day it occurs. The licensee shall make and keep any other records that the commission or administrator requires.

(b) All required records shall be kept available for inspection by the commission or its authorized representative during reasonable office hours for at least two years.

(c) The failure to make or keep a record as required by this section, the making of a false entry in the record, or the failure to make an entry as required by this section is a violation of this code.

[Acts 1977, 65th Leg., p. 478, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 64.05. Persons Ineligible for License

A general distributor's license may not be issued to a person who is the holder of a package store permit or a wine only package store permit.

[Acts 1977, 65th Leg., p. 478, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 64.06. Warehouses; Delivery Trucks

Section 62.08 of this code applies to the use of warehouses and delivery trucks by general distributor's licensees.

[Acts 1977, 65th Leg., p. 478, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 64.07. May Share Premises

Any number of general, local, and branch distributors may use the same premises, location, or place of business as licensed premises if the beer owned and stored by each of the distributors is segregated.

[Acts 1977, 65th Leg., p. 478, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 65. LOCAL DISTRIBUTOR'S LICENSE

Section
65.01. Authorized Activities.
65.02. Fee.
65.03. Sale of Beer to Private Clubs.
65.04. Records.
65.05. Persons Ineligible for License.
65.06. Warehouses; Delivery Trucks.
65.07. May Share Premises.

§ 65.01. Authorized Activities

(a) The holder of a local distributor's license may:

(1) receive beer in unbroken original packages from manufacturers and from general, branch, or local distributors;

(2) sell and distribute beer in the unbroken original packages in which it is received:

(A) to the following, if located in the county of the licensee's residence: local distributor permittees, permittees or licensees authorized to sell to ultimate consumers, private club registration permittees, authorized outlets located on any installation of the national military establishment, or qualified persons for shipment and consumption outside the state; or

(B) to other licensed distributors in the state; and

(3) serve free beer for consumption on the licensed premises.

(b) All sales made under the authority of this section except sales to general, local, or branch distributor's licensees must be made in accordance with Sections 61.73 and 102.31 of this code.

[Acts 1977, 65th Leg., p. 478, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 53, ch. 33, § 4, eff. Aug. 27, 1979.]

§ 65.02. Fee

The annual state fee for a local distributor's license is $50.

[Acts 1977, 65th Leg., p. 478, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 65.03. Sale of Beer to Private Clubs

The holder of a local distributor's license may sell and deliver beer to private clubs located in wet areas without having to secure a prior order. All sales made under the authority of this section must be made in accordance with Sections 61.73 and 102.31 of this code.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 65.04. Records

Section 64.04 of this code applies to recordkeeping by local distributor's licensees.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 65.05. Persons Ineligible for License

A local distributor's license may not be issued to any person who is the holder of a package store permit or a wine only package store permit.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 65.06. Warehouses; Delivery Trucks

Section 62.08 of this code applies to the use of warehouses and delivery trucks by local distributor's licensees.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 65.07. May Share Premises

The sharing of premises by distributors is covered by Section 64.07 of this code.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 66. BRANCH DISTRIBUTOR'S LICENSE

Section

66.01. Authorized Activities.
66.02. Fee.
66.03. Issuance of License.
66.04. Persons Ineligible for License.
66.05. Expiration of License.
66.06. Renewal of License.
66.07. Sale of Beer to Private Clubs.
66.08. Records.
66.09. Warehouses; Delivery Trucks.
66.10. May Share Premises.

§ 66.01. Authorized Activities

The holder of a branch distributor's license may engage in the same activities as a holder of a general distributor's license.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.02. Fee

The annual fee for a branch distributor's license is $50 per year or fraction of a year.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1973, ch. 777, § 22, eff. Aug. 27, 1979.]

§ 66.03. Issuance of License

(a) Except as provided in Subsection (b) of this section, a branch distributor's license may be issued only to the holder of a general distributor's license who first has obtained the primary license in the county of his residence or domicile. The branch distributor's license may be issued for premises in any county where the sale of beer is legal.

(b) A general distributor's licensee whose primary license was voided by a local option election under prior law, who took advantage of the right then existing to obtain a primary license in another county where he held a branch distributor's license without qualifying as a resident or domiciliary of that county, is not prevented from continuing to renew the primary license or from holding one or more branch licenses by the fact that the primary license is not in the county of his residence or domicile.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 54, ch. 33, § 5, eff. Aug. 27, 1979.]

§ 66.04. Persons Ineligible for License

A branch distributor's license may not be issued to a person who holds a package store permit or a wine only package store permit.

[Acts 1977, 65th Leg., p. 480, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.05. Expiration of License

A branch distributor's license expires at the same time as the holder's primary license.

[Acts 1977, 65th Leg., p. 480, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.06. Renewal of License

Application for renewal of a branch distributor's license may be made concurrently with the filing of the application for the renewal of the holder's primary license.

[Acts 1977, 65th Leg., p. 480, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.07. Sale of Beer to Private Clubs

The holder of a branch distributor's license may sell and deliver beer to private clubs located in wet areas without having to secure a prior order. All sales made under the authority of this section must be made in accordance with Sections 61.73 and 102.-31 of this code.

[Acts 1977, 65th Leg., p. 480, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.08. Records

Section 64.04 of this code applies to recordkeeping by branch distributor's licensees.

[Acts 1977, 65th Leg., p. 480, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.09. Warehouses; Delivery Trucks

Section 62.08 of this code applies to the use of warehouses and delivery trucks by branch distributor's licensees.

[Acts 1977, 65th Leg., p. 480, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.10. May Share Premises

The sharing of premises by distributors is covered by Section 64.07 of this code.

[Acts 1977, 65th Leg., p. 480, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 67. IMPORTER'S LICENSE

Section
67.01. Authorized Activities.
67.02. Fee.
67.03. Definition.
67.04. Eligibility for License.
67.05. Expiration of License.
67.06. Application for License.

§ 67.01. Authorized Activities

A holder of an importer's license may import beer into this state only from the holder of a nonresident manufacturer's license. The beer may be transported by a railway carrier, or by a common motor carrier operated under a certificate of convenience and necessity issued by the Railroad Commission of Texas or by the Interstate Commerce Commission. Each carrier must hold a carrier's permit issued under Chapter 41 of this code. All provisions of Chapter 41 relating to the transportation of liquor also apply to the transportation of beer. A carrier may not transport beer into the state unless it is consigned to an importer.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1970, ch. 777, § 12, eff. Aug. 27, 1979.]

§ 67.02. Fee

The fee for an importer's license is $5 per year or fraction of a year.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 67.03. Definition

As used in this subtitle, "importer" means a person who imports beer into the state in quantities in excess of 288 fluid ounces in any one day.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 67.04. Eligibility for License

An importer's license may be issued only to a holder of a manufacturer's or distributor's license.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 67.05. Expiration of License

An importer's license expires at the same time as the primary manufacturer's or distributor's license under which it is issued.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 67.06. Application for License

An application for an importer's license must contain all information required by the commission.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 68. IMPORTER'S CARRIER'S LICENSE

Section
68.01. Authorized Activities.
68.02. Fee.
68.03. Eligibility for License.
68.04. Application for License; Description of Vehicles.
68.05. Expiration of License.
68.06. Designation of Vehicles.

§ 68.01. Authorized Activities

An importer who holds an importer's carrier's license may import beer into this state in vehicles owned or leased in good faith by him.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 68.02. Fee

The fee for an importer's carrier's license is $5 per year or fraction of a year.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 68.03. Eligibility for License

An importer's carrier's license may be issued only to a holder of an importer's license.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 68.04. Application for License; Description of Vehicles

(a) An application for an importer's carrier's license must contain a description of the vehicles to be used and other information required by the commission.

(b) An importer may not import beer into the state in any vehicle not fully described in his application, except as permitted in Section 67.01 of this code.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 68.05. Expiration of License

An importer's carrier's license expires at the same time as the holder's primary importer's license.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 68.06. Designation of Vehicles

All vehicles used under an importer's carrier's license must have painted or printed on them the designation required by the commission.

[Acts 1977, 65th Leg., p. 482, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 69. RETAIL DEALER'S ON-PREMISE LICENSE

Section

69.01. Authorized Activities.
69.02. Fee.
69.03. Issuance of License for Railway Cars.
69.04. Hotels Not Disqualified.
69.05. Hearings on License Application: Notice and Attendance.
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69.07. Fingerprints.
69.08. License: Contents; Photograph.
69.09. Acquisition of Beverages for Resale From Other Licensees Prohibited.
69.10. Storing or Possessing Beer Off Premises Prohibited.
69.11. Exchange or Transportation of Beer Between Licensed Premises Under Same Ownership.
69.12. Possession of Certain Beverages Prohibited.
69.13. Breach of Peace: Retail Establishment.

§ 69.01. Authorized Activities

The holder of a retail dealer's on-premise license may sell beer in or from any lawful container to the ultimate consumer for consumption on or off the premises where sold. The licensee may not sell beer for resale.

[Acts 1977, 65th Leg., p. 482, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.02. Fee

Except as provided in Section 69.03 of this code, the annual state fee for a retail dealer's on-premise license is $25.

[Acts 1977, 65th Leg., p. 482, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.03. Issuance of License for Railway Cars

A retail dealer's on-premise license may be issued for a railway dining, buffet, or club car. Application for a license of this type shall be made directly to the commission, and the annual state fee is $5 for each car.

[Acts 1977, 65th Leg., p. 482, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.04. Hotels Not Disqualified

The fact that a hotel holds a permit to sell distilled spirits in unbroken packages does not disqualify the hotel from also obtaining a license to sell beer for on-premises consumption.

[Acts 1977, 65th Leg., p. 482, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.05. Hearings on License Application: Notice and Attendance

(a) On receipt of an original application for a retail dealer's on-premise license, the county judge shall give notice of all hearings before him concerning the application to the commission, the sheriff, and the chief of police of the incorporated city in which, or nearest which, the premises for which the license is sought are located.

(b) The individual natural person applying for the license or, if the applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who will be primarily responsible for the management of the premises shall attend any hearing involving the application.

[Acts 1977, 65th Leg., p. 482, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.06. Denial of Original Application

(a) The county judge shall deny an original application for a retail dealer's on-premise license if he finds that the applicant or the applicant's spouse, during the three years immediately preceding the application, was finally convicted of a felony or one of the following offenses:

(1) prostitution;

(2) a vagrancy offense involving moral turpitude;

(3) bookmaking;

(4) gambling or gaming;

(5) an offense involving controlled substances as defined in the Texas Controlled Substances Act [1] or other dangerous drugs;

(6) a violation of this code resulting in the cancellation of a license or permit, or a fine of not less than $500;

(7) more than three violations of this code relating to minors;

(8) bootlegging; or

(9) an offense involving firearms or a deadly weapon.

(b) The county judge shall also deny an original application for a license if he finds that three years has not elapsed since the termination of a sentence, parole, or probation served by the applicant or the applicant's spouse because of a felony conviction or conviction of any of the offenses described in Subsection (a) of this section.

(c) The commission shall refuse to issue a renewal of a retail dealer's on-premise license if it finds:

(1) that the applicant or the applicant's spouse has been finally convicted of a felony or one of the offenses listed in Subsection (a) of this section at any time during the three years immediately preceding the filing of the application for renewal; or

(2) that three years has not elapsed since the termination of a sentence, parole, or probation served by the applicant or the applicant's spouse because of a felony prosecution or prosecution for any of the offenses described in Subsection (a) of this section.

(d) In this section the word "applicant" includes the individual natural person holding or applying for the license or, if the holder or applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who is primarily responsible for the management of the premises.

[Acts 1977, 65th Leg., p. 483, ch. 194, § 1, eff. Sept. 1, 1977.]

[1] Civil Statutes, art. 4476–15

Amendment by Acts 1977, 65th Leg., p. 1714, ch. 681, § 3.

Acts 1977, 65th Leg., p. 1714, ch. 681, § 3, purports to add art. 667–5G to Penal Code (1925), without reference to repeal of the Liquor Control Act by Acts 1977, 65th Leg., p. 557, ch. 194, § 2. As so added, art. 666–11b reads:

"(a) The County Judge, Commission, or Administrator shall refuse to approve or issue an original or renewal Retail Dealer's or Retail Dealer's On-Premise License unless the applicant for the license files with his application a certificate issued by the Comptroller of Public Accounts stating that the applicant holds, or has applied for and satisfies all legal requirements for the issuance of, a sales tax permit for the place of business for which the license is sought.

"(b) The Commission or Administrator may suspend for not more than sixty (60) days or cancel a license if the Commission or Administrator finds, after notice and hearing, that the licensee:

"(1) no longer holds a sales tax permit for the place of business covered by the license; or

"(2) is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended), or is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes)."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 69.07. Fingerprints

(a) An applicant for an original retail dealer's on-premise license shall submit to the county judge of the county in which the applicant desires to engage in business a complete set of fingerprints of the individual natural person applying for the license or, if the applicant is not an individual natural person, a complete set of fingerprints of the individual partner, officer, trustee, or receiver who is to be primarily responsible for the management of the premises.

(b) The county judge shall, no later than the next calendar day after receiving the prints, forward them by mail to the Texas Department of Public Safety. The department shall classify the prints and check them against their fingerprint files and shall certify their findings concerning the criminal record of the applicant, or the lack of record, to the county judge. No license may be issued until the certification is made to the county judge.

(c) The sheriff of any county, or any district office of the commission, shall take the fingerprints of an applicant for a license without charge on forms approved by and furnished by the Texas Department of Public Safety and shall immediately deliver them to the county judge of the county where the applicant desires to engage in business.

[Acts 1977, 65th Leg., p. 483, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.08. License: Contents; Photograph

Each retail dealer's on-premise license shall contain the name and photograph of the individual natural person holding the license or, if the holder is not an individual natural person, the name and photograph of the individual partner, officer, trustee, or receiver who is primarily responsible for the management of the premises. The photograph may not be more than two years old and shall be furnished by the licensee. The commission may prescribe the size and nature of the photograph, the

manner of furnishing it, and the method of affixing it to the license.

[Acts 1977, 65th Leg., p. 484, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.09. Acquisition of Beverages for Resale From Other Licensees Prohibited

No holder of a retail dealer's on-premise license may borrow or acquire from, exchange with, or loan to any other holder of a retail dealer's on-premise license or holder of a retail dealer's off-premise license any alcoholic beverage for the purpose of resale.

[Acts 1977, 65th Leg., p. 484, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.10. Storing or Possessing Beer Off Premises Prohibited

No holder of a retail dealer's on-premise license may own, possess, or store beer for the purpose of resale except on the licensed premises.

[Acts 1977, 65th Leg., p. 484, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.11. Exchange or Transportation of Beer Between Licensed Premises Under Same Ownership

The owner of two or more licensed retail premises may not exchange or transport beer between them unless all of the conditions set out in Section 24.04 of this code are met, except that beer may be transferred between two licensed retail premises that are both covered by package store permits as provided in Section 22.08 of this code.

[Acts 1977, 65th Leg., p. 484, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.12. Possession of Certain Beverages Prohibited

No retail dealer's on-premise licensee, nor the licensee's officer, agent, servant, or employee, may possess on the licensed premises an alcoholic beverage which is not authorized to be sold on the premises.

[Acts 1977, 65th Leg., p. 484, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.13. Breach of Peace: Retail Establishment

The commission or administrator may suspend or cancel the license of a retail beer dealer after giving the licensee notice and the opportunity to show compliance with all requirements of law for retention of the license if it finds that a breach of the peace has occurred on the licensed premises or on premises under the licensee's control and that the breach of the peace was not beyond the control of the licensee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

[Acts 1977, 65th Leg., p. 484, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 70. RETAIL DEALER'S ON-PREMISE LATE HOURS LICENSE

Section

70.01. Authorized Activities.
70.02. Fee.
70.03. Application of Certain Code Provisions.

§ 70.01. Authorized Activities

The holder of a retail dealer's on-premise late hours license may sell beer for consumption on the premises on Sunday between the hours of 1:00 a. m. and 2 a. m. and on any other day between the hours of 12 p. m. and 2 a. m. if the premises covered by the license are in an area where the sale of beer during the hours is authorized by this code.

[Acts 1977, 65th Leg., p. 485, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 70.02. Fee

The annual state fee for a retail dealer's on-premise late hours license is $100.

[Acts 1977, 65th Leg., p. 485, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 70.03. Application of Certain Code Provisions

All provisions of this code which apply to a retail dealer's on-premise license also apply to a retail dealer's on-premise late hours license.

[Acts 1977, 65th Leg., p. 485, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 71. RETAIL DEALER'S OFF-PREMISE LICENSE

Section

71.01. Authorized Activities.
71.02. Fee.
71.03. Authority of Licensee Holding Package Store Permit or Wine Only Package Store Permit.
71.04. Possession of Certain Beverages Prohibited.
71.05. Acquisition of Beverages for Resale From Other Licensees Prohibited.
71.06. Storing or Possessing Beer Off Premises Prohibited.
71.07. Exchange or Transportation of Beer Between Licensed Premises Under Same Ownership.
71.08. Mitigating Circumstances: Retail Dealer's Off-Premise License.
71.09. Breach of Peace: Retail Establishment.

§ 71.01. Authorized Activities

The holder of a retail dealer's off-premise license may sell beer in lawful containers to consumers, but not for resale and not to be opened or consumed on or near the premises where sold.

[Acts 1977, 65th Leg., p. 485, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 71.02. Fee

The annual state fee for a retail dealer's off-premise license is $10.

[Acts 1977, 65th Leg., p. 485, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 71.03. Authority of Licensee Holding Package Store Permit or Wine Only Package Store Permit

(a) The holder of a retail dealer's off-premise license who also holds a package store permit may sell beer directly to consumers by the container, but not for resale and not to be opened or consumed on or near the premises where sold. Beer in containers holding 32 ounces or less may be sold only as follows:

(1) 12, 24, and 32 ounce containers may be sold only in the following lots or full multiples thereof:

(A) 6 containers holding 12 ounces each;

(B) 3 containers holding 24 ounces each; or

(C) 3 containers holding 32 ounces each; and

(2) 7, 8, and 16 ounce containers may be sold only in lots or full multiples of the number of containers in a retail package for that size container; for purposes of this section "retail package" shall mean original packages as defined in Section 1.04(18) of this code including 6-packs, 8-packs, or other packages containing at least 3 containers which are packaged for purposes of retail sales.

(b) The holder of a retail dealer's off-premise license who also holds a wine only package store permit may sell beer to consumers by the container, but not for resale and not to be opened or consumed on or near the premises where sold.

(c) The sale of beer by a holder of a retail dealer's off-premise license who also holds a package store permit is subject to the same restrictions and penalties governing the sale of liquor by package stores with regard to:

(1) the hours of sale and delivery;

(2) blinds and barriers;

(3) employment of or sales and deliveries to persons under the age of 18;

(4) sales and deliveries on Sunday; and

(5) advertising.

(d) The sale of beer by a holder of a retail dealer's off-premise license who also holds a wine only package store permit is subject to the same restrictions and penalties governing the sale of liquor by package stores with regard to:

(1) blinds and barriers;

(2) employment of or sales and deliveries to persons under the age of 18;

(3) delivery to the licensee or permittee on Sunday; and

(4) advertising.

[Acts 1977, 65th Leg., p. 485, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 54, ch. 33, § 6, eff. Jan. 1, 1980.]

§ 71.04. Possession of Certain Beverages Prohibited

No retail dealer's off-premise licensee, nor his officer, may possess liquor containing alcohol in excess of 14 percent by volume on the licensed premises.

[Acts 1977, 65th Leg., p. 486, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 71.05. Acquisition of Beverages for Resale From Other Licensees Prohibited

No holder of a retail dealer's off-premise license may borrow or acquire from, exchange with, or loan to any other holder of a retail dealer's off-premise license or holder of a retail dealer's on-premise license any alcoholic beverage for the purpose of resale.

[Acts 1977, 65th Leg., p. 486, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 71.06. Storing or Possessing Beer Off Premises Prohibited

No holder of a retail dealer's off-premise license may own, possess, or store beer for the purpose of resale except on the licensed premises.

[Acts 1977, 65th Leg., p. 486, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 71.07. Exchange or Transportation of Beer Between Licensed Premises Under Same Ownership

Section 69.11 of this code relates to the exchange or transportation of beer between licensed premises by retail dealers.

[Acts 1977, 65th Leg., p. 486, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 71.08. Mitigating Circumstances: Retail Dealer's Off-Premise License

Section 11.64 of this code relates to mitigating circumstances with respect to cancellation or suspension of a retail dealer's off-premise license.

[Acts 1977, 65th Leg., p. 486, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 71.09. Breach of Peace: Retail Establishment

The application of sanctions for the occurrence of a breach of the peace at a retail beer establishment is covered by Section 69.13 of this code.

[Acts 1977, 65th Leg., p. 487, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 72. TEMPORARY LICENSES

Section

72.01. Authorized Activities.
72.02. Fee.
72.03. Duration of License.
72.04. Required Basic License or Permit.
72.05. Issuance and Use of License; Rules.
72.06. Cancellation or Suspension of Primary License or Permit.

§ 72.01. Authorized Activities

The holder of a temporary license may sell beer in the county where the license is issued to ultimate consumers in or from any lawful container for consumption on or off the premises where sold.

[Acts 1977, 65th Leg., p. 487, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 72.02. Fee

The state fee for a temporary license is $5. No refund shall be allowed for the surrender or nonuse of a temporary license.

[Acts 1977, 65th Leg., p. 487, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 72.03. Duration of License

A temporary license may be issued for a period of not more than four days.

[Acts 1977, 65th Leg., p. 487, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 72.04. Required Basic License or Permit

A temporary license may be issued only to a holder of a retail dealer's on-premise license or a wine and beer retailer's permit.

[Acts 1977, 65th Leg., p. 487, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 72.05. Issuance and Use of License; Rules

(a) Temporary licenses shall be issued by the administrator or the commission or the commission's authorized representative. The commission shall adopt rules governing the issuance and use of temporary licenses.

(b) Licenses shall be issued only for the sale of beer at picnics, celebrations, or similar events.

(c) The administrator or commission may refuse to issue a license if there is reason to believe the issuance of the license would be detrimental to the public.

[Acts 1977, 65th Leg., p. 487, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 72.06. Cancellation or Suspension of Primary License or Permit

The primary license or permit under which a temporary license was issued may be cancelled or suspended for a violation of this code on the premises covered by the temporary license that would justify the cancellation or suspension of a license under Section 61.71 of this code.

[Acts 1977, 65th Leg., p. 487, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 73. AGENT'S BEER LICENSE

Section

73.01. Authorized Activities.
73.02. Fee.
73.03. License Required.
73.04. Qualification for License.
73.05. Grace Period.
73.06. Employment of Unlicensed Agent Prohibited.
73.07. Employment of Agent Whose License Has Been Suspended or Cancelled.
73.08. Rules.
73.09. Application for License.
73.10. Renewal of License.
73.11. Suspension or Cancellation of License.

§ 73.01. Authorized Activities

The holder of an agent's beer license, acting as an employee or representative of a licensed manufacturer of beer located inside or outside the state or as an employee or representative of a licensed distributor, may:

(1) promote the sale of beer through methods such as solicitation, display, advertising, and personal contact with licensed retailers of beer and their agents, servants, and employees, and with consumers of beer; and

(2) sell beer and offer it for sale.

[Acts 1977, 65th Leg., p. 488, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.02. Fee

(a) The annual state fee for an agent's beer license is $3.

(b) The commission may not refund any part of the fee for any reason.

(c) No manufacturer or distributor may pay the license fee for any person or reimburse any person for the payment of the fee.

[Acts 1977, 65th Leg., p. 488, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.03. License Required

A person whose compensation is based mainly on the activities specified in Section 73.01 may not engage in those activities unless he holds an agent's beer license.

[Acts 1977, 65th Leg., p. 488, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.04. Qualification for License

The commission shall not issue an agent's beer license to a person unless it is shown to the satisfaction of the commission that the applicant is employed or has good prospects for employment as agent or representative of a manufacturer or distributor.

[Acts 1977, 65th Leg., p. 488, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.05. Grace Period

A person may engage in the activities specified in Section 73.01 for an initial grace period of five days during which he shall procure an agent's beer license from the commission.

[Acts 1977, 65th Leg., p. 488, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.06. Employment of Unlicensed Agent Prohibited

No manufacturer or distributor may use or be the beneficiary of the services of any person to carry on the activities specified in Section 73.01 if he does not hold an agent's beer license and is not covered by the grace period provided by Section 73.05 of this code.
[Acts 1977, 65th Leg., p. 488, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.07. Employment of Agent Whose License Has Been Suspended or Cancelled

(a) No manufacturer or distributor may employ or continue to employ in any capacity a person whose agent's beer license has been suspended by the commission during the period of suspension.

(b) No manufacturer or distributor may employ or continue to employ in any capacity a person whose agent's beer license has been cancelled for cause by the commission within one year after the date of the cancellation.
[Acts 1977, 65th Leg., p. 489, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.08. Rules

The commission may promulgate reasonable rules defining the qualifications and regulating the conduct of holders of agent's beer licenses.
[Acts 1977, 65th Leg., p. 489, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.09. Application for License

(a) An application for an agent's beer license is filed with the commission or any designated employee of the commission. The application must be on a form prescribed by the commission and include all information required by the commission.

(b) The commission, administrator, or a designated employee of the commission shall act on applications, and the county judge has no authority over the issuance or approval of agent's beer licenses.
[Acts 1977, 65th Leg., p. 489, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.10. Renewal of License

An application for the renewal of an agent's beer license shall be made to the commission not more than 30 days before the license expires. The commission shall prescribe forms for that purpose and shall prescribe what information is required in the application.
[Acts 1977, 65th Leg., p. 489, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.11. Suspension or Cancellation of License

An agent's beer license may be suspended or cancelled by the commission for a violation of any rule or regulation of the commission or for any of the reasons a manufacturer's or distributor's license may be suspended or cancelled. The same procedure applicable to the suspension or cancellation of a manufacturer's or distributor's license shall be followed in the suspension or cancellation of an agent's beer license.
[Acts 1977, 65th Leg., p. 489, ch. 194, § 1, eff. Sept. 1, 1977.]

TITLE 4. REGULATORY AND PENAL PROVISIONS

CHAPTER 101. GENERAL CRIMINAL PROVISIONS

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SUBCHAPTER A. PROCEDURAL PROVISIONS

§ 101.01. Restraining Orders and Injunctions

(a) If a credible person by affidavit informs the attorney general or a county or district attorney that a person is violating or is about to violate a provision of this code, or that a permit or license was wrongfully issued, the attorney general or county or district attorney shall begin proceedings in district court to restrain the person from violating the code or operating under the permit or license.

(b) The court may issue a restraining order without a hearing, and on notice and hearing may grant an injunction, to prevent the threatened or further violation or operation. The court may require the complaining party to file a bond in an amount and with the conditions the court finds necessary.

(c) If the court finds that a person has violated a restraining order or injunction issued under this section, it shall enter a judgment to that effect. The judgment operates to cancel without further proceedings any license or permit held by the person. The district clerk shall notify the county judge of the county where the premises covered by the permit or license are located and shall notify the commission when a judgment is entered that operates to cancel a license or permit.

(d) No license or permit may be issued to a person whose license or permit is cancelled under Subsection (c) of this section for one year after the cancellation.

[Acts 1977, 65th Leg., p. 491, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.02. Arrest Without Warrant

A peace officer may arrest without a warrant any person he observes violating any provision of this code or any rule or regulation of the commission. The officer shall take possession of all illicit beverages the person has in his possession or on his premises as provided in Chapter 103 of this code.

[Acts 1977, 65th Leg., p. 491, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.03. Search and Seizure

(a) A search warrant may issue under Chapter 18, Code of Criminal Procedure, 1965, as amended, to search for, seize, and destroy or otherwise dispose of in accordance with this code:

(1) an illicit beverage;

(2) any equipment or instrumentality used, or capable or designed to be used, to manufacture an illicit beverage;

(3) a vehicle or instrumentality used or to be used for the illegal transportation of an illicit beverage;

(4) unlawful equipment or materials used or to be used in the illegal manufacturing of an illicit beverage;

(5) a forged or counterfeit stamp, die, plate, official signature, certificate, evidence of tax payment, license, permit, or other instrument pertaining to this code; or

(6) any instrumentality or equipment, or parts of either of them, used or to be used, or designed or capable of use, to manufacture, print, etch, indite, or otherwise make a forged or counterfeit instrument covered by Subdivision (5) of this subsection.

(b) Any magistrate may issue a search warrant on the affidavit of a credible person, setting forth the name or description of the owner or person in charge of the premises (or stating that the name and description are unknown), the address or description of the premises, and showing that the described premises is a place where this code has been or is being violated. If the place to be searched is a private dwelling occupied as such and no part of it is used as a store, shop, hotel, boarding house, or for any other purpose except as a private residence, the affidavit must be made by two credible persons.

(c) All provisions of Chapter 18, Code of Criminal Procedure, 1965, as amended, apply to the application, issuance, and execution of the warrant except those that conflict with this section.

(d) The officer executing the warrant shall seize all items described in Subsection (a) of this section, and those items may not be taken from his custody by a writ of replevin or any other process. The officer shall retain the items pending final judgment in the proceedings.

(e) This section does not require a peace officer to obtain a search warrant to search premises covered by a license or permit.

[Acts 1977, 65th Leg., p. 491, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.04. Consent to Inspection

By accepting a license or permit, the holder consents that the commission, an authorized representative of the commission, or a peace officer may enter the licensed premises at any time to conduct an investigation or inspect the premises for the purpose of performing any duty imposed by this code.

[Acts 1977, 65th Leg., p. 492, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.05. Negation of Exception: Information, Complaint, or Indictment

An information, complaint, or indictment charging a violation of this code need not negate an exception to an act prohibited by this code, but the exception may be urged by the defendant as a defense to the offense charged.

[Acts 1977, 65th Leg., p. 492, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.06. Testimony of Accomplice

A conviction for a violation of this code cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense.

[Acts 1977, 65th Leg., p. 492, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 108, ch. 67, § 1, eff. Aug. 27, 1979.]

§ 101.07. Duty of Peace Officers

All peace officers in the state, including those of cities, counties, and state, shall enforce the provisions of this code and cooperate with and assist the commission in detecting violations and apprehending offenders.

[Acts 1977, 65th Leg., p. 492, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.08. Duty of County Court

When a violation of this code occurs, the county court shall make a recommendation to the commission as to cancellation or suspension of any permit or license connected with the violation.

[Acts 1977, 65th Leg., p. 492, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.09. Reports of Convictions

Every county and district clerk in the state shall furnish the commission or its representative, on request, a certified copy of the judgment of conviction and of the information against a person convicted of a violation of this code. The clerk may not charge a fee for furnishing the copy.

[Acts 1977, 65th Leg., p. 492, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.10. Wholesale or Retail Sale: Prima Facie Evidence

(a) Proof that a retail permittee sold or delivered more than three gallons of distilled spirits to a person in a single or continuous transaction is prima facie evidence that the sale was at wholesale.

(b) Proof that a permittee authorized to sell distilled spirits at wholesale sold or delivered less than three gallons of distilled spirits in a single transaction is prima facie evidence that the sale was a retail sale.

(c) The presumption created by Subsection (b) of this section does not apply to the lawful delivery of 2.4 gallons or more of distilled spirits under the authority of a local distributor's permit.

[Acts 1977, 65th Leg., p. 492, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 101.11 to 101.30 reserved for expansion]

SUBCHAPTER B. OFFENSES RELATING TO DRY AREAS

§ 101.31. Alcoholic Beverages in Dry Areas

Except as otherwise provided in this code, no person in a dry area may manufacture, distill, brew, sell, import into the state, export from the state, transport, distribute, warehouse, store, solicit or take orders for, or possess with intent to sell an alcoholic beverage.

[Acts 1977, 65th Leg., p. 493, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.32. Prima Facie Evidence of Intent to Sell

(a) Possession of more than one quart of liquor in a dry area is prima facie evidence that it is possessed with intent to sell.

(b) Possession in a dry area of more than 24 twelve-ounce bottles of beer, or an equivalent amount, is prima facie evidence of possession with intent to sell.

[Acts 1977, 65th Leg., p. 493, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.33. Delivery of Liquor in Dry Area

Section 107.03 of this code relates to the delivery of liquor in a dry area.

[Acts 1977, 65th Leg., p. 493, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 101.34 to 101.40 reserved for expansion]

SUBCHAPTER C. CONTAINERS

§ 101.41. Containers, Packaging, and Dispensing Equipment of Beer: Labels

(a) No manufacturer or distributor, directly or indirectly or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may manufacture, sell, or otherwise introduce into commerce any container, packaging, or dispensing equipment of beer that does not meet the requirements of this section.

(b) Every container of beer must have a label or imprint in legible type showing the full name and address of the manufacturer and, if it contains a special brand brewed for a distributor, of the distributor. Any box, crate, carton, or similar device in which containers of beer are sold or transported must have a label meeting the same requirements.

(c) The label of a container of beer must state the net contents in terms of United States liquor measure.

(d) No container, packaging material, or dispensing equipment may bear a label or imprint that:

(1) by wording, lettering, numbering, or illustration, or in any other manner refers or alludes to or suggests the alcoholic strength of the product, a manufacturing process, aging, analysis, or a scientific fact;

(2) refers or alludes to the "proof," "balling," or "extract" of the product;

(3) is untrue in any respect; or

(4) by ambiguity, omission, or inference tends to create a misleading impression, or causes or is calculated to cause deception of the consumer with respect to the product.

[Acts 1977, 65th Leg., p. 493, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.42. Returnable Container: Acceptance by Another Manufacturer

No manufacturer of beer may purchase, accept as a return, or use a barrel, half-barrel, keg, case, or bottle permanently branded or imprinted with the name of another manufacturer.

[Acts 1977, 65th Leg., p. 494, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.43. Misbranding of Brewery Product

(a) No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may sell or otherwise introduce into commerce a brewery product that is misbranded.

(b) A product is misbranded if:

(1) it is misbranded within the meaning of the federal Food and Drug Act;

(2) the container is so made or filled as to mislead the purchaser, or if its contents fall below the recognized standards of fill;

(3) it misrepresents the standard of quality of products in the branded container; or

(4) it is so labeled as to purport to be a product different from that in the container.

[Acts 1977, 65th Leg., p. 494, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.44. Containers of Beer: Capacities

No person may possess, sell, or transport any beer except in containers having a capacity of one barrel, one-half barrel, one-quarter barrel, or one-eighth barrel, or in bottles or cans having a capacity of 32, 24, 16, 12, 8, or 7 fluid ounces.

[Acts 1977, 65th Leg., p. 494, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 54, ch. 33, § 7, eff. Jan. 1, 1980.]

§ 101.45. Containers of Wine: Maximum Capacity

No person may sell wine to a retail dealer in containers with a capacity greater than 4.9 gallons.

[Acts 1977, 65th Leg., p. 494, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.46. Containers of Liquor: Minimum Capacities

(a) Except as provided by Subsections (b) and (c) of this section, no person may import, sell, or possess with intent to sell any liquor in a container with a capacity of less than six fluid ounces.

(b) Subsection (a) of this section does not apply to permittees or licensees while engaged in supplying airline beverage or mixed beverage permittees, nor to the possession or sale of liquor by an airline beverage or mixed beverage permittee, but none of the permittees or licensees covered by this subsection may possess liquor in a container with a capacity of less than one fluid ounce.

(c) Subsection (a) of this section does not apply to liquor imported under Section 107.07 of this code.

[Acts 1977, 65th Leg., p. 494, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1146, ch. 552, § 1, eff. Aug. 27, 1979.]

Amendment of this section by Acts 1979, 66th Leg., p. 1969, ch. 777, § 9(b), failed to take effect under the provisions of § 9(a) of that act which read:

"This section does not take effect if House Bill No. 869, Acts of the 66th Legislature, Regular Session, 1979 [ch. 552], takes effect and amends Section 101.46, Alcoholic Beverage Code."

§ 101.47. Carrier May Transport Liquor in Small Containers

The commission may authorize a common carrier of persons engaged in interstate commerce to transport liquor in containers of less than six fluid ounces if the liquor is not for sale, use, or consumption in the state.

[Acts 1977, 65th Leg., p. 494, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1969, ch. 777, § 10, eff. Aug. 27, 1979.]

§ 101.48. Commission's Regulatory Authority

Sections 5.39 and 5.40 of this code relate to the commission's authority to regulate liquor containers and beer container deposits.

[Acts 1977, 65th Leg., p. 495, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 101.49 to 101.60 reserved for expansion]

SUBCHAPTER D. MISCELLANEOUS OFFENSES

§ 101.61. Violation of Code or Rule

A person who fails or refuses to comply with a requirement of this code or a valid rule of the commission violates this code.

[Acts 1977, 65th Leg., p. 495, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.62. Offensive Noise on Premises

No licensee or permittee, on premises under his control, may maintain or permit a radio, television, amplifier, piano, phonograph, music machine, orchestra, band, singer, speaker, entertainer, or other device or person that produces, amplifies, or projects music or other sound that is loud, vociferous, vulgar, indecent, lewd, or otherwise offensive to persons on or near the licensed premises.

[Acts 1977, 65th Leg., p. 495, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.63. Sale to Certain Persons

(a) A person commits an offense if he knowingly sells an alcoholic beverage to an habitual drunkard or an intoxicated or insane person.

(b) Except as provided in Subsection (c) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than $100 nor more than $500, by confinement in jail for not more than one year, or by both.

(c) If a person has been previously convicted of a violation of this section or of Section 106.03 of this code, a violation is a misdemeanor punishable by a fine of not less than $500 nor more than $1,000, by confinement in jail for not more than one year, or by both.

[Acts 1977, 65th Leg., p. 495, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.64. Indecent Graphic Material

No holder of a license or permit may possess or display on the licensed premises a card, calendar,

placard, picture, or handbill that is immoral, indecent, lewd, or profane.
[Acts 1977, 65th Leg., p. 495, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.65. Beverages Made From Certain Materials Prohibited

No person may manufacture, import, sell, or possess for the purpose of sale an alcoholic beverage made from:

(1) dried grapes, dried fruits, or dried berries;

(2) any compound made from synthetic materials;

(3) substandard wines;

(4) imitation wines; or

(5) must concentrated at any time to more than 80 degrees Balling.

[Acts 1977, 65th Leg., p. 495, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.66. Beverages of Certain Alcohol Content Prohibited

No person may manufacture, sell, barter, or exchange a beverage that contains alcohol in excess of one-half of one percent by volume and not more than four percent of alcohol by weight, except beer.
[Acts 1977, 65th Leg., p. 495, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.67. Prior Approval of Malt Beverages

(a) No person may ship or cause to be shipped into the state, import into the state, manufacture and offer for sale in the state, or distribute, sell, or store in the state any beer, ale, or malt liquor unless:

(1) a sample of the beverage or a sample of the same type and quality of beverage has been first submitted to the commission for analysis and been found by the commission or its representative to comply with all rules and regulations of the commission relating to quality, purity, and standards of measure; and

(2) the label of the beverage has been first submitted to the commission or its representative and found to comply with all provisions of this code relating to the labeling of the particular type of beverage.

(b) Only a brewer's or nonresident brewer's permittee or a manufacturer's or nonresident manufacturer's licensee may apply for and receive label approval on beer, ale, or malt liquor.

(c) This section does not apply to the importation of beer for personal consumption and not for sale.
[Acts 1977, 65th Leg., p. 496, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.68. Consignment Sale Prohibited

A person commits an offense if he is a party to, or directly or indirectly interested in or connected with, a consignment sale of an alcoholic beverage.
[Acts 1977, 65th Leg., p. 496, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.69. False Statement

Except as provided in Section 103.05(d) of this code, a person who makes a false statement or false representation in an application for a permit or license or in a statement, report, or other instrument to be filed with the commission and required to be sworn commits an offense punishable by imprisonment in the penitentiary for not less than 2 nor more than 10 years.
[Acts 1977, 65th Leg., p. 496, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.70. Common Nuisance

(a) A room, building, boat, structure, or other place where alcoholic beverages are sold, bartered, manufactured, stored, possessed, or consumed in violation of this code or under circumstances contrary to the purposes of this code, the beverages themselves, and all property kept or used in the place, are a common nuisance. A person who maintains or assists in maintaining the nuisance commits an offense.

(b) The county or district attorney in the county where the nuisance exists or the attorney general may sue in the name of the state for an injunction to abate and temporarily and permanently enjoin it. Except as otherwise provided in this section, the proceeding is conducted as other similar proceedings.

(c) The plaintiff is not required to give a bond. The final judgment is a judgment in rem against the property and a judgment against the defendant. If the court finds against the defendant, on final judgment it shall order that the place where the nuisance exists be closed for one year or less and until the owner, lessee, tenant, or occupant gives bond with sufficient surety as approved by the court in the penal sum of at least $1,000. The bond must be payable to the state and conditioned:

(1) that this code will not be violated;

(2) that no person will be permitted to resort to the place to drink alcoholic beverages in violation of this code; and

(3) that the defendant will pay all fines, costs, and damages assessed against him for any violation of this code.

(d) On appeal, the judgment may not be superseded except on filing an appeal bond in the penal sum of not more than $500, in addition to the bond for costs of the appeal. That bond must be approved by the trial court and must be posted before the judgment of the court may be superseded on appeal. The bond must be conditioned that if the judgment of the trial court is finally affirmed it may be forfeited in the same manner and for any cause for which a bond required on final judgment may be forfeited for an act committed during the pendency of an appeal.
[Acts 1977, 65th Leg., p. 496, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.71. Inspection of Vehicle

No holder of a permit issued under Title 3, Subtitle A, of this code, may refuse to allow the commission or its authorized representative or a peace officer, on request, to make a full inspection, investigation, or search of any vehicle.

[Acts 1977, 65th Leg., p. 497, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 102. INTRA-INDUSTRY RELATIONSHIPS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 102.01. Tied House Prohibited

(a) In this section, "tied house" means any overlapping ownership or other prohibited relationship between those engaged in the alcoholic beverage industry at different levels, that is, between a manufacturer and a wholesaler or retailer, or between a wholesaler and a retailer, as the words "wholesaler," "retailer," and "manufacturer" are ordinarily used and understood, regardless of the specific names given permits under Subtitle A, Title 3, of this code.

(b) In considering an original or renewal application for a permit issued under Subtitle A, Title 3, of this code, the commission or administrator may make any investigation or request any additional information necessary to enforce this section and to provide strict adherence to a general policy of prohibiting the tied house and related practices. The activities prohibited by this section are unfair competition and unlawful trade practices.

(c) No person having an interest in a permit issued under Subtitle A, Title 3, of this code may secure or hold, directly or indirectly, an ownership interest in the business or corporate stocks, including a stock option, convertible debenture, or similar interest, in a permit or business of a permittee of a different level who maintains licensed premises in Texas.

(d) No person may act or serve as officer, director, or employee of the businesses of permittees at different levels.

(e) No permittee may own the premises, fixtures, or equipment of a permittee of a different level.

(f) No permittee may secure or in any manner obtain the use of any premises, fixtures, or equipment on the credit of a permittee of a different level.

(g) No permittee may loan to, or by means of his credit secure a loan for, a permittee of a different level. If a permittee secures a loan from a source outside the state, there is a presumption of a tied house relationship or subterfuge, and the permittee securing the loan has the burden of showing that he has not violated this section.

(h) No permittee may enter with a permittee of a different level or with another person or legal entity into a conspiracy or agreement to control or manage, financially or administratively, directly or indirectly, in any form or degree, the business or interests of a permittee of a different level.

(i) No permittee may enter with another permittee into any type of profit-sharing agreement or any agreement relating to the repurchase of any assets or any agreement attempting to effectuate the shipment or delivery of an alcoholic beverage on consignment.

(j) On finding that a person has violated any provision of Subsections (c) through (i) of this section, the commission or administrator shall suspend for not less than six months or cancel the permit of any permittee involved. A person who held or had an interest in a permit cancelled under this subsection is ineligible to hold or have an interest in a permit for one year after the cancellation.

(k) This section does not apply to the application for renewal of a permit held by an applicant who was engaged in the legal alcoholic beverage business in this state under a charter or permit before August

24, 1935, or to an application for a nonresident seller's or wholesaler's permit held by an applicant who continuously has been the holder of a permit of that type since January 1, 1941.
[Acts 1977, 65th Leg., p. 498, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.02. Athletic Facility Owned by Manufacturer

The total or partial ownership by a manufacturer of premises primarily designed and used for athletic contests is not a ground for the denial, suspension, or cancellation of a retail license located on those premises.
[Acts 1977, 65th Leg., p. 499, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.03. Persons Barred From Interest in Premises of Retail Liquor Outlet

(a) This section applies to the holder of a brewer's, distiller's, winery, rectifier's, wholesaler's, class B wholesaler's, or wine bottler's permit.

(b) No holder of a permit named in Subsection (a) of this section may directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, own an interest of any kind in the premises where a package store permittee, wine only package store permittee, or mixed beverage permittee conducts his business.
[Acts 1977, 65th Leg., p. 499, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2118, ch. 819, § 9, eff. June 13, 1979.]

§ 102.04. Persons Barred From Interest in Mixed Beverage Business

(a) This section applies to any person who has an interest in the business of a distiller, brewer, rectifier, wholesaler, class B wholesaler, winery, wine bottler, or local distributor's permittee. This section also applies to the agent, servant, or employee of a person who has an interest in one of those businesses.

(b) Except as permitted in Section 23.01 of this code, no person to whom this section applies may:

(1) have a direct or indirect interest in the business, premises, equipment, or fixtures of a mixed beverage establishment;

(2) furnish or lend any money, service, or other thing of value to a mixed beverage permittee or guarantee the fulfillment of a financial obligation of a mixed beverage permittee;

(3) enter or offer to enter into an agreement, condition, or system which in effect amounts to the shipment and delivery of alcoholic beverages on consignment;

(4) furnish, rent, lend, or sell to a mixed beverage permittee any equipment, fixtures, or supplies used in the selling or dispensing of alcoholic beverages;

(5) pay or make an allowance to a mixed beverage permittee for a special advertising or distributing service, or allow the permittee an excessive discount;

(6) offer to a mixed beverage permittee a prize, premium, or other inducement, except as permitted by Section 102.07(b) of this code; or

(7) advertise in the convention program or sponsor a function at a meeting or convention or a trade association of holders of mixed beverage permits, unless the trade association was incorporated before 1950.
[Acts 1977, 65th Leg., p. 499, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1183, ch. 453, § 9, eff. Sept. 1, 1977, Acts 1979, 66th Leg., p. 2118, ch. 819, § 10, eff. June 13, 1979.]

§ 102.05. Hotel: Multiple Interests Authorized

A hotel may hold a package store permit, mixed beverage permit, wine and beer retailer's permit, and retail dealer's license if the businesses are completely segregated from each other.
[Acts 1977, 65th Leg., p. 499, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.06. Relationship Between Agent or Manufacturer's Agent and Package Store

No holder of an agent's or manufacturer's agent's permit may directly or indirectly have an interest in a package store permit or wine only package store permit or be residentially domiciled with a person who has a financial interest in a package store permit or wine only package store permit.
[Acts 1977, 65th Leg., p. 499, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.07. Prohibited Dealings With Retailer or Consumer

(a) Except as provided in Subsection (b) of this section, no person who owns or has an interest in the business of a distiller, brewer, rectifier, wholesaler, class B wholesaler, winery, or wine bottler, nor the agent, servant, or employee of such a person, may:

(1) own or have a direct or indirect interest in the business, premises, equipment, or fixtures of a retailer;

(2) furnish, give, or lend any money, service, or thing of value to a retailer;

(3) guarantee a financial obligation of a retailer;

(4) make or offer to enter an agreement, condition, or system which will in effect amount to the shipment and delivery of alcoholic beverages on consignment;

(5) furnish, give, rent, lend, or sell to a retail dealer any equipment, fixtures, or supplies to be used in selling or dispensing alcoholic beverages;

(6) pay or make an allowance to a retailer for a special advertising or distribution service;

(7) allow an excessive discount to a retailer;

(8) offer a prize, premium, gift, or similar inducement to a retailer or consumer or to the agent, servant, or employee of either.

(b) A permittee covered by Subsection (a) may furnish to a retailer without cost recipes, recipe books, book matches, cocktail napkins, or other advertising items showing the name of the permittee furnishing the items or the brand name of the product advertised if the individual cost of the items does not exceed 25 cents.

(c) No person who owns or has an interest in the business of a package store or wine only package store, nor the agent, servant, or employee of the person, may allow an excessive discount on liquor.

[Acts 1977, 65th Leg., p. 500, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2118, ch. 819, § 11, eff. June 13, 1979.]

§ 102.08. Wholesaler: Liquor Manufactured by Affiliate

(a) No holder of a wholesaler's permit may own, possess, or sell any liquor manufactured, distilled, or rectified by a person, firm, or corporation that is directly or indirectly affiliated with the wholesale permittee, regardless of whether the affiliation is corporate, by management, direction, or control, or through an officer, director, agent, or employee.

(b) This section does not apply to a holder of a wholesaler's permit who held the permit on January 1, 1941, and has held it continuously since that date, who was on that date selling liquor manufactured, distilled, or rectified by such an affiliate.

[Acts 1977, 65th Leg., p. 500, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.09. Wholesaler: Interest in Distiller or Rectifier

No holder of a wholesaler's permit may be affiliated with the holder of a distiller's or rectifier's permit, or with a person, firm, or corporation engaged in distilling or rectifying liquor inside or outside this state, regardless of whether the affiliation is direct or indirect, through an officer, director, agent, or employee, or by management, direction, or control.

[Acts 1977, 65th Leg., p. 500, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.10. Distiller or Rectifier: Interest in Wholesaler

(a) This section applies to the following:

(1) a holder of a distiller's or rectifier's permit;

(2) a person, firm, or corporation engaged in distilling or rectifying liquor, either inside or outside this state;

(3) an officer, director, agent, or employee of an entity named in Subdivision (1) or (2) of this subsection; or

(4) an affiliate of an entity named in Subdivision (1) or (2) of this subsection, regardless of whether the affiliation is corporate or by management, direction, or control.

(b) No entity named in Subsection (a) of this section may have any interest in the permit, business, assets, or corporate stock of a holder of a wholesaler's permit.

[Acts 1977, 65th Leg., p. 500, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.11. Manufacturer or Distributor: Prohibited Interests

No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may:

(1) own any interest in the business or premises of a retail dealer of beer;

(2) hold or have an interest in a license to sell brewery products for on-premises consumption, except to the extent that a manufacturer's license permits on-premises consumption.

[Acts 1977, 65th Leg., p. 501, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.12. Commercial Bribery by Manufacturer or Distributor

No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may give or permit to be given money or any thing of value in an effort to induce agents, employees, or representatives of customers or prospective customers to influence their employers or principals to purchase or contract to purchase brewery products from the manufacturer or distributor or to refrain from buying those products from other persons.

[Acts 1977, 65th Leg., p. 501, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.13. Exclusive Outlet Agreement as to Brewery Products

No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may require, by agreement or otherwise, that a retailer engaged in the sale of brewery products purchase any of those products from him to the total or partial exclusion of the products sold or offered for sale by a competitor or require the retailer to take or dispose of a certain quota of the product.

[Acts 1977, 65th Leg., p. 501, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.14. Manufacturer or Distributor: Furnishing Equipment or Fixtures

(a) No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may furnish, give, rent, lend, or sell any equipment, fixtures, or supplies to a person engaged in selling brewery products for on-premises consumption.

(b) This section does not apply to equipment, fixtures, or supplies furnished, given, loaned, rented, or sold before November 16, 1935, except that transactions made before that date may not be used as consideration for an agreement made after that date with respect to the purchase of brewery products. If a manufacturer or distributor of brewery products or an agent or employee of one of them removes the equipment, fixtures, or supplies from the premises of the person to whom they were furnished, given, loaned, rented, or sold, the exemption granted by this subsection no longer applies to the equipment, fixtures, or supplies.

[Acts 1977, 65th Leg., p. 501, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.15. Manufacturer or Distributor: Prohibited Dealings With Retailer

No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may:

(1) furnish, give, or lend any money or other thing of value to a person engaged or about to be engaged in selling brewery products for on-premises or off-premises consumption, or give the person any money or thing of value for his use, benefit, or relief; or

(2) guarantee the repayment of a loan or the fulfillment of a financial obligation of a person engaged in or about to be engaged in selling beer at retail.

[Acts 1977, 65th Leg., p. 502, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.16. Unlawful Agreements

(a) A brewer, distiller, winery permittee, or alcoholic beverage manufacturer, or the agent, servant, or employee of any of them, commits an offense if he orally or in writing enters or offers to enter into an agreement or other arrangement with a wholesaler or other person in the state:

(1) by which a person is required or influenced, or that is intended to require or influence a person, to purchase, otherwise obtain, produce, or require a certain volume or quota of business, more or less, of one or more types or brands of alcoholic beverages, either in a certain area, in a certain period of time, or on fulfillment of any condition; or

(2) to require or influence a person, or attempt to require or influence a person, to sell an alcoholic beverage in a manner contrary to law or in a manner calculated to induce a violation of the law.

(b) The commission or administrator shall investigate suspected violations of this section, and if either of them finds or has good reason to believe that this section has been or is being violated, the commission or administrator shall give the affected parties notice of hearing as provided in this code. On finding that a person has violated or is violating a provision of this section, the commission or administrator shall enter an order prohibiting the violator or his agents to directly or indirectly ship any of his goods into the state for a period not to exceed one year. No person may violate that order.

(c) The commission shall adopt necessary rules to effectuate this section.

[Acts 1977, 65th Leg., p. 502, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.17. Contract for Sale of Liquor

A brewer, distiller, winery permittee, manufacturer, or nonresident seller of liquor and the holder of a wholesaler's permit may enter into a contract for the sale and purchase of a specified quantity of liquor to be delivered over an agreed period of time, but only if the contract is first submitted to the commission or administrator and found by the commission or administrator not to be calculated to induce a violation of this code.

[Acts 1977, 65th Leg., p. 502, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.18. Manufacturer: Prohibited Interests

(a) This section applies to the following:

(1) a holder of a manufacturer's or nonresident manufacturer's license;

(2) an officer, director, agent, or employee of an entity named in Subdivision (1) of this subsection; or

(3) an affiliate of an entity named in Subdivision (1) of this subsection, regardless of whether the affiliation is corporate or by management, direction, or control.

(b) No entity named in Subsection (a) of this section may have any interest in the license, business, assets, or corporate stock of a holder of a general, local, or branch distributor's license.

[Added by Acts 1979, 66th Leg., p. 1973, ch. 777, § 24, eff. Aug. 27, 1979.]

[Sections 102.19 to 102.30 reserved for expansion]

SUBCHAPTER B. REGULATION OF CREDIT TRANSACTIONS

§ 102.31. Cash Payment Required

(a) This section applies to:

(1) the sale of beer or its containers or the original packages in which it is received, packaged, or contained by a distributor's licensee to a retail dealer's on-premise or off-premise licensee, a wine and beer retailer's permittee, or a wine and beer retailer's off-premise permittee; and

(2) the sale of malt beverages by a local distributor's permittee, or by any licensee authorized to sell those beverages for resale, to a mixed beverage or daily temporary mixed beverage permittee.

(b) No person directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may make a sale covered by this section except for cash on or before delivery to the purchaser.

(c) A person who engages in a subterfuge by which credit is extended to the purchaser violates this code. Acceptance of a postdated check is not a cash sale, but a valid check or draft payable on demand may be accepted as cash. If a check or draft is accepted in payment, it must be deposited in the bank for payment or presented for payment within two days after it is received. If the check or draft is dishonored by the drawee, the licensee or permittee who accepted it shall report that fact to the commission within two days after receiving notice of dishonor. The report shall be on a form prescribed by the commission and shall contain any information the commission requires.

(d) Sundays and legal holidays are not counted in determining time periods under this section.

(e) The commission may promulgate rules to give effect to this section.

[Acts 1977, 65th Leg., p. 502, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 55, ch. 33, § 8, eff. Aug. 27, 1979.]

§ 102.32. Sale of Liquor: Credit Restrictions

(a) In this section:

(1) "Wholesale dealer" means a wholesaler, class B wholesaler, winery, wine bottler, or local distributor's permittee.

(2) "Retailer" means a package store, wine only package store, wine and beer retailer's, wine and beer retailer's off-premise, or mixed beverage permittee, any other retailer, or a private club registration permittee.

(3) "Month" means a calendar month.

(b) No wholesale dealer may sell and no retailer may purchase liquor except for cash or on terms requiring payment by the retailer in accordance with Subsection (c) of this section.

(c) On purchases made from the 1st through 15th day of a month, payment must be made on or before the 25th day of that month. On purchases made on the 16th through the last day of a month, payment must be made on or before the 10th day of the following month.

(d) Each delivery of liquor shall be accompanied by an invoice giving the date of purchase. If a retailer becomes delinquent in the payment of an account for liquor, the wholesale dealer immediately shall report that fact in writing to the commission or administrator. No wholesale dealer may sell any liquor to a retailer who is delinquent until the delinquent account is paid in full and cleared from the records of the commission. An account becomes delinquent if it is not paid when it is required to be paid under Subsection (c) of this section.

(e) A wholesale dealer who accepts a postdated check, a note or memorandum, or participates in a scheme to assist a retailer in the violation of this section commits an offense.

(f) The commission shall adopt rules and regulations to give effect to this section.

[Acts 1977, 65th Leg., p. 503, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2119, ch. 819, § 12, eff. June 13, 1979.]

[Sections 102.33 to 102.50 reserved for expansion]

SUBCHAPTER C. TERRITORIAL LIMITS ON SALE OF BEER

§ 102.51. Setting of Territorial Limits

(a) Each holder of a manufacturer's or nonresident manufacturer's license shall designate territorial limits in this state within which the brands of beer the licensee manufactures may be sold by general, local, or branch distributor's licensees.

(b) Each holder of a general, local, or branch distributor's license shall enter into a written agreement with each manufacturer from which the distributor purchases beer for distribution and sale in this state setting forth the nonexclusive territorial limits within which each brand of beer purchased may be distributed and sold. A copy of the agreement and any amendments to it shall be filed with the administrator.

[Acts 1977, 65th Leg., p. 504, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.52. Rights of Distributors

(a) Nothing in Section 102.51 of this code limits or alters the right of a holder of a general, local, or branch distributor's license to sell beer to any other holder of a general, local, or branch distributor's license, except that a distributor who has purchased beer from another distributor may distribute and sell the beer only within a territory for which the manufacturer of the brand has designated that it may be sold by a distributor.

(b) A holder of general, local, or branch distributor's license may not purchase, possess, transport, or sell any brand of beer outside of the county in which the distributor's licensed premises are located unless the distributor has a written assigned territory from the holder of a manufacturer's or nonresident manufacturer's license covering that brand of beer.

[Acts 1977, 65th Leg., p. 504, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 55, ch. 33, § 9, eff. Aug. 27, 1979.]

§ 102.53. Rights of Retailers

Nothing in Section 102.51 or 102.52 of this code limits or alters the right of a holder of a retail

license or permit to purchase beer at the licensed premises of any general, local, or branch distributor's licensee in the state and transport that beer to his licensed premises, except that the retailer may sell the beer only within a territory for which the manufacturer of the brand has designated that it may be sold by a distributor.

[Acts 1977, 65th Leg., p. 504, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 55, ch. 33, § 10, eff. Aug. 27, 1979.]

CHAPTER 103. ILLICIT BEVERAGES

Section

103.01. Illicit Beverages Prohibited.
103.02. Equipment or Material for Manufacture of Illicit Beverages.
103.03. Seizure of Illicit Beverages, Etc.
103.04. Arrest of Person in Possession.
103.05. Report of Seizure.
103.06. Beverage Delivered to Commission.
103.07. Beverage of Illicit Manufacture or Unfit for Consumption.
103.08. Sale of Beer.
103.09. Sale of Liquor.
103.10. Exercise of Discretion in Case of Mistake.
103.11. Proceeds From Sale.
103.12. Ceiling Prices During Emergency.
103.13. Bonding of Seized Vehicles Pending Suit.
103.14. Institution of Suit for Forfeiture.
103.15. Notice of Forfeiture Suit.
103.16. Forfeiture of a Seized Vehicle.
103.17. Forfeiture of Other Seized Property.
103.18. Intervention by Secured Creditors.
103.19. Transfer of Security Interests.
103.20. Disposition of Forfeited Property.
103.21. Bill of Sale to Purchaser.
103.22. Costs of Forfeiture Suits.
103.23. Allocation of Proceeds of Sale.

§ 103.01. Illicit Beverages Prohibited

No person may possess, manufacture, transport, or sell an illicit beverage.

[Acts 1977, 65th Leg., p. 505, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.02. Equipment or Material for Manufacture of Illicit Beverages

No person may possess equipment or material designed for, capable of use for, or used in manufacturing an illicit beverage.

[Acts 1977, 65th Leg., p. 505, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.03. Seizure of Illicit Beverages, Etc.

A peace officer may seize without a warrant:

(1) any illicit beverage, its container, and its packaging;

(2) any vehicle, including an aircraft or watercraft, used to transport an illicit beverage;

(3) any equipment designed for use in or used in manufacturing an illicit beverage; or

(4) any material to be used in manufacturing an illicit beverage.

[Acts 1977, 65th Leg., p. 505, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.04. Arrest of Person in Possession

A peace officer may arrest without a warrant any person found in possession of:

(1) an illicit beverage;

(2) any equipment designed for use in or used in manufacturing an illicit beverage; or

(3) any material to be used in manufacturing an illicit beverage.

[Acts 1977, 65th Leg., p. 505, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.05. Report of Seizure

(a) A peace officer who makes a seizure under Section 103.03 of this code shall make a report in quadruplicate which lists each item seized and the place and name of the owner, operator, or other person from whom it is seized. Two copies of the report shall be verified by oath.

(b) One verified copy shall be retained in the permanent files of the commission or other agency making the seizure. The other verified copy shall be filed in a permanent file with the comptroller of public accounts. Either copy is subject to inspection by any member of the legislature or by any authorized law enforcement agency of the state.

(c) One copy of the report shall be delivered to the person from whom the seizure is made.

(d) A peace officer who makes a false report of the property seized commits a felony punishable by confinement in the penitentiary for not less than two years and not more than five years.

(e) A peace officer who fails to file the reports of a seizure as required by this section commits a misdemeanor punishable by a fine of not less than $50 nor more than $100 or by confinement in jail for not less than 10 nor more than 90 days or by both. The commission shall insure that the reports are made by peace officers.

[Acts 1977, 65th Leg., p. 505, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.06. Beverage Delivered to Commission

Any alcoholic beverage, its container, and its packaging which has been seized by a peace officer, as provided in Section 103.03 of this code, may not be replevied and shall be delivered to the commission for immediate public or private sale in the manner the commission considers best.

[Acts 1977, 65th Leg., p. 506, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.07. Beverage of Illicit Manufacture or Unfit for Consumption

The commission may not sell but may destroy alcoholic beverages unfit for public consumption or of illicit manufacture.

[Acts 1977, 65th Leg., p. 506, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.08. Sale of Beer

(a) Any beer, its container, or its packaging which is seized under the terms of this chapter shall be disposed of in accordance with this section.

(b) On notification that beer has been seized, the commission shall promptly notify a holder of a general, local, or branch distributor's license who handles the brand of beer seized and who operates in the county in which it was seized. If the beer was seized in a dry area, the commission shall notify either the general, local, or branch distributor who handles the brand operating nearest the area or the manufacturer brewing the beer. The commission and the distributor or manufacturer shall jointly determine whether the beer is in a salable condition.

(c) If the beer is determined not to be in a salable condition, the commission shall immediately destroy it. If it is determined to be in a salable condition, it shall be offered for sale to the distributor or manufacturer. If offered to a distributor, the beer shall be sold at the distributor's cost price less any state taxes which have been paid on the beer, F.O.B. the distributor's place of business. If the beer is offered to a manufacturer, it shall be sold at the manufacturer's cost price to its nearest distributor, less any state taxes which have been paid on the beer, F.O.B., the nearest distributor's place of business. In either case, the storage or warehousing charges necessarily incurred as a result of the seizure shall be added to the cost price.

(d) If the distributor or manufacturer does not exercise the right to purchase salable beer or to purchase returnable bottles, containers, or packages at their deposit price within 10 days, the commission shall sell the beer, bottles, containers, or packages at public or private sale as provided in this chapter.

[Acts 1977, 65th Leg., p. 506, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.09. Sale of Liquor

(a) Any liquor, its container, or its packaging which is seized under the terms of this chapter shall be disposed of in accordance with this section.

(b) On notification that liquor has been seized, the commission shall promptly notify a holder of a wholesaler's permit, a general class B wholesaler's permit, or a local class B wholesaler's permit who handles the brand of liquor seized and who operates in the county in which it was seized. If the liquor was seized in a dry area, the commission shall notify the wholesaler who handles the brand seized who operates nearest the area. The commission and the wholesaler shall jointly determine whether the liquor is in a salable condition.

(c) If the liquor is determined not to be in a salable condition, the commission shall immediately destroy it. If it is determined to be in a salable condition, it shall first be offered for sale to the wholesaler notified at the wholesaler's cost price F.O.B. its place of business, plus any storage or warehousing charges necessarily incurred as a result of the seizure.

(d) If the wholesaler does not exercise the right to purchase salable liquor, containers, or packages at the price specified in this section within 10 days, the commission shall sell the liquor, container, or packages at public or private sale, as provided in this chapter.

[Acts 1977, 65th Leg., p. 506, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.10. Exercise of Discretion in Case of Mistake

The preceding sections of this subchapter shall not be construed as preventing the commission from exercising its discretion if illicit alcoholic beverages are seized as the result of an accidental shipment or other reasonable mistake. Under those circumstances, the commission may issue orders and make disposition of the alcoholic beverages as it finds just and reasonable.

[Acts 1977, 65th Leg., p. 507, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.11. Proceeds From Sale

(a) The proceeds from the sale of seized alcoholic beverages, their containers, and their packaging shall be placed in escrow in a suspense account established by the commission for that purpose, pending the outcome of the forfeiture suit provided for in this chapter.

(b) Proceeds in escrow which are not forfeited to the state as a result of the suit shall be refunded to the alleged violator. Should the state illegally seize and sell any alcoholic beverages, the person legally entitled to possession of the beverages at the time of the seizure may recover from the state the fair market value of the beverages seized and sold, with the reimbursement paid out of the proceeds held in escrow from the sale and, if the funds in escrow are not sufficient, from the confiscated liquor fund.

[Acts 1977, 65th Leg., p. 507, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.12. Ceiling Prices During Emergency

If the federal government provides a method by which illicit alcoholic beverages or other property belonging to or forfeited to the state is sold at ceiling prices during a national emergency, the commission may comply with federal law or regulations in the sale or disposal of the beverages or property, even to the extent of partially or wholly abrogating provisions of this code that are inconsistent with the federal law or regulations.

[Acts 1977, 65th Leg., p. 507, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.13. Bonding of Seized Vehicles Pending Suit

Any person with an ownership or a security interest in a vehicle that has been seized under Section

103.03 may recover possession of the vehicle pending suit for forfeiture by executing a bond with surety equal to double the appraised value of the vehicle. The bond shall be approved by the officer who made the seizure and shall secure the return of the vehicle to the custody of the seizing officer on the day of trial of the forfeiture suit.
[Acts 1977, 65th Leg., p. 507, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.14. Institution of Suit for Forfeiture

(a) The attorney general or the county or district attorney in the county in which a seizure is made shall institute a suit for forfeiture of the property or the proceeds in escrow from any sale of illicit beverages, or both, when notified by the commission or by the seizing officer that a seizure has been made under Section 103.03 of this code.

(b) The forfeiture suit shall be brought in the name of the State of Texas against the property or the proceeds in escrow, or both, and shall be brought in a court of competent jurisdiction in the county in which the seizure was made.
[Acts 1977, 65th Leg., p. 508, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.15. Notice of Forfeiture Suit

(a) Notice of the pendency of a suit for forfeiture under this chapter shall be served in the manner prescribed by law on any person in possession of the property at the time of seizure.

(b) If no person was in possession at the time of seizure or if the location of anyone who was in possession is unknown, notice of the suit shall be posted for 20 consecutive days immediately preceding the date of the suit at the courthouse door in the county in which the seizure was made.
[Acts 1977, 65th Leg., p. 508, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.16. Forfeiture of a Seized Vehicle

(a) In a suit for forfeiture of a vehicle seized under Section 103.03 of this code, the state shall have the burden of proving that the vehicle was used to transport an illicit beverage and that all intervenors under Subsection (b) of this section, if any, knowingly violated some provision of this code.

(b) Any person with an ownership or security interest in the vehicle may intervene in the suit for forfeiture to establish his rights. An intervenor under the provisions of this section has the burden of proving that he has a valid ownership or security interest in the vehicle.

(c) If the state fails to prove that the vehicle was used to transport an illicit beverage, the court shall render judgment returning the vehicle to the owner.

(d) If the state proves that the vehicle was used to transport an illicit beverage and that all intervenors, if any, knowingly violated some provision of this code, the court shall render judgment forfeiting the vehicle to the state.

(e) If the state proves that the vehicle was used to transport an illicit beverage but fails to prove that any intervenor knowingly violated some provision of this code, the court shall render judgment delivering possession of the vehicle to the innocent intervenor with the highest priority to possession of the vehicle.
[Acts 1977, 65th Leg., p. 508, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.17. Forfeiture of Other Seized Property

(a) In any suit for forfeiture of proceeds in escrow from a sale of illicit beverages or of property other than vehicles, or both, seized under Section 103.03 of this code, the state shall have the burden of proving that:

(1) the alcoholic beverages were illicit;

(2) the equipment is designed to be used on or is used in manufacturing an illicit beverage; or

(3) the material is to be used in manufacturing an illicit beverage.

(b) If the state fails to prove the facts necessary for forfeiture, the court shall render judgment returning possession of the property or of the proceeds in escrow to the owner or the person in possession at the time of seizure.

(c) If the state proves the facts necessary for forfeiture, the court shall render judgment forfeiting the property or the proceeds in escrow, or both, to the state and ordering disposal in accordance with the provisions of Section 103.20 or Section 103.18(c) of this code.
[Acts 1977, 65th Leg., p. 508, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.18. Intervention by Secured Creditors

(a) In any suit for forfeiture of proceeds in escrow from any sale of illicit beverages or of property other than vehicles, or both, seized under Section 103.03 of this code, any person who has a security interest in any of the seized property may intervene to establish his rights.

(b) An intervenor under the provisions of this section shall have the burden of proving that he has a valid security interest in the property and that he had no knowledge that the property in which he has a security interest had been used or was to be used in violation of this code at the time the security interest was created.

(c) If an intervenor under this section establishes a security interest and a lack of knowledge of unlawful use of the property, the court, in the judgment forfeiting the property, shall issue an order of sale directed to the sheriff or any constable of the county in which the property was seized. The order shall command the sheriff or constable to conduct a sale at the courthouse door of all or part of the property, whichever the court considers proper, in the same manner as personal property is sold under execution.

(d) The proceeds of a sale under Subsection (c) of this section shall be applied first to the payment of the costs of suit and the expenses incident to the sale. After the costs of suit and expenses of sale have been approved by the court that tried the suit, any remaining proceeds shall be applied toward payment of creditors secured by the property, according to their priorities. After all secured creditors are satisfied, any remaining proceeds shall be paid to the commission to be allocated in accordance with the provisions of Section 103.23 of this code.

(e) If all intervenors under this section fail to establish a valid security interest or lack of knowledge of unlawful use of the property, the court, in the judgment forfeiting the property, shall order disposal of the property in accordance with the provisions of Section 103.20 of this code.

[Acts 1977, 65th Leg., p. 509, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.19. Transfer of Security Interests

All security interests in property sold under this chapter shall be transferred to the proceeds of the sale.

[Acts 1977, 65th Leg., p. 509, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.20. Disposition of Forfeited Property

(a) The commission may sell property, other than proceeds in escrow, forfeited to the state at a public or private sale in the manner the commission considers best.

(b) If in the opinion of the commission or the administrator the property is needed for the use of the commission, the commission may retain and use the property until it is no longer needed, at which time it shall be sold in accordance with Subsection (a) of this section.

[Acts 1977, 65th Leg., p. 509, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.21. Bill of Sale to Purchaser

When executing a sale under this chapter, the commission or the sheriff or constable shall issue a bill of sale to each purchaser of property. The bill of sale shall convey a valid and unimpaired title in the property to the purchaser.

[Acts 1977, 65th Leg., p. 509, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.22. Costs of Forfeiture Suits

The commission shall pay all costs of forfeiture suits out of the confiscated liquor fund or any other fund available to the commission for that purpose.

[Acts 1977, 65th Leg., p. 510, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.23. Allocation of Proceeds of Sale

Proceeds from a forfeiture sale and proceeds in escrow which are forfeited to the state in a forfeiture suit shall be disposed of by depositing 35 percent of the proceeds in a separate fund in the state treasury designated as the confiscated liquor fund and depositing 65 percent of the proceeds in the general revenue fund. The confiscated liquor fund may be appropriated to the commission to defray the expenses of accumulating evidence pertaining to violations of this code; assembling, storing, transporting, selling, and accounting for confiscated alcoholic beverages, containers, devices, and property; and any other purposes deemed necessary by the commission in administering and enforcing this code. Any unexpended balance in the confiscated liquor fund at the end of a biennium shall remain in the fund subject to further appropriation for the same purposes.

[Acts 1977, 65th Leg., p. 510, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 104. REGULATION OF RETAILERS

Section

104.01. Lewd, Immoral, Indecent Conduct.
104.02. Blinds and Barriers.
104.03. Conspiracy; Accepting Unlawful Benefit.
104.04. Draft Beer Dispenser: Sign Required.

§ 104.01. Lewd, Immoral, Indecent Conduct

No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts:

(1) the use of loud and vociferous or obscene, vulgar, or indecent language, or permitting its use;

(2) the exposure of person or permitting a person to expose his person;

(3) rudely displaying or permitting a person to rudely display a pistol or other deadly weapon in a manner calculated to disturb persons in the retail establishment;

(4) solicitation of any person to buy drinks for consumption by the retailer or any of his employees;

(5) becoming intoxicated on the licensed premises or permitting an intoxicated person to remain on the licensed premises;

(6) permitting lewd or vulgar entertainment or acts;

(7) permitting solicitations of persons for immoral or sexual purposes;

(8) failing or refusing to comply with state or municipal health or sanitary laws or ordinances; or

(9) possession of a narcotic or any equipment used or designed for the administering of a narcotic or permitting a person on the licensed premises to do so.

[Acts 1977, 65th Leg., p. 510, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 204, ch. 114, § 1, eff. Aug. 27, 1979.]

§ 104.02. Blinds and Barriers

(a) No person may install or maintain a blind or barrier in the opening or door of a retail alcoholic beverage establishment or paint the windows, at or above a point 54 inches above the ground or sidewalk beneath the window, in a manner that will obstruct the view of the general public.

(b) No person may install or maintain a curtain, hanging, sign, or other obstruction that prevents a clear view of the interior of a package store or wine only package store, except a drug store that holds one of those permits may display drug merchandise notwithstanding this subsection.

[Acts 1977, 65th Leg., p. 511, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 104.03. Conspiracy; Accepting Unlawful Benefit

A retail dealer or his agent, servant, or employee commits an offense if he conspires with another person to violate or accepts the benefits of a violation of this code or a valid rule of the commission.

[Acts 1977, 65th Leg., p. 511, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 104.04. Draft Beer Dispenser: Sign Required

No retail dealer may dispense draft beer unless each faucet or other dispensing apparatus is equipped with a sign clearly indicating the name or brand of the product being dispensed through the faucet or apparatus. The sign must be in full sight of the purchaser, and the letters on it must be legible.

[Acts 1977, 65th Leg., p. 511, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 105. HOURS OF SALE AND CONSUMPTION

Section

105.01. Hours of Sale: Liquor.
105.02. Hours of Sale: Wholesalers and Local Distributors to Retailers.
105.03. Hours of Sale: Mixed Beverages.
105.04. Hours of Sale: Wine and Beer Retailer.
105.05. Hours of Sale: Beer.
105.06. Hours of Consumption.

§ 105.01. Hours of Sale: Liquor

(a) Except as provided in Sections 105.02, 105.03, and 105.04 of this code, no person may sell, offer for sale, or deliver any liquor:

(1) on New Year's Day, Thanksgiving Day, or Christmas Day;

(2) on Sunday; or

(3) before 10 a. m. or after 9 p. m. on any other day.

(b) When Christmas Day or New Year's Day falls on a Sunday, Subsection (a) of this section applies to the following Monday.

[Acts 1977, 65th Leg., p. 511, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1973, ch. 777, § 23, eff. Aug. 27, 1979.]

§ 105.02. Hours of Sale: Wholesalers and Local Distributors to Retailers

(a) Except as provided by Subsection (b) of this section, a wholesaler or a local distributor's permittee may sell, offer for sale, or deliver liquor to a retailer between 7 a. m. and 9 p. m. on any day except Sunday and Christmas Day.

(b) A local distributor's permittee may not sell, offer for sale, or deliver any liquor on a day on which a package store permittee is prohibited from selling liquor.

[Acts 1977, 65th Leg., p. 511, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1183, ch. 453, § 10, eff. Sept. 10, 1977; Acts 1979, 66th Leg., p. 1973, ch. 777, § 23, eff. Aug. 27, 1979.]

§ 105.03. Hours of Sale: Mixed Beverages

(a) No person may sell or offer for sale mixed beverages at any time not permitted by this section.

(b) A mixed beverage permittee may sell and offer for sale mixed beverages between 7 a. m. and midnight on any day except Sunday. On Sunday he may sell mixed beverages between midnight and 1:00 a. m. and between noon and midnight.

(c) In a county having a population of 300,000 or more, according to the last preceding federal census, a holder of a mixed beverage late hours permit may also sell and offer for sale mixed beverages between midnight and 2 a. m. on any day.

(d) In a county having a population of less than 300,000, according to the last preceding federal census, the extended hours prescribed in Subsection (c) of this section are effective for the sale of mixed beverages and the offer to sell them by a holder of a mixed beverages late hours permit:

(1) in the unincorporated areas of the county if the extended hours are adopted by an order of the commissioners court; and

(2) in an incorporated city or town if the extended hours are adopted by an ordinance of the governing body of the city or town.

(e) A violation of a city ordinance or order of a commissioners court adopted pursuant to Subsection (d) of this section is a violation of this code.

[Acts 1977, 65th Leg., p. 511, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 105.04. Hours of Sale: Wine and Beer Retailer

The hours of sale and delivery for alcoholic beverages sold under a wine and beer retailer's permit or a wine and beer retailer's off-premise permit are the same as those prescribed for the sale of beer under Section 105.05 of this code.

[Acts 1977, 65th Leg., p. 512, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 105.05. Hours of Sale: Beer

(a) No person may sell, offer for sale, or deliver beer at any time not permitted by this section.

(b) A person may sell, offer for sale, or deliver beer between 7 a. m. and midnight on any day except Sunday. On Sunday he may sell beer between midnight and 1:00 a. m. and between noon and midnight.

(c) In a county having a population of 300,000 or more, according to the last preceding federal census, a holder of a retail dealer's on-premise late hours license may also sell, offer for sale, and deliver beer between midnight and 2 a. m. on any day.

(d) In a county having a population of less than 300,000, according to the last preceding federal census, the extended hours prescribed in Subsection (c) of this section are effective for the sale, offer to sell, and delivery of beer by a holder of a retail dealer's on-premise late hours license:

(1) in the unincorporated areas of the county if the extended hours are adopted by an order of the commissioners court; and

(2) in an incorporated city or town if the extended hours are adopted by an ordinance of the governing body of the city or town.

(e) A violation of a city ordinance or order of a commissioners court adopted pursuant to Subsection (d) of this section is a violation of this code.

[Acts 1977, 65th Leg., p. 512, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1970, ch. 777, § 13, eff. Aug. 27, 1979.]

§ 105.06. Hours of Consumption

(a) In this section:

(1) "Extended hours area" means an area:

(A) located in a county having a population of more than 300,000, according to the last preceding federal census; or

(B) located in a county having a population of not more than 300,000, according to the last preceding federal census, if the area has been made subject to the extended hours of sale provided in Section 105.03 or 105.05 of this code.

(2) "Standard hours area" means an area which is not an extended hours area.

(b) In a standard hours area, a person commits an offense if he consumes or possesses with intent to consume an alcoholic beverage in a public place at any time on Sunday between 1:15 a. m. and 12 noon or on any other day between 12:15 a. m. and 7 a. m.

(c) In an extended hours area, a person commits an offense if he consumes or possesses with intent to consume an alcoholic beverage in a public place at any time on Sunday between 2:15 a. m. and 12 noon and on any other day between 2:15 a. m. and 7 a. m.

(d) Proof that an alcoholic beverage was possessed with intent to consume in violation of this section requires evidence that the person consumed an alcoholic beverage on that day in violation of this section.

(e) An offense under this section is a misdemeanor punishable by a fine of not more than $50.

[Acts 1977, 65th Leg., p. 512, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 106. PROVISIONS RELATING TO AGE

Section

106.01. Definition.
106.02. Purchase of Alcohol by a Minor.
106.03. Sale to Minors.
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106.05. Possession of Alcohol by a Minor.
106.06. Purchase of Alcohol for a Minor; Furnishing Alcohol to a Minor.
106.07. Misrepresentation of Age by a Minor.
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106.09. Employment of Minors.
106.10. Plea of Guilty by Minor.
106.11. Parent or Guardian at Trial.
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106.13. Sanctions Against Retailer.

§ 106.01. Definition

In this chapter, "minor" means a person under 18 years of age.

[Acts 1977, 65th Leg., p. 513, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.02. Purchase of Alcohol by a Minor

(a) A minor commits an offense if he purchases an alcoholic beverage.

(b) Except as provided in Subsection (c) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200.

(c) If a person has been previously convicted of a violation of this section, a violation is a misdemeanor punishable by a fine of not less than $100 nor more than $500.

[Acts 1977, 65th Leg., p. 513, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.03. Sale to Minors

(a) A person commits an offense if he knowingly sells an alcoholic beverage to a minor.

(b) A person who sells a minor an alcoholic beverage does not commit an offense if the minor falsely represents himself to be 18 years old or older by displaying an apparently valid Texas driver's license containing a physical description consistent with his appearance for the purpose of inducing the person to sell him an alcoholic beverage.

(c) Except as provided in Subsection (d) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than $100 nor more than $500, by confinement in jail for not more than one year, or by both.

(d) If a person has been previously convicted of a violation of this section or Section 101.63 of this code, a violation is a misdemeanor punishable by a

fine of not less than $500 nor more than $1,000, by confinement in jail for not more than one year, or by both.
[Acts 1977, 65th Leg., p. 513, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.04. Consumption of Alcohol by a Minor

(a) Except as provided in Subsection (b) of this section, a minor commits an offense if he consumes an alcoholic beverage.

(b) A minor may consume an alcoholic beverage if he is in the visible presence of an adult parent, guardian, or spouse.

(c) Except as provided in Subsection (d) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200.

(d) If a person has been previously convicted of a violation of this section or Section 106.05 of this code, a violation is a misdemeanor punishable by a fine of not less than $100 nor more than $500.
[Acts 1977, 65th Leg., p. 514, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.05. Possession of Alcohol by a Minor

(a) Except as provided in Subsection (b) of this section, a minor commits an offense if he possesses an alcoholic beverage.

(b) A minor may possess an alcoholic beverage:

(1) while in the course and scope of his employment if he is an employee of a licensee or permittee and the employment is not prohibited by this code; or

(2) if he is in the presence of an adult parent, guardian, or spouse, or other adult to whom he has been committed by a court.

(c) Except as provided in Subsection (d) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200.

(d) If a person has been previously convicted of a violation of this section or Section 106.04 of this code, a violation is a misdemeanor punishable by a fine of not less than $100 nor more than $500.
[Acts 1977, 65th Leg., p. 514, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1973, ch. 777, § 21, eff. Aug. 27, 1979.]

§ 106.06. Purchase of Alcohol for a Minor; Furnishing Alcohol to a Minor

(a) Except as provided in Subsection (b) of this section, a person commits an offense if he purchases an alcoholic beverage for or gives or knowingly makes available an alcoholic beverage to a minor.

(b) A person may purchase an alcoholic beverage for or give an alcoholic beverage to a minor if he is the minor's adult parent, guardian, or spouse, or an adult in whose custody the minor has been committed by a court, and he is visibly present when the minor possesses or consumes the alcoholic beverage.

(c) A violation of this section is a misdemeanor punishable by a fine of not less than $100 nor more than $500.
[Acts 1977, 65th Leg., p. 514, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.07. Misrepresentation of Age by a Minor

(a) A minor commits an offense if he falsely states that he is 18 years of age or older or presents any document that indicates he is 18 years of age or older to a person engaged in selling or serving alcoholic beverages.

(b) Except as provided in Subsection (c) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200.

(c) If a person has been previously convicted of a violation of this section, a violation is a misdemeanor punishable by a fine of not less than $100 nor more than $500.
[Acts 1977, 65th Leg., p. 514, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.08. Importation by a Minor

No minor may import into this state or possess with intent to import into this state any alcoholic beverage.
[Acts 1977, 65th Leg., p. 515, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.09. Employment of Minors

(a) Except as provided in Subsections (b) and (c) of this section, no person may employ a minor to sell, prepare, serve, or otherwise handle liquor, or to assist in doing so.

(b) A holder of a wine only package store permit may employ a person 16 years old or older to work in any capacity.

(c) A holder of a mixed beverage permit may employ a minor to work in any capacity other than the actual selling, preparing, or serving of mixed beverages.
[Acts 1977, 65th Leg., p. 515, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.10. Plea of Guilty by Minor

No minor may plead guilty to an offense under this chapter except in open court before a judge.
[Acts 1977, 65th Leg., p. 515, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.11. Parent or Guardian at Trial

(a) Except as provided in Subsection (d) of this section, no minor may be convicted of an offense under this chapter unless his parent or legal guardian is present in court.

(b) If the parent or legal guardian of a minor accused of a violation of this chapter resides within the jurisdiction of the court before whom the case is to be heard, the court shall summon the parent or legal guardian to appear in court and shall require him to be present at all proceedings in the case.

(c) If the parent or legal guardian of a minor accused of a violation of this chapter resides outside the jurisdiction of the court before whom the case is to be heard, the court shall give written notice of the charge against the minor to the parent or legal guardian.

(d) If the court is unable to locate or to compel the presence of a minor's parent or legal guardian after diligent effort, the court may waive the requirement of presence of a parent or legal guardian.
[Acts 1977, 65th Leg., p. 515, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.12. Expungement of Conviction of a Minor

(a) Any person convicted of not more than one violation of this code while a minor, on attaining the age of 18 years, may apply to the court in which he was convicted to have the conviction expunged.

(b) The application shall contain the applicant's sworn statement that he was not convicted of any violation of this code while a minor other than the one he seeks to have expunged.

(c) If the court finds that the applicant was not convicted of any other violation of this code while he was a minor, the court shall order the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, to be expunged from the applicant's record. After entry of the order, the applicant shall be released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.
[Acts 1977, 65th Leg., p. 515, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.13. Sanctions Against Retailer

(a) Except as provided in Subsections (b) and (c) of this section, the commission or administrator may cancel or suspend for not more than 60 days a retail license or permit or a private club registration permit if it is found, on notice and hearing, that the licensee or permittee knowingly sold, served, dispensed, or delivered an alcoholic beverage to a minor in violation of this code or knowingly permitted a minor to violate Section 106.04 or 106.05 of this code on the licensed premises.

(b) For a second offense the commission or administrator may cancel the license or permit or suspend it for not more than three months. For a third offense within a period of 36 consecutive months the commission or administrator may cancel the permit or suspend it for not more than 12 months.

(c) The commission or administrator may relax the provisions of this section concerning suspension and cancellation and assess a sanction the commission or administrator finds just under the circumstances if, at a hearing, the licensee or permittee establishes to the satisfaction of the commission or administrator:

(1) that the violation could not reasonably have been prevented by the permittee or licensee by the exercise of due diligence;

(2) that the permittee or licensee was entrapped; or

(3) that an agent, servant, or employee of the permittee or licensee violated this code without the knowledge of the permittee or licensee.
[Acts 1977, 65th Leg., p. 516, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 107. TRANSPORTATION AND IMPORTATION

Section
107.01. Transportation of Liquor: Statement Required.
107.02. Transportation of Beer: Statement Required.
107.03. Delivery of Liquor in Dry Area.
107.04. Delivery of Beer in Dry Area.
107.05. Importation of Liquor.
107.06. Importation of Beer.
107.07. Importation for Personal Use; Importation by Railroad Companies.
107.08. Transportation of Beverages for Personal Consumption.

§ 107.01. Transportation of Liquor: Statement Required

(a) No person may transport liquor into this state or on a public highway, street, or alley in this state unless the person accompanying or in charge of the shipment has with him, available for exhibition and inspection, a written statement furnished and signed by the shipper showing the name and address of the consignor and the consignee, the origin and destination of the shipment, and any other information required by rule or regulation of the commission.

(b) The person in charge of the shipment while it is being transported shall exhibit the statement to the commission, an authorized representative of the commission, or a peace officer on demand, and it is a violation of this code to fail or refuse to do so. The representative or officer shall accept the written statement as prima facie evidence of the legal right to transport the liquor.
[Acts 1977, 65th Leg., p. 516, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 107.02. Transportation of Beer: Statement Required

(a) It is lawful for a person to transport beer from any place where its sale, manufacture, or distribution is authorized to another place in the state where its sale, manufacture, or distribution is authorized, or from the state boundary to a place where its sale, manufacture, or distribution is authorized, even though the route of transportation may cross a dry area.

(b) A shipment of beer must be accompanied by a written statement furnished and signed by the shipper showing:

(1) the name and address of the consignor and consignee;

(2) the origin and destination of the shipment; and

(3) any other information required by the commission or administrator.

(c) The person in charge of the shipment while it is being transported shall exhibit the written statement to any representative of the commission or peace officer who demands to see it. The statement shall be accepted by the representative or peace officer as prima facie evidence of the legal right to transport the beer.

(d) A person who transports beer not accompanied by the required statement, or who fails to exhibit the statement after a lawful demand, violates this code.

[Acts 1977, 65th Leg., p. 517, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 107.03. Delivery of Liquor in Dry Area

No carrier may transport and deliver liquor to a person in a dry area in this state except for a purpose authorized by this code.

[Acts 1977, 65th Leg., p. 517, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 107.04. Delivery of Beer in Dry Area

A common carrier may not deliver beer in a dry area unless it is consigned to a local or general distributor's licensee who has previously stated that he intends to transport it to a licensed place of business in a wet area. A common carrier who transports beer to a distributor in a dry area shall comply strictly with this section and Section 107.02 of this code.

[Acts 1977, 65th Leg., p. 517, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 107.05. Importation of Liquor

(a) No person may import liquor into the state and deliver it to a person not authorized to import it.

(b) This section does not apply to the transportation of liquor into the state as authorized by Section 107.07 of this code.

[Acts 1977, 65th Leg., p. 517, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 107.06. Importation of Beer

(a) No person may import beer into the state except the holder of a manufacturer's or general, local, or branch distributor's license.

(b) No person may transport beer into this state unless it is consigned and delivered to one of the licensees named in Subsection (a) of this section.

(c) This section does not apply to the importation or transportation of military beer consigned to a military installation or to the importation of beer as authorized under Section 107.07 of this code.

[Acts 1977, 65th Leg., p. 517, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 107.07. Importation for Personal Use; Importation by Railroad Companies

(a) A Texas resident may import not more than one quart of liquor for his own personal use without being required to hold a permit. A nonresident of Texas may import not more than a gallon of liquor for his own personal use without being required to hold a permit. A person importing liquor into the state under this subsection must pay the state tax on liquor and affix the required tax stamps. No person under the age of 18 years and no intoxicated person may import any liquor into the state.

(b) A person may import beer into this state for his own personal use without being required to hold a license, but may not import more than 24 twelve-ounce bottles or an equivalent quantity in one day. He must pay the state tax on beer.

(c) A member of the armed forces stationed in Texas is treated as a Texas resident for the purposes of Subsections (a) and (b) of this section.

(d) A railroad company operating in this state may import beer owned by the company in quantities necessary to meet the needs of its passengers, but it may not sell or serve beer in a dry area.

[Acts 1977, 65th Leg., p. 518, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 107.08. Transportation of Beverages for Personal Consumption

A person who purchases an alcoholic beverage for his own consumption may transport it from a place where its sale is legal to a place where its possession is legal without holding a license or permit.

[Acts 1977, 65th Leg., p. 518, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 108. ADVERTISING

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO ADVERTISING

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SUBCHAPTER A. GENERAL PROVISIONS RELATING TO ADVERTISING

§ 108.01. Deceptive, Disparaging, or Otherwise Unlawful Advertising

(a) No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may publish, disseminate, or cause to be published or disseminated by any medium enumerated in Subsection (b) of this section an advertisement of a brewery product that:

(1) causes or is reasonably calculated to cause deception of the consumer with respect to the product advertised;

(2) directly or by ambiguity, omission, or inference tends to create a misleading impression;

(3) is untrue in any particular;

(4) refers to the alcohol content of the product;

(5) disparages a competitor's product; or

(6) is obscene or indecent.

(b) The media covered by this section include:

(1) radio broadcasting;

(2) newspapers, periodicals, and other publications;

(3) signs and outdoor advertising; and

(4) any printed or graphic matter.

[Acts 1977, 65th Leg., p. 519, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.02. Prohibited Forms of Advertising

No person may advertise an alcoholic beverage or the sale of an alcoholic beverage by the employment or use of a sound vehicle or handbill on a public street, alley, or highway.

[Acts 1977, 65th Leg., p. 519, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.03. Regulation of Promotional Activities

The commission shall adopt rules permitting and regulating the use of business cards, menu cards, stationery, service vehicles and equipment, and delivery vehicles and equipment that bear alcoholic beverage advertising. The commission shall also adopt rules permitting and regulating the use of insignia advertising beer by brand name on caps, regalia, or uniforms worn by employees of manufacturers or distributors or by participants in a game, sport, athletic contest, or revue if the participants are sponsored by a manufacturer or distributor.

[Acts 1977, 65th Leg., p. 519, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.04. Acts of Promotional or Courtesy Nature: Administrative Discretion

The commission may promulgate rules which shall set definite limitations consistent with the general provisions of this code, relaxing the restrictions of Sections 102.14, 102.15, and 108.06 of this code, with respect to:

(1) the sale or gift of novelties advertising the product of a manufacturer or distributor;

(2) the making of gifts to civic, religious, or charitable organizations;

(3) the cleaning and maintenance of coil connections for dispensing draught beer;

(4) the lending of equipment for special occasions; and

(5) acts of a purely courtesy nature.

[Acts 1977, 65th Leg., p. 519, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.05. Allowance for Advertisement or Distribution

No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may pay or make an allowance to a retail dealer for an advertising or distribution service.

[Acts 1977, 65th Leg., p. 520, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.06. Prizes and Premiums

No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may offer a prize, premium, gift, or other inducement to a dealer in or consumer of brewery products.

[Acts 1977, 65th Leg., p. 520, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.07. Advertising of Mixed Beverage Establishments

The provisions of this code applicable to outdoor advertising and to advertising in or on the premises do not apply to establishments for which a mixed beverage permit has been issued. The commission or administrator shall promulgate reasonable rules relating to that type of advertising, and violation of any of those rules is a violation of this code.

[Acts 1977, 65th Leg., p. 520, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 108.08 to 108.50 reserved for expansion]

SUBCHAPTER B. OUTDOOR ADVERTISING

§ 108.51. Definitions

In this subchapter:

(1) "Outdoor advertising" means any sign bearing a word, mark, description, or other device that is used to advertise an alcoholic beverage or the business of a person who manufactures, sells, or distributes an alcoholic beverage if the sign is displayed outside the walls or enclosure of a building or structure where a license or permit is issued or if it is displayed inside a building but within five feet of an exterior wall facing a street or highway so that

it is visible by a person of ordinary vision from outside the building. "Outdoor advertising" does not include advertising appearing on radio or television, in a public vehicular conveyance for hire, or in a newspaper, magazine, or other literary publication published periodically. For the purpose of this definition the word "sign," with respect to a retailer, does not include an identifying label affixed to a container as authorized by law or to a card or certificate of membership in an association or organization if the card or certificate is not larger than 80 square inches.

(2) "Billboard" means a structure directly attached to the land, a house, or a building having one or more spaces used to display a sign or advertisement of an alcoholic beverage or a person engaged in the manufacture, sale, or distribution of alcoholic beverages, whether or not the structure is artificially lighted. "Billboard" does not include a bench or a wall or other part of a structure used as a building, fence, screen, front, or barrier.

(3) "Electric sign" means a structure or device other than an illuminated billboard by which artificial light produced by electricity is used to advertise the alcoholic beverage business by a person who manufactures, sells, or distributes alcoholic beverages or to advertise an alcoholic beverage.

[Acts 1977, 65th Leg., p. 520, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 500, ch. 231, § 1, eff. Aug. 27, 1979.]

§ 108.52. Permissible Outdoor Advertising

(a) No outdoor advertising is permitted in this state except that which is authorized by this section or under rules of the commission or administrator promulgated pursuant to Section 108.03 of this code.

(b) Billboards and electric signs are permitted if they are not located in a manner contrary to this code.

(c) Retail licensees and permittees may erect or maintain one sign at each place of business which may read as follows:

(1) if a beer retailer, the sign may read "Beer";

(2) if an off-premises beer retailer, the sign may read "Beer" or "Beer to Go";

(3) if a wine and beer retailer, the sign may read "Beer," "Beer and Wine," or "Beer, Wine and Ale";

(4) if a wine and beer off-premises retailer, the sign may read "Beer," "Beer to Go," "Beer and Wine," "Beer and Wine to Go," "Beer, Wine and Ale," or "Beer, Wine and Ale to Go";

(5) if a package store permittee, the sign may read "Package Store," "Liquors," or "Wines and Liquors," and if a retail dealer's off-premise license is also held, the sign may read "Package Store," "Wines, Liquors and Beer," or "Wine, Liquors and Beer to Go"; or

(6) if a wine only package store permittee, the sign may read "Wine" or "Wines," and if a retail dealer's off-premise license is also held, the sign may read "Wines and Beer," "Wine and Beer," or "Wine and Beer to Go."

(d) A sign erected under Subsection (c) of this section may be placed inside or outside the place of business so as to be visible to the general public. None of the letters on a sign may be more than 12 inches in height, and no sign may contain any wording, insignia, or device representative of the brand or name of an alcoholic beverage. The commission or administrator may permit a licensee or permittee to erect or maintain one sign at each entrance or side of a building occupied by him if it faces more than one street or highway.

(e) Billboards, electric signs, or other signs to designate the firm name or business of a permittee or licensee authorized to manufacture, rectify, bottle, or wholesale alcoholic beverages may be displayed at the licensee's or permittee's place of business.

(f) A display composed of alcoholic beverages or printed or lithographed material advertising alcoholic beverages located inside the licensed premises is permitted if the alcoholic beverages or advertising material is not placed within six inches of a window or opening facing a street, alley, or highway. A card or certificate of membership in an association or organization is not "advertising material" for the purpose of this subsection if it is not larger than 80 square inches.

(g) Outdoor advertising of an alcoholic beverage or of the business of any person engaged in the manufacture, sale, or distribution of an alcoholic beverage is permitted to be placed on or affixed to a bench unless:

(1) the advertising is prohibited by an ordinance of an incorporated city or town; or

(2) the advertising is in an area or zone where the sale of alcoholic beverages is prohibited by law.

[Acts 1977, 65th Leg., p. 521, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 501, ch. 231, § 2, eff. Aug. 27, 1979.]

§ 108.53. Billboards and Electric Signs: When Permit is Required

(a) No person may erect a billboard or electric sign advertising an alcoholic beverage within 200 feet of a retail establishment authorized to sell that beverage unless he has first obtained a permit for that purpose from the commission. No permit is

required for a billboard or electric sign that is not located within 200 feet of a retail establishment authorized to sell the advertised alcoholic beverage.

(b) The commission or administrator shall provide permit application forms, which may contain any information the commission or administrator deems necessary. The application shall contain a statement that the erection or maintenance of the billboard or electric sign will not have the effect of advertising or directing patronage to a particular retail establishment authorized to sell alcoholic beverages. Application shall be made under oath, addressed to the commission or administrator.

(c) The commission or administrator shall issue a permit if either of them finds that all statements in the application are true and the erection or maintenance of the billboard or electric sign will not be contrary to this code or to a rule of the commission. Otherwise, the commission or administrator shall refuse to issue a permit.

[Acts 1977, 65th Leg., p. 521, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.54. Nonconforming Outdoor Advertising: Seizure, Removal

(a) No person may erect, maintain, or display any outdoor advertising, billboard, or electric sign which does not conform in all respects to the provisions of this code. A billboard or electric sign that does not conform is illegal equipment which is subject to seizure and forfeiture as provided in this code.

(b) The owner of any outdoor advertising that does not conform to the provisions of this code is responsible for removing it from public view immediately, and the failure to do so is a violation of this code.

[Acts 1977, 65th Leg., p. 522, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.55. Local Regulation of Billboards, Electric Signs

No person may erect or maintain a billboard or electric sign in violation of an ordinance of an incorporated city or town.

[Acts 1977, 65th Leg., p. 522, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.56. Dry Areas

No person may erect or maintain a billboard or electric sign in an area or zone where the sale of alcoholic beverages is prohibited by law.

[Acts 1977, 65th Leg., p. 522, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 109. MISCELLANEOUS REGULATORY PROVISIONS

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SUBCHAPTER A. SALVAGED AND INSURED LOSSES

§ 109.01. Sale of Salvaged or Insured Loss

If a person who does not hold a permit or license to sell alcoholic beverages acquires possession of alcoholic beverages as an insurer or insurance salvor in the salvage or liquidation of an insured damage or loss sustained in this state by a qualified licensee or permittee, he may sell the beverages in one lot or parcel as provided in this subchapter without being required to obtain a license or permit.

[Acts 1977, 65th Leg., p. 523, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.02. Registration of Beverages With Commission

Immediately after taking possession of the alcoholic beverages, the insurer or insurance salvor shall register them with the commission, furnishing the commission a detailed inventory and the exact location of the beverages. At the time of registration, the registrant shall post with the commission a surety bond in an amount that the administrator finds adequate to protect the state against the taxes due on the beverages, if any are due. The registrant shall remit with the registration a fee of $10. The fee only permits the sale of the beverages listed in the registration.

[Acts 1977, 65th Leg., p. 523, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.03. Prerequisite to Salability

An alcoholic beverage is salable under this subchapter only if it has not been adulterated, it is fit for human consumption, all tax stamps required by law have been affixed, and the labels are legible as to contents, brand, and manufacturer.

[Acts 1977, 65th Leg., p. 523, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.04. Sale of Beer: Procedure

(a) When the commission is notified under this subchapter of the acquisition of beer or its containers or original packages, it shall immediately notify a holder of a general, local, or branch distributor's license who handles the brand of beer and who operates in the county where it is located or, if it is located in a dry area or if no distributor operates in the county, the nearest distributor handling the brand or the manufacturer who brewed it.

(b) The insurer or insurance salvor, the commission, and the distributor or manufacturer shall jointly agree whether the beer is salable. If it is determined to be unsalable, the commission shall destroy it. If it is determined to be salable, the manufacturer or distributor shall be given the opportunity to purchase it. A distributor may purchase beer at the cost price less any state taxes that have been paid, F.O.B. its place of business. A manufacturer may purchase beer at the cost price to the nearest distributor of the brand, less any state taxes that have been paid, F.O.B. that distributor's place of business. A manufacturer or distributor may purchase returnable bottles, containers, or packages at their deposit price.

(c) If the distributor or manufacturer does not exercise the right to purchase the merchandise within 10 days after being given the opportunity to purchase it, the insurer or insurance salvor may sell it to any qualified licensee or permittee as provided in Section 109.01 of this code.

[Acts 1977, 65th Leg., p. 523, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.05. Sale of Liquor: Procedure

(a) When the commission is notified under this subchapter of the acquisition of liquor or its containers or original packages, it shall immediately notify the holder or holders of wholesaler's, class B wholesaler's, or local class B wholesaler's permits who handle and regularly sell the brand or brands of liquor involved and who operate in the area where the liquor is located, or who operate in the nearest wet area if the liquor is in a dry area. The commission shall also notify the nonresident seller's permittees who handle the brand or brands of liquor involved, or the manufacturer's agent's permittees who represent those nonresident seller's permittees.

(b) The commission, the permittees who are notified, and the insurer or insurance salvor shall jointly determine whether the liquor is salable. If the liquor is determined to be unsalable, the commission shall destroy it. If it is determined to be salable, it shall first be offered for sale to the wholesaler and nonresident seller of the brand or brands at their cost price, less any state taxes that have been paid on the liquor.

(c) If the wholesaler does not exercise the right to purchase the liquor, container, or packages within 10 days after it is offered, the commission shall sell it at a public or private sale.

[Acts 1977, 65th Leg., p. 524, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.06. Purchaser's Right to Use Beverages

A permittee or licensee who purchases alcoholic beverages under this subchapter may treat them as other alcoholic beverages acquired by him as provided in this code.

[Acts 1977, 65th Leg., p. 524, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.07. Salvor May Reject Bid

A salvor may reject a bid made on only a part of a whole salvage.

[Acts 1977, 65th Leg., p. 524, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 109.08 to 109.20 reserved for expansion]

SUBCHAPTER B. HOME PRODUCTION OF WINE

§ 109.21. Home Production of Wine

(a) The head of a family or an unmarried adult may produce for the use of his family or himself not more than 200 gallons of wine per year. No license or permit is required.

(b) The commission may prohibit the use of any ingredient it finds detrimental to health or susceptible of use to evade this code. Only wine made from the normal alcoholic fermentation of the juices of dandelions or grapes, raisins, or other fruits may be produced under this section. The possession of wine produced under this section is not an offense if the person making it complies with all provisions of this section and the wine is not distilled, fortified, or otherwise altered to increase its alcohol content.

[Acts 1977, 65th Leg., p. 524, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 863, ch. 387, § 1, eff. Aug. 27, 1979.]

§ 109.22. Repealed by Acts 1979, 66th Leg., p. 863, ch. 387, § 2, eff. Aug. 27, 1979

The repealed section, relating to sale of materials for home production of wine, was derived from Acts 1977, 65th Leg., p. 525, ch. 194, § 1.

[Sections 109.23 to 109.30 reserved for expansion]

SUBCHAPTER C. LOCAL REGULATION OF ALCOHOLIC BEVERAGES

§ 109.31. Municipal Regulation of Liquor

A city by charter may prohibit the sale of liquor in all or part of the residential sections of the city.

[Acts 1977, 65th Leg., p. 525, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.32. Municipal and County Regulation of Beer

(a) An incorporated city or town by charter or ordinance may:

(1) prohibit the sale of beer in a residential area; and

(2) regulate the sale of beer and prescribe the hours when it may be sold, except the city or town may not permit the sale of beer when its sale is prohibited by this code.

(b) In a county that has only one incorporated city or town that has a majority of the population of the county, according to the most recent federal census, and where the city or town has shortened the hours of sale for beer on Sundays by a valid charter amendment or ordinance before January 1, 1957, the commissioners court may enter an order prohibiting the sale of beer on Sundays during the hours it is prohibited in the city or town. The order may apply to all or part of the area of the county located outside the city or town. The commissioners court may not adopt the order unless it first publishes notice for four consecutive weeks in a newspaper of general circulation in the county published in the county or a nearby county.

(c) In exercising the authority granted by this section, the city, town, or county may distinguish between retailers selling beer for on-premises consumption and retailers, manufacturers, or distributors who do not sell beer for on-premises consumption.

[Acts 1977, 65th Leg., p. 525, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.33. Sales Near School, Church, or Hospital

The commissioners court of a county may enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town may enact regulations applicable in the city or town, prohibiting the sale of alcoholic beverages by a dealer whose place of business is within 300 feet of a church, public school, or public hospital. The measurement of the distance shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections.

[Acts 1977, 65th Leg., p. 526, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 109.34 to 109.50 reserved for expansion]

SUBCHAPTER D. OTHER MISCELLANEOUS PROVISIONS

§ 109.51. Sacramental Wine

Nothing in this code limits the right of a minister, priest, rabbi, or religious organization from obtaining sacramental wine for sacramental purposes only, directly from any lawful source inside or outside the state. No fee or tax may be directly or indirectly charged for the exercise of this right. The commission by rule and regulation may regulate the importation of sacramental wine and prevent unlawful use of the right granted by this section.

[Acts 1977, 65th Leg., p. 526, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.52. Warehouse Receipts

A bank, trust company, or other financial institution that owns or possesses warehouse receipts for alcoholic beverages as security for a loan, after receiving permission from the commission or administrator, may sell the beverages to a licensee or permittee authorized to purchase them.

[Acts 1977, 65th Leg., p. 526, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.53. Citizenship of Permittee; Control of Premises; Subterfuge Ownership; Etc.

No person who has not been a citizen of Texas for a period of three years immediately preceding the filing of his application therefor shall be eligible to receive a permit under this code. No permit except a brewer's permit, and such other licenses and permits as are necessary to the operation of a brewer's permit, shall be issued to a corporation unless the same be incorporated under the laws of the state and unless at least 51 percent of the stock of the corporation is owned at all times by citizens who have resided within the state for a period of three years and who possess the qualifications required of other applicants for permits; provided, however, that the restrictions contained in the preceding clause shall not apply to domestic or foreign corporations that were engaged in the legal alcoholic beverage business in this state under charter or permit prior to August 24, 1935. Partnerships, firms, and associations applying for permits shall be composed wholly of citizens possessing the qualifications above enumerated. Any corporation (except carrier) holding a permit under this code which shall violate any provisions hereof, or any rule or regulation promulgated hereunder, shall be subject to forfeiture of its charter and it shall be the duty of the attorney general, when any such violation is called to his attention, to file a suit for such cancellation in a district court of Travis County. Such provisions of this section as require Texas citizenship or require incorporation in Texas shall not apply to the holders of agent's, industrial, medicinal and carrier's permits. No person shall sell, warehouse, store or solicit orders for any liquor in any wet area without first having procured a permit of the class required for such privilege, or consent to the use of or allow his permit to be displayed by or used by any person other than the one to whom the permit was issued. It is the intent of the legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this code shall be liberally construed to carry out this intent, and it shall be the duty of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices hereinafter declared to constitute unlawful trade practices. No applicant for a package store permit or a renewal thereof shall

have authority to designate as "premise" and the commission or administrator shall not approve a lesser area than that specifically defined as "premise" in Section 11.49(a) of this code. Every permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee shall be unlawful. No person under the age of 18 years, unless accompanied by his or her parent, guardian, adult husband or adult wife, or other adult person into whose custody he or she has been committed for the time by some court, shall knowingly be allowed on the premises of the holder of a package store permit. Any package store permittee who shall be injured in his business or property by another package store permittee by reason of anything prohibited in this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and/or to recover threefold the damages by him sustained; plus costs of suit including a reasonable attorney's fee. The provision prohibiting the licensing of only a portion of a building as premise for a package store permit shall not apply to hotels as already defined in this code.

[Acts 1977, 65th Leg., p. 526, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.54. Festivals and Civic Celebrations

(a) Any licensee who has purchased beer for sale at the site of a festival or civic celebration which has been held annually for at least 15 years during a specified period not exceeding 10 days shall be authorized for 24 hours following the official close of the celebration to sell any beer remaining at the site to any licensee or permittee authorized to purchase beer for resale.

(b) Records of any such transactions shall be kept as may be required by the administrator.

[Added by Acts 1979, 66th Leg., p. 864, ch. 388, § 1, eff. June 6, 1979.]

TITLE 5. TAXATION

CHAPTER 201. LIQUOR TAXES

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SUBCHAPTER A. TAX ON LIQUOR OTHER THAN ALE AND MALT LIQUOR

§ 201.01. Liquor

In this subchapter, "liquor" does not include ale or malt liquor.

[Acts 1977, 65th Leg., p. 529, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.02. "First Sale" Defined

In this subchapter, "first sale":

(1) as applied to liquor imported into this state by the holder of a wholesaler's permit authorizing importation, means the first actual sale by the permittee to the holder of any other permit authorizing the retail sale of the beverage or to the holder of a local distributor's permit; and

(2) as applied to all other liquor, means the first sale, possession, distribution, or use in this state.

[Acts 1977, 65th Leg., p. 529, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.03. Tax on Distilled Spirits

(a) A tax is imposed on the first sale of distilled spirits at the rate of $2 per gallon.

(b) The minimum tax imposed on packages of distilled spirits containing two ounces or less is five cents per package.

(c) Should packages containing less than one-half pint but more than two ounces ever be legalized in this state, the minimum tax imposed on each of these packages is $0.122.

[Acts 1977, 65th Leg., p. 529, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.04. Tax on Vinous Liquor

(a) A tax is imposed on the first sale of vinous liquor that does not contain over 14 percent of alcohol by volume at the rate of 17 cents per gallon.

(b) A tax is imposed on vinous liquor that contains more than 14 percent of alcohol by volume at the rate of 34 cents per gallon.

(c) A tax is imposed on artificially carbonated and natural sparkling vinous liquor at the rate of 43 cents per gallon.

[Acts 1977, 65th Leg., p. 529, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.05. Reporting System

A person who holds a permit authorizing the importation of liquor into this state shall pay the liquor tax by the reporting system under bond.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.06. Payment of Tax; Discounts

(a) The tax on liquor, levied and computed under this subchapter, shall be paid by a remittance payable to the state treasurer and forwarded together with any required sworn statement of taxes due to the commission in Austin on or before the date it is due.

(b) A discount of two percent of the amount due shall be withheld by the permittee for keeping records, furnishing bonds, and properly accounting for the remittance of the tax due. No discount is permitted if the tax is delinquent at the time of payment.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.07. Due Date

The tax on liquor is due and payable on the 15th of the month following the first sale.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.08. Exemption From Tax

(a) No tax may be collected on liquor:

(1) shipped out of state for consumption outside the state; or

(2) sold aboard a ship for ship's supplies.

(b) The commission shall provide forms for claiming the exemption prescribed by this section.

(c) A tax credit shall be allowed for payment of any unintended or excess tax.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.09. Refund Due on Disposition Outside of State

The holder of any permit authorizing the transportation of liquor out of this state may apply to the commission for a refund of the excise tax on liquor on which the state tax has been paid on proper proof that the liquor was sold or disposed of outside of this state.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.10. Excess Tax

A permittee is entitled to a refund or tax credit on future tax payment for any excess tax on liquor paid through oversight, mistake, error, or miscalculation.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.11. Tax Credits and Refunds

The commission shall provide by rule for the equitable and final disposition of tax refunds or credits when liquor tax is overpaid or paid by mistake. It shall prescribe the time and manner for filing claims for credits and refunds and provide appropriate forms.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.12. Appropriations for Refunds

Necessary funds from the collection of the tax on imported liquor before the revenue from that tax has been allocated may be appropriated for the payment of refunds of tax on imported liquor.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.13. Sale of Untaxed Liquor Prohibited

No person may sell, offer for sale, or store for the purpose of sale in this state any liquor on which the state or federal tax, if due, has not been paid.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.14. Invoices of Transported Liquor

A holder of a permit authorizing the wholesaling of liquor and the transporting of liquor outside of this state shall furnish to the commission duplicate copies of all invoices for the sale of liquor transported outside of this state within 24 hours after the liquor has been removed from the permittee's place of business.

[Acts 1977, 65th Leg., p. 531, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.15. Evidence in Suit

In any suit brought to enforce the collection of tax owed by the holder of a permit authorizing the importation of liquor into this state, a certificate by the commission or administrator showing the delinquency is prima facie evidence of:

(1) the levy of the tax or the delinquency of the stated amount of tax and penalty; and

(2) compliance by the commission with the provisions of this code relating to the computation and levy of the tax.

[Acts 1977, 65th Leg., p. 531, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.16. Penalty

A person who violates any section of this subchapter except Section 201.09 or 201.13 of this code commits a misdemeanor which on conviction is punishable by a fine of not less than $100 nor more than $1,000 or by imprisonment in the county jail for not less than 30 days nor more than one year. Violations of Sections 201.09 and 201.13 are punishable in accordance with Section 1.05 of this code.

[Acts 1977, 65th Leg., p. 531, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.17. Liquor in Metric Containers

For the purpose of the taxes imposed on liquor by this subchapter and on ale and malt liquor by Subchapter B of this chapter, if the liquor is in metric containers the amount of tax due is determined by converting the metric amount into the equivalent amount in gallons and applying the appropriate tax rate. The commission shall prepare tables showing the amount of tax due on various types of liquor, including ale and malt liquor, in metric containers.

[Acts 1977, 65th Leg., p. 531, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 201.18 to 201.40 reserved for expansion]

SUBCHAPTER B. TAX ON ALE AND MALT LIQUOR

§ 201.41. First Sale

"First sale" of ale or malt liquor means its first sale in Texas or its importation into this state, whichever occurs first, but not both.

[Acts 1977, 65th Leg., p. 531, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.42. Tax on Ale and Malt Liquor

A tax is imposed on the first sale of ale and malt liquor at the rate of $0.165 per gallon.

[Acts 1977, 65th Leg., p. 531, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.43. Duty to Pay Tax; Due Date

(a) The importer has the primary duty to pay the tax on ale and malt liquor imported into this state.

(b) The brewer has the primary duty to pay the tax on ale and malt liquor brewed in this state.

(c) The tax is due and payable on the 15th day of the month following the month in which the taxable first sale occurs.

[Acts 1977, 65th Leg., p. 531, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.44. Tax Exemptions

No tax may be collected on ale or malt liquor:

(1) shipped out of the state for consumption outside the state; or

(2) sold aboard a ship for ship's supplies.

[Acts 1977, 65th Leg., p. 391, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.45. Prohibition of Sale of Untaxed Ale or Malt Liquor

No person may sell, offer for sale, or store for the purpose of sale in this state any ale or malt liquor on which the state or federal tax, if due, has not been paid.

[Acts 1977, 65th Leg., p. 532, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.46. Tax Liability

A person possessing ale or malt liquor on which the tax is delinquent is liable for the delinquent tax in addition to the criminal penalties.

[Acts 1977, 65th Leg., p. 532, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.47. Tax Refunds and Credits

(a) The holder of a permit authorizing the transportation of ale or malt liquor out of the state may apply to the commission for a refund of the excise tax on ale or malt liquor that has been paid on proper proof that the ale or malt liquor was sold or disposed of outside the state.

(b) Tax credits shall be allowed for overpayment or mistaken payment of the tax on ale or malt liquor, and the commission shall provide by rule for the equitable and final disposition of the tax credits.

[Acts 1977, 65th Leg., p. 532, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.48. Payment

The tax on ale and malt liquor shall be paid by a remittance payable to the state treasurer and forwarded, together with any required sworn statements of taxes due, to the commission in Austin on or before the date it is due. A discount of two percent of the amount due shall be withheld by the permittee or licensee for keeping records, furnishing bonds, and properly accounting for the remittance of the tax due. No discount is permitted if the tax is delinquent at the time of payment.

[Acts 1977, 65th Leg., p. 391, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.49. May Require Information

(a) The commission may require all brewers, nonresident brewers, importers, wholesalers, and class B wholesalers of ale and malt liquor to provide information as to purchases, sales, and shipments to en-

able the commission to collect the full amount of the tax due. No brewer, nonresident brewer, importer, wholesaler, or class B wholesaler may fail or refuse to furnish the required information.

(b) The commission may seize or withhold from sale the brewer's, nonresident brewer's, importer's, wholesaler's, or class B wholesaler's ale or malt liquor for failure or refusal to supply the information required under Subsection (a) of this section or to permit the commission to make an investigation of pertinent records, whether the records are inside or outside of this state.

[Acts 1977, 65th Leg., p. 532, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.50. Invoices of Transported Liquor

The holder of a permit authorizing the wholesaling of liquor and the transportation of it out of the state shall furnish to the commission duplicate copies of all invoices for the sale of liquor transported out of the state within 24 hours after the liquor has been removed from the permittee's place of business. Violation of this section is punishable by the penalty prescribed in Section 201.16 of this code.

[Acts 1977, 65th Leg., p. 532, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.51. Evidence in Suit

In any suit brought to enforce the collection of tax due on ale or malt liquor brewed in or imported into this state, a certificate by the commission or administrator showing the delinquency is prima facie evidence of:

(1) the levy of the tax or the delinquency of the stated amount of tax and penalty; and

(2) compliance by the commission with the provisions of this code relating to the computation and levy of the tax.

[Acts 1977, 65th Leg., p. 533, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.52. Ale and Malt Liquor in Metric Containers

Section 201.17 of this code applies to the taxation of ale and malt liquor in metric containers.

[Acts 1977, 65th Leg., p. 533, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 201.53 to 201.70 reserved for expansion]

SUBCHAPTER C. STAMPS

§ 201.71. Stamps

Unless the liquor is exempt from tax or payment has been or is to be made by a permittee in accordance with the provisions of Subchapter A, B, or D of this chapter, the tax levied under Subchapter A or B shall be paid by affixing a stamp or stamps on each bottle or container of liquor. The stamp shall be affixed in strict accordance with the commission's rules and regulations.

[Acts 1977, 65th Leg., p. 533, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.72. Duty to Print

The commission and the board of control shall have engraved or printed the liquor and beer tax stamps required by this code. The board of control shall let the contracts for the stamps required by this code as provided by law. The commission shall expend funds necessary to keep an ample supply of stamps on hand.

[Acts 1977, 65th Leg., p. 533, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.73. Design

The commission shall prescribe the design and denomination of the tax stamps. Each stamp must show the amount of tax for which it evidences payment and shall contain the words "Texas State Tax Paid."

[Acts 1977, 65th Leg., p. 533, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.74. State Treasurer

(a) The state treasurer is responsible for the custody and sale of tax stamps and for the proceeds of the sales under his official bond.

(b) The treasurer shall sell tax stamps only to qualified persons designated by the commission and to no other person.

(c) The treasurer may designate any state or national bank in this state as his agent to deliver and collect for any tax stamps and to remit the sale proceeds to him.

(d) Invoices for tax stamps shall be issued by the treasurer in triplicate and numbered consecutively. The original of the invoice shall be forwarded to the purchaser or to the person in whose care it may be sent for the benefit of a qualified purchaser. The second copy shall be transmitted to the commission daily and accompanied by those statements required by the commission. The third copy shall be retained by the treasurer.

(e) The treasurer shall make and keep a permanent record of all tax stamps received by him as well as all tax stamps sold. This record shall provide a perpetual inventory of all tax stamps and their disposition. The record must be available at all times to the commission or its authorized representatives.

[Acts 1977, 65th Leg., p. 533, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.75. Delivery of Stamps

The commission shall prescribe the manner in which tax stamps are delivered by the state treasurer to the commission for use and sale by its inspectors in charge of ports of entry.

[Acts 1977, 65th Leg., p. 534, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.76. Refunds

(a) The commission may make refunds for tax stamps in all cases where:

(1) stamped liquor is returned to the distillery or manufacturer, on certification by a duly authorized representative of the commission who inspected the shipment;

(2) stamped liquor has been destroyed, on certification by a duly authorized representative of the commission that the liquor has been destroyed;

(3) a person who has been authorized to purchase tax stamps and is in possession of unused tax stamps on discontinuation of business; and

(4) tax stamps of improper value have been erroneously affixed to a bottle or container of liquor and those tax stamps have been destroyed in a manner prescribed by the commission.

(b) To obtain a refund under this section, it must be shown that the tax stamps for which a refund is asked were purchased from the state treasurer and that the refund is made to a person authorized to purchase tax stamps from the treasurer. No other refunds for tax stamps are allowed.

(c) Sufficient funds to pay refunds for tax stamps may be appropriated from the revenue derived from the sale of the tax stamps before that revenue has been allocated.

[Acts 1977, 65th Leg., p. 534, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.77. Who May Purchase Stamps

The commission shall designate those permittees or other persons entitled to purchase state tax stamps.

[Acts 1977, 65th Leg., p. 534, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.78. Stamps for Wine

Tax stamps for wine shall be issued in multiples of the rate assessed for each pint and for each one-tenth of a gallon.

[Acts 1977, 65th Leg., p. 534, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.79. Alternative Method of Collecting Tax on Wine

The commission may provide by rule an alternative method of collecting the tax on wine. That method may dispense with the use of tax stamps.

[Acts 1977, 65th Leg., p. 534, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.80. Exemption

The commission may prescribe by order special rules for the payment of the tax imposed by Subchapter A or B of this chapter in any circumstance that in the judgment of the commission creates an emergency or makes it impractical to require the affixing of tax stamps.

[Acts 1977, 65th Leg., p. 534, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.81. Stamps for Distilled Spirits

Tax stamps for distilled spirits may be issued only in multiples of the rate assessed each half-pint, except that when distilled spirits are contained in containers of one-tenth of a gallon, tax stamps shall be issued at the assessed rate for each type of distilled spirit.

[Acts 1977, 65th Leg., p. 534, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.82. Imported Distilled Spirits; Federal Stamp

A container of distilled spirits that has a federal liquor strip stamp attached or that has been imported from a foreign country is subject to taxation and must have the appropriate state tax stamp for distilled spirits affixed to it, unless it is taxed under the reporting system.

[Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 201.83 to 201.90 reserved for expansion]

SUBCHAPTER D. TAX ON LIQUOR PRESCRIPTIONS

§ 201.91. Tax on Liquor Prescriptions

A tax is imposed on each liquor prescription filled by a pharmacist at the rate of 22 cents per prescription.

[Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.92. Tax Stamp

The tax on liquor prescriptions levied by Section 201.91 of this code shall be paid by affixing a tax stamp to each prescription before the prescribed liquor is sold or dispensed by the pharmacist.

[Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.93. Prohibitions

No person may sell any liquor by prescription without first affixing the required tax stamp to the prescription and to the container of prescribed liquor.

[Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.94. Liability for Tax

The liquor prescription tax is a liability on the owner of the pharmacy or drug store selling the prescribed liquor.

[Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.95. Revocation of Permit

Failure to pay the tax due on liquor prescriptions is a ground for revocation of any permit authorizing the sale of liquor by prescription.

[Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.96. Suit

If the owner of a pharmacy fails to pay the tax on liquor prescriptions, the commission may sue him to collect the amount due.

[Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.97. Printing, Distribution, and Use of Stamps

(a) The commission shall design the tax stamp required by this subchapter. Each tax stamp shall have a serial number or other identifying mark printed on it. Each tax stamp shall be in duplicate so that one of each of the counterparts may be affixed to the container of liquor and the other to the prescription under which the liquor is sold.

(b) On requisition of the commission, the tax stamps shall be printed under the direction of the board of control and furnished to the state treasurer, who shall furnish the tax stamps only to holders of medicinal permits in this state.

(c) The commission may regulate the manner in which the tax stamps are affixed, cancelled, or accounted for.

[Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 202. MIXED BEVERAGE TAX

Section

202.01. Definitions.
202.02. Tax on Gross Receipts.
202.03. Tax Return; Due Date.
202.04. Payment.
202.05. Civil Penalty for Failure to File or Pay.
202.06. Records of Tax Receipts.
202.07. Violations: Penalty.
202.08. Aggravated Violations: Penalty.
202.09. Tax Account Examination; Additional Tax; Penalty.
202.10. Record of Tax Receipts.
202.11. Stamps.
202.12. Violators Ineligible for Permit.
202.13. May Keep Records at Single Location.
202.14. Summary Suspension.

§ 202.01. Definitions

In this chapter:

(1) "Permittee" means a mixed beverage permittee, mixed beverage late hours permittee, daily temporary mixed beverage permittee, private club registration permittee, or private club late hours permittee.

(2) "Business day" means the period of time between 3 a. m. one day and 3 a. m. the next day.

[Acts 1977, 65th Leg., p. 536, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.02. Tax on Gross Receipts

A tax at the rate of 10 percent is imposed on the gross receipts of a permittee from the sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with alcoholic beverages and consumed on the premises of the permittee.

[Acts 1977, 65th Leg., p. 536, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.03. Tax Return; Due Date

(a) Each permittee shall file a sworn tax return with the commission on or before the 15th day of every month.

(b) The return shall be in a form prescribed by the commission or administrator and shall include a statement of the total gross taxable receipts during the preceding month and any other information required by the commission or administrator.

(c) Tax due for a business day which falls in two different months is allocated to the month during which the business day begins.

[Acts 1977, 65th Leg., p. 536, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.04. Payment

The tax due for the preceding month shall accompany the return and be in the form of a cashier's check, certified check, or postal money order payable to the State of Texas. The commission shall deposit the revenue in the mixed beverage tax clearance fund.

[Acts 1977, 65th Leg., p. 536, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.05. Civil Penalty for Failure to File or Pay

If any permittee fails to file a return or to pay to the commission the tax as required by this subchapter when the return or payment is due, the permittee shall forfeit an amount equal to five percent of the amount due as a penalty, and after 30 days the penalty is increased to 10 percent of the amount due.

[Acts 1977, 65th Leg., p. 536, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.06. Records of Tax Receipts

(a) Each permittee shall make and keep a record, in a form prescribed by the commission or administrator, of all tax receipts, including the total for each business day.

(b) Permittees, except daily temporary mixed beverage permittees, shall keep a copy of this record, as well as all other records of receipts and disbursements by the permittee, on file on the premises for a period of two years. The record is open to inspection by any agent of the commission or by any peace officer at any time.

(c) Daily temporary mixed beverage permittees shall file a copy of the records for each month with the tax return for that month as prescribed by the commission.

[Acts 1977, 65th Leg., p. 537, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.07. Violations: Penalty

(a) No person may fail to keep a record in the manner required by this chapter, fail to file any return in the manner required by this chapter, keep a false record, or file a false return.

(b) A person who violates this section is punishable by a fine of not more than $1,000, or by confinement in the county jail for not more than 30 days, or by both.

[Acts 1977, 65th Leg., p. 537, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.08. Aggravated Violations: Penalty

(a) No person may knowingly fail to keep any record in the manner required by this chapter, fail to file any return in the manner required by this chapter, keep a false record, or file a false return.

(b) A person who violates this section is punishable by a fine of not less than $500 nor more than $1,000 and by confinement in the county jail for not less than 30 days nor more than two years.

(c) The commission or administrator shall cancel the permit of any permittee found by the commission or administrator, after notice and hearing, to have violated or have been convicted of violating this section.

[Acts 1977, 65th Leg., p. 537, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.09. Tax Account Examination; Additional Tax; Penalty

(a) The commission shall examine the tax account of each permittee and collect any additional taxes due as established through any information or records in the possession of, or available to, the commission or that may come into the commission's possession.

(b) For the convenience of the commission in examining tax accounts of mixed beverage permittees and private club registration permittees, each of these permittees is required to purchase separately and individually for each licensed premises any and all alcoholic beverages to be sold or served on the licensed premises.

(c) When additional taxes are established as due based on an examination by the commission, a penalty equal to 10 percent of the additional taxes due shall be collected with the additional taxes due.

[Acts 1977, 65th Leg., p. 537, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.10. Record of Tax Receipts

The commission shall keep a record indicating the name of the permittee from whom each return is received, the incorporated city or town, if any, and county in which the permittee's premises are located, and the amount of the tax received.

[Acts 1977, 65th Leg., p. 537, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.11. Stamps

(a) No mixed beverage permittee, daily temporary mixed beverage permittee, or private club registration permittee may possess or permit any person to possess on the premises any distilled spirits in any container not bearing a serially numbered identification stamp issued by the commission or other identification approved by the commission.

(b) No local distributor's permittee may knowingly sell, ship, or deliver any distilled spirits in any container not bearing a serially numbered identification stamp issued by the commission or other identification approved by the commission.

(c) Identification stamps shall be issued only to holders of local distributor's permits, who shall affix the stamps in a manner prescribed by the commission or administrator.

[Acts 1977, 65th Leg., p. 538, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.12. Violators Ineligible for Permit

(a) No mixed beverage, daily temporary mixed beverage, or private club registration permit may ever be issued to any of the following:

(1) a person whose permit was cancelled for a violation of Section 28.06(c) or 202.08 of this code;

(2) a person who held an interest of any kind in a permit that was cancelled for a violation of Section 28.06(c) or 202.08 of this code;

(3) a person who held 50 percent or more of the stock, either in his own name or by any other means, of a corporation whose permit was cancelled because of a violation of Section 28.06(c) or 202.08 of this code;

(4) a corporation if any person holding more than 50 percent or more of the stock, either in his own name or by any other means, is disqualified from obtaining a permit in his individual capacity because of a violation of Section 28.06(c) or 202.08 of this code; or

(5) a person residentially domiciled with a person who is barred from obtaining a permit because of a violation of Section 28.06(c) or 202.08 of this code.

(b) For the purposes of this section, a person is treated as holding 50 percent or more of the stock in a corporation if that person and his parents, children, and siblings, and all persons with whom he is residentially domiciled, together own 50 percent or more of the stock in the corporation.

[Acts 1977, 65th Leg., p. 538, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.13. May Keep Records at Single Location

(a) If two or more establishments operated under a permit or permits named in Section 202.01(1) of this code are located in the same county and are under the same or substantially the same ownership,

the holder or holders of the permits may apply to the administrator, on a form furnished by the administrator for that purpose, for permission to keep all required records for those establishments at a single location in the county. The single location need not be the licensed premises of one of the establishments.

(b) If the administrator decides to approve the application, he must do so in writing and may impose any conditions regarding the keeping of the records that he finds appropriate.

(c) If records are kept at a single location under this section, the records for each establishment must still be kept separately.

[Acts 1977, 65th Leg., p. 538, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.14. Summary Suspension

(a) If a permittee fails to file a return or make a tax payment as required by this chapter, including deficiencies under Section 202.09, the commission may summarily suspend the permit without a hearing. The Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), does not apply to the commission in their enforcement and administration of this section.

(b) A suspension under this section takes effect on the third day after the date on which the notice of suspension is given. The notice shall be given to the permittee, his agent, servant, or employee by registered or certified mail if not given in person.

(c) The commission shall terminate a suspension made under this section when the permittee files all required returns and makes all required tax payments, including payment of any penalties that are due.

[Added by Acts 1979, 66th Leg., p. 733, ch. 325, § 2, eff. June 6, 1979.]

CHAPTER 203. BEER TAX

Section

203.01. Tax on Beer.
203.02. Tax on First Sale or Importation.
203.03. Duty to Pay Tax; Due Date.
203.04. Tax on Unsalable Beer.
203.05. Exemption From Tax.
203.06. Excess Tax.
203.07. Claims for Refunds.
203.08. Tax Exemption for Certain Manufacturers.
203.09. Statements.
203.10. Payment of Taxes; Discount.
203.11. Evidence in Suit.
203.12. Tax Liability.

§ 203.01. Tax on Beer

A tax is imposed on the first sale of beer manufactured in this state or on the importation of beer into this state at the rate of five dollars per barrel.

[Acts 1977, 65th Leg., p. 539, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.02. Tax on First Sale or Importation

The tax levied by Section 203.01 of this code applies to the first sale in this state or to the importation into this state, whichever occurs first, but not to both.

[Acts 1977, 65th Leg., p. 539, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.03. Duty to Pay Tax; Due Date

(a) The importer shall pay the tax on beer imported into this state.

(b) The manufacturer shall pay the tax on beer manufactured in this state.

(c) The tax is due and payable on the 15th day of the month following the month in which the taxable first sale or importation occurred.

[Acts 1977, 65th Leg., p. 539, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.04. Tax on Unsalable Beer

No tax imposed under Section 203.01 of this code may be imposed or collected on beer that for any reason has been found and declared to be unsalable by the commission or administrator. A manufacturer or distributor is entitled to a refund of any tax he has paid on unsalable beer.

[Acts 1977, 65th Leg., p. 539, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.05. Exemption From Tax

(a) No tax may be collected on beer:

(1) shipped out of this state for consumption outside of this state;

(2) sold aboard ships for ship's supplies; or

(3) shipped to any installation of the national military establishment under federal jurisdiction for consumption by military personnel on that installation.

(b) The commission shall provide forms on which distributors and manufacturers may claim these exemptions from the tax on beer.

(c) If after paying the tax on beer a manufacturer or distributor becomes eligible for one of the above exemptions, the manufacturer or distributor is entitled to a refund.

[Acts 1977, 65th Leg., p. 539, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.06. Excess Tax

A manufacturer or distributor is entitled to a refund or credit on future tax payment for any excess tax on beer paid through oversight, mistake, error, or miscalculation.

[Acts 1977, 65th Leg., p. 540, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.07. Claims for Refunds

(a) The commission or administrator shall prescribe by rule for the claiming of tax refunds and credits authorized under this chapter, including provisions as to the time and manner for claiming the refunds and credits.

(b) Necessary funds from the collection of beer tax before it is allocated may be appropriated for the payment of beer tax refunds.

[Acts 1977, 65th Leg., p. 540, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.08. Tax Exemption for Certain Manufacturers

A manufacturer whose annual production of beer in this state does not exceed 75,000 barrels is exempt from the payment of 25 percent of the tax imposed under Section 203.01 of this code on each barrel of beer manufactured in this state.

[Acts 1977, 65th Leg., p. 540, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.09. Statements

(a) The commission may require manufacturers of beer manufactured in this state or imported into this state, importers, and distributors to provide information as to purchases, sales, and shipments to enable the commission to collect the full amount of beer tax due. No manufacturer, importer, or distributor may fail or refuse to furnish the information.

(b) The commission may seize or withhold from sale the manufacturer's, importer's, or distributor's beer for failure or refusal to supply the information required under Subsection (a) of this section or to permit the commission to make an investigation of pertinent records whether inside or outside this state.

[Acts 1977, 65th Leg., p. 540, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.10. Payment of Taxes; Discount

The tax on beer shall be paid by a remittance payable to the state treasurer and forwarded with any required sworn statements of taxes due to the commission in Austin on or before the due date. A discount of two percent of the amount due shall be withheld by the permittee or licensee for keeping records, furnishing bonds, and properly accounting for the remittance of the tax due. No discount is permitted if the tax is delinquent at the time of payment.

[Acts 1977, 65th Leg., p. 540, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.11. Evidence in Suit

In a suit brought to enforce the collection of tax due on beer manufactured in or imported into this state, a certificate by the commission or administrator showing the delinquency is prima facie evidence of:

(1) the levy of the tax or the delinquency of the stated amount of tax and penalty; and

(2) compliance by the commission with the provisions of this code in relation to the computation and levy of the tax.

[Acts 1977, 65th Leg., p. 540, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.12. Tax Liability

A person possessing beer on which the tax is delinquent is liable for the delinquent taxes in addition to the criminal penalties.

[Acts 1977, 65th Leg., p. 540, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 204. BONDS

Section
204.01. Bond Required.
204.02. Form and Conditions.
204.03. Amount of Bond.
204.04. Multiple Permits, One Bond.
204.05. Cancellation of Bond.

§ 204.01. Bond Required

(a) Except as otherwise provided in this section, the following licensees and permittees shall furnish a bond:

(1) those authorized to import alcoholic beverages into the state;

(2) manufacturers of beer and brewers of ale or malt liquor in the state;

(3) permittees subject to the gross receipts tax on mixed beverages imposed by Section 202.02 of this code; and

(4) all other permittees.

(b) No bond is required of a holder of a carriers, local cartage, wine and beer retailers, nonresident seller's, manufacturer's agent's, or agent's permit.

(c) No bond is required of a retail licensee or permittee who is not responsible for the primary payment of an alcoholic beverage excise tax to this state. This subsection does not exempt permittees subject to the gross receipts tax on mixed beverages imposed by Section 202.02 of this code.

(d) A permittee required to furnish a bond to secure the payment of the gross receipts tax on mixed beverages may furnish, in lieu of all or part of the amount of the bond required:

(1) one or more certificates of deposit or savings assigned to the state, issued by one or more banks or savings institutions authorized to do business in this state; or

(2) one or more letters of credit issued by one or more banks or savings institutions authorized to do business in this state.

(e) If certificates of deposit or savings or letters of credit are furnished under Subsection (d) of this section, the administrator shall keep them in his possession. Interest earned on a certificate of deposit or savings is not subject to the assignment and remains the property of the owner of the certificate.

(f) A permittee subject to the gross receipts tax on mixed beverages imposed by Section 202.02 of this code is not required to furnish a bond if for the

preceding 36 months the permittee has paid all taxes and fees required by this code on or before the due date. A finding of deficiency under Section 202.09 of this code does not constitute a failure to pay a tax when due for purposes of this subsection or Subsection (g) or (h) of this section if the deficiency and any applicable penalty are paid within 10 days of the date of demand for payment by the commission.

(g) An exemption under Subsection (f) of this section terminates and the permittee must furnish a bond if the permittee fails to pay a tax or fee imposed by this code on or before the due date.

(h) A permittee required to furnish a bond under Subsection (g) of this section is again entitled to exemption from the surety requirement if the permittee:

(1) pays all delinquent taxes and fees and any applicable penalties; and

(2) pays all taxes and fees required by this code on or before the due date for 36 consecutive months after the month in which the delinquent taxes and fees and the penalties are paid.

[Acts 1977, 65th Leg., p. 541, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1183, ch. 453, § 11, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 732, ch. 325, § 1, eff. June 6, 1979.]

Acts 1979, 66th Leg., p. 733, ch. 325, § 3, provided:

"For purposes of Subsections (f) through (h) of section 204.01, Alcoholic Beverage Code, as added, the 36 month period immediately preceding the effective date of this Act is counted in determining whether a permittee is entitled to an exemption from the requirement of furnishing a surety bond."

§ 204.02. Form and Conditions

(a) A bond required under this chapter must be executed with the permittee or licensee as principal, a qualified surety company doing business in this state as surety, and the state as payee. All bonds of permittees must be payable in Travis County.

(b) The bond must be conditioned as required by the commission. Bonds required of permittees must be conditioned that as long as the applicant holds the permit he will not violate any law of this state relating to the traffic in or transportation, sale, or delivery of liquor or any valid rule of the commission. The bonds of permittees who are required to account for taxes and fees must also be conditioned that the permittee will account for and pay all permit fees and taxes levied by this code.

(c) The form of all bonds must be approved by the attorney general.

(d) A certificate of deposit or savings furnished by a permittee to secure the payment of the gross receipts tax on mixed beverages must be assigned to the state in a manner approved by the administrator to secure the payment of the tax.

(e) A letter of credit furnished by a permittee to secure the payment of the gross receipts tax on mixed beverages must be in a form and contain any conditions required by the administrator to secure the payment of the tax.

[Acts 1977, 65th Leg., p. 541, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1184, ch. 453, § 12, eff. Sept. 1, 1977.]

§ 204.03. Amount of Bond

(a) The commission or administrator shall set the amount of all bonds required under this chapter.

(b) A permittee who furnishes certificates of deposit or savings or letters of credit in lieu of all or part of the amount of bonds required by the commission or administrator to secure the payment of the gross receipts tax on mixed beverages may furnish any combination of these methods of securing the tax which satisfies that amount. The total of the bonds, certificates, and letters of credit of a permittee subject to the gross receipts tax on mixed beverages must be in an amount that, in the opinion of the commission or administrator, will protect the state, but in no case may the commission or administrator set the amount at less than $1,000 or more than $25,000.

(c) Bonds of other permittees, except those permittees covered by Subsection (d) of this section, may not be set at an amount less than $1,000 or more than $25,000.

(d) Bonds to insure the payment of the tax on distilled spirits imposed by Section 201.03 of this code, the tax on vinous liquor imposed by Section 201.04 of this code, the tax on ale and malt liquor imposed by Section 201.42 of this code, or the tax on beer imposed by Section 203.01 of this code, shall be set at an amount that will protect the state against the anticipated tax liability of the principal for any six-week period.

[Acts 1977, 65th Leg., p. 541, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1184, ch. 453, § 13, eff. Sept. 1, 1977.]

§ 204.04. Multiple Permits, One Bond

If another permit is required, incidental to the operation of a business for which a basic permit is procured, the commission may accept one bond to support all of the permits. The commission shall determine the amount of the bond.

[Acts 1977, 65th Leg., p. 542, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 204.05. Cancellation of Bond

The commission may not cancel a surety bond until the surety company has paid and discharged in full all of its liabilities on the bond to the state as of the date of cancellation.

[Acts 1977, 65th Leg., p. 542, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 205. REVENUE ALLOCATION

Section

205.01. Clearance Fund.
205.02. Disposition of Receipts.
205.03. Mixed Beverage Tax Clearance Fund.
205.04. Allocation for Tax Collection Expense.

§ 205.01. Clearance Fund

(a) In this chapter, "clearance fund" means the fund created by the provisions of Section 2, Article XX, Chapter 184, Acts of the 47th Legislature, Regular Session, 1941.

(b) Funds allocated to the clearance fund shall only be used for the purposes expressed in the Act creating it.

[Acts 1977, 65th Leg., p. 542, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 205.02. Disposition of Receipts

(a) After allocation of funds to defray administrative expenses as provided in the current departmental appropriations act, receipts from the sale of tax stamps and funds derived from taxes on distilled spirits, wine, beer, and ale and malt liquor shall be deposited in the state treasury as follows:

(1) one-fourth to the available school fund; and

(2) three-fourths to the clearance fund.

(b) All revenues derived from the collection of permit or license fees provided for in this code, except fees for temporary licenses, shall be deposited to the credit of the clearance fund.

(c) Receipts derived from the gross receipts tax on mixed beverages imposed by Section 202.02 of this code shall be deposited to the credit of a special clearance fund known as the mixed beverage tax clearance fund.

[Acts 1977, 65th Leg., p. 542, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 205.03. Mixed Beverage Tax Clearance Fund

(a) In this section, "permittee" means a mixed beverage permittee, mixed beverage late hours permittee, daily temporary mixed beverage permittee, private club registration permittee, or a private club late hours permittee.

(b) Before the end of the month following each calendar quarter, the commission shall submit to the comptroller of public accounts a report showing the total amount of taxes received during the quarter from permittees outside an incorporated city or town within each county and the total amount received from permittees within each incorporated city or town in each county.

(c) As soon as possible after receipt of each quarterly report of the commission, the comptroller shall issue to each county a warrant drawn on the mixed beverage tax clearance fund in the amount of 15 percent of receipts from permittees within the county during the quarter and shall issue to each incorporated city or town a warrant drawn on that fund in the amount of 15 percent of receipts from permittees within the incorporated city or town during the quarter, as shown by the commission's report. The remainder of the receipts for the quarter shall be transferred to the general revenue fund.

[Acts 1977, 65th Leg., p. 543, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 205.04. Allocation for Tax Collection Expense

Text of section added effective until September 1, 1988

When the commission deems it necessary in order to comply with the purposes of Section 5.37(b) of this code, it may collect a surcharge equal to 10 percent of the state license and permit fees authorized under this code from designated classes of licensees or permittees at the time their fees are due, but in no event shall the surcharge exceed $50 on any license or permit. All revenues derived from this tax collection expense surcharge shall be deposited in a separate fund in the state treasury designated as the confiscated liquor fund. This section expires September 1, 1988.

[Added by Acts 1979, 66th Leg., p. 612, ch. 287, § 2, eff. May 24, 1979.]

CHAPTER 206. PROVISIONS GENERALLY APPLICABLE TO TAXATION

Section

206.01. Records.
206.02. Proof of Taxes Due.
206.03. Importation Without Tax Stamp.
206.04. Jurisdiction Ceded to Federal Government.
206.05. Unmutilated Stamps.
206.06. Forgery or Counterfeiting.
206.07. Payment of Tax by Mail.

§ 206.01. Records

(a) A permittee who distills, rectifies, manufactures, or receives any liquor shall make and keep a record of each day's production or receipt of liquor and the amount of tax stamps purchased by the permittee. A permittee other than a retailer shall make and keep a record of each sale of liquor and to whom the sale is made. Each transaction shall be entered on the day it occurs. Permittees shall make and keep any other records required by the commission. All required records shall be kept available for inspection by the commission or its authorized representatives for at least two years.

(b) No person may fail or refuse to make and retain for at least two years any record required by this section.

(c) No person may fail or refuse to keep any record required by this section open for inspection by the commission or its duly authorized representatives during reasonable office hours.

(d) No person may knowingly, with intent to defraud, make or cause to be made any false entry in any record required by this section or with like intent, alter or cause to be altered any item in one of those records.

[Acts 1977, 65th Leg., p. 543, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 206.02. Proof of Taxes Due

In a suit or claim by the attorney general for taxes due, he may attach or file as an exhibit a report or audit of a permittee or licensee with an affidavit made by the administrator or his representative stating that the taxes shown to be due by the report or audit are past due and unpaid and that all payments and credits have been allowed. Unless the opposing party files an answer in the same form and manner as required by Rule 185, Texas Rules of Civil Procedure, the audit or report constitutes prima facie evidence of the taxes due. The provisions of Rule 185 are applicable to a suit to collect taxes under this section.

[Acts 1977, 65th Leg., p. 544, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 206.03. Importation Without Tax Stamp

A person commits an offense if he imports or transports liquor into this state without the proper state tax stamps affixed to the containers if the liquor is consigned to, intended for delivery to, or being transported to a person or place inside this state unless the liquor is consigned to a holder of a permit authorizing the importation of liquor.

[Acts 1977, 65th Leg., p. 544, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 206.04. Jurisdiction Ceded to Federal Government

(a) No person may transport or ship or cause to be transported or shipped any alcoholic beverage into any area in this state in which the state has ceded police jurisdiction to the federal government or any of its agencies unless the containers or packages holding those alcoholic beverages have a Texas tax stamp affixed if required by this code.

(b) Common carriers are not required to see that tax stamps are affixed.

[Acts 1977, 65th Leg., p. 544, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 206.05. Unmutilated Stamps

No person may possess, buy, sell, or offer to buy or sell any empty carton, case, package, keg, barrel, bottle, or any other kind of alcoholic beverage container on which the state tax stamps have not been mutilated or defaced.

[Acts 1977, 65th Leg., p. 544, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 206.06. Forgery or Counterfeiting

(a) In this section, "counterfeit" or "forged" means printed, manufactured or made by, or under the direction of, or issued, sold, or circulated by a person not authorized to do so under the provisions of this code.

(b) No person may forge or counterfeit a stamp provided for in this code or print, engrave, make, issue, sell, circulate, or possess with intent to use, sell, circulate, or pass a forged or counterfeit stamp or place or cause to be placed any forged or counterfeit stamp on any container of alcoholic beverage.

(c) No person may print, engrave, make, issue, sell, or circulate with intent to defraud or knowingly possess a forged or counterfeit permit, license, official signature, certificate, evidence of tax payment, or other instrument.

(d) No person may possess a stamp or a part of a stamp, die, plate, device, machine, or other instrument used or designed for use for forging or counterfeiting any instrument named in Subsection (b) or (c) of this section.

(e) Conviction for an offense defined in this section may be had on the uncorroborated evidence of an accomplice. A court, officer, or tribunal having jurisdiction of an offense defined in this section or any district or county attorney may subpoena any person and compel his attendance as a witness to testify as to the violation of any provision of this section. Any person so summoned and examined is immune from prosecution for the violation of any provision of this section about which he may testify.

(f) A person who violates any provision of this section commits a felony punishable by imprisonment in the penitentiary for not less than 2 nor more than 20 years.

[Acts 1977, 65th Leg., p. 544, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 206.07. Payment of Tax by Mail

(a) The payment of any tax imposed by this code is timely made if not later than the date on which payment is due the tax is mailed to the commission in an envelope with the proper address and postage and is received by the commission not later than the 10th day after the date on which it was due.

(b) A legible postmark made by the United States Postal Service is prima facie evidence of the date of mailing.

[Added by Acts 1979, 66th Leg., p. 1965, ch. 777, § 1, eff. Aug. 27, 1979.]

TITLE 6. LOCAL OPTION ELECTIONS

CHAPTER 251. LOCAL OPTION ELECTIONS

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SUBCHAPTER A. MANNER OF CALLING ELECTION

§ 251.01. Election to be Held

On proper petition by the required number of voters of a county, or of a justice precinct or incorporated city or town in the county, the commissioners court shall order a local option election in the political subdivision to determine whether or not the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized in the county, justice precinct, or incorporated city or town.

[Acts 1977, 65th Leg., p. 546, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.02. Qualifications for Political Subdivision to Hold Election

(a) A political subdivision must have been in existence for at least 18 months before holding a local option election to legalize or prohibit the sale of liquor. The political subdivision must include substantially all the area encompassed by the subdivision at the time of its creation and may include any other area subsequently legally annexed by or added to the political subdivision.

(b) Subsection (a) of this section does not apply to a city or town incorporated before December 1, 1971.

[Acts 1977, 65th Leg., p. 546, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.03. Application for Petition

If 10 or more qualified voters of any county, justice precinct, or incorporated city or town file a written application, the county clerk of the county shall issue to the applicants a petition to be circulated among the qualified voters of that political subdivision for the signatures of those qualified voters in the area who desire that a local option election be called in that area for the purpose of determining whether the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized in the political subdivision.

[Acts 1977, 65th Leg., p. 546, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.04. Heading, Statement, and Issue on Application for Petition to Prohibit

An application for a petition seeking an election to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be headed: "Application for Local Option Election Petition to Prohibit." The application shall contain a statement just ahead of the signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above." The petition shall clearly state the issue to be voted on, and that issue must be one of those issues set out in Section 251.14 of this code.

[Acts 1977, 65th Leg., p. 547, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.05. Heading, Statement, and Issue on Application for Petition to Legalize

An application for a petition seeking an election to legalize the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be headed: "Application for Local Option Election Petition to Legalize." The application shall contain a statement just ahead of the signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above." The petition shall clearly state the issue to be voted on, and that issue must be one of those issues set out in Section 251.14 of this code.

[Acts 1977, 65th Leg., p. 547, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.06. Petition Requirements

Each petition shall show the date it is issued by the county clerk and be serially numbered. Each

page of a petition shall bear the same date and serial number and the actual seal of the county clerk rather than a facsimile of that seal.

[Acts 1977, 65th Leg., p. 547, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.07. Heading and Statement on Petition to Prohibit

The petition for a local option election seeking to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be headed "Petition for Local Option Election to Prohibit." The petition shall contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above." The petition must clearly state the issue to be voted on, and that issue must be one of those issues set out in Section 251.14 of this code.

[Acts 1977, 65th Leg., p. 547, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.08. Heading and Statement on Petition to Legalize

The petition for a local option election seeking to legalize the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be headed "Petition for Local Option Election to Legalize." The petition shall contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above." The petition must clearly state the issue to be voted on, and that issue must be one of those issues set out in Section 251.14 of this code.

[Acts 1977, 65th Leg., p. 547, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.09. Copies of Petition

(a) The county clerk shall supply as many copies of the petition as may be required by the applicants but not to exceed more than one page of the petition for every 10 registered voters in the county, justice precinct, or incorporated city or town. Each copy shall bear the date, number, and seal on each page as required on the original petition.

(b) The county clerk shall keep a copy of each petition and a record of the applicants for that petition.

[Acts 1977, 65th Leg., p. 548, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.10. Verification of Petition

(a) The county clerk shall check the names of the signers of petitions and the voting precincts in which they reside to determine whether the signers of the petition were qualified voters of the county, justice precinct, or incorporated city or town at the time the petition was issued. The county clerk shall certify to the commissioners court the number of qualified voters signing the petition.

(b) No signature may be counted, either by the county clerk or commissioners court, where there is reason to believe that:

(1) it is not the actual signature of the purported signer;

(2) the voter registration certificate number is not correct;

(3) the voter registration certificate number is not in the actual handwriting of the signer;

(4) it is a duplication either of a name or of handwriting used in any other signature on the petition;

(5) the residence address of the signer is not correct or is not in the actual handwriting of the signer; or

(6) the name of the voter is not signed exactly as it appears on the official copy of the current list of registered voters for the voting year in which the petition is issued.

[Acts 1977, 65th Leg., p. 548, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.11. Requirements to Order Election

The commissioners court, at its next regular session after the petition is filed, shall order a local option election to be held on the issue set out in the petition if the petition is filed with the county clerk not later than 30 days after it is issued and bears in the actual handwriting of the signers the following:

(1) the actual signatures of a number of qualified voters of the political subdivision equal to 35 percent of the votes cast in the subdivision for governor in the last preceding general election for that office;

(2) a notation showing the residence address of each of the signers; and

(3) each signer's voter registration certificate number.

[Acts 1977, 65th Leg., p. 548, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.12. Record in Minutes

The date a petition is presented, the names of the signers, and the action taken with respect to the petition shall be entered in the minutes of the commissioners court.

[Acts 1977, 65th Leg., p. 548, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.13. Issues to Appear in Order for Election

(a) The order for the election shall state in its heading and text whether the local option election to be held is for the purpose of prohibiting or legalizing the sale of the alcoholic beverages set out in the issue recited in the application and petition.

(b) The order shall state the issue to be voted on in the election.

[Acts 1977, 65th Leg., p. 548, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.14. Issues

(a) In the ballot issues prescribed in this section, "wine" is limited to vinous beverages that do not contain more than 14 percent alcohol by volume and includes malt beverages that do not exceed that alcohol content. For local option purposes, those beverages, sold and dispensed to the public in unbroken, sealed, individual containers, are a separate and distinct type of alcoholic beverage.

(b) In areas where any type or classification of alcoholic beverages is prohibited and the issue submitted pertains to legalization of the sale of one or more of the prohibited types or classifications, the ballot shall be prepared to permit voting for or against one of the following issues:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(7) "The legal sale of all alcoholic beverages including mixed beverages."

(8) "The legal sale of mixed beverages."

(c) In areas where the sale of all alcoholic beverages including mixed beverages has been legalized, the ballot shall be prepared to permit voting for or against one of the following issues in any prohibitory election:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(7) "The legal sale of all alcoholic beverages including mixed beverages."

(8) "The legal sale of mixed beverages."

(d) In areas where the sale of all alcoholic beverages except mixed beverages has been legalized, the ballot shall be prepared to permit voting for or against one of the following issues in any prohibitory elections:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(e) In areas where the sale of beverages containing alcohol not in excess of 14 percent by volume has been legalized, and those of higher alcoholic content are prohibited, the ballot shall be prepared to permit voting for or against one of the following issues in any prohibitory election:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(f) In areas where the sale of beer containing alcohol not exceeding four percent by weight has been legalized, and all other alcoholic beverages are prohibited, the ballot shall be prepared to permit voting for or against one of the following issues in any prohibitory election:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(g) In an area where the sale of a particular type of alcoholic beverage has been legalized only for off-premises consumption, no alcoholic beverage may be consumed on the licensed premises and no type of alcoholic beverage other than the type legalized may be sold.

[Acts 1977, 65th Leg., p. 549, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1156, ch. 560, § 1, eff. Sept. 1, 1979.]

Section 8(a) of the 1979 amendatory act provided:

"(a) If the commissioners court of a county before the effective date of this Act entered an order for an election under Chapter 251, Alcoholic Beverage Code, and the date set for the election falls on or after the effective date of this Act, the officials conducting the election may prepare the ballot and conduct the election under the law as it existed on the date that the order was entered or under the law as it exists on or after the effective date of this Act."

§ 251.15. Issue on Mixed Beverages

(a) No local option election affects the sale of mixed beverages unless the proposition specifically mentions mixed beverages.

(b) In any legalization or prohibitory local option election where any shade or aspect of the issue submitted involves the sale of mixed beverages, any other type or classification of alcoholic beverage that was legalized prior to the election remains legalized without regard to the outcome of that election on the question of mixed beverages.

[Acts 1977, 65th Leg., p. 550, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.16. Evidence of Validity

The commissioners court order for election is prima facie evidence of compliance with all provisions necessary to give the order validity or to give the commissioners court jurisdiction to make it valid.
[Acts 1977, 65th Leg., p. 551, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.17. Frequency of Elections

No local option election on a particular issue may be held in a political subdivision until one year has elapsed since the last local option election in that subdivision on that issue.
[Acts 1977, 65th Leg., p. 551, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 251.18 to 251.30 reserved for expansion]

SUBCHAPTER B. ELECTION

§ 251.31. Conform to General Election Laws

(a) The officers holding the local option election shall conform to the general laws regulating elections unless otherwise provided in this chapter.

(b) The votes shall be counted after the polls are closed and the report of the election submitted to the commissioners court within 24 hours after the closing of the polls.
[Acts 1977, 65th Leg., p. 551, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.32. Notice of Election

The county clerk shall post or cause to be posted at least one copy of the election order in each precinct of the county, justice precinct, or incorporated city or town affected. The notice shall be posted at least six days prior to election day.
[Acts 1977, 65th Leg., p. 551, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.33. Time of Election

The election must be held on a day not less than 20 nor more than 30 days after the date of the commissioners court order for an election.
[Acts 1977, 65th Leg., p. 551, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.34. Voting Places

(a) The election shall be held at a voting place in each regular county election precinct as established by the commissioners court inside the affected territory if the election is for the entire county or for a justice precinct.

(b) The election shall be held at a voting place in each election precinct established by the governing body of the city or town for its municipal elections if the election is for an incorporated city or town. If the governing body of a city or town has not established precincts for its municipal elections, the commissioners court shall prescribe the election precincts for the local option election under the rules governing establishment of precincts for municipal elections.

(c) The election shall be held at the customary polling place in each election precinct. If the customary polling place is not available, the commissioners court shall designate another polling place.

(d) The order for the election shall state the polling place for each election precinct and the precinct numbers of county precincts included in each municipal election precinct if the election is for an incorporated city or town.
[Acts 1977, 65th Leg., p. 551, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.35. Appointment of Election Judges, Clerks, and Watchers

(a) Election judges, clerks, and watchers shall be qualified voters of the election precinct in which they are named to serve.

(b) Appointment of election judges and clerks shall be in accordance with the general election laws.

(c) Election watchers may be appointed in accordance with general law, but they must be qualified voters of the election precinct where they serve.
[Acts 1977, 65th Leg., p. 551, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.36. Public School of Instruction

(a) The county judge shall cause to be held a public school of instruction for those who actually conduct the election at the polling places not less than three days before the local option election.

(b) The county clerk shall post in his office a notice of the time and place of the school at least 48 hours before it is held.

(c) The county clerk shall notify each presiding judge of the time and place where the school is to be held.

(d) Each presiding judge shall notify each appointed clerk and watcher of the election in his precinct of the time and place of the school.

(e) This school will be open to any interested person.
[Acts 1977, 65th Leg., p. 552, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.37. Number of Ballots Furnished

The county clerk shall furnish the presiding judge of each election precinct with at least the number of ballots equal to the number of qualified voters in the precinct plus 10 percent of that number of voters.
[Acts 1977, 65th Leg., p. 552, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1158, ch. 560, § 2, eff. Sept. 1, 1979.]

§ 251.38. Issue on Ballot

(a) The issue ordered to appear on the ballot for an election ordered by the commissioners court shall

be the same as that applied for and set out in the petition.

(b) The issue appropriate to the election shall be printed on the ballot in the exact language stated in Section 251.14 of this code.

[Acts 1977, 65th Leg., p. 552, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1158, ch. 560, § 2, eff. Sept. 1, 1979.]

§ 251.381. Methods of Voting

Voting may be conducted by:

(1) paper ballot;

(2) voting machine, electronic voting system, or any other voting system approved for use in accordance with the Texas Election Code; or

(3) any combination of the methods of voting authorized by Subdivision (1) or (2) of this section that conforms to applicable requirements of the Texas Election Code.

[Added by Acts 1979, 66th Leg., p. 1158, ch. 560, § 3, eff. Sept. 1, 1979.]

§ 251.39. Repealed by Acts 1979, 66th Leg., p. 1160, ch. 560, § 7, eff. Sept. 1, 1979

The repealed section, relating to marking ballots, was derived from Acts 1977, 65th Leg., p. 552, ch. 194, § 1.

§ 251.40. County to Pay Election Expense

(a) The county shall pay the expense of holding a local option election authorized by this code in the county, justice precinct, or incorporated city or town in that county, subject to the limitations in this section.

(b) County expense is limited to the holding of one election in each of the political subdivisions in Subsection (a) of this section in a one-year period where the intent of the election is to legalize the sale of alcoholic beverages. County expense is limited to the holding of one election in each of the political subdivisions in Subsection (a) of this section in a one-year period where the intent of the election is to prohibit the sale of alcoholic beverages.

(c) All other local option elections shall be paid by the county from funds derived by the county as prescribed in Section 251.41 of this code.

[Acts 1977, 65th Leg., p. 553, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.41. Financing Election

(a) If under Section 251.40 of this code the county is not required to pay the cost of the election, the county clerk shall require a deposit before the issuance of a petition for a local option election.

(b) The deposit must be in the form of a cashier's check in the total amount of 25 cents per voter listed on the current list of registered voters residing in the county, justice precinct, or incorporated city or town where the election is to be held.

(c) The money received shall be deposited in the county's general fund. No refund may be made to the applicants regardless of whether the petition is returned to the county clerk or the election is ordered.

(d) The county clerk may not issue a petition to the applicants unless the deposit is made, if a deposit is required by this code.

(e) A violation of Subsection (d) of this section is a misdemeanor punishable by a fine of not less than $200 nor more than $500, or confinement in the county jail for not more than 30 days, or both.

[Acts 1977, 65th Leg., p. 553, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 251.42 to 251.50 reserved for expansion]

SUBCHAPTER C. PROCEDURE FOLLOWING ELECTION

§ 251.51. Canvass of Votes; Declaration of Result

(a) On the fifth day after the election, or as soon after the fifth day as practicable, the commissioners court shall meet in special session to canvass the returns. On completing the canvass, the commissioners court shall make an order declaring the result and cause the clerk of the commissioners court to record the order as provided by law.

(b) If, in a prohibitory election, a majority of the votes cast favor the issue "Against the legal sale . . .," the court's order must state that the sale of the type or types of beverages stated in the issue at the election is prohibited effective 30 days after the order is entered. The prohibition remains in effect until changed by a subsequent local option election held under this code.

(c) If, in a legalization election, a majority of the votes cast favor the issue "For the legal sale . .," the legal sale of the type or types of beverages stated in the issue at the election is legal on the entering of the court's order. The legalization remains in effect until changed by a subsequent local option held under this code.

(d) The local option status of a subdivision is not changed if:

(1) in a prohibitory election, a majority of the votes cast favor the issue "For the legal sale . . .."; or

(2) in a legalization election, a majority of the votes cast favor the issue "Against the legal sale . . . ."

[Acts 1977, 65th Leg., p. 553, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.511. Recount: Paper Ballots

(a) A recount of the paper ballots may be obtained on the following grounds:

(1) the difference between the number of votes cast on the winning and losing sides of the measure is less than five percent of the number of votes cast on the winning side; or

(2) affidavit by an election judge and certification by the secretary of state that votes were miscounted, as provided by the Texas Election Code for a recount of paper ballots in a general election.

(b) The recount must be requested in writing by at least 25 registered voters of the territory covered by the election. To be valid, a request must contain the signature, residence address, and voter registration number of the requestor and be filed in accordance with the procedure for requesting a recount in a general election. A single document may contain the requests of more than one requestor.

(c) Except as otherwise provided by this section, the provisions of the Texas Election Code regulating the recount of paper ballots apply to a recount under this section with appropriate changes to account for the fact that the election is on a measure instead of for a public office.

[Added by Acts 1979, 66th Leg., p. 1158, ch. 560, § 4, eff. Sept. 1, 1979.]

Section 8(b) of the 1979 amendatory act provided:

"(b) The provisions of this Act relating to election recounts apply to any local option election held on or after the effective date of this Act. Those provisions do not apply to an election held before the effective date of this Act."

§ 251.512. Recount: Voting Systems

A recheck of the results registered on a voting machine, recount of the results of voting by an electronic voting system or an examination of the electronic system program, or a recount of the results of voting by any other method of voting other than paper ballot shall be conducted in the same manner as in a general election.

[Added by Acts 1979, 66th Leg., p. 1158, ch. 560, § 4, eff. Sept. 1, 1979.]

Nonapplication of provisions of this section to elections held before September 1, 1979, see note under § 251.511.

§ 251.52. Order Prima Facie Evidence

The order of the commissioners court declaring the result of the election is prima facie evidence that all provisions of law have been complied with in giving notice of and holding the election, counting and returning the votes, and declaring the result of the election.

[Acts 1977, 65th Leg., p. 554, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.53. Certification of Result

Within three days after the result of a local option election has been declared, the county clerk shall certify the result to the secretary of state and the commission. The clerk may not charge a fee for this service.

[Acts 1977, 65th Leg., p. 554, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.54. Posting Order Prohibiting Sale

A commissioners court order declaring the result of a local option election and prohibiting the sale of any or all types of alcoholic beverages must be published by posting the order at three public places in the county or other political subdivision in which the election was held. The posting of the order shall be recorded in the minutes of the commissioners court by the county judge. The entry in the minutes or a copy certified under the hand and seal of the county clerk is prima facie evidence of posting.

[Acts 1977, 65th Leg., p. 554, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.55. Election Contest

(a) A qualified voter of the county, justice precinct, or incorporated city or town where a local option election is held may contest the election any time within 30 days after the result of that election is declared.

(b) The enforcement of local option laws in the political subdivision in which the election is being contested is not suspended during the election contest.

(c) The district court of the county in which the election is held has original and exclusive jurisdiction of all suits to contest the election. The district court has jurisdiction to try and determine all matters connected with the election. If it appears from the evidence that such irregularities existed in bringing about or holding the election that the true result of the election is impossible to determine or the result is very doubtful, the court shall hold the election to be void and order the proper officer to order another election to be held by having a certified copy of the judgment and order of the court to be delivered to that officer.

(d) The election contest is conducted in the same manner as an election contest of a general election.

(e) Election contests have precedence in the district and appellate courts.

(f) The result of an election contest finally settles all questions relating to the validity of that election.

No person may call the legality of that election in question again in any other suit or proceeding.

(g) If no election contest is instituted within the 30-day time limit, it is conclusively presumed that that election is valid and binding in all respects upon all courts.

[Acts 1977, 65th Leg., p. 554, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 251.56 to 251.70 reserved for expansion]

SUBCHAPTER D. MISCELLANEOUS LOCAL OPTION PROVISIONS

§ 251.71. Wet and Dry Areas

(a) An area is a "dry area" as to an alcoholic beverage of a particular type and alcohol content if the sale of that beverage is unlawful in the area. An area is a "wet area" as to an alcoholic beverage of a particular type and alcoholic content if the sale of that beverage is lawful in the area.

(b) Those areas that are wet or dry when this code takes effect retain that status until the status of the area is changed as provided in this code.

(c) All trial courts of this state shall take judicial notice of the wet or dry status of an area in a criminal prosecution.

(d) In an information, complaint, or indictment, an allegation that an area is a dry area as to a particular type of alcoholic beverage is sufficient, but a different status of the area may be urged and proved as a defense.

[Acts 1977, 65th Leg., p. 555, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.72. Change of Status

Except as provided in Section 251.73 of this code, an authorized voting unit that has exercised or may exercise the right of local option retains the status adopted, whether absolute prohibition or legalization of the sale of alcoholic beverages of one or more of the various types and alcoholic contents on which an issue may be submitted under the terms of Section 251.14 of this code, until that status is changed by a subsequent local option election in the same authorized voting unit.

[Acts 1977, 65th Leg., p. 555, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.73. Prevailing Status: Resolution of Conflicts

To insure that each voter has the maximum possible control over the status of the sale of alcoholic beverages in the area where he resides:

(1) the status that resulted from or is the result of a duly called election for an incorporated city or town prevails against the status that resulted from or is the result of a duly called election in a justice precinct or county in which the incorporated city or town, or any part of it is contained; and

(2) the status that resulted or is the result of a duly called election for a justice precinct prevails against the status that resulted from or is the result of a duly called election in an incorporated city or town in which the justice precinct is wholly contained or in a county in which the justice precinct is located.

[Acts 1977, 65th Leg., p. 555, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.74. Airport and Stadium as Wet Areas

(a) This section applies to any county:

(1) that has a population of more than 500,000, according to the most recent federal census;

(2) in which the sale of all alcoholic beverages has been legalized in all or any part of the county; and

(3) where, at the general election on November 3, 1970, the voters approved the constitutional amendment authorizing the sale of mixed beverages on a local option basis.

(b) In a county covered by this section, the commissioners court may designate as an area wet for the sale of mixed beverages only:

(1) the area encompassed by the building structure of a professional sports stadium, used wholly or partly for professional sporting events and having a seating capacity of at least 40,000, and not more than 125 acres of adjacent land used for the benefit of the stadium, regardless of ownership of the land, if no registered voters reside there; and

(2) the area encompassed by a regional airport.

(c) The order of the commissioners court authorizes the issuance of a mixed beverage permit.

[Acts 1977, 65th Leg., p. 555, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.741. Certain Airports as Wet Areas

In addition to those areas declared wet by order of the commissioners court under the authority of Section 251.74 of this code, in a county with a population of more than 175,000 according to the most recent federal census where the sale of mixed beverages only is legalized in the most populous city in the

county by a local option election held after May 18, 1971, the area actually encompassed by any municipal airport under the jurisdiction of that city is wet for the sale of mixed beverages only. Subsequent local option elections held by that city do not affect the local option status of the airport unless the result of the election prohibits the sale of mixed beverages, in which case the provisions of this section do not apply.

[Added by Acts 1977, 65th Leg., p. 1184, ch. 453, § 14, eff. Sept. 1, 1977.]

§ 251.75. Continuance of Operation as Manufacturer or Brewer

Notwithstanding any other provision of this code, if the sale of beer or ale is prohibited in an area by a local option election, a holder of a manufacturer's license or brewer's permit that was issued prior to the election may not be denied an original or renewal manufacturer's license or brewer's permit for the same location on the ground that the local option status of the area prohibits the sale of beer or ale. Except for the right to sell beer or ale contrary to the local option status of the area, the licensee or permittee may engage in all activities authorized by the license or permit, including the manufacturing, brewing, possessing, storing, and packaging of beer or ale, and transporting it to an area where its sale is legal. The licensee or permittee may deliver beer or ale at his licensed premises to a purchaser from outside the state, an authorized carrier, distributor, or class B wholesaler. The purchaser, carrier, distributor, or class B wholesaler may not receive the beer or ale for transportation unless there has first been an order, acceptance, and payment or legal satisfaction of payment in an area where the sale of beer or ale is legal.

[Acts 1977, 65th Leg., p. 556, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.76. Continuance of Operation as Distiller

Notwithstanding any other provision of this code, a person who has been issued a distiller's permit may not subsequently be denied an original or renewal distiller's permit for the same location on the ground that the sale of distilled spirits has been prohibited in the area by a local option election. A person holding a permit at the time of the election or issued a permit under this section may exercise all privileges granted by this code to the holder of a distiller's permit, including the manufacturing, possessing, storing, packaging, and bottling of distilled spirits and the transportation of them to areas in which their sale is legal.

[Acts 1977, 65th Leg., p. 556, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.77. Continuance of Operation as Distributor

(a) Notwithstanding any other provision of this code, if the sale of beer is prohibited by local option election, a licensed distributor of beer whose warehouse or other facilities used in connection with the distributorship are located in the area affected, has the right to continue to operate as a distributor in that area and maintain the necessary premises and facilities for distribution. The distributor continues to enjoy all the rights and privileges incident to distributorship, including the right to possess, store, warehouse, and sell beer in that area, and deliver beer into and out of that area.

(b) A distributor in the area affected may sell or deliver beer only to licensed outlets located where the sale of beer is legal.

[Acts 1977, 65th Leg., p. 556, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.78. Continuance of Operation as Wholesaler

(a) Notwithstanding any other provision of this code, if the sale of the type or types of liquor authorized to be sold by the holder of a wholesaler's permit whose warehouse or other facility used in connection with the wholesale operation is prohibited in an area by local option election, the holder of the wholesaler's permit shall have the right to continue to operate as a wholesaler in that area and maintain the necessary premises and facilities for the wholesale operation. The wholesaler shall enjoy all the rights and privileges incident to the permit, including the right to possess, store, warehouse, sell, deliver, and receive liquor.

(b) A wholesaler in the area affected may only sell or deliver liquor to permittees located where the sale of liquor is legal.

[Acts 1977, 65th Leg., p. 556, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.79. Areas in Which Certain Permits and Licenses May be Issued

Notwithstanding any other provision of this code, a wholesaler's permit, general class B wholesaler's permit, local class B wholesaler's permit, or general, local or branch distributor's license may be issued and licensed premises maintained in any area where the sale of any alcoholic beverage is legal. A person issued a permit or license under this section may exercise all rights and privileges of other permittees and licensees of the same class.

[Acts 1977, 65th Leg., p. 557, ch. 194, § 1, eff. Sept. 1, 1977.]

DISPOSITION TABLE

Showing where provisions of former articles of the Penal Code of 1925 are covered in the Alcoholic Beverage Code.

P.C. Article	Alcoholic Beverage Code Section
666—1	—
666—2	1.03
666—3	25.09
	69.12
666—3	71.04
666—3a	1.04
	11.49
	11.50
666—4	11.01
Subsec.	
(a-1)	109.21
	109.22
(b)	101.31
(b-1)	251.79
(c)	105.06
(d)	105.06
666—5	5.01
	5.02
	5.03
	5.04
	5.05
	5.06
	5.07(a)
	5.07(b)
	5.08
	5.09
	5.10
	5.11
666—5a	5.13
666—5b	—
666—6	
Subd.	
(a)	5.31
	5.32
	5.33
	5.34
(b)	5.35
(c)	5.36
(d)	5.31
(e)	5.37
(f)	5.38
	5.39
	101.45
(g)	5.41
666—7	5.44
666—7a	5.42
666—7b	5.14
666—7c	5.15
666—7d	5.16
666—8	107.07

P.C. Article	Alcoholic Beverage Code Section
666—9	101.05
666—10	11.39
666—11	11.41
	11.43
	11.45
	11.46
	11.47
	11.48
666—11a	28.03
666—12	11.61
	11.68
666—12a	
Subsec.	
(1)	11.62
(2)	11.41
(3)	5.43
(4)	11.63
	11.65
(5)	5.45
	5.47
	5.48
	206.02
(6)	5.12
666—12b	106.13
666—13	
Subsec.	
(a)	11.09
(b)	11.03
	11.10
(c)	11.69
(d)	101.04
(e)	109.52
(f)	28.05
666—14	11.67
	5.17
666—15	
Subd.	
(1)	12.01
	12.02
	37.04
(1a)	13.01
	13.02
	13.03
(2)	14.01
	14.02
(3)	16.01
	16.02
	16.03
	16.04
(4)	17.01

DISPOSITION TABLE

P.C. Article 666—15 Subd.	Alcoholic Beverage Code Section
(4)	17.02
	17.03
(5)	15.01
	15.02
(6)	11.34
	19.01
	19.02
(7)	20.01
	20.02
(7a)	21.01
	21.02
(7b)	—
(8)	22.01
	22.02
	22.08
	22.09
(9)	24.01
	24.02
	24.04
	24.08
(10)	35.01
	35.02
	35.03
	35.04
	35.05
	35.06
(11)	38.01
	38.02
	38.03
	38.04
	38.05
	38.06
(12)	41.01
	41.02
	41.03
	41.04
(13)	42.01
	42.02
	42.03
	42.04
(14)	22.08
	24.04
	43.01
	43.02
	43.03
	43.04
	43.05
	43.06
(15)	46.01
	46.02
	46.03
	46.04
(16)	45.01
	45.02
	45.03
(17)	11.31
	25.01
	25.02
	25.03
	25.04

P.C. Article 666—15 Subd.	Alcoholic Beverage Code Section
(17)	25.10
	105.04
(17)–A	26.01
	26.02
	26.03
	26.04
	105.04
(17a)	11.38
	27.01
	27.02
	27.03
	27.04
	27.05
	27.06
(18)	18.01
	18.02
	18.03
(19)	39.01
	39.02
	39.03
	39.04
	39.05
	39.21
	39.22
	39.23
	39.24
	39.25
	39.26
	39.27
	39.28
	39.29
	39.30
	39.31
	39.32
	39.41
(20)	40.01
	40.02
	40.03
	40.04
	40.05
(21)(a)	34.01
(21)(b)	11.38
	34.06
	34.02
	34.03
	34.06
(21)(c)	34.01
(21)(d)	34.04
(21)(e)	34.04
(21)(f)	34.05
(22)(a)	28.01
(22)(b)	28.01
(22)(c)	28.02
(23)(a)	30.02
	30.03
(23)(b)	30.01
	30.03
(23)(c)	30.04
(23)(d)	30.05
(23)(e)	30.03

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P.C. Article	Alcoholic Beverage Code Section
666—15	
Subd.	
(23)(c)	30.06
(24)	29.01
	29.02
	29.03
(25)(a)	31.01
	31.03
(25)(b)	31.03
	31.04
(25)(c)	31.04
(25)(d)	31.03
(25)(e)	31.02
666—15a	109.51
666—15a1	11.04
	11.38
	61.36
666—15b	11.02
	11.36
666—15c	
Subsec.	
(1)	11.31
	11.35
	11.40
(2)	11.32
	11.33
	11.39
(3)	11.08
	11.07
666—15d	11.42
666—15e	
Subsec.	
1	32.03
	32.05
	32.06
	32.09
	32.10
2	32.14
3	32.14
4	32.14
5	32.01
	32.03
	32.07
	32.12
5a	32.03
6	11.38
	32.02
	32.04
	32.13
	32.16
6a	32.15
7	32.17
7a	32.18
8	32.02
9	32.19
10	32.17
11	—
(12)	32.11
13	11.38
666—15f	33.01
	33.02
	33.03

P.C. Article	Alcoholic Beverage Code Section
666—15½, subsec. A	
Subd.	
(1)	37.01
	37.03
(2)	37.05
(3)	37.14
(4)	37.07
(5)	—
(6)	37.08
(7)	37.12
(8)	37.06
(9)	37.02
	37.10
666—15½, subsec. B	36.01
	36.02
	36.03
	36.04
	36.05
666—16	204.01
	204.02
	204.03
	204.04
	204.05
666—17	
Subsec.	
(1)	22.06
	22.07
	24.05
	24.06
	24.07
	71.03
(2)	22.04
	22.05
(3)	102.07
(4)	101.71
(5)	106.09
(7)	206.05
(8)	22.10
	24.09
(9)	11.68
(10)	22.11
	24.10
(11)	101.61
(12)	101.68
(13)	103.01
(14)(a)	106.02
	106.04
	106.05
(14)(b)	106.06
(14)(c)	106.06
(14)(d)	106.07
(14)(e)	106.10
	106.11
(14)(f)	106.12
(15)	101.46
	101.47
(16)	104.02
(17)	11.68
	61.84
(18)	107.03
	107.05
(19)	101.65

P.C. Article	Alcoholic Beverage Code Section
666—17	
Subsec.	
(20)	206.03
(21)	106.08
(22)	11.06
	22.03
	24.03
	43.07
(23)	11.05
(24)	35.07
	36.07
(25)	—
(26)	104.03
(27)	37.09
(28)	102.09
	102.10
(29)	102.08
(30)	11.61
(31)	11.68
(32)	201.82
(33)	107.05
	206.04
(34)	102.06
(35)	102.03
	102.04
(36)	101.64
(37)	28.12
	102.31
	102.32
666—17a	
Subsec.	
(1)	103.02
	101.69
666—17b	102.01
666—18	109.53
666—19	11.61
	11.70
	11.71
666—20	101.03
666—20a	
Subsec.	
(a)	201.91
(b)	201.92
(c)	—
(d)	201.94
	201.95
	201.96
(e)	201.97
(f)	201.93
666—20b	
Subsec.	
(a)	28.08
(b)	28.09
(c)	28.09
(d)	28.09
(e)	28.09
(f)	28.10
(g)	28.10
666—20c	28.06
666—20d	
Subsec.	
(a)	202.01

P.C. Article	Alcoholic Beverage Code Section
666—20d	
Subsec.	
(b)	202.02
(c)	202.01
	202.06
(d)	202.03
	202.05
(c)(1)	202.04
	205.02
(c)(2)	202.10
	205.03
(e)(3)	205.03
(f)	204.01
	204.02
	204.03
(g)	202.11
(h)	202.09
(i)	202.07
(j)	202.08
(k)	202.12
(*l*)	202.12
(m)	202.13
666—20e	19.03
	19.04
	23.01
	23.02
	23.03
	23.05
	23.06
	28.01
	28.07
	32.01
	32.08
	36.06
	37.13
	44.01
	44.02
	44.03
666—20e—1	20.01
	21.01
	23.01
	62.10
	64.03
	65.03
	66.07
666—21	
Subsec.	
(1)	201.03
	201.04
	201.42
(2)	201.02
	201.41
(3)	201.05
	201.06
	201.07
	201.10
	201.11
	201.12
	201.15
	204.01
	204.02
	204.03

P.C. Article	Alcoholic Beverage Code Section
666—21	
Subsec.	
(3)	205.02
(4)	201.08
	201.11
(5)	201.71
	201.80
(6)	201.14
	201.50
(7)	201.16
666—21a	201.71
	201.78
	201.81
666—21b	201.77
666—21c	206.01
666—21d	—
666—21e	5.39
	201.17
666—21⅛	
Subsec.	
c	201.48
	203.10
666—21¼	—
666—21⅓	201.79
666—21½	—
666—23	251.71
	251.74
666—23a	
Subsec.	
(1)	107.08
(2)	101.32
(3)	41.01
	42.01
(4)	107.07
(5)	22.01
	102.05
(6)	101.10
(7)	101.10
(8)	101.06
666—24	109.31
666—25	
Subsec.	
(a)	22.08
	105.01
	105.02
(b)	105.03
(c)	105.03
(d)	105.03
(e)	105.03
(f)	201.09
	201.13
	201.45
	201.47
666—25a	109.33
666—26	
Subsec.	
(a)	106.09
(b)	106.03
	101.63

P.C. Article	Alcoholic Beverage Code Section
666—27	
Subsec.	
(a)	107.01
(b)	102.16
666—27½	102.17
666—28	206.06
666—29	101.70
666—30	
Subsec.	
(a)	103.06
	103.07
	103.08(a)
	103.08(b)
	103.08(c)
	103.08(d)
	103.09(a)
	103.09(b)
	103.09(c)
	103.09(d)
	103.10
	103.12
	103.20(a)
	103.21
(b)	103.05(a)
	103.05(b)
	103.05(c)
	103.05(d)
	103.05(e)
	103.11(a)
	103.11(b)
	103.23
666—31	101.02
	101.07
	101.08
666—32	251.01
	251.03
	251.04
	251.05
	251.06
	251.07
	251.08
	251.09
	251.10
	251.11
	251.12
	251.13
	251.17
	251.38
	251.72
	251.73
666—32½	
Subsec.	
(a)	251.40
(b)	251.41
666—33	251.13
	251.16
	251.33
	251.34
	251.35
	251.36
666—34	251.32

P.C. Article	Alcoholic Beverage Code Section
666—35	
Subsec.	
(a)	251.37
(b)	251.37
	251.39
666—36	251.31
666—37	
Subsec.	
(a)	251.51
	251.52
(b)	251.77
(c)	251.78
(d)	251.78
666—38	251.54
666—39	251.51
	251.52
	251.53
666—40	
Subsec.	
(a)	251.01
(b)	251.14
(c)	251.14
(d)	251.14
(e)	251.14
(f)	251.14
(g)	251.14
(h)	251.14
(i)	251.15
666—40a	251.55
666—40b	251.02
666—41	1.05
666—41a	101.09
	251.53
	251.71
666—41b	11.64
	11.66
	61.72
666—42	
Subsec.	
(a)	103.03
	103.04
	103.06
	103.13
	103.16
(b)	103.14
	103.15
	103.16
	103.17
	103.20(b)
	103.22
(c)	103.18
	103.19
	103.21
666—43A	11.44
666—43B	1.04
666—45	
Subsec.	
(a)	201.72
	201.73
(b)	201.74
(c)	201.75
(d)	201.76

P.C. Article	Alcoholic Beverage Code Section
666—46	205.01
	205.02
666—47	—
666—48	5.49
666—49	—
666—49a	22.12
	24.11
	28.11
	39.42
666—50	108.02
666—51	—
666—51a	101.62
666—52	22.08
	24.04
	42.05
666—53	101.68
666—54	11.37
	61.37
666—56	37.11
666—57	12.03
	62.06
	62.09
	251.75
666—58, as added by Acts 62nd, Ch. 65	28.04
666—58, as added by Acts 62nd, Ch. 531	36.08
Acts 62nd, Ch. 531	109.01
	109.02
	109.03
	109.04
	109.05
	109.06
	109.07
666—60	
Subsec.	
(a)	251.79
(b)	22.03
	23.04
	43.04
(c)	28.07
	32.08
(d)	23.01
667—1	1.04
	101.44
667—2	1.06
	101.66
667—2a	251.75
	251.76
667—2b	
Subsec.	
(a)	102.51
(b)	102.51
(c)	102.52
(d)	102.53
667—3	61.01
Subsec.	
(a)	62.01
	62.02
	62.07

P.C. Article	Alcoholic Beverage Code Section
667—3	
Subsec.	
(a–1)	63.01
	63.02
	63.03
	63.04
(b)	64.01
	64.02
(c)	65.01
	65.02
(d)	66.01
	66.02
	66.03
	66.05
	66.06
(e)	69.01
	69.02
(e–1)	70.01
	70.02
	70.03
(e–2)	70.01
(f)	71.01
	71.02
(g)	64.05
	65.05
	66.04
(h)	61.36
(i)	62.08
(j)	72.01
	72.02
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BUSINESS AND COMMERCE CODE

TITLE 1. UNIFORM COMMERCIAL CODE

CHAPTER 2. SALES

SUBCHAPTER C. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

§ 2.316. Exclusion or Modification of Warranties

[See Compact Edition, Volume 1 for text of (a) to (e)]

(f) The implied warranties of merchantability and fitness do not apply to the sale or barter of livestock or its unborn young.

[Amended by Acts 1979, 66th Leg., p. 190, ch. 99, § 1, eff. May 2, 1979.]

§ 2.326. Sale on Approval and Sale or Return; Consignment Sales and Rights of Creditors

[See Compact Edition, Volume 1 for text of (a) to (c)(2)]

(3) complies with the filing provisions of the chapter on Secured Transactions (Chapter 9), or

(4) is delivering a work of art subject to the Artists' Consignment Act.

[See Compact Edition, Volume 1 for text of (d)]

[Amended by Acts 1977, 65th Leg., p. 1530, ch. 623, § 4, eff. Aug. 29, 1977.]

CHAPTER 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

SUBCHAPTER A. SHORT TITLE, APPLICABILITY AND DEFINITIONS

§ 9.110. Sufficiency of Description

Except as provided in Subsections (c) and (f) of Section 9.402, any description of personal property or real estate is sufficient for the purposes of this chapter whether or not it is specific if it reasonably identifies what is described.

[Amended by Acts 1975, 64th Leg., p. 940, ch. 353, § 1, eff. June 19, 1975.]

SUBCHAPTER C. RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

§ 9.301. Persons Who Take Priority Over Unperfected Security Interests; Right of "Lien Creditor".

[See Compact Edition, Volume 1 for text of (a)]

(b) If the secured party files with respect to a purchase money security interest before or within 20 days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

[See Compact Edition, Volume 1 for text of (c) and (d).]

[Amended by Acts 1979, 66th Leg., p. 723, ch. 318, § 1, eff. June 6, 1979.]

§ 9.312. Priorities Among Conflicting Security Interests in the Same Collateral

[See Compact Edition, Volume 1 for text of (a) to (c).]

(d) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

[See Compact Edition, Volume 1 for text of (e) to (g).]

[Amended by Acts 1979, 66th Leg., p. 723, ch. 318, § 2, eff. June 6, 1979.]

SUBCHAPTER D. FILING

§ 9.402. Formal Requisites of Financing Statement; Amendments; Mortgage as Financing Statement

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) A form substantially as follows is sufficient to comply with Subsection (a):

Name of debtor (or assignor) _____
Address _____
Name of secured party (or assignee) _____
Address _____

1. This financing statement covers the following types (or items) of property:
(Describe) _____

2. (If collateral is crops) The above described crops are growing or are to be grown on:
(Describe Real Estate) _____

_____

3. (If applicable) The above goods are or are to become fixtures on (or where appropriate substitute either "The above timber is standing on _____" or "The above minerals or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on _____")
(Describe Real Estate) _____
and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record) The name of a record owner of the real estate concerned is

_____

4. (If products of collateral are claimed) Products of the Collateral are also covered.
(use _____
whichever _____
Signature of Debtor (or Assignor
is _____
applicable)
Signature of Secured Party (or Assignee)

(d) A financing statement may be amended by filing a writing signed by both the debtor and the secured party, provided, however, that an amendment to a financing statement which changes only the name of the secured party or the required address of either the secured party or the debtor is sufficient when it is signed by the secured party instead of the debtor. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(e) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, or a financing statement filed as a fixture filing (Section 9.313), must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(f) A mortgage is effective as a financing statement filed as a fixture filing or as a financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, from the date of its filing for record if (1) the goods or other collateral are described in the mortgage by item or type, (2) in the case of a fixture filing, the goods are or are to become fixtures related to the real estate described in the mortgage, (3) in the case of timber to be cut, the timber is standing on the real estate described in the mortgage, (4) in the case of minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, the minerals or the like (including oil and gas) or the accounts are to be financed at the wellhead or minehead of the well or mine located on the real estate described in the mortgage, (5) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records, and (6) the mortgage is duly filed for record. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

[See Compact Edition, Volume 1 for text of (g) and (h)]

[Amended by Acts 1975, 64th Leg., p. 940, ch. 353, §§ 2, 3, eff. June 19, 1975; Acts 1977, 65th Leg., p. 333, ch. 163, § 1, eff. Aug. 29, 1977.]

§ 9.403. What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer

(a) Presentation for filing of a financing statement or other statement and tender of the filing fee or acceptance of the financing statement or other statement by the filing officer constitutes filing under this chapter.

[See Compact Edition, Volume 1 for text of (b) and (c)]

(d) Except as provided in Subsection (g) a filing officer shall mark each financing statement with a file number and with the date and hour of filing and shall hold the financing statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the financing statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the financing statement. The filing officer shall mark each continuation statement with the date and hour of filing and shall note it in the index of the original financing statement.

(e) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be $3.00 if the statement is in the standard form prescribed by the Secretary of State and otherwise shall be $6.00, plus in each case, if the financing statement is subject to Subsection (e) of Section 9.402, $3.00.

(f) A mortgage which is effective as a filing under Subsection (f) of Section 9.402 remains effective as such a filing as to the types of collateral enumerated in Subsection (f) of Section 9.402 until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(g) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, or is filed as a fixture filing, it shall be filed for record and recorded, and the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

[See Compact Edition, Volume 1 for text of (h)]

[Amended by Acts 1975, 64th Leg., p. 941, ch. 353, § 4, eff. June 19, 1975; Acts 1977, 65th Leg., p. 333, ch. 163, §§ 2, 3, eff. Aug. 29, 1977.]

§ 9.404. Termination Statement

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) If the termination statement is in the standard form prescribed by the Secretary of State, the uniform fee for filing and indexing the termination statement shall be $3.00, and otherwise shall be $6.00, plus, in each case where the original financing statement was filed pursuant to Subsection (e) of Section 9.402, $3.00.

[Amended by Acts 1975, 64th Leg., p. 942, ch. 353, § 5, eff. June 19, 1975.]

§ 9.405. Assignment of Security Interest; Duties of Filing Officer; Fees

(a) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the financing statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in Section 9.403.

[See Compact Edition, Volume 1 for text of (b) and (c)]

(d) The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be $3.00 if the statement is in the standard form prescribed by the Secretary of State and otherwise shall be $6.00, plus, in each case where the original financing statement was filed pursuant to Subsection (e) of Section 9.402, $3.00.

[Amended by Acts 1975, 64th Leg., p. 942, ch. 353, § 6, eff. June 19, 1975.]

§ 9.406. Release of Collateral; Duties of Filing Officer; Fees

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with Subsection (b) of Section 9.405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be $3.00 if the statement is in the standard form prescribed by the Secretary of State and otherwise shall be $6.00, plus, in each case where the original financing statement was filed pursuant to Subsection (e) of Section 9.402, $3.00.

[Amended by Acts 1975, 64th Leg., p. 942, ch. 353, § 7, eff. June 19, 1975.]

SUBCHAPTER E. DEFAULT

§ 9.504. Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his

right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party who has a security interest in the same collateral and who has duly filed in the office of the Secretary of State or of the county clerk in the proper county in this state a financing statement indexed in the name of the debtor or from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

[See Compact Edition, Volume 1 for text of (d) and (e)]

[Amended by Acts 1975, 64th Leg., p. 942, ch. 353, § 8, eff. June 19, 1975; Acts 1977, 65th Leg., p. 333, ch. 163, § 4, eff. Aug. 29, 1977.]

§ 9.505. Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation

[See Compact Edition, Volume 1 for text of (a)]

(b) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection. In the case of consumer goods no other notice need be given. In other cases notice shall be given to any other secured party who has a security interest in the same collateral and who has duly filed in the office of the Secretary of State or the County Clerk in the proper county in this state a financing statement indexed in the name of the debtor or from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the notice was sent, the secured party must dispose of the collateral under Section 9.504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

[Amended by Acts 1975, 64th Leg., p. 943, ch. 353, § 9, eff. June 19, 1975; Acts 1977, 65th Leg., p. 334, ch. 163, § 6, eff. Aug. 29, 1977.]

CHAPTER 11. EFFECTIVE DATE AND TRANSITION PROVISIONS—1973 AMENDMENTS

§ 11.105. Transition Provision on Change of Place of Filing

[See Compact Edition, Volume 1 for text of (a)]

(b) With respect to any collateral, other than fixtures or minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, which are covered by a financing statement or security agreement filed as a financing statement or continuation statement filed prior to January 1, 1974, and which shall not have lapsed prior to January 1, 1974, acquired by the debtor on or after January 1, 1974, any effective financing statement or security agreement filed as a financing statement or continuation statement described in this section and purporting to cover such after-acquired collateral shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under the code with its 1973 amendments.

[See Compact Edition, Volume 1 for text of (c)]

(d) If the filing for record of a mortgage would have been effective as to the types of collateral enumerated in Subsection (f) of Section 9.402 if the 1973 amendments had been in effect on the date of the filing for record of the mortgage, the mortgage shall be deemed effective as such a filing as to the types of collateral enumerated in Subsection (f) of Section 9.402 of this code, as amended, on January 1, 1974.

[Amended by Acts 1975, 64th Leg., p. 944, ch. 353, §§ 10, 11, eff. June 19, 1975.]

§ 11.108. Presumption That Rule of Law Continues Unchanged

Unless a change in law has clearly been made, the provisions of this title with 1973, 1975, and 1977 amendments shall be deemed declaratory of the meaning of the title.

[Amended by Acts 1975, 64th Leg., p. 944, ch. 353, § 12, eff. June 19, 1975; Acts 1977, 65th Leg., p. 334, ch. 163, § 5, eff. Aug. 29, 1977.]

CHAPTER 16. TRADEMARKS

SUBCHAPTER B. REGISTRATION OF MARK

§ 16.10. Application for Registration

[See Compact Edition, Volume 1 for text of (a) and (b).]

(c) The applicant shall

(1) prepare and file the application and a copy of the application with the secretary of state; and

(2) submit as part of the application to the secretary of state

(A) two identical specimens or facsimiles of the mark as actually used, one specimen or facsimile with the original application and one specimen or facsimile with the copy and,

(B) a filing fee of $10 payable to the secretary of state.

[See Compact Edition, Volume 1 for text of (d).]

[Amended by Acts 1979, 66th Leg., p. 233, ch. 120, § 47, eff. May 9, 1979.]

§ 16.11. Registration by Secretary of State

If the application satisfies the requirements of this chapter, and the filing fee is paid, the secretary of state shall

(1) endorse on the original and the copy of the application

(A) the word "filed"; and

(B) the date on which the application was filed;

(2) file the original in his office;

(3) issue a certificate of registration evidencing registration on the date on which the application was filed;

(4) attach the copy to the certificate of registration; and

(5) deliver the certificate of registration with the attached copy of the application to the applicant.

[Amended by Acts 1979, 66th Leg., p. 233, ch. 120, § 48, eff. May 9, 1979.]

TITLE 2. COMPETITION AND TRADE PRACTICES

CHAPTER 17. DECEPTIVE TRADE PRACTICES

SUBCHAPTER E. DECEPTIVE TRADE PRACTICES AND CONSUMER PROTECTION

Section
17.50A. Notice: Offer of Settlement.
17.50B. Damages and Defenses.
17.51 to 17.56. Repealed.
17.55A. Indemnity.
17.56A. Limitation.

§ 17.43. Cumulative Remedies.

The provisions of this subchapter are not exclusive. The remedies provided in this subchapter are in addition to any other procedures or remedies provided for in any other law; provided, however, that no recovery shall be permitted under both this subchapter and another law of both actual damages and penalties for the same act or practice. A violation of a provision of law other than this subchapter is not in and of itself a violation of this subchapter. An act or practice that is a violation of a provision of law other than this subchapter may be made the basis of an action under this subchapter if the act or practice is proscribed by a provision of this subchapter or is declared by such other law to be actionable under this subchapter. The provisions of this subchapter do not in any way preclude other political subdivisions of this state from dealing with deceptive trade practices.

[Amended by Acts 1979, 66th Leg., p. 1327, ch. 603, § 1, eff. Aug. 27, 1979.]

§ 17.45. Definitions

As used in this subchapter:

(1) "Goods" means tangible chattels or real property purchased or leased for use.

(2) "Services" means work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods.

[See Compact Edition, Volume 1 for text of (3)]

(4) "Consumer" means an individual, partnership, corporation, or governmental entity who seeks or acquires by purchase or lease, any goods or services.

(5) "Unconscionable action or course of action" means an act or practice which, to a person's detriment:

(A) takes advantage of the lack of knowledge, ability, experience, or capacity of a person to a grossly unfair degree; or

(B) results in a gross disparity between the value received and consideration paid, in a transaction involving transfer of consideration.

[See Compact Edition, Volume 1 for text of (6) to (8)]

(9) "Knowingly" means actual awareness of the falsity, deception, or unfairness of the act or practice giving rise to the consumer's claim or, in an action brought under Subdivision (2) of Subsection (a) of Section 17.50, actual awareness of the act or practice constituting the breach of warranty, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

[Amended by Acts 1975, 64th Leg., p. 149, ch. 62, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 600, ch. 216, § 1, eff. May 23, 1977; Acts 1979, 66th Leg., p. 1327, ch. 603, § 2, eff. Aug. 27, 1979.]

§ 17.46. Deceptive Trade Practices Unlawful

(a) False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action by the consumer protection division under Sections 17.47, 17.58, 17.60, and 17.61 of this code.

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

(1) passing off goods or services as those of another;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;

(6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;

(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) disparaging the goods, services, or business of another by false or misleading representation of facts;

(9) advertising goods or services with intent not to sell them as advertised;

(10) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;

(11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;

(12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

(13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;

(14) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;

(16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;

(17) advertising of any sale by fraudulently representing that a person is going out of business;

(18) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(19) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 of the Business & Commerce Code to involve obligations in excess of those which are appropriate to the goods;

(20) selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a multi-level distributorship. As used herein, "multi-level distributorship" means a sales plan for the distribution of goods or services in which promises of rebate or payment are made to individuals, conditioned upon those individuals recommending or securing additional individuals to assume positions in the sales operation, and where the rebate or payment is not exclusively conditioned on or in relation to proceeds from the retail sales of goods;

(21) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

(22) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in

which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract; or

(23) the failure to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

(c)(1) It is the intent of the legislature that in construing Subsection (a) of this section in suits brought under Section 17.47 of this subchapter the courts to the extent possible will be guided by Subsection (b) of this section and the interpretations given by the Federal Trade Commission and federal courts to Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)].

(2) In construing this subchapter the court shall not be prohibited from considering relevant and pertinent decisions of courts in other jurisdictions.

(d) For the purposes of the relief authorized in Subdivision (1) of Subsection (a) of Section 17.50 of this subchapter, the term "false, misleading, or deceptive acts or practices" is limited to the acts enumerated in specific subdivisions of Subsection (b) of this section.

[Amended by Acts 1977, 65th Leg., p. 601, ch. 216, §§ 2, 3, eff. May 23, 1977; Acts 1977, 65th Leg., p. 892, ch. 336, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1327, ch. 603, § 3, eff. Aug. 27, 1979.]

Section 9 of the 1979 amendatory act provided:

"This Act shall be applied prospectively only. Nothing in this Act affects either procedurally or substantively a cause of action that arose either in whole or in part prior to the effective date of this Act."

§ 17.47. Restraining Orders

(a) Whenever the consumer protection division has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, and that proceedings would be in the public interest, the division may bring an action in the name of the state against the person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice. The consumer protection division may bring any action under this section against a licensed insurer or insurance agent for a violation of this subchapter, Article 21.21, Texas Insurance Code, as amended, or the rules and regulations of the State Board of Insurance issued under Article 21.21, Texas Insurance Code, as amended, only on the written request of the State Board of Insurance or the commissioner of insurance.

Nothing herein shall require the consumer protection division to notify such person that court action is or may be under consideration. Provided, however, the consumer protection division shall, at least seven days prior to instituting such court action, contact such person to inform him in general of the alleged unlawful conduct. Cessation of unlawful conduct after such prior contact shall not render such court action moot under any circumstances, and such injunctive relief shall lie even if such person has ceased such unlawful conduct after such prior contact. Such prior contact shall not be required if, in the opinion of the consumer protection division, there is good cause to believe that such person would evade service of process if prior contact were made or that such person would destroy relevant records if prior contact were made.

(b) An action brought under Subsection (a) of this section which alleges a claim to relief under this section may be commenced in the district court of the county in which the person against whom it is brought resides, has his principal place of business, has done business, or in the district court of the county where the transaction occurred, or, on the consent of the parties, in a district court of Travis County. The court may issue temporary restraining orders, temporary or permanent injunctions to restrain and prevent violations of this subchapter and such injunctive relief shall be issued without bond.

(c) In addition to the request for a temporary restraining order, or permanant injunction in a proceeding brought under Subsection (a) of this section, the consumer protection division may request a civil penalty of not more than $2,000 per violation, not to exceed a total of $10,000, to be paid to the state.

(d) The court may make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages or to restore money or property, real or personal, which may have been acquired by means of any unlawful act or practice. Damages may not include any damages incurred beyond a point two years prior to the institution of the action by the consumer protection division. Orders of the court may also include the appointment of a receiver or a sequestration of assets if a person who has been ordered by a court to make restitution under this section has failed to do so within three months after the order to make restitution has become final and nonappealable.

[See Compact Edition, Volume 1 for text of (e) and (f)]

[Amended by Acts 1977, 65th Leg., p. 602, ch. 216, § 4, eff. May 23, 1977.]

§ 17.50. Relief for Consumers

(a) A consumer may maintain an action where any of the following constitute a producing cause of actual damages:

(1) the use or employment by any person of a false, misleading, or deceptive act or practice

that is specifically enumerated in a subdivision of Subsection (b) of Section 17.46 of this subchapter;

(2) breach of an express or implied warranty;

(3) any unconscionable action or course of action by any person; or

(4) the use or employment by any person of an act or practice in violation of Article 21.21, Texas Insurance Code, as amended, or rules or regulations issued by the State Board of Insurance under Article 21.21, Texas Insurance Code, as amended.

(b) In a suit filed under this section, each consumer who prevails may obtain:

(1) the amount of actual damages found by the trier of fact. In addition the court shall award two times that portion of the actual damages that does not exceed $1,000. If the trier of fact finds that the conduct of the defendant was committed knowingly, the trier of fact may award not more than three times the amount of actual damages in excess of $1,000;

(2) an order enjoining such acts or failure to act;

(3) orders necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this subchapter; and

(4) any other relief which the court deems proper, including the appointment of a receiver or the revocation of a license or certificate authorizing a person to engage in business in this state if the judgment has not been satisfied within three months of the date of the final judgment. The court may not revoke or suspend a license to do business in this state or appoint a receiver to take over the affairs of a person who has failed to satisfy a judgment if the person is a licensee of or regulated by a state agency which has statutory authority to revoke or suspend a license or to appoint a receiver or trustee. Costs and fees of such receivership or other relief shall be assessed against the defendant.

(c) On a finding by the court that an action under this section was groundless and brought in bad faith, or brought for the purpose of harassment, the court shall award to the defendant reasonable and necessary attorneys' fees and court costs.

(d) Each consumer who prevails shall be awarded court costs and reasonable and necessary attorneys' fees.

[Amended by Acts 1977, 65th Leg., p. 603, ch. 216, § 5, eff. May 23, 1977; Acts 1979, 66th Leg., p. 1329, ch. 603, § 4, eff. Aug. 27, 1979.]

§ 17.50A. Notice: Offer of Settlement

(a) As a prerequisite to filing a suit seeking damages under Subdivision (1) of Subsection (b) of Section 17.50 of this subchapter against any person, a consumer shall give written notice to the person at least 30 days before filing the suit advising the person of the consumer's specific complaint and the amount of actual damages and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant.

(b) If the giving of 30 days' written notice is rendered impracticable by reason of the necessity of filing suit in order to prevent the expiration of the statute of limitations or if the consumer's claim is asserted by way of counterclaim, the notice provided for in Subsection (a) of this section is not required, but the tender provided for by Subsection (c) of this section and by Subsection (d), Section 17.50B of this subchapter may be made within 30 days after the filing of the suit or counterclaim.

(c) Any person who receives the written notice provided by Subsection (a) of this section may, within 30 days after the receipt of the notice, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date of the written notice. A person who does not receive such a written notice due to the consumer's suit or counterclaim being filed as provided for by Subsection (b) of this section may, within 30 days after the filing of such suit or counterclaim, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date the suit or counterclaim was filed. Any offer of settlement not accepted within 30 days of receipt by the consumer shall be deemed to have been rejected by the consumer.

(d) A settlement offer made in compliance with Subsection (c) of this section, if rejected by the consumer, may be filed with the court together with an affidavit certifying its rejection. If the court finds that the amount tendered in the settlement offer is the same or substantially the same as the actual damages found by the trier of fact, the consumer may not recover an amount in excess of the amount tendered in the settlement offer or the amount of actual damages found by the trier of fact, whichever is less.

(e) The tender of an offer of settlement is not an admission of engaging in an unlawful act or practice or of liability under this Act. Evidence of a settlement offer may be introduced only to determine the reasonableness of the settlement offer as provided for by Subsection (d) of this section.

[Added by Acts 1977, 65th Leg., p. 604, ch. 216, § 6, eff. May 23, 1977; Acts 1979, 66th Leg., p. 1330, ch. 603, § 5, eff. Aug. 27, 1979.]

§ 17.50B. Damages: Defenses

(a) In an action brought under Section 17.50 of this subchapter, it is a defense to the award of any damages or attorneys' fees if the defendant proves that before consummation of the transaction he gave reasonable and timely written notice to the plaintiff of the defendant's reliance on:

(1) written information relating to the particular goods or service in question obtained from official government records if the written information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information;

(2) written information relating to the particular goods or service in question obtained from another source if the information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information; or

(3) written information concerning a test required or prescribed by a government agency if the information from the test was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information.

(b) In asserting a defense under Subdivision (1), (2), or (3) of Subsection (a) of Section 17.50B above, the defendant shall prove the written information was a producing cause of the alleged damage. A finding of one producing cause does not bar recovery if other conduct of the defendant not the subject of a defensive finding under Subdivision (1), (2), or (3) of Subsection (a) of Section 17.50B above was a producing cause of damages of the plaintiff.

(c) In a suit where a defense is asserted under Subdivision (2) of Subsection (a) of Section 17.50B above, suit may be asserted against the third party supplying the written information without regard to privity where the third party knew or should have reasonably foreseen that the information would be provided to a consumer; provided no double recovery may result.

(d) In an action brought under Section 17.50 of this subchapter, it is a defense to a cause of action if the defendant proves that he received notice from the consumer advising the defendant of the nature of the consumer's specific complaint and of the amount of actual damages and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant, and that within 30 days after the day on which the defendant received the notice the defendant tendered to the consumer:

(1) the amount of actual damages claimed; and

(2) the expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant.

[Added by Acts 1979, 66th Leg., p. 1331, ch. 603, § 6, eff. Aug. 27, 1979.]

§ 17.51 to 17.54. Repealed by Acts 1977, 65th Leg., p. 605, ch. 216, §§ 10 to 13, eff. May 23, 1977

Prior to repeal, § 17.54 was amended by Acts 1975, 64th Leg., p. 149, ch. 62, § 2.

See, now, § 17.50B.

§ 17.55A. Indemnity

A person against whom an action has been brought under this subchapter may seek contribution or indemnity from one who, under the statute law or at common law, may have liability for the damaging event of which the consumer complains. A person seeking indemnity as provided by this section may recover all sums that he is required to pay as a result of the action, his attorney's fees reasonable in relation to the amount of work performed in maintaining his action for indemnity, and his costs.

[Added by Acts 1977, 65th Leg., p. 604, ch. 216, § 7, eff. May 23, 1977.]

§ 17.56. Venue

An action brought which alleges a claim to relief under Section 17.50 of this subchapter may be commenced in the county in which the person against whom the suit is brought resides, has his principal place of business, or has a fixed and established place of business at the time the suit is brought or in the county in which the alleged act or practice occurred or in a county in which the defendant or an authorized agent of the defendant solicited the transaction made the subject of the action at bar.

[Amended by Acts 1977, 65th Leg., p. 604, ch. 216, § 8, eff. May 23, 1977; Acts 1979, 66th Leg., p. 1332, ch. 603, § 7, eff. Aug. 27, 1979.]

§ 17.56A. Limitation

All actions brought under this subchapter must be commenced within two years after the date on which the false, misleading, or deceptive act or practice occurred or within two years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice. The period of limitation provided in this section may be extended for a period of 180 days if the plaintiff proves that failure timely to commence the action was caused by the defendant's knowingly engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

[Added by Acts 1979, 66th Leg., p. 1332, ch. 603, § 8, eff. Aug. 27, 1979.]

§ 17.59. Post Judgment Relief

(a) If a money judgment entered under this subchapter is unsatisfied 30 days after it becomes final and if the prevailing party has made a good faith attempt to obtain satisfaction of the judgment, the following presumptions exist with respect to the party against whom the judgment was entered:

(1) that the defendant is insolvent or in danger of becoming insolvent; and

(2) that the defendant's property is in danger of being lost, removed, or otherwise exempted from collection on the judgment; and

(3) that the prevailing party will be materially injured unless a receiver is appointed over the defendant's business; and

(4) that there is no adequate remedy other than receivership available to the prevailing party.

(b) Subject to the provisions of Subsection (a) of this section, a prevailing party may move that the defendant show cause why a receiver should not be appointed. Upon adequate notice and hearing, the court shall appoint a receiver over the defendant's business unless the defendant proves that all of the presumptions set forth in Subsection (a) of this section are not applicable.

(c) The order appointing a receiver must clearly state whether the receiver will have general power to manage and operate the defendant's business or have power to manage only a defendant's finances. The order shall limit the duration of the receivership to such time as the judgment or judgments awarded under this subchapter are paid in full. Where there are judgments against a defendant which have been awarded to more than one plaintiff, the court shall have discretion to take any action necessary to efficiently operate a receivership in order to accomplish the purpose of collecting the judgments.

[Amended by Acts 1977, 65th Leg., p. 604, ch. 216, § 9, eff. May 23, 1977.]

TITLE 3. INSOLVENCY, FRAUDULENT TRANSFERS, AND FRAUD

CHAPTER 26. STATUTE OF FRAUDS

§ 26.01. Promise or Agreement Must be In Writing

[See Compact Edition, Volume 1 for text of (a) to (a)(2)]

(b) Subsection (a) of this section applies to:

[See Compact Edition, Volume 1 for text of (b)(1) to (6)]

(7) a promise or agreement to pay a commission for the sale or purchase of:

(A) an oil or gas mining lease;

(B) an oil or gas royalty;

(C) minerals; or

(D) a mineral interest; and

(8) an agreement, promise, contract, or warranty of cure relating to medical care or results thereof made by a physician or health care provider as defined in Section 1.03, Medical Liability and Insurance Improvement Act of Texas.

This section shall not apply to pharmacists.

[Amended by Acts 1977, 65th Leg., p. 2053, ch. 817, § 21.01, eff. Aug. 29, 1977.]

TITLE 4. MISCELLANEOUS COMMERCIAL PROVISIONS

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CHAPTER 36. ASSUMED BUSINESS OR PROFESSIONAL NAME

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SUBCHAPTER A. GENERAL PROVISIONS

§ 36.01. Short Title

This chapter may be cited as the Assumed Business or Professional Name Act.

[Added by Acts 1977, 65th Leg., p. 1095, ch. 403, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act repealed Civil Statutes, Arts. 5924 to 5927b; § 3 amended Insurance Code, art. 21.43(b); and § 4 thereof provided:

"If a court of competent jurisdiction shall adjudge any clause, sentence, subsection, or section of this Act to be invalid or unconstitutional, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection, or section of this Act so adjudged to be invalid or unconstitutional."

§ 36.02. Definitions

In this chapter, unless the context otherwise requires:

(1) "Partnership" means a joint venture, general partnership, or limited partnership.

(2) "Company" means a real estate investment trust, joint-stock company, or any other business, professional, or other association or legal entity that is not incorporated other than a partnership.

(3) "Corporation" means a domestic or foreign corporation, professional corporation, professional association, other corporation, or any other business, professional, or other association or legal entity that is incorporated.

(4) "Person" includes an individual, partnership, company, or corporation.

(5) "Representative" means a trustee, administrator, executor, independent executor, guardian, conservator, trustee in bankruptcy, receiver, or any other person appointed by a court or by trust or will to have custody of, take possession of, have title to, or otherwise be empowered to control the person or property of any person.

(6) "Estate" means the property of any person which is administered by a representative.

(7) "Assumed name" means:

(A) in the case of an individual, a name that does not include the surname of the individual;

(B) in the case of a joint venture or general partnership, a name that does not include the surname or other legal name of each joint venturer or general partner;

(C) in the case of an individual, joint venture, or a general partnership, a name, including a surname, that suggests the existence of additional owners by including words such as "Company," "& Company," "& Son," "& Sons," "& Associates," "Brothers," and the like, but not words that merely describe the business or professional service being conducted or rendered;

(D) in the case of a limited partnership, any name other than the name stated in its certificate of limited partnership;

(E) in the case of a company, any name used by the company; and

(F) in the case of a corporation, any name other than the name stated in its articles of incorporation or association or comparable document.

(8) "Registrant" means any person that has filed, or on whose behalf there has been filed, an assumed name certificate under the provisions of this chapter or other law.

(9) "Office" means, in the case of any person that is not an individual or that is a corporation which is not required to or does not maintain a registered office in this state, the principal office of such person and also its principal place of business if not the same as its principal office. In the case of a corporation which is required to maintain a registered office in this state, "office" means the registered office and also its principal office if not the same as its registered office.

(10) "Address" means a post office address and also the street address if not the same as the post office address.

[Added by Acts 1977, 65th Leg., p. 1095, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.03. Exclusion of Insurance Companies

The provisions of this chapter shall not apply to any insurance company as defined in Article 1.29 of the Insurance Code which is authorized to do business in this state except as such code shall specifically provide.

[Sections 36.04 to 36.09 reserved for expansion]

[Added by Acts 1977, 65th Leg., p. 1096, ch. 403, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER B. ASSUMED BUSINESS OR PROFESSIONAL NAME CERTIFICATE

§ 36.10. For Unincorporated Business or Profession

(a) Any person who regularly conducts business or renders professional services other than as a corporation in this state under an assumed name shall file in the office of the county clerk in each county in which such person has or will maintain business or professional premises or, if no business or professional premises are or will be maintained in any county, in each county where such person conducts business or renders a professional service, a certificate setting forth:

(1) the assumed name under which such business or professional service is or is to be conducted or rendered;

(2) if the registrant is:

(A) an individual, his full name and residence address;

(B) a partnership, (i) the venture or partnership name, (ii) the venture or partnership office address, and (iii) the full name of each joint venturer or general partner and his residence address if he is an individual or its office address if not an individual;

(C) an estate, (i) the name of the estate, (ii) the estate's office address, if any, and (iii) the full name of each representative of the estate and his residence address if he is an individual or its office address if not an individual;

(D) a real estate investment trust, (i) the name of the trust, (ii) the address of the trust, (iii) the full name of each trustee manager and his residence address if he is an individual and its office address if not an individual; or

(E) a company other than a real estate investment trust, or a corporation, (i) the name of the company or corporation, (ii) the state, country, or other jurisdiction under the laws of which it was organized, incorporated, or associated, and (iii) its office address;

(3) the period, not to exceed 10 years, during which the assumed name will be used; and

(4) a statement specifying that the business or professional service that is or is to be conducted or rendered in the county under such assumed name is being or will be conducted or rendered as a proprietorship, sole practitioner, joint venture, general partnership, limited partnership, real estate investment trust, joint-stock company, or some other form of unincorporated business or professional association or entity, as the case may be.

(b) A certificate filed under Subsection (a) of this section shall be executed and acknowledged by each individual whose name is required to be stated therein or by his representative or attorney in fact, and in the case of any person not an individual the name of which is required to be stated therein, the certificate shall be executed and acknowledged under oath on behalf of such person by its representative or attorney in fact or by a joint venturer, general partner, trustee manager, officer, or anyone having comparable authority, as the case may be, of such person. Any certificate executed and acknowledged by an attorney in fact shall include a statement that such attorney in fact has been duly authorized in writing by his principal to execute and acknowledge the same.

[Added by Acts 1977, 65th Leg., p. 1096, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.11. For Incorporated Business or Profession

(a) Any corporation which regularly conducts business or renders professional services in this state under an assumed name, or which may be required by law to use an assumed name in this state to conduct such business or render such services, shall file in the office of the Secretary of State and, (1) if such corporation is required to maintain a registered office in this state, in the office of the county clerk of the county in which such registered office is located and of the county in which its principal office is located if within this state and not the same county where the registered office is located; or (2) if such corporation is not required to or does not maintain a registered office in this state, in the office of the county clerk of the county in which its office within this state is located or if the corporation is not incorporated, organized, or associated under the laws of this state, in the office of the county clerk of the county in which its principal place of business in this state is located if not the same as its office, a certificate setting forth:

(1) the assumed name under which such business or professional service is or is to be conducted or rendered;

(2) the name of the corporation as stated in its articles of incorporation or association or comparable document;

(3) the state, country, or other jurisdiction under the laws of which it was incorporated or associated and address of its registered or similar office in that state, country, or jurisdiction;

(4) the period, not to exceed 10 years, during which the assumed name will be used;

(5) a statement specifying that the corporation is a business corporation, nonprofit corporation, professional corporation, professional association, other type of corporation, or some other type of incorporated business, professional or other association, or legal entity;

(6) if the corporation is required to maintain a registered office in this state, (A) the address of such registered office and the name of its registered agent at such address, and (B) the address of its principal office if not the same as that of its registered office in this state;

(7) if the corporation is not required to or does not maintain a registered office in this state, its office address in this state and if the corporation is not incorporated, organized, or associated under the laws of this state, the address of its place of business in this state and its office address elsewhere, if any; and

(8) the county or counties within the state where business or professional services are being or are to be conducted or rendered under such assumed name.

(b) A certificate filed under Subsection (a) of this section shall be executed and duly acknowledged by an officer, representative, or attorney in fact for the corporation. A certificate executed and acknowledged by an attorney in fact shall include a statement that the attorney in fact has been duly authorized in writing by his principal to execute and acknowledge the same.

(c) Nothing in this chapter shall require a corporation or its shareholders, associates, or members to file an assumed business or professional name certificate in order to conduct business or render a professional service within this state under the name of the corporation as stated in its articles of incorporation, association, or comparable document.

[Added by Acts 1977, 65th Leg., p. 1097, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.12. Material Change in Information; New Certificate

(a) Whenever an event occurs that causes the information in a certificate filed pursuant to this chapter by a person conducting business or rendering a professional service under an assumed name in this state to become materially misleading, a new certificate complying with Section 36.10 or Section 36.11 of this chapter, as the case may be, shall be filed in the office of the county clerk and of the Secretary of State, if applicable, in which an original or renewal certificate was filed. The new certificate shall be filed within 60 days after the occurrence of the events which necessitates its filing.

(b) An event that causes the information contained in a certificate filed under this chapter to become materially misleading includes such matters as:

(1) a change in the name, identity, entity, form of business or professional organization, or location of a registrant;

(2) in the case of a proprietorship or sole practitioner, a change in ownership;

(3) in the case of a partnership, the admission of a new partner or joint venturer or whenever any general partner or joint venturer ceases to be associated with the partnership; or

(4) in the case of a registrant that is required by law to maintain a registered or similar office and a registered or similar agent at such office, a change in the address of such office or identity of such agent.

(c) A new certificate filed under this section shall be effective for a term not to exceed 10 years from the date it is filed.

[Added by Acts 1977, 65th Leg., p. 1098, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.13. Duration of Certificate; Renewal; Termination of Existing Certificates

(a) A certificate filed pursuant to this chapter in the office of the county clerk and of the Secretary of State, if applicable, by any person conducting business or rendering a professional service under an assumed name in this state shall be effective for a term not to exceed 10 years from the date the certificate is filed.

(b) At the end of the stated term, not to exceed 10 years, the certificate shall become null and void and of no effect, unless within six months prior to its expiration a renewal certificate complying with the provisions of this chapter for an original certificate shall be filed in the office of the county clerk and of the Secretary of State, if applicable.

(c) A registrant may renew a certificate under this section for any number of successive terms, but each such term shall not exceed 10 years in duration.

(d) Any assumed name certificate that has been filed pursuant to Articles 5924 and 5924.1, Revised Civil Statutes of Texas, 1925, prior to the effective date of this chapter, shall become null and void after December 31, 1978, unless before that date a new certificate complying with the requirements of this chapter has been filed. A new certificate thus filed shall be effective for a term not to exceed 10 years from the date it is filed.

(e) The county clerk of each county shall notify in writing each person that has conducted a business under an assumed name and for which an assumed name certificate has been filed in the office of that clerk pursuant to Articles 5924 and 5924.1, Revised Civil Statutes of Texas, 1925, prior to the effective date of this chapter, that under the provisions of Subsection (d) of this section the certificate shall become null and void after December 31, 1978, unless a new certificate is filed that complies with the provisions of this chapter. The written notice shall be effective by being deposited with the United States Postal Service, addressed to the name of the business at the office address given in the certificate as last filed.

[Added by Acts 1977, 65th Leg., p. 1099, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.14. Abandonment of Use of Assumed Business or Professional Name

(a) A registrant that has filed an assumed business or professional name certificate under this chapter which ceases to transact business or render professional services under the assumed name stated in such certificate in this state may file in the office of the county clerk and of the Secretary of State, if applicable, where such certificate has been filed, a statement of abandonment of use of a business or professional name setting forth:

(1) the assumed business or professional name being abandoned;

(2) the date on which the certificate was filed in the office in which such statement is being filed and any other filing office or offices, if any, where the certificate has been filed; and

(3) the registrant's name and residence or office address as would be required to be stated if the certificate were being presently filed.

(b) A statement filed under Subsection (a) of this section shall be executed and acknowledged in the same manner as would be required if the registrant were filing an assumed business or professional name certificate under this chapter.

[Added by Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.15 Index of Certificates; Filing Fees

Each county clerk and the Secretary of State shall keep an alphabetical index of all assumed names

which have been filed in his office pursuant to the provisions of this chapter and of the persons filing the same. The county clerk shall receive a fee of $2 for indexing and filing each certificate or statement required or permitted to be filed pursuant to this chapter. The Secretary of State shall collect for the use of the state a fee of $10 for indexing and filing each certificate or statement required or permitted to be filed pursuant to this chapter. A copy of such certificate or statement duly certified to by the county clerk in whose office the same was filed or by the Secretary of State shall be presumptive evidence in all courts in this state of the facts therein contained.

[Added by Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.16. Prescribed Forms

The Secretary of State may prescribe the forms to be used for filing any assumed business or professional name certificate or statement that complies with this chapter in his office or in the office of any county clerk in this state. The use of such forms, however, shall not be mandatory unless otherwise specifically provided by law.

[Added by Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.17. Effect of Filing

Nothing in this chapter shall be construed to give a registrant of an assumed business or professional name any right to use the name when contrary to the common law or statutory law of unfair competition, unfair trade practices, common law copyright, or similar law. The mere filing of an assumed business or professional name certificate pursuant to this chapter shall not constitute actual use of the assumed name set out therein for purposes of determining priority of rights.

[Added by Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.]

[Sections 36.18 to 36.24 reserved for expansion]

SUBCHAPTER C. CIVIL AND CRIMINAL PENALTIES

§ 36.25. Civil Penalties

Failure to comply with the provisions of this chapter by any person shall not impair the validity of any contract or act by such person nor prevent such person from defending any action or proceeding in any court of this state, but such person shall not maintain an action or proceeding in any court of this state arising out of a contract or act in which an assumed name was used until an original, new, or renewed assumed business or professional name certificate has been filed as required by this chapter. In an action or proceeding brought against a person that has not complied with this chapter, the plaintiff or other party bringing the suit or proceeding may recover, if the court shall so determine, expenses incurred, including attorney's fees, in locating and effecting service of process on such person.

[Added by Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.26. Criminal Penalty

A person conducting business or rendering a professional service in this state under an assumed name who intentionally violates a provision of this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $2,000.

[Added by Acts 1977, 65th Leg., p. 1101, ch. 403, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 867, ch. 391, § 1, eff. Aug. 27, 1979.]

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TITLE 1. GENERAL PROVISIONS

CHAPTER 1. TITLE, ORGANIZATION, AND PURPOSE

§ 1.04. Applicability

[See Compact Edition, Volume 1 for text of (a)]

(b) This code shall not apply to those facilities and institutions under the control and direction of the Texas Department of Mental Health and Mental Retardation or to the institutions for delinquent, dependent and neglected children under the control and direction of the Texas Youth Council except as specifically provided in Subchapter E of Chapter 30 of this code [1] and in Section 16.104 of this code.

(c) Any educational institution supported either wholly or in part by state tax funds shall, if undertaking to provide educational services to any individual within the jurisdiction or geographical boundaries of the educational institution, provide equal educational opportunities to all individuals within its jurisdiction or geographical boundaries pursuant to the provisions of this code and pursuant to the provisions of regulations promulgated by the Central Education Agency to give effect to the intent of the legislature in its enactment of this code. No individual otherwise eligible for educational services through an educational institution supported either wholly or in part by state tax funds may deny services to any handicapped student as defined in Section 16.104 of this code, but the educational institution shall instead be obligated to provide handicapped individuals such special educational services as might from time to time be authorized by law or, where expressly authorized, to assist in and contribute toward the provision of appropriate special educational services in cooperation with other educational institutions and other appropriate agencies, institutions, or departments.

(d) Notwithstanding the other provisions of this section, employees of the Texas Youth Council in academic or vocational programs shall be members of the Teacher Retirement System of Texas under Chapter 3 of this code.

[Amended by Acts 1975, 64th Leg., p. 2377, ch. 734, § 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 369, ch. 181, § 1, eff. May 20, 1977; Acts 1977, 65th Leg., p. 1962, ch. 782, § 1, eff. June 16, 1977; Acts 1979, 66th Leg., p. 1323, ch. 602, § 25, eff. Aug. 27, 1979.]

[1] Section 30.81 et seq.

CHAPTER 2. GENERAL PROVISIONS

Section

2.09a. Immunization Records; Reporting.

§ 2.09. Immunization; Requirements; Exceptions

(a) No person may be admitted to any elementary or secondary school or institution of higher education unless he has been immunized against diphtheria, rubeola, rubella, tetanus, and poliomyelitis, except as provided in Subsection (c).

(b) Subject to the provisions of Subsection (c), the Texas Board of Health may modify or delete any of the immunizations in Subsection (a) or may require immunizations against additional diseases as a requirement for admission to any elementary or secondary school or institution of higher education.

(c) No form of immunization is required for a person's admission to any elementary or secondary school or institution of higher education when the person applying for admission submits to the admitting official either of the following:

(1) an affidavit or a certificate signed by a physician who is duly registered and licensed to practice medicine within the United States, in which it is stated that, in the physician's opinion, the immunization required would be injurious to the health and well-being of the applicant or any member of his family or household; or

(2) an affidavit signed by the applicant or, if a minor, by his parent or guardian stating that the immunization conflicts with the tenets and practice of a recognized church or religious denomination of which the applicant is an adherent or member; provided, however, that this exemption does not apply in times of emergency or epidemic declared by the Commissioner of Health.

(d) The Texas Department of Health shall provide the required immunizations to children in areas where no local provision exists to provide these services.

(e) A person may be provisionally admitted to an elementary or secondary school or institution of higher education if he has begun the required immunizations and if he continues to receive the necessary immunizations as rapidly as is medically feasible. The Texas Department of Health shall promulgate rules and regulations relating to the provisional admission of persons to an elementary or secondary school or institution of higher education.

[Amended by Acts 1979, 66th Leg., p. 771, ch. 337, § 1, eff. June 6, 1979.]

§ 2.09a. Immunization Records; Reporting

(a) Each school or institution of higher education covered by this Act shall keep an individual immunization record during the period of attendance for each student admitted, and the records shall be open for inspection at all reasonable times by the Central Education Agency or by representatives of local health departments or the Texas Department of Health.

(b) Each school or institution of higher education covered by this Act shall cooperate in transferring students' immunization records between other schools and institutions of higher education. Specific approval from students, parents, or guardians is not required prior to making such record transfers.

(c) The Central Education Agency and the Texas Department of Health shall develop the form for a required annual report of the immunization status of students, and such annual report shall be submitted by all Texas schools at such time and in such manner as is indicated in the instructions printed on such form.

[Added by Acts 1979, 66th Leg., p. 772, ch. 337, § 2, eff. June 6, 1979.]

CHAPTER 3. TEACHER RETIREMENT SYSTEM

SUBCHAPTER B. CREDITABLE SERVICE

Section
3.27. Purchase of Credit for Developmental Leave.
3.28. Repealed.
3.29. Purchase of Credit for Service with Certain University Components.

SUBCHAPTER C. BENEFITS

3.40. Waiver of Benefits.

SUBCHAPTER D. ADMINISTRATION AND ORGANIZATION

3.63. Collection of Federal or Private Funds for Retirement Contributions.

SUBCHAPTER A. GENERAL PROVISIONS

§ 3.02. Definitions and Qualifications of Terms

(a) In this chapter, unless the context clearly requires a different meaning, the words and phrases defined below in this section shall have the meanings hereinbelow given.

[See Compact Edition, Volume 1 for text of a(1) and a(2)]

(3) "Employee" means any person employed to render service on a full-time, regular salary basis by the governing board of any school district created under the laws of this state, by any county school board, by the State Board of Trustees of the Retirement System, by the State Board of Education, by the Central Education Agency, by the board of regents of any college or university, or by any other legally constituted board or agency of any public school.

(4) "Employer" means the State of Texas or any of its designated agents or agencies responsible for public education, to include those boards and agencies listed in Subsection (a)(3) of this section.

(5) "Member" means any employee included in the membership of the retirement system in accordance with this chapter.

(6) "State Board of Trustees" means the board established to administer the retirement system under the terms of this chapter.

(7) "Service" means service as an employee as defined in this section.

(8) "Prior service" means service by such person as an employee prior to:

(A) September 1, 1937, as relates to any person who became a member or who at any time on or before August 31, 1949, was eligible for membership in the retirement system; or

(B) September 1, 1949, as relates to any person who for the first time became eligible for membership in the retirement system on or after September 1, 1949.

(9) "Membership service" means service rendered as an employee while a member of the retirement system.

(10) "Creditable service" means the prior service, membership service, developmental leave, out-of-state service, and military duty for which a member of the retirement system is entitled to credit under the provisions of this chapter.

(11) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member and credited with the authorized interest to his individual account in the member savings account.

(12) "Annual compensation" means the compensation that is paid or payable to an employee by his employers for service during a school year, except that compensation in excess of $25,000 for school years after September 1, 1969, but before September 1, 1979, and compensation in excess of $8,400 for school years prior to September 1, 1969, shall not be included as annual compensation.

(13) "Military duty" means active duty in the Armed Forces of the United States, other than as a student in the service academies, which meets one of the following criteria:

(A) the active duty was rendered as a direct result of being inducted into the Armed Forces or of first enlisting for duty on a date when the federal government was actively inducting personnel into the Armed Forces pursuant to federal draft laws;

(B) the active duty was rendered as a reservist or a member of the National Guard who is ordered to duty under the authority of federal law; or

(C) the active duty was rendered during a period when the federal government was actively inducting personnel into the Armed Forces pursuant to federal draft laws.

(14) "Retirement" means withdrawal from service with a retirement benefit granted under the provisions of this chapter.

(15) "Beneficiary" means any person receiving an annuity, retirement benefit, or other benefit provided in this chapter.

(16) "Designated beneficiary" means any person nominated to receive in case of a member's or annuitant's death any benefit payable after such death under the provisions of this chapter.

(17) "Standard annuity" shall have the meaning given such term by the laws in effect on a member's date of retirement for retirement benefits and on a member's date of death for death benefits. For benefits payable by reason of retirement or death on or after May 31, 1977, "standard annuity" means an annuity payable in equal monthly installments aggregating in twelve months and calculated as follows: two percent for each year of prior service credit and membership service credit multiplied by the member's "best-five-years-average compensation."

(18) "Best-five-years-average compensation" means the average annual compensation received by the member as an employee during the 5 years of membership service (whether or not consecutive) in which the member earned the highest annual compensation. Compensation in excess of the limits established in the definition of "annual compensation" shall be excluded in calculating the "best-five-years-average compensation" except that such average for a person retiring on or after the date that such limits are removed shall be based on actual compensation paid or payable for service as an employee.

(19) "School year" means the year beginning on or about September 1 of any calendar year and ending August 31 of the following calendar year. However, the school year for a member whose contract year begins on or after July 1 and extends after August 31 of the same calendar year shall commence from the beginning date of the contract for the school year, but in no case may the school year include more than twelve months. The employer shall certify annually the beginning date of the member's contract in such form and under such procedures as may be required by the Board of Trustees.

(20) "Actuarial equivalent" of any benefit means a benefit of equal monetary value when computed upon the basis of annuity or mortality tables and on an interest or discount rate adopted by the State Board of Trustees for such purpose from time to time and in force at the time the benefit is originally entered upon.

(21) "Developmental leave" means an absence from service for a school year which is approved by a member's employer for study, research, travel, or other purpose designed to improve the member's professional competence as determined by the employer.

(b) In case of doubt the State Board of Trustees of the retirement system shall determine whether a person is an employee within the contemplation of this chapter.

(c) In cases where the annual compensation includes maintenance, the retirement system shall fix the value of that part of the compensation not paid in money.

[Amended by Acts 1975, 64th Leg., p. 122, ch. 57, § 1, eff. April 18, 1975; Acts 1975, 64th Leg., p. 2373, ch. 732, § 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1013, ch. 377, § 1, eff. June 10, 1977; Acts 1979, 66th Leg., p. 1174, ch. 570, §§ 1, 2, eff. Aug. 27, 1979.]

Section 2 of ch. 732 provided:

"The annual compensation beginning with the 1970–71 school year for members who retire after the effective date of this Act may be adjusted to conform to the provisions of Section 1 of this Act in accordance with such rules and procedures as the Board of Trustees shall adopt."

Section 16 of the 1979 amendatory act provided:

"In addition to the amounts authorized by Section 3.58 of the Texas Education Code the legislature may appropriate from the General Revenue Fund an amount to finance the actuarially determined liability created by the enactment of Sections 1 and 2 of this Act."

§ 3.03. Membership

(a) All persons who on the effective date of this code were members of the Teacher Retirement System of Texas shall continue as members subject to the provisions of this chapter, except as provided in

Subchapter G of Chapter 51 of the Texas Education Code.[1]

(b) Every employee in any public school or other branch or unit of the public school system of this State is a member of the retirement system as a condition of his employment. This subsection shall not apply to require membership of any person who

(1) has heretofore, pursuant to authority of former laws, executed and filed a waiver of membership in the retirement system; however, any such person may elect to become a member at the beginning of any school year, but shall not be entitled to credit for prior service unless payments for the waived service are made as provided in Section 3.25 of this code;

(2) was or may be for the first time employed at 60 years of age or older; however, such person may elect to become a member of the retirement system as of the effective date of employment by notifying his employer and the State of Board of Trustees within 90 days from the effective date of employment;

(3) elects to participate in the retirement program provided by Subchapter G of Chapter 51 of the Texas Education Code; or

(4) is solely employed by a public institution of higher education which requires as a condition of employment that the person be enrolled as a student in that institution; such employment shall be excluded from membership coverage beginning September 1, 1977.

[Amended by Acts 1977, 65th Leg., p. 1015, ch. 377, § 2, eff. June 10, 1977.]

[1] Section 51.351 et seq.

§ 3.05. Reciprocal Service

Any member of the teacher retirement system may claim credit with the teacher retirement system for service rendered as a state employee as provided in Chapter 75, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 6228a–2, Vernon's Texas Civil Statutes).

[Amended by Acts 1977, 65th Leg., p. 1016, ch. 377, § 3, eff. June 10, 1977.]

SUBCHAPTER B. CREDITABLE SERVICE

§ 3.21. Determination

[See Compact Edition, Volume 1 for text of (a)]

(b) Years of service on which the amounts of a benefit is based shall consist of the number of years of creditable service as defined in this chapter to which the member is entitled. Such service credits shall be determined and regulated by Sections 3.22–3.27 of this code.

[Amended by Acts 1977, 65th Leg., p. 1016, ch. 377, § 4, eff. June 10, 1977.]

§ 3.22. Prior Service Credits

(a) Under the rules and regulations adopted by the State Board of Trustees, each person on becoming a member of the retirement system for the first time shall file a detailed statement of all his prior service.

[See Compact Edition, Volume 1 for text of (b) to (d)]

(e) Any member who has credit for five years of membership service and who has no unpaid waived, withdrawn, or delinquent service shall be entitled to credit for prior service.

[See Compact Edition, Volume 1 for text of (f)]

[Amended by Acts 1977, 65th Leg., p. 1016, ch. 377, § 5, eff. June 10, 1977.]

§ 3.23. Creditable Service

(a) Under such rules and regulations as the State Board of Trustees may adopt, a member shall be allowed membership service credit for each year of service rendered in accordance with the provisions of this chapter if he has made and maintained with the retirement system all deposits and payments required by this chapter or prior existing laws.

(b) Any member who performed one or more years of military duty while a member of the retirement system shall be permitted to deposit to his individual account in the member savings account for each year of duty an amount equal to his deposits made with the retirement system during the last preceding full year of service as an employee. He shall then be entitled to one year of creditable service for each year of military duty.

(c) Any member who performed one or more years of military duty prior to becoming a member of the retirement system shall be permitted to deposit to his individual account in the member savings account for each year of such military duty an amount equal to his deposits made with the retirement system during the first full year of service as an employee after becoming a member of the retirement system. He shall then be entitled to one year of creditable service for each year of military duty.

(d) In addition to the deposits required for the creditable service authorized in Subsections (b) and (c) of this section, the member shall be required to pay a fee of five percent per annum of such deposits from the date the member became eligible to make the deposit for credit until the date of deposit. Fees shall be credited to the state contribution account.

(e) A member shall not make deposits for military duty until he has credit for 10 years of actual service in the public schools of Texas and shall not be eligible for more than five years of credit for such duty.

[Amended by Acts 1975, 64th Leg., p. 122, ch. 57, § 2, eff. April 18, 1975; Acts 1977, 65th Leg., p. 1016, ch. 377, § 6, eff. June 10, 1977.]

Section 1 of the 1975 amendatory act amended Section 3.02; § 3 thereof provided: "Notwithstanding the provisions of Section 4 of this Act [emergency provision], the fee provided by Section 2 of this Act to be incorporated in Subsection (d), Section 3.23, Texas Education Code, shall become effective on September 1, 1975."

§ 3.25. Reinstatement of Service Credits

(a) Any employee who has executed a waiver of membership in the retirement system shall have the privilege of electing to receive full membership service credit, provided such employee after becoming a member of the retirement system shall deposit all back deposits, assessments, and dues which he would have paid or deposited had he been a member of the retirement system during each of the years he actually was employed in the public schools following the date on which he first became eligible for membership in the retirement system, together with interest from the date each amount was payable at the rate of five percent per annum. The interest shall be credited to the state contribution account.

(b) Any member who terminates or has terminated membership in the retirement system by withdrawal of deposits or by absence from service shall have the privilege of reinstating such terminated membership by rendering service during current membership for two subsequent consecutive creditable years or for a subsequent continuous period equal in duration to the period from the date of the relevant withdrawal to the beginning date of such period of creditable service, whichever is shorter, and by depositing the amount withdrawn plus membership fees for the years during which membership was terminated plus a reinstatement fee of five percent per annum from the date of withdrawal to date of redeposit. The reinstatement fee shall be credited to the state contribution account.

(c) Any person who terminates or has terminated membership in the retirement system by retiring under the provisions of Section 3.31 of this chapter shall have the privilege of reinstating such terminated membership by rendering service for five consecutive years and depositing an amount equal to service retirement benefits received plus a reinstatement fee of five percent per annum from the date of his return to employment to the date of redeposit and an amount equal to the percentage of each year's annual compensation which would have been deducted had the person been an active member of the retirement system after his return to employment plus a reinstatement fee of five percent per annum on such percentage of compensation from the end of the respective year of service to the date of deposit plus membership fees for the years after his return to employment. Upon payment of the amount required by this subsection the reinstated member shall receive credit for each year's service both before and after his initial retirement. Reinstatement fee shall be credited to the state contribution account.

(d) The amounts to be deposited shall be determined in each case by the State Board of Trustees and no person shall be granted retirement upon such service credits until the amount so determined is paid in full.

[Amended by Acts 1975, 64th Leg., p. 36, ch. 19, § 1, eff. March 20, 1975; Acts 1977, 65th Leg., p. 1017, ch. 377, § 7, eff. June 10, 1977.]

Sections 2 to 9 of the 1975 Act amended Sections 3.26, 3.33, 3.34, 3.36, 3.37, 3.52 and 3.57; §§ 10, 11 thereof provided:

"Sec. 10. Notwithstanding the provisions of Section 12 of this Act, the fees and interest charges provided by Sections 1, 2, and 9 of this Act to be incorporated in Subsections (b) and (c) of Section 3.25, Subsection (b) of Section 3.26, and Subsection (g) of Section 3.57, Texas Education Code, shall become effective on September 1, 1975. Until that date the fees and interest charges, if any, in effect immediately prior to the adoption of this Act shall be continued."

"Sec. 11. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

§ 3.26. Purchase of Credit for Out-of-State Service

(a) Any member of the retirement system who has been employed in any public school system maintained in whole or in part by any other state or territory of the United States or by the United States for children of United States citizens may purchase equivalent membership service credits under this retirement system for such service. Specifically excluded from out-of-state service credit is service while a member of the Armed Forces rendered at any public school, for which service the member was compensated by the United States.

(b) For each year that out-of-state service credit is desired, the member shall deposit to his individual account with the retirement system 12 percent of the rate of annual compensation received during his first year of service as an employee of the public schools of this state which is both after the out-of-state service and September 1, 1956, or, in the event the member has no creditable service in Texas after September 1, 1956, 12 percent of his rate of annual compensation during his last creditable year of service in Texas prior to that date and subsequent to the out-of-state service. In addition the member shall pay a fee at the rate of five percent per annum of the amount which the member is eligible to deposit for each year of credit under Subsection (c)(1) of this section. Such fee shall accrue on each amount from the date the member is first eligible to make the deposit for credit until the date of deposit, except that no fees shall begin to accrue before the member completes 10 years of actual service in the public schools in Texas. A deposit for at least one year's credit including fees attributable to that credit must be made with the initial application and all payments for out-of-state service for which credit is desired must be made before retirement.

(c) For each year that deposits are made, the member shall be granted immediately upon payment of the required deposit and fees one year's member-

ship service credit subject, however, to the special conditions which are:

(1) No person shall be allowed to acquire credits on the basis of employment outside this state in excess of one year for each one year of service in Texas.

(2) No more than 10 years' total credit can be purchased under the provisions of this section.

(d) No member shall be entitled to purchase credit under this section until he has actually rendered at least 10 years of creditable service in Texas, excluding any credit for non-Texas employment. Equivalent membership service credits granted for out-of-state service shall not be used in computing the member's "best-five-years-average compensation."

(e) All such deposits shall be credited, pending retirement, to the member's individual account in the member's savings account. Fees for deposits made after the member becomes eligible for purchase of this credit shall be credited to the state contribution account.

[Amended by Acts 1975, 64th Leg., p. 37, ch. 19, § 2, eff. March 20, 1975; Acts 1977, 65th Leg., p. 1018, ch. 377, § 8, eff. June 10, 1977.]

For effective date and severability provisions, see note under Section 3.25.

§ 3.27. Purchase of Credit for Developmental Leave

(a) Any member of the retirement system with five years of service who subsequently takes a developmental leave may purchase equivalent membership service credit for up to two years of such leave, provided the member is rendering service as an employee of a Texas public school at the time of the purchase.

(b) On or before the date a member takes a developmental leave, the member shall file with the retirement system a notice of intent to take developmental leave, and the member's employer shall file a certification that the leave satisfies the requirements of developmental leave as defined in this chapter.

(c) To purchase credit for a developmental leave, the member shall deposit to his individual account with the retirement system an amount equal to

(1) the same percentage of annual compensation as required in this chapter for member contributions, based on the member's annual rate of compensation earned during the last creditable year of service preceding the developmental leave; plus

(2) the amount which the State of Texas would have contributed under this chapter if the member had received such rate of annual compensation for employment during the year in which the leave was taken; plus

(3) the membership fee in effect during the year the developmental leave is taken.

All amounts deposited shall be credited to the member savings account except that membership fees shall be credited to the expense account.

(d) No deposits for purchase of developmental leave credit may be made after the end of the first creditable school year following the developmental leave. Developmental leave credit may not be counted toward any service retirement benefit calculation until the member obtains 10 years of credit for actual service in the public schools of Texas. In the event such credit is not counted the accumulated deposits in the member's individual account attributable to the deposit for developmental leave credit and any fees attributable to such years shall be paid to the member or his beneficiary, if applicable. [Added by Acts 1977, 65th Leg., p. 1019, ch. 377, § 9, eff. June 10, 1977.]

§ 3.28. Repealed by Acts 1979, 66th Leg., p. 1175, ch. 570, § 3, eff. Aug. 27, 1979

The repealed section, added by Acts 1977, 65th Leg., p. 1029, ch. 377, § 24, related to the purchase of service credit by distributive education teachers.

§ 3.29. Purchase of Credit for Service with Certain University Components

(a) Any member of the retirement system may purchase equivalent membership service credit for service as an employee of the following entities that was performed before the entities became components of The University of Texas System:

(1) the Callier Center for Communication Disorders, now a part of The University of Texas at Dallas; or

(2) the Houston Speech and Hearing Center, now a part of The University of Texas Health Science Center at Houston.

(b) To purchase credit under this section, a member shall deposit with the retirement system for each year for which credit is sought an amount equal to the sum of:

(1) 12 percent of the rate of the member's annual compensation during the first full 12 months of service as a member of the retirement system that is after the date the service for which credit is sought was performed; plus

(2) a fee computed at the rate of five percent a year of the amount determined under Subdivision (1) of this subsection from the date the service for which credit is sought was performed to the date of deposit; plus

(3) any membership fees that would have been paid had the service for which credit is sought been performed as a member of the retirement system.

(c) The retirement system shall credit deposits made under this section to the member's individual account in the member savings account, except that membership fees shall be credited to the expense account.

(d) The retirement system shall count credit established under this section in determining eligibility for all benefits payable by the retirement system. [Added by Acts 1979, 66th Leg., p. 440, ch. 200, § 1, eff. Aug. 27, 1979.]

SUBCHAPTER C. BENEFITS

§ 3.31. Service Retirement Benefits

(a) The date of retirement for any eligible member shall be the last day of any month in which he makes written application to the State Board of Trustees, or in which he satisfies the age and service requirements of this subsection, whichever is later. A member who retires after the effective date of this chapter shall be eligible to retire with a standard service retirement benefit consisting of one of the following:

(1) a standard annuity payable in monthly installments during such retired member's life, provided he has completed 10 or more years of creditable service and has attained the age of 65 years;

(2) a standard annuity payable in monthly installments during such retired member's life, provided he has completed 20 or more years of creditable service and has attained the age of 60 years;

(3) a percentage of the standard annuity reduced from age 65 as shown in the following table provided he has at least 10 years of service and has attained the age of 55 years:

	AGE AT DATE OF RETIREMENT										
YEARS OF SERVICE	55	56	57	58	59	60	61	62	63	64	65
10-19	47%	51%	55%	59%	63%	67%	73%	80%	87%	93%	100%

(4) a percentage of the standard annuity reduced as shown in the following table provided he has at least 20 years of creditable service and has attained the age of 55 years:

	AGE AT DATE OF RETIREMENT					
YEARS OF SERVICE	55	56	57	58	59	60
20-24	70%	76%	82%	88%	94%	100%
25-29	75%	80%	82%	88%	94%	100%
30	80%	82%	84%	88%	94%	100%
31	82%	84%	86%	88%	94%	100%
32	84%	86%	88%	90%	94%	100%
33	86%	88%	90%	92%	94%	100%
34	88%	90%	92%	94%	96%	100%
35	90%	92%	94%	96%	98%	100%
36	92%	94%	96%	98%	100%	100%
37	94%	96%	98%	100%	100%	100%
38	96%	98%	100%	100%	100%	100%
39	98%	100%	100%	100%	100%	100%
40 or more	100%	100%	100%	100%	100%	100%

(5) a percentage of the standard annuity reduced for early retirement as shown in the table included in Subsection (a)(4) of this section at any age provided he has completed at least 30 years of creditable service. The State Board of Trustees shall extend the table in Subsection (a)(4) of this section to ages earlier than 55 years by decreasing the percentage by two percent for each year of age of the member under 55 years.

(b) The State Board of Trustees may adopt tables which reduce benefits for early retirement by each month of age, but such tables shall be limited to interpolations between the percentages for each year of age provided in this section.

(c) In lieu of any service retirement benefit allowable under Subsection (a) of this section, a member may elect, by giving notice to the State Board of Trustees in writing before the date fixed for retirement, to receive the actuarial equivalent of the benefit in the form of a reduced monthly amount payable throughout his lifetime, with provision for:

(1) Option One: on his death, the same monthly payments shall be made to and continued throughout the life of the person nominated by the member's written designation filed with the State Board of Trustees prior to his retirement; or

(2) Option Two: on his death, one-half of the same monthly payments shall be made to and continued throughout the life of the person nominated by the member's written designation filed with the State Board of Trustees prior to his retirement; or

(3) Option Three: on his death before 60 monthly payments have been made, they shall continue to the designated beneficiary until the remainder of the 60 payments have been made; or

(4) Option Four: on his death before 120 monthly payments have been made, they shall continue to the designated beneficiary until the remainder of the 120 payments have been made.

(d) A member shall in any event be entitled to a minimum benefit of $6.50 per month for each year of prior service credit and membership service credit or to its actuarial equivalent if the member has selected an option. Such minimum benefit is subject to the appropriate percentage reduction for early retirement, if applicable. A member who retires on or after attaining 65 years of age shall be entitled to such minimum benefit or to $75 per month, whichever is greater, or to the actuarial equivalent thereof.

(e) No annuity payment authorized under the provisions of this chapter shall be made for any fraction of a month in which the annuitant dies.

(f) At any time before his date of retirement a member by giving written notice to the State Board of Trustees may revoke his application for retirement and may make, revoke, or change his selection of an option as provided in Subsection (c) of this section. Except as specifically provided in this chapter, no person who has retired under the provisions of this chapter may revoke his retirement nor make, revoke, or change his selection of an option under Subsection (c) of this section.

(g) No member may receive a service retirement benefit from the retirement system with less than 10 years of credit for actual service in the public schools except as provided in Chapter 573, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6228i, Vernon's Texas Civil Statutes), and Chapter 75, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 6228a–2, Vernon's Texas Civil Statutes).

[Amended by Acts 1975, 64th Leg., p. 7, ch. 6, § 1, eff. Feb. 13, 1975; Acts 1977, 65th Leg., p. 1019, ch. 377, § 10, eff. June 10, 1977.]

Section 2 of the 1975 Act provided: "Section 1 of this Act applies to benefits payable on the last day of February, 1975, and subsequent months."

See, also, note under Section 3.38.

Section 29 of the 1977 amendatory act provided:

"Should this Act become effective at a date later than May 31, 1977, the retirement benefits payable on or after such later effective date to persons who retired on May 31, 1977, or thereafter shall be recalculated as if the member had retired under the provisions of Chapter 3 of the Texas Education Code as amended by this Act. Should this Act become effective on a date later than June 30, 1977, the increases in monthly benefits provided for persons in Section 16 of this Act shall become effective with the first monthly payment due on or after such effective date."

§ 3.32. Disability Benefits

(a) A member or the legal representative of a member may apply for the disability benefits provided in this section. The member shall make application for disability benefits and shall submit the results of a medical examination on forms prescribed by the retirement system and shall submit such additional information relating to the disability as the retirement system may by rule prescribe or as the medical board may require in an individual case. The member shall be retired on the applicable disability benefit upon the certification by the medical board that the member is mentally or physically disabled from the further performance of duty and that such disability is probably permanent.

The date of retirement on a disability for a member shall be the last day of the month in which the member made application or terminated employment, whichever is later. However, the member shall have 30 days following the certification of disability by the medical board in which to make deposits for any withdrawn account, waiver, out-of-state service, military duty, transferred state service, or other special service.

[See Compact Edition, Volume 1 for text of (b)]

(c) If the member has 10 or more years of creditable service, but is not eligible for service retirement without reduction, he shall receive for the duration of his disability the standard annuity calculated on the basis of his creditable service to date of retirement, or $6.50 per month for each year of service, whichever is greater. In the event the disability retirement occurs after or continues until he attains 60 years of age, his disability shall be conclusively presumed continuous for the remainder of his life.

(d) Once each year during the first five years following disability retirement and once every three years thereafter, the State Board of Trustees may require any member who retired on a disability benefit and who has not yet attained age 60 to undergo a medical examination by a physician or physicians designated by the medical board. Should he refuse to submit to at least one such medical examination during any authorized examination period, his benefit shall be discontinued until he consents to an examination.

(e) If a person under 60 years of age who is receiving a disability retirement benefit is restored to active service, if such person refuses to submit to a required medical examination for more than one year, or if the medical board certifies to the State Board of Trustees that he is no longer physically or mentally disabled from further performance of duty and the State Board of Trustees concurs, his benefit shall be discontinued, he shall again become a member of the retirement system and the sum in his account before disability retirement, less all disability benefits paid to him, shall be transferred from the retired reserve account to his individual account in the member savings account. On restoration to membership, any creditable service used to compute a member's benefit when he retired shall be restored to full force and effect.

(f) If a person receiving a disability retirement benefit is gainfully employed, his benefit shall be suspended or reduced to an amount by which his salary earned during his last year of creditable service exceeds his present earnings. Should his earnings later change, his benefit may be further modified, but shall never exceed his original benefit. To enforce the provisions of this subsection the State Board of Trustees shall adopt rules for reporting of income by each such person.

(g) No member eligible for service retirement without reduction shall be allowed to retire on a disability benefit.

(h) The medical board may rule on an application for disability in a regular or special meeting or by mail, telephone, telegraph, or other suitable means of communication.

[Amended by Acts 1977, 65th Leg., p. 1021, ch. 377, § 11, eff. June 10, 1977.]

§ 3.33. Beneficiary Designation

(a) Any member or annuitant may name one or more persons as his designated beneficiary to receive the benefits payable under this chapter in the event of his death, except in the case of an Option One or Option Two retirement benefit for which only one person may be designated as beneficiary. The designation of beneficiary must be in writing on a form prescribed by and filed with the retirement system. In like manner the member or annuitant may change or revoke a designation previously made, except that the beneficiary designations for Option One and Option Two retirement annuities may not be changed or revoked after the date of retirement. Unless the written designation of the retired member clearly indicates an intention to the contrary or the provisions of law require otherwise, the latest effective beneficiary designation shall be presumed to apply to all benefits payable upon the death of a member or retired member. The retirement system may provide for the designation of alternate beneficiaries.

(b) In the event a member or annuitant fails to designate a beneficiary, or a designated beneficiary does not survive the member or annuitant, or a designated beneficiary files with the retirement system a written waiver of any claim to amounts payable upon the death of the member or annuitant on a form satisfactory to the retirement system, benefits payable upon the death of the member or annuitant, other than payment under retirement Option One and Option Two, and election rights to survivor benefits, if applicable, shall be made available to one of the following classes of persons in the following order of precedence:

(1) any surviving joint designated beneficiaries;

(2) if none of the above, any alternate beneficiaries;

(3) if none of the above, the surviving spouse of the deceased;

(4) if none of the above, the children of the deceased or their descendants by representation;

(5) if none of the above, the parent or parents of the deceased in equal portions;

(6) if none of the above, the duly appointed executor or administrator of the estate of the member or annuitant;

(7) if none of the above, to such persons as are entitled to the distribution of the estate of the deceased member or annuitant under the laws of his domicile at the date of death.

(c) If, within one year of death, no claim for payment of benefits has been received by the retirement system from a person entitled under the designation or order of precedence provided in this section, payment of benefits, except for benefits under retirement Option One and Option Two, may be made in the order of precedence as if the person had predeceased the deceased member or annuitant. Payment under this subsection bars recovery by any other person. If, within four years after death, payment has not been made under this chapter and no claim for such payment is pending, the accumulated contributions of the deceased member or the balance of the reserve for the retired annuitant escheat to the benefit of the fund and shall be transferred to the state contribution account.

(d) No benefit payable upon the death of a member or other annuitant under this chapter shall be paid to a person convicted of causing that death but shall instead be paid to the person or persons who would be entitled to the benefit had the convicted killer predeceased his victim. Any person who becomes eligible under this subsection to elect among death or survivor benefit options provided by this chapter shall be entitled to select among options available as if such person were the designated beneficiary. Any annuity calculated in part on the life of the convicted killer shall be reduced to a lump sum equal to the present value of the remainder of the annuity, and such sum shall be paid to the person authorized under this section to receive the death or survivor benefit. The retirement system shall not be responsible for the payment of benefits pursuant to the provisions of this subsection unless it receives actual notice of the conviction of the beneficiary; however, the retirement system may delay payment of any benefit due upon the death of a member or annuitant pending the results of a criminal investigation and of legal proceedings against the beneficiary for causing that death. For the purposes of this chapter, a person shall be deemed to have been convicted of causing the death of a member or other annuitant when the person pleads guilty, pleads nolo contendere, or is found guilty by judge or jury of the said crime. The sentence which may or may not be probated shall have no bearing. The conviction shall be considered final when there are no appeals pending and the time for appeal has expired.

(e) A trust may be named as a beneficiary under the provisions of this chapter. For purposes of the calculation of, eligibility for, and duration of benefits, the beneficiary of the trust shall be considered as the designated beneficiary of the member. The trustee shall exercise any election rights to benefit options and name any subsequent beneficiaries. A trust with multiple beneficiaries may not receive benefits to which multiple designated beneficiaries are not entitled.

[Amended by Acts 1975, 64th Leg., p. 38, ch. 19, § 3, March 20, 1975; Acts 1977, 65th Leg., p. 1022, ch. 377, § 12, eff. June 10, 1977; Acts 1979, 66th Leg., p. 1175, ch. 570, § 4, eff. Aug. 27, 1979.]

For effective date and severability provisions, see note under Section 3.25.

§ 3.34. Death Benefits

(a) If a member dies before retirement and during any school year in which he is in service, his eligible designated beneficiary shall be paid, at the beneficiary's election, the greatest of the following amounts in the manner the State Board of Trustees by rule may prescribe:

(1) the annual compensation of the member for the preceding school year not to exceed $25,000; or

(2) the rate of annual compensation of the member for the current school year not to exceed $25,000; or

(3) 60 monthly payments equal to the monthly installments of a standard annuity (calculated as provided in Section 3.02(a)(17) of this code); or

(4) an annuity payable for the designated beneficiary's life with payments equal to those under Option One in Section 3.31(c)(1) of this code had the member retired at the end of the month preceding his death; or

(5) the accumulated contributions of the member's member savings account.

(b) If a member dies during an absence from service, his designated beneficiary shall be paid:

(1) the same benefits payable upon the member's death in active service if the absence of the member from service was due to sickness, accident, or other cause which the State Board of Trustees determines to be involuntary or in furtherance of the objectives or welfare of the public school system, or during a period when he was eligible to retire or would become eligible without further service to retire within five years of his last covered employment; or

(2) the accumulated contributions in the member's individual account if the absence of the member from service was not the result of sickness, accident, or other justifiable cause determined in this chapter.

(c) Death benefit annuities shall only be available when the deceased member has sufficient creditable service to receive service retirement benefits under the provisions of this chapter upon reaching retirement age. Multiple beneficiaries shall not be eligible to elect the life annuity death benefit. For the purpose of determining the life annuity for death benefits the State Board of Trustees shall extend the table in Section 3.31(a)(3) to ages earlier than age 55 by decreasing the percentage to the actuarial equivalent of the age 55 benefit and shall extend the table in Section 3.31(a)(4) to ages earlier than the earliest retirement age provided by law to the actuarial equivalent of the benefit at the earliest retirement age.

[Amended by Acts 1975, 64th Leg., p. 38, ch. 19, § 4, eff. March 20, 1975; Acts 1977, 65th Leg., p. 1024, ch. 377, § 13, eff. June 10, 1977.]

For effective date and severability provisions, see note under Section 3.25.

§ 3.35. Survivor Benefits

Text of section effective until September 1, 1980

(a) If a member dies before retirement, his designated beneficiary (if entitled to a death benefit other than the accumulated contributions of the member) may elect, in lieu of the applicable death benefit authorized under Section 3.34 of this code, to receive a lump sum payment of $500 plus the following applicable survivor benefits:

(1) if the designated beneficiary is the spouse or dependent parent of the deceased member, he may elect to receive for life a monthly benefit of $75 commencing at age 65 or immediately if the beneficiary has already attained that age; or

(2) if the designated beneficiary is the spouse of the deceased and has one or more children under 18 years of age or has the custody of one or more children of the deceased under 18 years of age, he may elect to receive a monthly benefit of $150 until the youngest child attains the age of 18 years, and at that time all payments shall cease until the beneficiary attains age 65 when he shall receive for life a monthly benefit of $75; or

(3) if the designated beneficiary or beneficiaries are the deceased's dependent children under the age of 18 years, they may, on election of their guardian, receive a total monthly benefit of $150 so long as there are two or more such children under 18 years of age; thereafter, when there is only one child remaining under 18 years of age, he may receive $75 per month until attaining 18 years.

(b) If the designated beneficiary is a spouse or dependent parent of the deceased, the benefits payable under Subsection (a)(1) and (2) of this section shall cease upon the beneficiary's death or remarriage; in that event, however, payment of the benefits provided in Subsection (a)(3) of this section will commence if applicable.

[Amended by Acts 1977, 65th Leg., p. 1025, ch. 377, § 14, eff. June 10, 1977.]

For text of section effective September 1, 1980, see § 3.35, post

§ 3.35. Survivor Benefits

Text of section effective September 1, 1980

(a) If a member dies before retirement, his designated beneficiary (if entitled to a death benefit other than the accumulated contributions of the member) may elect, in lieu of the applicable death benefit authorized under Section 3.34 of this code, to receive a lump sum payment of $1500 plus the following applicable survivor benefits:

(1) if the designated beneficiary is the spouse or dependent parent of the deceased member, he

may elect to receive for life a monthly benefit of $100 commencing at age 65 or immediately if the beneficiary has already attained that age; or

(2) if the designated beneficiary is the spouse of the deceased and has one or more children under 18 years of age or has the custody of one or more children of the deceased under 18 years of age, he may elect to receive a monthly benefit of $200 until the youngest child attains the age of 18 years, and at that time all payments shall cease until the beneficiary attains age 65 when he shall receive for life a monthly benefit of $100; or

(3) if the designated beneficiary or beneficiaries are the deceased's dependent children under the age of 18 years, they may, on election of their guardian, receive a total monthly benefit of $200 so long as there are two or more such children under 18 years of age; thereafter, when there is only one child remaining under 18 years of age, he may receive $100 per month until attaining 18 years.

(b) If the designated beneficiary is a spouse or dependent parent of the deceased, the benefits payable under Subsection (a)(1) and (2) of this section shall cease upon the beneficiary's death; in that event, however, payment of the benefits provided in Subsection (a)(3) of this section will commence if applicable.

(c) A person who qualifies for survivor benefits from more than one deceased member as a spouse or as a spouse with dependent children shall nevertheless be entitled to only the monthly survivor benefits of one such member.

[Amended by Acts 1977, 65th Leg., p. 1025, ch. 377, § 14, eff. June 10, 1977; Acts 1979, 66th Leg., p. 1175, ch. 570, § 5, eff. Sept. 1, 1980.]

For text of section effective until September 1, 1980, see § 3.35, ante

§ 3.36. Benefits Payable Upon Death After Retirement

Text of section effective until September 1, 1980

[See Compact Edition, Volume 1 for text of (a)]

(b) If a member retires upon a disability retirement benefit and dies while drawing his benefit, his beneficiary may elect to receive, in lieu of the benefit provided in Subsection (a) of this section, the same death benefit to which he would have been entitled had the deceased been in active service at death.

[See Compact Edition, Volume 1 for text of (c) to (e)]

(f) Upon the death of a retired member receiving service retirement benefits under Subsection (a) of Section 3.31 or service retirement benefits under Subsection (c)(1) or (2) of Section 3.31 of this chapter when the retired member's designated beneficiary predeceases him, there shall be paid to the designated beneficiary, or to those provided in Subsection (b) of Section 3.33 of this chapter if there is no designated beneficiary in existence at the time of the retired member's death, an amount equal to the retired member's accumulated contributions less the total amount of service retirement benefits paid pursuant to Section 3.31 of this chapter to the retired member.

(g) Upon the death of a retired member's designated beneficiary who is receiving an annuity under Option One or Option Two as provided by Subsection (c) of Section 3.31 of this chapter the estate or the heirs of the beneficiary shall be refunded an amount equal to the accumulated contributions of the retired member less the total amount of service retirement benefits paid pursuant to Section 3.31 of this chapter to the retired member and his designated beneficiary.

[See Compact Edition, Volume 1 for text of (h)]

[Amended by Acts 1975, 64th Leg., p. 39, ch. 19, § 5, eff. March 20, 1975; Acts 1977, 65th Leg., p. 1025, ch. 377, § 15, eff. June 10, 1977.]

For text of section effective September 1, 1980, see § 3.36, post

§ 3.36. Benefits Payable Upon Death After Retirement

Text of section effective September 1, 1980

(a) If a retired member dies while receiving a retirement benefit, his eligible designated beneficiary shall be entitled to the same survivor benefits provided for designated beneficiaries of members in active service at death. Any benefit payable to the designated beneficiary under a service retirement option previously elected by the deceased shall not be affected by the beneficiary's eligibility for survivor benefits. The lump sum payment of $1500 shall be made regardless of the beneficiary's eligibility for any other survivor benefit.

(b) If a member retires upon a disability retirement benefit and dies while drawing his benefit, his beneficiary may elect to receive, in lieu of the benefit provided in Subsection (a) of this section, the same death benefit to which he would have been entitled had the deceased been in active service at death.

(c) A widow or widower, as designated beneficiary of a member of the retirement system with 25 or more years of creditable service who died prior to April 8, 1957, shall be entitled to receive survivor benefits provided in this chapter for beneficiaries of members with a creditable year of service, except that the lump sum amount shall not be payable, and provided that such beneficiary did not receive or is

not receiving a death benefit other than the return of the member's deposits plus accumulated interest.

(d) Any widow or widower, as designated beneficiary of a retired member who did not have a creditable year of service after November 23, 1956, and who died prior to August 23, 1963, while receiving a retirement annuity from the retirement system, shall be entitled to receive survivor benefits provided elsewhere in this chapter, except that the lump sum amount shall not be payable.

(e) Benefits provided in Subsections (c) and (d) of this section shall become effective on the last day of the month in which the qualified beneficiary applies to the retirement system in such form as may be prescribed by the State Board of Trustees and payments shall be due from and after that date only, and the same age requirements specified elsewhere in this chapter shall apply to the provisions of these subsections.

(f) Upon the death of a retired member receiving service retirement benefits under Subsection (a) of Section 3.31 or service retirement benefits under Subsections (c)(1) or (2) of Section 3.31 of this chapter when the retired member's designated beneficiary predeceases him, there shall be paid to the designated beneficiary, or to those provided in Subsection (b) of Section 3.33 of this chapter if there is no designated beneficiary in existence at the time of the retired member's death, an amount equal to the retired member's accumulated contributions less the total amount of service retirement benefits paid pursuant to Section 3.31 of this chapter to the retired member.

(g) Upon the death of a retired member's designated beneficiary who is receiving an annuity under Option One or Option Two as provided by Subsection (c) of Section 3.31 of this chapter the estate or the heirs of the beneficiary shall be refunded an amount equal to the accumulated contributions of the retired member less the total amount of service retirement benefits paid pursuant to Section 3.31 of this chapter to the retired member and his designated beneficiary.

(h) Payments provided by Subsections (f) and (g) of this section shall not affect the right of an eligible beneficiary to receive survivor benefits provided in this chapter nor the right of any beneficiary to receive the lump sum payment as provided in Subsection (a) of this section.

[Amended by Acts 1975, 64th Leg., p. 39, ch. 19, § 5, eff. March 20, 1975; Acts 1977, 65th Leg., p. 1025, ch. 377, § 15, eff. June 10, 1977; Acts 1979, 66th Leg., p. 1176, ch. 570, § 6, eff. Sept. 1, 1980.]

For text of section effective until September 1, 1980, see § 3.36, ante

For effective date and severability provisions, see note under Section 3.25.

§ 3.37. Employment After Retirement

(a) Any person receiving a service retirement benefit from the retirement system may be employed in the public schools of Texas under the following conditions:

(1) on a part-time day-to-day basis only not to exceed 120 school days in any one school year as a substitute for an employee who is absent from duty;

(2) as a substitute in a vacant position until such position can be filled, but not to exceed 45 days, but any substitute employment in a vacant position shall be deducted from the 120 days permitted as a substitute for an absent employee; or

(3) on as much as a one-half time basis.

[See Compact Edition, Volume 1 for text of (b)]

(c) A person who reports for duty as a substitute during any day and works any portion of that day, shall be considered to have worked one day. The State Board of Trustees of the retirement system shall by rule define "one-half time basis" and shall adopt rules governing the employment of a substitute.

(d) A person receiving a service retirement benefit from the retirement system who is employed in any position in the public schools of Texas except as provided in this section, shall forfeit all retirement benefits for any month in which such employment occurs. Employment which begins as substituting may become permanent employment. A person who substitutes on a day-to-day basis in a regular position for an absent employee for more than 120 school days or for more than 45 school days in a vacant position and then continues in the same position shall be considered to have been a regular employee since the first day of employment and forfeits his retirement benefits for all months of employment in that position.

[Amended by Acts 1975, 64th Leg., p. 39, ch. 19, § 6, eff. March 20, 1975; Acts 1977, 65th Leg., p. 1894, ch. 755, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1177, ch. 570, § 7, eff. Aug. 27, 1979.]

For effective date and severability provisions, see note under Section 3.25.

§ 3.38. Limited Adjustment of Benefits in Effect

[See Compact Edition, Volume 1 for text of (a) to (e)]

(f) The amount of monthly benefits payable to retired members or their beneficiaries, to members retired on a disability, or to beneficiaries of deceased members pursuant to Section 3.31, Subsection (c) of Section 3.32, and Subsections (a)(3) and (a)(4) of Section 3.34 of this chapter, as amended, shall be increased by a percentage of the amount otherwise payable under the provisions of this chapter, including previously enacted applicable increases, in effect immediately prior to the effective date of this sub-

section. The amount of such percentage increase shall be as follows: 18 percent if the retirement date of the retired or disabled member or the date of death of the member in service occurred prior to March 31, 1969; 12 percent if the retirement date of the retired or disabled member or the date of death of the member in service occurred prior to May 31, 1971, but on or after March 31, 1969; 5 percent if the retirement date of the retired or disabled member or the date of death of the member in service occurred prior to September 1, 1973, but on or after May 31, 1971. Annuity payments forfeited pursuant to this chapter are subject to the increases provided in this subsection with respect to both the transfer required in Section 3.53 of this chapter and any resumption in due course of such payments to the retired member or beneficiary.

(g) Upon the conditions hereinafter stated, the monthly benefits other than survivor benefits payable to retired members or their beneficiaries, to members retired on a disability with 10 or more years of membership service, or to beneficiaries of deceased members each of whose respective date of retirement or death occurred before May 31, 1977, shall be increased effective with the June, 1977, benefit payment. The amount of the increase shall be computed by multiplying each year of the member's creditable service by the sum of 75 cents plus two cents for each year between the accrual of the benefit and August 31, 1977. The reduction factors for early age retirement and for retirement under an option shall be applicable to the increases provided in this section. Any person also eligible for an increase by the application of Subsection (h) of this section to the June, 1977, benefit payment shall be entitled to the greater of the two increases only. The increase in benefits provided in this subsection shall become effective upon the appropriation and payment of $60,851,000 to the Teacher Retirement System of Texas to finance the increase. The increase shall continue in effect only until funds in the Benefit Increase Reserve Account attributable to this appropriation are exhausted, or if an additional amount of $60,851,000 is appropriated and paid to the Teacher Retirement System of Texas before the end of September, 1979, the increase shall continue for the duration of the benefit on which the increase is based pursuant to existing or future laws. Such appropriations shall be in addition to the state contribution provided by Section 3.58 of this chapter.

(h) Effective with the June, 1977, benefit payment, the monthly service retirement benefits of all retired members or their beneficiaries and of all members who have qualified for disability benefits shall equal at least the minimum benefits payable to a person whose retirement or qualification for disability benefits is effective at the end of that month. Effective with the June, 1977, benefit payment, death benefits based upon the retirement benefit minimums to which the deceased member would have been entitled and survivor benefits shall be increased to the amounts which would have been payable had the deceased member died at the end of that month. The reduction factors provided for early age retirement and for retirement under an option shall be applicable to minimum benefits payable under this section.

(i) Beginning with the September, 1979, benefit payment, monthly benefits except survivor benefits, shall be increased by a percentage of the payment otherwise due under this chapter as follows: 20 percent if retirement, or death in the case of death benefit annuities, occurred before March 31, 1969, 10 percent if retirement, or death if applicable, occurred on or after March 31, 1969, but before September 1, 1973, and 5 percent if retirement, or death if applicable, occurred on or after September 1, 1973, but before May 31, 1977.

Effective with the September, 1979, payment, monthly survivor benefits shall be increased to the amounts in effect for beneficiaries of members or retired members who die on or after September 1, 1980. The increase provided in this section for all benefits except survivor benefits shall become effective only upon the appropriation of $149,455,000 to the Teacher Retirement System of Texas to finance that increase. The increase in survivor benefits provided in this section shall become effective only upon the appropriation of $11,727,000 to finance that increase, and such amount shall be deposited in the retired reserve account. Appropriations authorized by this section must be in addition to the state contribution provided by Section 3.58 of this chapter. Should an amount less than the amount required to fund the increases provided by this Act be appropriated, the general appropriations bill may specify rates of increases other than those provided by this Act. If the rates of increases are not specified in the general appropriations bill, the State Board of Trustees shall adjust the rates of increases accordingly to rates which the actual amount appropriated will fund.

[Amended by Acts 1975, 64th Leg., p. 7, ch. 6, § 3, eff. Feb. 13, 1975; Acts 1977, 65th Leg., p. 1026, ch. 377, § 16, eff. June 10, 1977; Acts 1979, 66th Leg., p. 1180, ch. 571, § 1, eff. Aug. 27, 1979.]

Sections 4 to 7 of the 1975 amendatory act provided:

"Sec. 4. Section 3 of this Act takes effect only if the constitutional amendment proposed by Senate Joint Resolution No. 3, 64th Legislature, Regular Session, 1975, is adopted [so adopted by voters at election held April 22, 1975], and if so, Section 3 takes effect for benefits payable on the last day of the month in which the amendment is adopted.

"Sec. 5. The amount of monthly benefits payable under the Teacher Retirement System to retired members or their beneficiaries, to members retired on a disability, or to beneficiaries of deceased members pursuant to Section 3.31, Subsection (c) of Section 3.32, and Subsections (a)(3) and (a)(4) of Section 3.34 of the Texas Education Code, as amended, shall be increased by a percentage of the amount otherwise payable under the provisions of Chapter 3 of the code, as amended, including previously enacted applicable increases, in effect immediately prior to the effective date of this section. The amount of such percentage increase shall be as follows: 18 percent if the retirement date of the retired or disabled member or the date of death of the member in service occurred prior to March 31, 1969; 12 percent if the retirement date of the retired or disabled member or the date of death of the member in service occurred prior to May 31, 1971, but on or after March 31, 1969; 5 percent if

the retirement date of the retired or disabled member or the date of death of the member in service occurred prior to September 1, 1973, but on or after May 31, 1971. Annuity payments forfeited pursuant to Chapter 3 of the Texas Education Code, as amended, are subject to the increases provided in this section with respect to both the transfer required in Section 3.53 of the code and any resumption in due course of such payments to the retired member or beneficiary.

"Sec. 6. Section 5 of this Act applies to benefits payable on the last day of February, 1975. Such increases in benefits shall be paid through the last day of the month in which the proposed amendment to the constitution is voted on by the qualified voters of this state, but not later than November 30, 1975, and shall not continue to be paid thereafter unless the qualified voters adopt the constitutional amendment.

"Sec. 7. Contingent on the adoption of the constitutional amendment, there is hereby appropriated from the General Revenue Fund to the Teacher Retirement System of Texas $98 million in addition to the amounts required by Section 3.58 of the Texas Education Code, such sum having been actuarially determined to be the amount necessary to fund the increases in benefits herein provided for the duration of the life expectancy of the annuitants eligible to receive such increases. The State Comptroller of Public Accounts, on adoption of the constitutional amendment, shall transfer this appropriated amount to the Teacher Retirement System of Texas for deposit in the system's retired reserve fund. In addition, there is hereby appropriated from the General Revenue Fund to the Teacher Retirement System of Texas $4 million which shall be transferred to the system immediately after the effective date of this Act."

§ 3.40. Waiver of Benefits

Under rules prescribed by the retirement system, any person entitled to benefits from the retirement system may waive all or a portion of them. A waiver or revocation of a waiver, if applicable, must be in writing on a form prescribed by the retirement system. The alternative beneficiary provisions of Section 3.33(b) of this chapter shall only apply if the waiver is irrevocable and is received by the retirement system before the first benefit payment is made to the person executing the waiver. A revocable waiver may be revoked only as to benefits payable after the date of revocation. Benefits not paid pursuant to a waiver shall be transferred to the state contribution account from the appropriate benefit reserve accounts.

[Added by Acts 1979, 66th Leg., p. 1177, ch. 570, § 8, eff. Aug. 27, 1979.]

SUBCHAPTER D. ADMINISTRATION AND ORGANIZATION

§ 3.51. Establishment of Accounts

According to the purpose for which they are held, all assets of the retirement system shall be credited to one of six accounts: the member savings account, the state contribution account, the retired reserve account, the benefit increase reserve account, the interest account, and the expense account.

[Amended by Acts 1977, 65th Leg., p. 1026, ch. 377, § 17, eff. June 10, 1977.]

§ 3.52. Member Savings Account

(a) In the member savings account shall be accumulated the regular percentage contributions made by members from their compensation together with interest allowable thereon. Interest on members' contributions shall be credited annually on August 31 at the rate of five percent of the average balance in the account during the preceding year.

[See Compact Edition, Volume 1 for text of (b) to (d)]

[Amended by Acts 1975, 64th Leg., p. 40, ch. 19, § 7, eff. March 20, 1975.]

For effective date and severability provisions, see note under Section 3.25.

§ 3.52. Member Savings Account

[See Compact Edition, Volume 1 for text of (a)]

(b) Any person absent from service covered by the retirement system, except by death or retirement under the terms of this chapter, shall be paid, after applying in writing on a form prescribed by the State Board of Trustees, all accumulated contributions in the person's individual account in the member savings account; the account shall be closed, and membership (if not previously ended) shall be terminated. A person is not absent from service for the purposes of this section who has an application pending for or has received a promise of employment in a position covered by the retirement system or is on leave of absence from employment in a public school.

[See Compact Edition Volume 1 for text of (c) and (d)]

[Amended by Acts 1979, 66th Leg., p. 1178, ch. 570, § 9, eff. Aug. 27, 1979.]

§ 3.53. State Contribution Account

In the state contribution account shall be accumulated all contributions hereafter made to the retirement system by the State of Texas as provided in Section 3.58 of this code, interest as provided in Section 3.55(b)(5) of this code, the retirement annuities forfeited by members who return to employment under the provisions of Section 3.37(d) of this code, and reinstatement fees and interest as provided in Section 3.25 of this code.

[Amended by Acts 1977, 65th Leg., p. 1026, ch. 377, § 18, eff. June 10, 1977.]

§ 3.54 Retired Reserve and Benefit Increase Reserve Accounts

(a) In the retired reserve account shall be held all reserves for benefits heretofore or hereafter granted except such reserves as may be required to fund postretirement benefit adjustments allowed after January 31, 1975; and all retirement annuities and all death or survivor benefits shall be paid from this account. This account shall consist of transfers previously authorized by law and of future transfers made.

(b) In the benefit increase reserve account shall be held all reserves for postretirement increases or other adjustments of initial benefit payments authorized by law on or after January 31, 1975, and such increases shall be paid from this account.

(c) To the retired reserve account shall be transferred:

(1) the accumulated contributions in the member's individual account in the member savings account on his retirement or approval for payment of any benefit authorized under this chapter at the time of the member's retirement or death and all benefit increases prior to Janu-

ary 31, 1975 (except for the return of his accumulated contributions); plus, additional reserves from the state contribution account which are certified by the actuary as necessary to provide for the payment of the approved benefit as it becomes due;

(2) interest as specified in Section 3.55(b)(2) of this code; and

(3) accounts as specified in Section 3.52(d) of this code.

(d) To the benefit increase reserve account shall be transferred:

(1) assets appropriated to pay postretirement benefit increases authorized by the legislature on or after January 31, 1975; and

(2) interest as specified in Section 3.55(b)(4) of this code.

[Amended by Acts 1977, 65th Leg., p. 1027, ch. 377, § 19, eff. June 10, 1977.]

§ 3.55. Interest Account

(a) Into the interest account shall be paid all income, interest, and dividends derived from deposits and investments authorized by this chapter. Net capital gains and losses realized from the sale, call, maturity, or conversion of securities will be accumulated in the interest account and will be transferred annually to the state contribution account together with any other balance remaining in the interest account.

(b) Once each year on August 31, transfers from the interest account shall be made:

(1) to the member savings account in an amount sufficient to credit the members' contributions with interest at the rate of five percent;

(2) to the retired reserve account in an amount sufficient to credit the average balance of the reserve account with interest at the rate of four and three-fourths percent per annum; or a higher rate as calculated pursuant to Subsection (c) of this section;

(3) to the expense account in an amount designated by the State Board of Trustees pursuant to Section 3.56(d) of this chapter;

(4) to the benefit increase reserve account an amount sufficient to credit the average annual balance of the account with interest at a rate recommended by the actuary and approved by the State Board of Trustees as representing a reasonable anticipation of earnings from the investments of assets accrued to the benefit increase reserve account; and

(5) to the state contribution account any balance remaining in the interest account.

[See Compact Edition, Volume 1 for text of (c)]

[Amended by Acts 1975, 64th Leg., p. 40, ch. 19, § 8, eff. March 20, 1975; Acts 1977, 65th Leg., p. 1027, ch. 377, § 20, eff. June 10, 1977; Acts 1979, 66th Leg., p. 1178, ch. 570, § 10, eff. Aug. 27, 1979.]

For effective date and severability provisions, see note under Section 3.25.

§ 3.57. Member Contributions

(a) "Member Contributions": The rate of contributions required of each member of the retirement system shall be five percent of his annual compensation or $180, whichever is the lesser, for service rendered between September 1, 1937, and September 1, 1957, and for any member six percent of the first $8,400 of his annual compensation for service rendered on or after September 1, 1957, to September 1, 1969. The rate of contribution required of each member after September 1, 1969, but before the school year beginning on or about September 1, 1977, shall be six percent of his annual compensation and with the school year beginning on or about September 1, 1977, and thereafter shall be 6.65 percent of his annual compensation. Every member shall also pay for operation of the system, an annual membership fee of $5 which shall be credited to the expense account.

(b) Each employer shall deduct from the salary of each member 6.65 percent of his compensation for each payroll period.

[See Compact Edition, Volume 1 for text of (c)]

(d) Each employer or his designated disbursing officer shall send all deductions and a certification of earnings of the member to the executive secretary, at such time and in such form as the retirement system may prescribe. All deductions received shall be deposited with the state treasurer whereupon they shall be deemed appropriated for use according to the provisions of this chapter.

[See Compact Edition, Volume 1 for text of (e) to (f)]

(g) If deductions which should have been made from any member's salary were not in fact made, the member must pay these deductions, plus a five percent per annum fee on the unpaid amount from the end of the school year such deductions were due or the end of the 1974–75 school year, whichever is later, until the date of payment, on terms prescribed by the State Board of Trustees. The member shall thereupon receive credit for the prior service to which he may be entitled under this chapter. Fees shall be credited to the state contribution account.

[See Compact Edition, Volume 1 for text of (h)]

(i) Any member who was employed in a position at a public institution of higher education for which enrollment as a student in that institution was a condition of employment shall be entitled to credit for service in such a position if the service was rendered before the effective date of legislation excluding such employment from membership in the retirement system, if the member deposits or has deposited before September 1, 1978, the amounts, including fees, required by this chapter for service, and if such deposits are continuously maintained

with the retirement system until the member qualifies for the payment of benefits under this chapter.
[Amended by Acts 1975, 64th Leg., p. 40, ch. 19, § 9, eff. March 20, 1975; Acts 1977, 65th Leg., p. 1028, ch. 377, § 21, eff. June 10, 1977; Acts 1979, 66th Leg., p. 1178, ch. 570, § 11, eff. Aug. 27, 1979.]

For effective date and severability provisions, see note under Section 3.25.

Section 28 of the 1977 amendatory act provided:

"Employees of The University of Texas System who the State Board of Trustees of the Teacher Retirement System of Texas ruled eligible for membership in the Teacher Retirement System of Texas but whom The University of Texas System ruled ineligible for such membership shall be required, beginning September 1, 1979, to pay the fees provided in Section 3.57 of the Texas Education Code, as amended, for any resulting late payment of deposits."

Section 15 of the 1979 amendatory act provided:

"Fees, other than membership fees, collected for delinquent deposits pursuant to Section 3.57(g) of the Texas Education Code for school years prior to the 1975–76 school year shall be refunded to the member or his estate from the state contribution account."

§ 3.58. State Contributions

(a) "State Contributions": The State of Texas shall contribute during each year an amount equal to eight and one-half percent of the aggregate annual compensation of all members of the retirement system during that same year. All assets heretofore contributed by the state to the retirement system, together with the contributions hereafter made, shall be held, credited, transferred and expended for payment of authorized benefits as provided in this chapter.

(b) On or before November 1 preceding each regular session of the legislature, the State Board of Trustees shall certify to the state comptroller for his review and adoption the amount necessary to pay the state's contributions to the teacher retirement system for the ensuing biennium. This amount shall be included in the budget of the state which the governor submits to the legislature. The State Board of Trustees shall certify on or before August 31 of each year to the state comptroller and treasurer the estimated amount of contributions to be received from members during the ensuing year.

(c) All money appropriated by the state for the teacher retirement system shall be paid in monthly installments as provided in Chapter 3, Acts of 57th Legislature, 2nd Called Session, 1961 (Article 7083a, Section 2(3), Vernon's Texas Civil Statutes). Each monthly installment shall be paid into the state contribution account.
[Amended by Acts 1977, 65th Leg., p. 1029, ch. 377, § 22, eff. June 10, 1977; Acts 1979, 66th Leg., p. 1178, ch. 570, § 12, eff. Aug. 29, 1979.]

Section 27 of the 1977 amendatory act provided:

"In addition to the amounts provided in Section 3.58 of the Texas Education Code, there is hereby authorized an appropriation to the Teacher Retirement System of Texas of the total sum of $121,702,000 to fund the increase in benefits provided in Section 16 of this Act. There is hereby appropriated from the general revenue fund to the Teacher Retirement System of Texas $60,851,000 in addition to the amounts required in Section 3.58 of the Texas Education Code. The state comptroller of public accounts on adoption of this Act shall transfer this amount to the Teacher Retirement System of Texas for deposit in the system's benefit increase account."

§ 3.59. General Administration

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) Four members shall be appointed by the governor, with the advice and consent of the senate, subject to the following requirements:

(1) Two such members shall each be appointed from a slate of three members of the retirement system who are currently employed by a public school district and who have been nominated, at an election conducted under rules adopted by the State Board of Trustees, by written ballot by those members of the retirement system whose most recent credited service was performed for a public school district. The two members shall serve staggered terms of six years.

(2) One such member shall be appointed from a slate of three former members who have retired and are receiving benefits under the provisions of this chapter or of previous laws governing the Teacher Retirement System of Texas and who have been nominated by written ballot by those persons who have retired and are receiving benefits under the provisions of this chapter or of previous laws governing the Teacher Retirement System of Texas at an election conducted under the rules and regulations adopted by the State Board of Trustees. The retired member shall hold office for a term of two years ending August 31, 1975. The State Board of Trustees shall send directly to all retired members notice of deadlines for filing as a candidate for nomination, information on procedures to follow in filing as such candidate, and written ballots.

(3) One member shall be appointed from a slate of three members of the retirement system who are currently employed by an institution of higher education and who have been nominated, at an election conducted under rules adopted by the State Board of Trustees, by written ballot by those members of the retirement system whose most recent credited service was performed for an institution of higher education. The member shall serve a term of six years.

(d–1) The State Board of Trustees of the Teacher Retirement System of Texas is subject to the Texas Sunset Act,[1] but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1989 and of every 12th year after 1989 are reviewed.

[See Compact Edition, Volume 1 for text of (e) and (f)]

(g) Each trustee shall take the constitutional oath prescribed for officers before entering upon the duties of office.

[See Compact Edition, Volume 1 for text of (h) to (p)]

[Amended by Acts 1977, 65th Leg., p. 1029, ch. 377, § 25, eff. June 10, 1977; Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.174, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1024, ch. 457, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1179, ch. 570, § 13, eff. Aug. 27, 1979.]

[1] Civil Statutes, art. 5429k.

Section 2 of the 1979 amendatory act provided:

"A person holding office as a member of the board of trustees of the Teacher Retirement System of Texas on the effective date of this Act continues to hold the office for the term for which the member was appointed. The governor shall appoint a person as provided by Section 3.59(d)(3), Texas Education Code, as amended, for a term to succeed a board member's term that expires on August 31, 1981. The governor shall appoint one person as provided by Section 3.59(d)(1), Texas Education Code, as amended, for a term to succeed a board member's term that expires on August 31, 1981, and one person as provided by Section 3.59(d)(1), Texas Education Code, as amended, for a term to succeed a board member's term that expires on August 31, 1983."

§ 3.60. Management and Investment of Funds

(a) The State Board of Trustees shall be the trustee of all funds, securities, money, and other assets of the retirement system with full power to invest and reinvest them, as authorized by Article XVI, Section 67, of the Texas Constitution.

[See Compact Edition, Volume 1 for text of (b) to (f)]

[Amended by Acts 1977, 65th Leg., p. 1032, ch. 377, § 26, eff. June 10, 1977.]

§ 3.63. Collection of Federal or Private Funds for Retirement Contributions

(a) Any employer who makes an application to obtain money provided by the United States government or its agencies or from any privately sponsored source must, if any of the money will pay part or all of any employee's salary, also apply for any legally available funds to pay state contributions as set out in Section 3.58 of this chapter, as amended, and in Section 51.357 of this code, as amended. When an employer receives funds to pay for state contributions for retirement pursuant to this application, the employer shall immediately send such funds to the retirement system for deposit in the General Revenue Fund of the state treasury. Employers shall report monthly to the system in a form it prescribes the names of each employee paid in whole or part from a grant, the source of the grant, the amount of the employee's salary paid from the grant, the amount of money provided for state contributions for the employee by the grant, and such other information as the retirement system deems necessary to enforce this section. The retirement system may also require reports from employers of monies applied for and evidence that such application includes a request for funds available to pay for state contributions to the retirement program of employees paid from such money. The retirement system shall adopt rules to enforce the provisions of this section and shall have powers to examine the records of any employer to determine compliance with this section and its rules.

(b) It shall be a Class C misdemeanor for an administrator of an employer to knowingly fail to comply with any provision of this section.

(c) Any employer who fails to comply with this section shall be prohibited from applying for or expending any further federal or private grant funds. The system shall report alleged noncompliance to the attorney general, the state treasurer, the Legislative Budget Board, the comptroller and the governor. The attorney general shall bring a writ of mandamus against any employer to compel compliance with this section.

(d) This section shall apply to fund applications made prior to the effective date of this section only if the additional funds for employer retirement costs can be obtained by amending the application or unless the grant made pursuant to the application includes money for employer retirement costs. Employers shall be required to send to the retirement system only those funds received after the effective date of this section. However, funds from grants accumulated for the payment of employer costs for retirement benefits and held by the Central Education Agency may be transferred to the state contribution account of the retirement system.

[Added by Acts 1979, 66th Leg., p. 1179, ch. 570, § 14, eff. Aug. 27, 1979.]

CHAPTER 4. PENAL PROVISIONS

§ 4.22. Possession of Intoxicants on Public School Grounds

(a) The possession of any intoxicating beverage for consumption, sale, or distribution while on the grounds or in a building of a public elementary, junior high, or senior high school or while entering or inside any enclosure, field, or stadium where an athletic event sponsored or participated in by a public elementary, junior high, or senior high school of this state is being held is unlawful.

(b) If any officer of this state sees any person violating this section, he shall immediately seize the intoxicating beverage and within a reasonable time deliver it to the county or district attorney to be held as evidence until the trial of the accused possessor and then dispose of same.

(c) Any person violating the provisions of this section shall be guilty of a Class C misdemeanor.

[Amended by Acts 1979, 66th Leg., p. 493, ch. 224, § 1, eff. Aug. 27, 1979.]

§ 4.25. Thwarting Compulsory Attendance Law

(a) If any parent or person standing in parental relation to a child, within the compulsory school attendance ages and not lawfully exempt or properly excused from school attendance, fails to require such child to attend school for such periods as required by law, it shall be the duty of the proper attendance officer to warn, in writing, the parent or person standing in parental relation that attendance

must be immediately required. If after this warning the parent or person standing in parental relation wilfully fails to comply, the attendance officer shall file a complaint against him in the county court, in the justice court of his resident precinct, or in the municipal court of the municipality in which he resides. Any parent or person standing in parental relation convicted of wilfully violating this section shall be fined not less than $5 nor more than $25 for the first offense, not less than $10 nor more than $50 for the second offense, and not less than $25 nor more than $100 for a subsequent offense. Each day the child remains out of school after the warning has been given or the child ordered to school by the juvenile court may constitute a separate offense.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1975, 64th Leg., p. 1356, ch. 513, § 1, eff. Sept. 1, 1975.]

TITLE 2. PUBLIC SCHOOLS

CHAPTER 11. CENTRAL EDUCATION AGENCY

SUBCHAPTER A. GENERAL PROVISIONS

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11.031. Central Services for Texas School for the Deaf and Texas School for the Blind.
11.041. Use of Facilities of Texas School for the Deaf.
11.052. Education for the Visually Handicapped.
11.061. Management and Supervision of the Texas School for the Blind [NEW].
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11.102. Supplemental Allowances for Exceptional Expenses of Blind Education [NEW].
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SUBCHAPTER B. STATE BOARD OF EDUCATION

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11.83. Repealed.
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11.88. Repealed.

SUBCHAPTER A. GENERAL PROVISIONS

§ 11.01. Composition and Purpose

Text of section effective until January 1, 1982

The State Board of Education, the State Board for Vocational Education, the state commissioner of education, and the State Department of Education shall comprise the Central Education Agency. It shall carry out such educational functions as may be assigned to it by the legislature, but all educational functions not specifically delegated to the Central Education Agency shall be performed by county boards of education or district boards of trustees.

[Amended by Acts 1977, 65th Leg., 1st C.S., p. 35, ch. 1, § 18, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1320, ch. 602, § 15, eff. Aug. 27, 1979.]

For text of section effective January 1, 1982, see § 11.01, post

§ 11.01. Composition and Purpose

Text of section effective January 1, 1982

The State Board of Education, the State Board for Vocational Education, the state commissioner of education, and the State Department of Education shall comprise the Central Education Agency. It shall carry out such educational functions as may be assigned to it by the legislature, but all educational functions not specifically delegated to the Central Education Agency shall be performed by county boards of education or district boards of trustees.

[Amended by Acts 1977, 65th Leg., 1st C.S., p. 35, ch. 1, § 18, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1320, ch. 602, § 15, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2317, ch. 841, § 4(k), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see § 11.01, ante

§ 11.011. Application of Sunset Act

The Central Education Agency is subject to the Texas Sunset Act [1]; and unless continued in existence as provided by that Act the agency is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.149, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

11.03. Supervision of the Texas School for the Deaf

Text as amended by Acts 1979, 66th Leg., p. 1652, ch. 691, § 1

(a) The Central Education Agency shall have exclusive jurisdiction and control over the Texas School for the Deaf, and it shall be the duty of the commissioner of education to appoint a superintendent for that school, subject to approval by the State Board of Education. Such jurisdiction shall extend but not be limited to the physical assets of the school, and appropriations made for its benefit shall be administered and expended by the agency.

(b) The Texas School for the Deaf shall:

(1) provide educational services on a day or residential basis to deaf students for whom adequate educational opportunities are unavailable in their local or regional programs;

(2) provide short-term services to deaf students so that they may be better able to benefit from educational services available in their local communities;

(3) provide services for multiply handicapped deaf students who cannot be effectively assisted through community programs but whose developmental capacities are such that they should not be admitted to residential institutions operated by the Texas Department of Mental Health and Mental Retardation;

(4) be a primary resource to school districts for promoting excellence in educational services for hearing-impaired students;

(5) be a training and staff development resource for those at the community level who are involved in providing educational and related services to hearing-impaired students; and

(6) be a research and demonstration facility to improve methods of providing educational services to meet the current and future needs of hearing-impaired students.

[Amended by Acts 1979, 66th Leg., p. 1652, ch. 691, § 1, eff. Aug. 27, 1979.]

For text as amended by Acts 1979, 66th Leg., p. 2162, ch. 827, § 1, see § 11.03, post

§ 11.03. Supervision of the Texas School for the Deaf

Text as amended by Acts 1979, 66th Leg., p. 2162, ch. 827, § 1

(a) The Texas School for the Deaf is governed by a nine-member board appointed by the governor in accordance with this section and confirmed by the senate. Three of the members must be deaf persons, three must each be a parent of a deaf person, and three must be experienced in working with deaf persons. The State Board of Education shall nominate three persons for each position, and the governor shall appoint one of those nominees to each position.

(b) Except as provided for the initial appointees, members of the board serve for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. In making the initial appointments, the governor shall designate three members to serve for terms expiring in 1981, three in 1983, and three in 1985. The initial appointments shall be made in such a manner that the different categories of persons to serve on the board will also be staggered as to length of their terms.

(c) Members of the board serve without salary but are entitled to reimbursement for actual and necessary expenses incurred in carrying out official duties.

(d) The board shall organize and conduct itself in the same manner as an independent school district board of trustees.

(e) The board shall prepare and present the annual budget for the school to the State Board of Education for approval and presentation to the legislature.

(f) Actions of the board may be appealed to the State Board of Education and the State Board of Education may review any of the activities of the board.

[Amended by Acts 1979, 66th Leg., p. 2162, ch. 827, § 1, eff. Aug. 27, 1979.]

For text as amended by Acts 1979, 66th Leg., p. 1652, ch. 691, § 1, see § 11.03, ante

Section 4 of Acts 1979, 66th Leg., p. 2165, ch. 827, provided:

"The State Board of Education shall nominate and the governor shall appoint members to the governing board for the Texas School for the Deaf and for the Texas School for the Blind immediately after the effective date of this Act."

§ 11.031. Central Services for Texas School for the Deaf and Texas School for the Blind

(a) The State Board of Education by rule may require centralized services for the Texas School for the Deaf and the Texas School for the Blind which in the judgment of the board will provide efficient and economical operations. The centralized services may include accounting and other business office services, warehousing, maintenance, and other services.

(b) Centralized services provided under Subsection (a) of this section shall be managed cooperatively by the State Board of Education, the Texas School for the Blind, and the Texas School for the Deaf.

[Added by Acts 1979, 66th Leg., p. 2164, ch. 827, § 3, eff. Aug. 27, 1979.]

§ 11.04. Superintendent of the Texas School for the Deaf

[See Compact Edition, Volume 1 for text of (a)]

(b) The superintendent may reside at the school and shall devote his time exclusively to the duties of his office.

(c) Repealed by Acts 1979, 66th Leg., p. 2165, ch. 827, § 5, eff. Aug. 27, 1979.

[Amended by Acts 1979, 66th Leg., p. 1653, ch. 691, § 2, eff. Aug. 29, 1979; Acts 1979, 66th Leg., p. 2165, ch. 827, § 5, eff. Aug. 29, 1979.]

§ 11.041. Use of Facilities of Texas School for the Deaf

Organizations approved by the State Board of Education may use the facilities of the physical plant of the Texas School for the Deaf if that use is approved by the superintendent of the school and the use will not interfere with the regular operations of the school.

[Added by Acts 1979, 66th Leg., p. 1653, ch. 691, § 3, eff. Aug. 29, 1979.]

§ 11.052. Education for the Visually Handicapped

(a) The Central Education Agency shall develop and administer a comprehensive statewide plan for the education of the visually handicapped which will ensure that visually handicapped children have an opportunity for achievement equal to the opportunities afforded their peers with normal vision.

(b) The Central Education Agency shall be responsible for:

(1) the development of standards and guidelines for all special education services for the visually handicapped which it is authorized to provide or support pursuant to the provisions of this code, including matters related to standards and accreditation;

(2) the supervision of such field offices as might from time to time be established to assist local school districts in serving visually handicapped children more effectively;

(3) the development and administration of special programs for children handicapped by both serious visual loss and serious hearing loss;

(4) the evaluation of special education services provided for visually handicapped children by local school districts and the approval or disapproval of state funding of such services; and

(5) the maintenance of effective liaison between special education programs provided for the visually handicapped by local school districts and related initiatives exerted by the State Commission for the Blind, the Department of Mental Health and Mental Retardation, the School for the Blind, and other related programs, agencies, or facilities as appropriate.

(c) The minimum components of the comprehensive statewide plan for the education of the visually handicapped shall include but not be limited to the following:

(1) adequate provision for comprehensive diagnosis and evaluation of each school-age child having a serious visual impairment;

(2) procedures, format, and content of the individualized written service plan for each such visually handicapped child;

(3) emphasis on providing educational services to visually handicapped children in their home communities whenever possible;

(4) Methods to assure that visually handicapped children receiving special education services in local school systems receive, prior to being placed in a classroom setting or within a reasonable time thereafter, the compensatory skills training, communicative skills, orientation and mobility training, social adjustment skills, and vocational or career counseling required in order for such students to succeed in classroom settings and to derive lasting benefits of a practical nature from the education obtained in local school systems;

(5) flexibility on the part of the local school systems to meet the special needs of visually handicapped children through:

(A) specialty staff and resources provided by the local school district;

(B) contractual arrangements with other qualified agencies, either public or private;

(C) supportive assistance from regional service centers, field offices of the Central Education Agency, or adjacent school districts;

(D) short-term or long-term services through the Texas School for the Blind or related types of facilities or programs;

(E) other instructional and service arrangements approved by the agency; or

(F) any combination of the foregoing;

(6) a statewide admission, review, and dismissal process;

(7) provision for effective interreaction between the visually handicapped child's classroom setting and his home environment, including provision for parental training and counseling either by local school personnel or by representatives of other organizations directly involved in the development and implementation of the individualized written service plan for the child;

(8) a requirement for the continuing education and professional development of local school district staff providing special education services to the visually handicapped;

(9) adequate monitoring and precise evaluation of special education services provided to visually handicapped children through local school districts; and

(10) a requirement that local school districts providing special education services to visually handicapped children develop procedures for assuring that staff assigned to work with the visually handicapped children have prompt and effective access directly to resources available through cooperating agencies in the area, through the Texas School for the Blind, through the Central Media Depository, the Comprehensive Diagnostic and Evaluation Center, sheltered workshops participating in the state program of purchases of blind-made goods and services, and related types of resources.

(d) In developing, administering, and coordinating the statewide plan for the education of the visually handicapped, the agency shall encourage the use of all pertinent resources, whether such resources exist in special education programs or in closely related programs operated by other public or private agencies, through encouraging the development of cooperative working relationships and by assisting in the development of contractual arrangements between local school districts and other organizations, and it shall be the duty of the agency to discourage interagency competition, overlap, and duplication in the development of specialized resources and the delivery of services.

(e) Every eligible blind or visually handicapped student shall receive the educational programs according to an individualized written service plan which:

(1) shall be developed following adequate diagnosis and evaluation of all pertinent medical, psychological, social, cultural, environmental, and related factors which bear on the individual's ability to benefit from educational programs;

(2) shall be jointly developed by a representative of an educational program who is qualified and experienced in working with individuals handicapped by serious visual loss, by the blind or handicapped individual and his parent or guardian, and by representatives of other public or private organizations providing or capable of providing specialized services which tend to assure greater effectiveness of the educational effort exerted in behalf of the blind or visually handicapped individual;

(3) specifies in measurable terms the goals and objectives to be accomplished as a result of the educational and specialized services to be provided by the various organizations working with the blind or visually handicapped individual;

(4) specifies the time by which each service is to be initiated, the anticipated duration of each service, and the time within which the objectives and goals of the services might be achieved;

(5) contains a procedure and schedule for periodic review and evaluation of progress toward established objectives and goals based on objective criteria and contains a record of the reviews and evaluations;

(6) summarizes the views of the blind or visually handicapped individual, or as appropriate, his parent or guardian or other representative concerning his goals and objectives and the special services being provided;

(7) outlines the obligations undertaken by the individual's family in connection with the individualized written service plan, including family commitments regarding physical restoration services, procurement of optical aids, and related services;

(8) reflects that the individual has been provided a detailed explanation of the various service resources available to him within the community and throughout the state;

(9) reflects that the individualized written service plan has been reviewed as frequently as necessary, but in no event less than once annually, by competent educational authorities, representatives of cooperating organizations, the individual, and his parent or guardian and that the plan has been modified, refined, or redeveloped in a manner consistent with determinations made through such review;

(10) describes in detail the arrangements made to provide the blind or visually handicapped individual with orientation and mobility training, instruction in braille or use of large print, other training to compensate for serious visual loss, access to special media, and special tools, appliances, aids, or devices commonly utilized by individuals with serious visual losses; and

(11) sets forth the plans and arrangements made for contacts with and continuing services to the blind or visually handicapped individual during periods in which he might not be involved in school programs.

[Added by Acts 1975, 64th Leg., p. 2397, ch. 734, § 23, eff. June 21, 1975. Amended by Acts 1977, 65th Leg., 1st C.S., p. 36, ch. 1, § 20, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 677, ch. 301, §§ 5, 6, eff. May 31, 1979.]

§ 11.06. Functions and Purposes of Texas School for the Blind

The Texas School for the Blind is constituted, funded, and operated for the following functions and purposes:

(1) to provide educational services on a residential basis to blind children and youth who, for whatever reasons, are unable to obtain adequate educational opportunities in their local communities;

(2) to provide short-term services to blind children and youth for the purpose of equipping such blind children and youth to be able to benefit from educational services available in their local communities;

(3) to serve multiply handicapped blind children and youth who cannot be effectively assisted through community programs, but whose developmental capacities are such that it may not be convincingly demonstrated that the children and youth should appropriately be admitted to residential institutions operated by the State Department of Mental Health and Mental Retardation;

(4) to serve as the primary catalyst within the State of Texas for promoting greater excellence and relevance in educational services for blind individuals;

(5) to serve as a resource to local school programs throughout the state in connection with the efforts of local school programs to serve blind and visually handicapped individuals effectively;

(6) to serve as a mechanism for training and ongoing staff development for those who are involved in providing educational and closely related services to blind or visually handicapped children and youth in local communities throughout the state;

(7) to serve as a research and demonstration facility through which new and improved methods of providing educational services are developed to meet the current and future educational needs of blind and visually handicapped children and youth and through which are developed new and innovative methods of applying the most advanced medical technology, scientific achievement, and psychological and social knowledge to solve the educational problems of blind and visually handicapped children or youth; and

(8) to cooperate with any and all other public or private organizations, as appropriate, in more effectively carrying out, through effective interagency coordination and vigorous interagency communication, those provisions of this code which relate to the education of the blind and visually handicapped, as well as those provisions of closely related state statutes.

[Amended by Acts 1975, 64th Leg., p. 2393, ch. 734, § 19, eff. June 19, 1975.]

§ 11.061. Management and Supervision of the Texas School for the Blind

(a) The Texas School for the Blind is governed by a nine-member board appointed by the governor in accordance with this section and confirmed by the senate. Three of the members must be blind persons, three must each be a parent of a blind person, and three must be experienced in working with blind persons. The State Board of Education shall nominate three persons for each position, and the governor shall appoint one of those nominees to each position.

(b) Except as provided for the initial appointees, members of the board serve for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. In making the initial appointments to the board, the governor shall designate three members to serve for terms expiring in 1981, three in 1983, and three in 1985. The initial appointments shall be made in such a manner that the different categories of persons to serve on the board will also be staggered as to the length of their terms.

(c) Members of the board serve without salary but are entitled to reimbursement for actual and necessary expenses incurred in carrying out official duties.

(d) The board shall organize and conduct itself in the same manner as an independent school district board of trustees.

(e) The board shall prepare and present the annual budget for the school to the State Board of Education for approval or presentation to the legislature.

(f) Actions of the board may be appealed to the State Board of Education and the State Board of Education may review any of the activities of the board.

(g) The chief administrative officer of the Texas School for the Blind shall be its superintendent, who is empowered to take all necessary and appropriate action to carry out the functions and purposes of the Texas School for the Blind, pursuant to such general policies as the Board of the Texas School for the Blind might from time to time prescribe, and subject only to a requirement of reporting not less than quarterly to the Board of the Texas School for the Blind as to his activities, progress in the implementation of general policies prescribed by the board, matters of programmatic exceptionality, general statistical summaries of services provided by the Texas School for the Blind during the period covered by the report, budget matters of major consequence or concern, and such additional matters as the Board of the Texas School for the Blind might from time to time request to be specifically covered in the superintendent's reports.

(h) The Board of the Texas School for the Blind shall establish and not less than semi-annually meet with two advisory committees, the nature and composition of which shall be as hereinafter indicated, and both of which shall be available to the superintendent for consultation and assistance on request at any time.

(i) There shall be an educational advisory committee consisting of two teachers employed in classroom settings at the Texas School for the Blind, two teachers working primarily with blind and visually handicapped students in public school settings, and two staff of the Texas School for the Blind not employed in classroom settings.

(j) There shall be a consumers advisory committee, consisting of the parents of two students attending the Texas School for the Blind, the parents of two blind children enrolled in public school programs, one former graduate of the Texas School for the Blind employed in a profession other than education, and one former student of the Texas School for the Blind successfully engaged in a vocation not normally requiring college training.

(k) Members of the two advisory committees shall serve two-year terms, and shall be appointed by the Board of the Texas School for the Blind following consideration of such recommendations as might be made by the Superintendent of the Texas School for the Blind.

(*l*) Members of the advisory committees to the superintendent and Board of the Texas School for the Blind shall receive no salary for their services but shall be entitled to reimbursement for the actual and necessary expenses of their travel in providing services for the Texas School for the Blind.

[Added by Acts 1975, 64th Leg., p. 2394, ch. 734, § 20, eff. June 21, 1975. Amended by Acts 1979, 66th Leg., p. 2163, ch. 827, § 2, eff. Aug. 27, 1979.]

Section 4 of the 1979 amendatory act provided:

"The State Board of Education shall nominate and the governor shall appoint members to the governing board for the Texas School for the Deaf and for the Texas School for the Blind immediately after the effective date of this Act."

§ 11.062. Repealed by Acts 1977, 65th Leg., 1st C.S., p. 48, ch. 1, § 35, eff. Sept. 1, 1977

The repealed section, establishing a business office on the campus of the Texas School for the Blind, was added by Acts 1975, 64th Leg., p. 2394, ch. 734, § 20.

§ 11.063. Staffing and Funding of School for the Blind

(a) With the concurrence of the Board of the Texas School for the Blind, the superintendent is authorized to adopt a salary structure for the Texas School for the Blind with maximum levels not to exceed an amount equivalent to the maximum salary levels of the five local independent school districts offering the highest salaries, and not less than those of the Austin Independent School District, including consideration of employee benefits, being paid to staff employed for the special education of children with severely disabling handicaps.

(b) The funding of the Texas School for the Blind shall consist of:

(1) such amounts as might be specifically appropriated to the Texas School for the Blind by the legislature;

(2) such sums as which the Central Education Agency might make available to the Texas School for the Blind pursuant to other provisions of this code;

(3) budgets developed through contracts and agreements;

(4) amounts received through gifts and bequests; and

(5) payments from local school districts in an amount equivalent to the amount of ad valorem tax collections which would have been expended on each child sent to the Texas School for the Blind from within its geographical boundaries had the child been enrolled in a program of special education offered by the local independent school district.

(c) All amounts whatsoever and howsoever received by the Texas School for the Blind are hereby appropriated for expenditure in relation to the functions and purposes of the Texas School for the Blind as set forth in Section 11.06 of this code.

[Added by Acts 1975, 64th Leg., p. 2394, ch. 734, § 20, eff. June 21, 1975.]

§ 11.07. Superintendent of the Texas School for the Blind

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) Repealed by Acts 1979, 66th Leg., p. 2165, ch. 827, § 5, eff. Aug. 27, 1979.

[Amended by Acts 1979, 66th Leg., p. 2165, ch. 827, § 5, eff. Aug. 27, 1979.]

§ 11.071. Travel and Clothing Expenses for Certain Blind Students

Economically deprived children attending the Texas School for the Blind shall be entitled to the same clothing and travel benefits as are allowed under Section 11.051 of this code for economically deprived children attending the Texas School for the Deaf.

[Added by Acts 1975, 64th Leg., p. 2397, ch. 734, § 22, eff. June 21, 1975.]

§ 11.08. Medical Services for the Texas School for the Blind

Appropriate ophthalmological or optometric services shall be provided to examine and treat all students at the Texas School for the Blind in relation to their ophthalmic needs. Other specialty medical and psychological services shall be provided as needed.

[Amended by Acts 1975, 64th Leg., p. 2397, ch. 734, § 21, eff. June 21, 1975.]

§ 11.09. Repealed by Acts 1979, 66th Leg., p. 679, ch. 301, § 8(a), eff. May 31, 1979; Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979

See, now, § 16.104.

§ 11.091. Diagnostic and Evaluation Center

(a) The Texas School for the Blind shall establish a comprehensive diagnostic and evaluation center and program in Austin for multiply handicapped blind children and youth. The center shall be operated on a cooperative, interagency basis under the general coordination of the Texas School for the Blind.

(b) To the maximum extent feasible and practicable, the diagnostic and evaluation center shall utilize resources available in the Austin area through the State Commission for the Blind, the Texas School for the Blind, the Criss Cole Rehabilitation Center, the State Department of Mental Health and Mental Retardation, the University of Texas, and other public or private organizations in the area.

(c) The purposes and functions of the diagnostic and evaluation center are:

(1) to provide thorough diagnostic studies of multiply handicapped blind children and youth, to determine the nature and scope of special education and related services needed by the individuals, which studies shall at the minimum consist of a comprehensive evaluation of pertinent medical, psychological, social, cultural, environmental, and related factors which bear on the individual's ability to benefit from educational programs and which bear on the types of special services the individual needs in order to obtain maximum benefits from educational services;

(2) to develop scientifically valid instruments, methodologies, and procedures for measuring in a useful and meaningful manner the total developmental assets and deficiencies that relate to the capacity of a multiply handicapped blind child or youth to benefit from educational programs and to prepare for a full and useful life as an independent, contributing member of society;

(3) to test, develop, demonstrate, and help implement concepts, formats, and processes for establishing, executing, periodically reviewing, and from time to time modifying individualized written service plans for all blind or visually handicapped children or youth participating in educational programs within the State of Texas;

(4) to stimulate and assist in the development of more adequate diagnostic and evaluative resources in other communities for blind and visually handicapped children and youth throughout the state, experimenting with a variety of new and innovative methods for providing such diagnostic and evaluative services at the community level with a view toward ultimately assuring timely and convenient access to the diagnostic and evaluative resources required for developing and carrying out individualized service plans with optimum effectiveness; and

(5) to develop new and innovative methods for applying the most advanced medical technology, scientific achievement, and psychological and social knowledge to solve the educational problems of blind and visually handicapped children or youth.

(d) The costs of the comprehensive diagnostic and evaluation center and program, including initial costs of establishment and recurrent costs of operation, shall be defrayed through such sums as the legislature might appropriate for these purposes, through such grants, gifts, bequests, and donations as the cooperating agencies might receive for the establishment and support of the center and program, through reasonable fees charged to organizations requesting diagnostic and evaluative services for multiply handicapped blind children and youth, and through such budgets as might be developed by the cooperating agencies with interagency contracts.

(e), (f) Repealed by Acts 1979, 66th Leg., p. 679, ch. 301, § 8(a), eff. May 31, 1979.

[Added by Acts 1975, 64th Leg., p. 2383, ch. 734, § 13, eff. June 21, 1975. Amended by Acts 1979, 66th Leg., p. 679, ch. 301, §§ 7, 8, eff. May 31, 1979.]

§ 11.10. Regional Day Schools for the Deaf

(a) to (m) Repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979.

[See Compact Edition, Volume 1 for text of (n)]

(o) To carry out legislative intent and the objectives of subsections (n) and the following subsections of this Section 11.10, the Central Education Agency shall employ a director and assistant director of services to the deaf. The director of services to the deaf shall develop and administer a comprehensive statewide plan for deaf education services including continuing diagnosis and evaluation, counseling and teaching, and designed to accomplish the following objectives:

(1) Assisting and counseling parents of children of any age whose hearing is determined by professionally acceptable evaluation to be nonfunctional for education purposes, such assistance and counseling to be provided in each of the regional day school programs for the deaf hereinbelow authorized, and admitting all children between the ages of three and 21 whose hearing is determined by professionally acceptable evaluation to be nonfunctional for educational purposes to the regional day school programs for the deaf; and

(2) Enabling a majority or as many as may be practicable of deaf children to reside with their parents or guardians and be afforded compensatory education in their home school districts or in facilities of regional day school programs for the deaf; and

(3) Enabling deaf children who are unable to attend schools at their place of residence and whose parents or guardians live too far from facilities of regional day school programs for the deaf for daily commuting or to be accommodated five nights a week in foster homes or other residential school facilities provided for by the Central Education Agency in order that such children may attend a regional day school program for the deaf; and

(4) Enrolling in the Texas School for the Deaf at Austin or any other educational facility for the deaf as determined by the parents of deaf children only those children whose needs can best be met in that institution, designating the Texas School for the Deaf as the statewide educational resource for students to whom adequate educational opportunities are unavailable in local or regional programs; and

(5) Encouraging children enrolled in regional day school programs for the deaf who have demonstrated ability to do so to return to regular school classes on a part-time, full-time or trial basis. Supplemental aid from the regional day school program for the deaf shall be made available to such children; and

(6) Recognizing the need for development of oral communications abilities in deaf children and the ability of many to achieve high educational excellence through that method, but also recognizing the inability of some to gain their education successfully by this means, the comprehensive plan developed by the director of services to the deaf will call for the use of methods of communication which will best meet the needs of each individual deaf child in this state, with each child to be examined thoroughly so as to ascertain his potential for communications through oral means. The director of services to the deaf may establish separate programs to accommodate diverse communication methodologies.

[See Compact Edition, Volume 1 for text of (p)]

(q) It is the intent of the legislature that local resources be utilized to the fullest practicable extent in the establishment and operation of the regional day school programs for the deaf. The Central Education Agency is authorized and expected to contract with any qualified public or private organization or qualified individuals for diagnostic, evaluation and instructional services or any other services incidental to the education of deaf children, including transportation and/or maintenance.

The Central Education Agency shall employ educational and other personnel, may purchase or lease real or personal property, may accept gifts or grants of real or personal property or services from any source, public or private, including independent school districts and any institution of higher learning in this state, for the purpose of establishing and operating regional day school programs for the deaf.

The Central Education Agency may provide by rule or regulation that upon establishment of each regional school the countywide school(s) in that region shall become a part of the regional school operation and that all equipment, classroom supplies, and other personal property owned by the countywide schools shall become the property of the regional day school. When any such programs are combined, the directors and employees of the former countywide schools shall be employed in appropriate, substantially similar capacities within the regional day school program for that region.

(r) Except for certain transportation costs, costs of operation of the regional day school programs for the deaf shall be borne by the state and paid from the Foundation School Program Fund. Such costs shall be considered and included by the Foundation School Fund Budget Committee in estimating the needs for purposes of the Foundation School Program and the regional day school programs for the deaf. However, funds allocated to countywide schools shall remain so allocated except in those regions in which the countywide program has been made a part of the appropriate region, as aforesaid. Funds specially appropriated to the regional day school program by the General Appropriations Act of the 63rd Legislature, or any substitute therefor, shall be used so as to implement as completely as may be possible the provisions of this Act during the next biennium and in accordance with a budget of expenditures approved by the State Board of Education with the first funds, however, hereby required to be expended for staffing and planning of the regional day school program. Such funds may be used in conjunction with funds from the Foundation School Program Fund in accordance with rules and regulations adopted by the Central Education Agency, the allocation and reallocation of which is hereby authorized. While the principal cost of educating deaf children shall be borne by the state, independent school districts and all institutions of higher learning in the state are hereby authorized and encouraged to make available real or personal property or services in cooperation with the regional day school programs for the deaf for any activities related to education and betterment of education of deaf children including but not limited to research and personnel training and development. The school district in which a regional day school is located shall bear the costs of transporting students in the program who live within the district and is entitled to have those students counted in its allotment of transportation funds from the state. The regional day school program shall bear the costs of transporting children who live outside the district to the regional day school. It is the intent of the legisla-

ture in enacting this subsection that the use of all of the educational resources of this state be maximized to carry out the intent and objectives of this Act.

(s) Operating costs for the program in each regional day school program for the deaf shall be determined and paid on the following basis:

(1) An estimated allocation of $2,700 for each student enrolled in the program of the regional day school program for the deaf in any current year.

(2) Teachers, principals, supervisors, counselors, para-professional and supporting personnel shall be employed in such numbers as the Central Education Agency finds to be necessary to establish and operate the regional day school programs for the deaf, and such numbers shall not be less than student-professional ratios known to be requisite for success in education of deaf children. Salaries of all personnel employed in the regional day school programs for the deaf shall be determined in accordance with policies established by the State Board of Education.

(3) Local districts may receive allocations for transportation of students participating in the regional day school programs on the same basis as that provided for in Section 16.206 of this code.

(t) To assure effective implementation of this Act the Central Education Agency shall upon the passage of this Act institute planning and research designed to accomplish the intent and objectives set forth herein including employment of personnel considered essential to meet the operational date specified for this Act.

[See Compact Edition, Volume 1 for text of (u)]

[Amended by Acts 1975, 64th Leg., p. 1401, ch. 542, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., 1st C.S., p. 38, ch. 1, § 21, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1323, ch. 602, §§ 24, 35(a), eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1653, ch. 691, §§ 4, 5, eff. Aug. 27, 1979.]

For subject matter of former subsecs. (a) to (m), see, now, § 16.104.

§ 11.101. Repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979

See, now, § 16.104.

§ 11.102. Supplemental Allowances for Exceptional Expenses of Blind Education

From the Foundation School Fund there shall be made available a special supplemental allowance for each blind student or for each student with a serious visual handicap and another medically diagnosed handicap of a significantly limiting nature, who is receiving special education services through any approved program whatsoever. The amount of the special supplemental allowance for each blind student or for each such multiply handicapped student shall be equivalent to the special allocation for deaf students enrolled in regional day school programs, as authorized by Paragraph (1), Subsection (s), Section 11.10 of this code. The supplemental allowances may be expended only for special services uniquely required by the nature of the student's handicap and may not be used in lieu of educational funds otherwise available under this code and through state or local appropriations.

[Added by Acts 1975, 64th Leg., p. 2382, ch. 734, § 10, eff. June 21, 1975.]

§ 11.103. Coordination of Services to Handicapped Children

(a) In this section "handicapped children" has the meaning defined in Section 16.104(b) of this code.

(b) The commissioner of education, with the approval of the State Board of Education, shall develop and implement a plan for the coordination of services to handicapped children within each geographical area served by a regional education service center. The plan shall include, but may not be limited to, procedures for:

(1) identifying existing public or private educational and related services for handicapped children in each region;

(2) identifying and referring handicapped children who cannot be appropriately served by the school district in which they reside to other appropriate programs;

(3) assisting school districts individually and cooperatively to develop programs to identify and provide appropriate services for handicapped children;

(4) expanding and coordinating services provided by regional education service centers which are related to programs for handicapped children; and

(5) providing for special services such as special seats, books, instructional media, and other supplemental supplies and services required for quality instruction.

(c) The commissioner may allocate appropriated funds to regional education service centers and may otherwise expend those funds, as necessary, to implement the provisions of this section.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 36, ch. 1, § 19, eff. Sept. 1, 1977.]

§ 11.104. Private Outdoor Training Programs for Deaf Students

(a) In accordance with the rules of the State Board of Education, the Central Education Agency may contract with private entities to provide for the attendance of deaf students at outdoor recreational programs operated for the purpose of providing skill training and education for deaf children, or for deaf

children and their parents, or for deaf children and their teachers and/or parents.

(b) In selecting students to attend programs under Subsection (a) of this section, the Central Education Agency shall select students from each regional day school program for the deaf and from the Texas School for the Deaf in proportion to the number of students attending the program or school.

(c) The sum of $30,000 is appropriated to the Central Education Agency from the General Revenue Fund for each year of the biennium beginning September 1, 1979, for the purpose of carrying out the provisions of this Act.

[Added by Acts 1979, 66th Leg., p. 1182, ch. 573, § 1, eff. June 11, 1979.]

§ 11.15. Repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979

See, now, § 16.104.

§ 11.16. Educational Program for Deaf Adults

[See Compact Edition, Volume 1 for text of (a) to (d)]

(e) The legislature may appropriate money from the general revenue fund for the support of the program. The Central Education Agency shall allocate to each qualifying school district the sum of $500 per year for each student enrolled in the district's educational program for deaf adults.

[Amended by Acts 1979, 66th Leg., p. 1655, ch. 691, § 6, eff. Aug. 27, 1979.]

Repeal

This section was repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979, without reference to the amendment of subsection (e) by Acts 1979, 66th Leg., p. 1655, ch. 691, § 6, eff. Aug. 27, 1979.

§ 11.161. Repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979

The repealed Section, relating to educational programs for blind adults was added by Acts 1975, 64th Leg., p. 2399, ch. 734, § 24.

§ 11.18. Adult Education

(a) As used in this section, the following words and phrases shall have the indicated meanings:

(1) "Adult education" means services and instruction provided by public local education agencies below the college credit level for adults.

(2) "Adult" means any individual who is over the age of compulsory school attendance as set forth in Section 21.032 of this code.

(3) "Community education" means the concept which involves the people of the community in a program designed to fulfill their educational needs, while promoting more effective use of public education facilities and other public facilities for the purpose of providing recreational, cultural, and other related community services.

(b) The Central Education Agency shall:

(1) manage this program with adequate staffing to develop, administer, and support a comprehensive statewide adult education program and coordinate related federal and state programs for education and training of adults;

(2) develop, implement, and regulate a comprehensive statewide program for community level education services to meet the special needs of adults;

(3) develop the mechanism and guidelines for coordination of comprehensive adult education and related skill training services for adults with other agencies, both public and private, in planning, developing, and implementing related programs, including community education programs;

(4) administer all state and federal funds for adult education and related skill training in Texas;

(5) prescribe and administer standards and accrediting policies for adult education;

(6) prescribe and administer rules and regulations for teacher certification for adult education; and

(7) accept and administer grants, gifts, services, and funds from available sources for use in adult education.

[See Compact Edition, Volume 1 for text of (c) and (d)]

(e) Funds shall be appropriated to implement statewide adult basic education, adult bilingual education, high school equivalency, and high school credit programs to eliminate illiteracy in Texas and to implement and support a statewide program to meet the total range of adult needs for adult education, related skill training, and pilot programs to demonstrate the effectiveness of the community education concept. An additional sum of money may be appropriated for the purpose of skill training in direct support of industrial expansion and start-up, in those locations, industries, and occupations designated by the Texas Industrial Commission, when such training is also in support of the basic purposes of this section.

[Amended by Acts 1975, 64th Leg., p. 466, ch. 200, § 1, eff. May 15, 1975; Acts 1979, 66th Leg., p. 1324, ch. 602, § 28, eff. Aug. 27, 1979.]

§ 11.19. Repealed by Acts 1979, 66th Leg., p. 1162, ch. 562, § 2, eff. Aug. 27, 1979

The repealed section, added by Acts 1975, 64th Leg., p. 2298, ch. 716, § 1, related to educational programs for gifted and talented students.

See, now, §§ 16.501 and 16.502.

§ 11.201. Community Education Services

(a) Any school district of this state classified common, independent school district or rural high school district whose governing board elects to provide community education for all age groups may upon application and pursuant to regulations prescribed by the Central Education Agency be reimbursed for such costs from state funds to the extent herein authorized. Only those districts will be eligible which have in the previous or current year achieved a level of community education services prescribed by the Central Education Agency. The regulations shall contain specific provisions for eligibility and program operation.

(b) The cost to the state shall be paid from the Foundation School Fund, and this cost shall be considered by the Foundation School Fund Budget Committee in estimating the funds needed for Foundation School Program purposes.

(c) For purposes of this section, community education services are defined in accordance with the definition contained in Subdivision (3) of Subsection (a) of Section 11.18 of this code.

(d) Expenditures under this section shall not exceed $1,505,000 annually.

[Added by Acts 1979, 66th Leg., p. 1324, ch. 602, § 27, eff. Aug. 27, 1979.]

SUBCHAPTER B. STATE BOARD OF EDUCATION

§ 11.211. Application of Sunset Act

The State Board of Education is subject to the Texas Sunset Act,[1] but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1989 and every 12th year after 1989 are reviewed.

[Added by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.148, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

§ 11.24. General Powers and Duties

(a) The State Board of Education is the policy-forming and planning body for the public school system of the state. It shall also be the State Board for Vocational Education and as such, the board shall have all the powers and duties conferred on it by the various statutes relating to the State Board for Vocational Education. The State Board of Education (State Board for Vocational Education) may contract with the Coordinating Board, Texas College and University System, so that the coordinating board may assume the leadership role and administrative responsibility of the State Board for Vocational Education for state level administration of technical-vocational education programs in Texas public community colleges, public technical institutes, and other eligible public postsecondary institutions.

[See Compact Edition, Volume 1 for text of (b)]

[Amended by Acts 1975, 64th Leg., p. 2057, ch. 676, § 4, eff. June 20, 1975.]

§ 11.27. Repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979

Subsection 35(c) of the 1979 repealing act provided:

"The repeal of Section 11.27, Texas Education Code, as amended, does not affect a contract entered into before the effective date of this Act if funds are available to the Central Education Agency for payment under the contract after the effective date of this Act."

Prior to repeal, this section was amended by Acts 1975, 64th Leg., p. 1032, ch. 398, § 1.

See, now, § 16.104.

§ 11.29. Adoption of Budget for the Central Education Agency

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) Repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979.

[See Compact Edition, Volume 1 for text of (d) and (e)]

[Amended by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979.]

§ 11.32. Regional Education Service Centers

(a) The State Board of Education shall provide, by rules and regulations, for the establishment and operation of Regional Education Service Centers to provide educational services to the school districts and to coordinate educational planning in the region.

(b) Regional centers shall be located throughout the state so that each school district has the opportunity to be served and to participate in an approved center, on a voluntary basis. No center shall be approved unless it serves an area having 50,000 or more eligible scholastics in average daily attendance for the next preceding school year, except that the State Board of Education may make an exception for sparsely populated areas.

(c) Each center shall be governed by a seven-member board. The State Board of Education shall adopt uniform rules and regulations to provide for the local selection, appointment, and continuity of membership for regional boards of directors. Vacancies shall be filled by appointment by the remaining members of the regional board for the unexpired term. All members shall serve without compensation.

(d) The Regional Board of Directors is authorized to employ an executive director for its respective center and such other personnel, professional and clerical, as it deems necessary to carry out the functions of the center, and to do and perform all things which it deems proper for the successful operation thereof, and to pay for all operating expenses by warrants drawn on proper funds available for such purpose.

(e) The Regional Board of Directors of each Regional Education Service Center, under rules of the State Board of Education, may enter into contracts for grants from both public and private organizations and to expend such funds for the specific purposes in accordance with the terms of the contract with the contracting agency.

(f) Basic costs for the provision of regional education services to school districts and coordination of educational planning in the region and for administrative costs necessary to support these services shall be paid from the Foundation School Fund. Each Regional Education Service Center shall receive an annual allotment of $200,000, with the remainder of the funds available under the provisions of this subsection to be allocated to the Regional Education Service Centers on the basis of the average daily attendance within the area of operation for each Regional Education Service Center as determined for the next preceding school year. The allotment amounts here authorized to be granted by the State Board of Education shall not exceed in any year a sum equal to .45 percent multiplied by the following specified elements of cost contained in the Foundation School Program for the current school year: salaries, maintenance and operation, vocational operating costs, transportation-regular, transportation-special education, transportation-vocational education, agency administration, other special education programs, vocational contract services, bilingual education, preschool non-English speaking, preschool deaf, compensatory education, driver education, and minimum aid.

(g) Each Regional Education Service Center, within each five-year period shall:

(1) perform a self-study of the effectiveness of its services to school districts;

(2) invite a panel of distinguished personnel from other service centers, public school administrators, and other persons deemed appropriate by the service center board to evaluate the practices and services provided by the service center; and

(3) be subject to a management and service audit conducted by the Central Education Agency.

[Amended by Acts 1975, 64th Leg., p. 897, ch. 334, § 7, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 40, ch. 1, § 22, eff. Sept. 1, 1977.]

§ 11.33. General Powers and Duties of Regional Education Service Centers

(a)(1) Regional Education Media Centers shall be established and operated by Regional Education Service Centers under rules of the State Board of Education in order to furnish participating school districts with education media materials, equipment and maintenance, and educational services.

(2) Centers approved by the State Board of Education as meeting their requirements shall develop, provide, and make available to participating school districts education media services.

(3) A Regional Education Media Center is an area center, composed of one or more Texas school districts, that is approved to house, circulate, and service educational media for the public schools of the participating districts.

(4) Any school district which is a participant member of a Regional Education Media Center may elect to withdraw its membership in the center for a succeeding scholastic year, electing not to support nor to receive its services for any succeeding year. Title to and all educational media and property purchased by the center shall remain with and in the center.

(5) The cost incident to setting up the centers, their operation, and the purchase of education media supplies and equipment shall be borne by the state and each participating district to the extent and in the manner provided in this subsection.

(6) The state shall allot and pay to each approved center annually an amount determined on the basis of not to exceed $1 per scholastic in average daily attendance for the next preceding school year in the district or districts that are participants in an approved center. The funds or amount provided by the state shall be used only to purchase, maintain, and service educational media or equipment for the center which have prior approval of its Regional Board of Directors and the State Board of Education through its budgetary system.

(7) School districts as participant members in the center shall provide and pay to the proper center a proportionate amount determined on the basis of the average daily student attendance for the next preceding school year matching the amount provided by the state. The matching funds provided by the participant districts, including any donated or other local funds, may be used to pay for costs of administration of or servicing by the center and to purchase supplemental educational media. A center shall not enter into obligations which shall exceed funds available or reasonably anticipated as receivable for the current school year.

(8) Annually, pursuant to such rules and procedure as may be prescribed by the State Board of Education, the governing board of each center shall determine the rate per pupil based on average daily student attendance the next preceding school year, not to exceed the $1 limit prescribed in this subsection, which shall constitute the basis for determination of total amount to be transmitted by participant districts to the center and as matching funds from the state's contribution to this program.

(9) The state's share of the cost in the regional media centers program shall be paid from the Foun-

dation School Fund, and this cost will be considered by the Foundation Program Committee in estimating the funds needed for foundation program purposes. Nothing in this subsection shall be construed to prohibit a center from receiving and utilizing matching funds in any amount for which it may be eligible from federal sources.

(b)(1) A program of financial assistance for computer services to school districts of the state through Regional Education Service Centers shall be developed by the State Board of Education to encourage a planned statewide network or system of computer services designed to meet public school educational and informational needs. Toward achievement of maximum efficiency and to insure a practicable uniformity in services, the State Board of Education, by rules and regulations, shall adopt eligibility requirements for data processing computer services to receive the state financial assistance authorized herein.

(2) Only computer services that are provided by or through a Regional Education Service Center to make available computer services required to meet the needs of the school districts of one or more Education Service Center regions shall be eligible for financial assistance hereunder.

(3) The State Board of Education annually shall approve a state assistance allotment for computer services to be paid to eligible Regional Education Service Centers that qualify, and in an amount to be determined under rules and regulations adopted by the State Board of Education for that purpose; provided that the allotment amounts here authorized to be granted by the State Board of Education shall not exceed in any year a sum equal to $1 multiplied by the average daily attendance in the public schools of Texas as determined for the next preceding school year.

(4) The state's share of the cost of this program authorized by this subsection shall be paid from the Foundation School Fund, and this cost shall be considered by the Foundation School Fund Budget Committee in estimating the funds needed for Foundation School Program purposes.

(c)(1) The State Board of Education shall promulgate rules, in compliance with the approved statewide design for special education, to provide for a plan for the coordination of services to handicapped children within each geographical area served by a Regional Education Service Center. Regional Education Service Centers, under the procedures set forth in this plan, may provide supplementary or technical assistance to school districts for:

(A) identification of existing public or private educational and related services for handicapped children in each region;

(B) identification and referral of handicapped children who cannot be appropriately served by the school district in which they reside to other appropriate programs;

(C) assistance to school districts individually and cooperatively to develop programs to identify and provide appropriate services for handicapped children;

(D) expansion and coordination of services provided by Regional Education Service Centers which are related to programs for handicapped children; and

(E) provision for special services such as special seats, books, instructional media, and other supplemental supplies and services required for quality instruction.

(2) The responsibility for carrying out the provisions of this subsection rests with the commissioner of education, who may allocate funds to regional service centers for the provision of support services for the functions described in this subsection.

(d) Regional Education Service Centers may provide other services to school districts under rules and regulations adopted by the State Board of Education.

[Amended by Acts 1975, 64th Leg., p. 897, ch. 334, § 8, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 41, ch. 1, § 23, eff. Sept. 1, 1977.]

§ 11.36. Library Standards

(a) The State Board of Education shall establish regulations for accreditation of schools which establish standards for library services and personnel. The standards shall include:

(1) minimum standards for employment of librarians and other library personnel;

(2) acquisition and maintenance of library materials; and

(3) the operation and development of learning resources programs for each school district in this state.

(b) The standards shall include rules for the expenditure of state funds. The local districts shall not be required to expend local funds for the implementation of this section.

[Added by Acts 1979, 66th Leg., p. 1154, ch. 557, § 1, eff. Aug. 27, 1979.]

SUBCHAPTER F. STATE PROPERTY TAX BOARD

Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted Title 1 of the Tax Code, the Property Tax Code. Section 8 of said Act provided:

"(a) The name of the School Tax Assessment Practices Board is changed to the State Property Tax Board, and its members serve as members of the State Property Tax Board for the terms to which each was appointed to serve on the School Tax Assessment Practices Board. A reference to the School Tax Assessment Practices Board by a statute means the State Prop-

erty Tax Board. All books, records, property, and personnel of the School Tax Assessment Practices Board are transferred to the State Property Tax Board.

"(b) The repeal by this Act of the laws establishing the School Tax Assessment Practices Board and its powers and duties does not affect:

"(1) the prior operation of those laws or any prior action taken under them;

"(2) any right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under them;

"(3) any violation of those laws or any penalty, forfeiture, or punishment imposed under them prior to the repeal; or

"(4) any investigation, proceeding, or remedy relating to any right, privilege, obligation, liability, penalty, forfeiture, or punishment under the prior laws, and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the laws had not been repealed, except that if a penalty, forfeiture, or punishment is reduced or is not replaced in this Act, it shall be imposed according to the terms of this Act.

"(c) For the purposes of Subsection (b) of this section, the State Property Tax Board assumes the powers, duties, rights, privileges, and obligations of the School Tax Assessment Practices Board."

§ 11.71. Purpose

It is the policy of this state to ensure equity among taxpayers in the burden of school district taxes and among school districts in the payment of state financial aid to schools. The purpose of this subchapter is to promote that equity by providing for uniformity in the tax appraisal and assessment practices and procedures of school district tax offices, for improvement in the administration and operation of school district tax offices, and for greater competence among persons appraising and assessing school districts' taxes.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 29, ch. 1, § 16, eff. July 22, 1977.]

§ 11.72. Board Defined

In this subchapter, "board" means the State Property Tax Board.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 29, ch. 1, § 16, eff. July 22, 1977; Acts 1979, 66th Leg., p. 2329, ch. 841, § 5, eff. Jan. 1, 1980.]

§ 11.73. Repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(e), eff. Jan. 1, 1980

Acts 1979, 66th Leg., ch. 841, repealing this section, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

The repealed section, relating to board personnel, was added by Acts 1977, 65th Leg., 1st C.S., p. 29, ch. 1, § 16.

§ 11.74. Powers and Duties Generally

(a) The board shall adopt rules establishing minimum standards for the administration and operation of an office engaged in appraising and assessing property for school taxation. The minimum standards for a tax office may vary according to the number of parcels and the kinds of property the office is responsible for appraising and assessing.

(b) The board may require from each office engaged in appraising and assessing property for school taxation an annual report, on a form prescribed by the board, on the administration and operation of the office.

(c) The board may contract with consultants to assist in performance of the duties imposed by this subchapter.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 30, ch. 1, § 16, eff. July 22, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 11.75. Training and Education of Appraisers and Assessors

(a) The board shall conduct, sponsor, or approve courses of instruction and inservice and intern training programs on the technical, legal, and administrative aspects of property taxation.

(b) The board shall cooperate in developing curricula with other public agencies, with educational institutions, and with private organizations interested in training and educating appraisers or assessors, and the board may cooperate with them in conducting or sponsoring courses of instruction and training programs.

(c) A school district shall reimburse the chief administrator of an office responsible for appraising and assessing property for school taxation for all actual and necessary expenses, tuition and other fees, and costs of materials incurred in attending, with approval of the superintendent for the district, a course or training program that is required by Section 11.76 of this code.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 30, ch. 1, § 16, eff. July 22, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 11.76. Training Schedule for School Appraisers and Assessors

The board shall establish by rule a minimum annual number of hours of education and training for a chief administrator of an office appraising and assessing property for school taxes who does not hold a certificate issued by the Board of Tax Assessor Examiners pursuant to Section 18 of the Texas Assessors Registration and Professional Certification Act.[1]

[Added by Acts 1977, 65th Leg., 1st C.S., p. 30, ch. 1, § 16, eff. July 22, 1977.]

[1] Civil Statutes, art. 7244b.

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 11.77. Appraisal Manuals and Other Materials

(a) The board shall prepare and issue:

(1) a general appraisal manual;

(2) special appraisal manuals;

(3) cost, price, and depreciation schedules, with provision for inserting local market index factors and with a standard procedure for determining local market index factors;

(4) news and reference bulletins;

(5) annotated digests of all laws relating to property taxation; and

(6) a handbook of all rules promulgated by the board relating to the property tax and its administration.

(b) The board shall revise or supplement all materials periodically, as necessary, to keep them current.

(c) The board shall provide without charge all materials to officials of offices engaged in appraising and assessing property for school taxation. It shall make the materials available to members of the public but may charge a reasonable fee to offset the costs of printing and distributing the materials.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 30, ch. 1, § 16, eff. July 22, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 11.78. Sanction for Noncompliance

(a) After December 31, 1982, the board shall recommend to the State Board of Education that a school district be declared ineligible for state financial aid if the office appraising and assessing property for the district's tax purposes:

(1) does not comply with the minimum standards for administration and operation of the office established pursuant to Section 11.74 of this code; or

(2) is not administered by a person in compliance with Section 11.76 of this code.

(b) After September 1, 1979, and before January 1, 1983, the board shall recommend to the State Board of Education that a school district be declared ineligible for state financial aid if the chief administrator of the office appraising and assessing property for the district's tax purposes:

(1) does not hold a certificate issued by the Board of Tax Assessor Examiners as provided by Section 18 of the Texas Assessors Registration and Professional Certification Act; [1]

(2) has held the position for more than one year; and

(3) has failed to complete successfully the minimum amount of education and training required under Section 11.76 of this code.

(c) After January 1, 1978, the board shall recommend to the State Board of Education that a school district be declared ineligible for state financial aid if the district has unreasonably failed to file a completed report required by the board under Section 11.82 of this code.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 31, ch. 1, § 16, eff. July 22, 1977.]

[1] Civil Statutes, art. 7244b.

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 11.79. Determination of Noncompliance

(a) If the board recommends to the State Board of Education that a school district be declared ineligible for state financial aid under Section 11.78 of this code, the board shall notify the presiding officer of the district's board of trustees, the district's superintendent, and the chief administrator of the office appraising and assessing property for the district of its recommendation. The notice shall be delivered by certified mail, return receipt requested, and shall state the grounds for the board's recommendation.

(b) A district is entitled to petition the State Board of Education for a hearing within 60 days after delivery of the notice to contest the recommendation or to show that it has substantially remedied the cause stated as grounds for the recommendation.

(c) If after opportunity for a hearing the State Board of Education finds that the district is ineligible for state financial aid under Section 11.78 of this code, the board shall certify its finding to the commissioner of education.

(d) At any time after a school district has been found ineligible for state aid by the State Board of Education, the district may submit evidence that it has substantially remedied the cause of its ineligibility. Within 30 days after receipt of a submission under this subsection, the board shall hold a hearing to determine whether the district has become eligible for state financial aid. The board may find that a district has become eligible for state financial aid without a hearing. If the board finds that a district has become eligible for state financial aid, it shall certify its finding to the commissioner of education and to the School Tax Assessment Practices Board.

(e) After receipt of a certification that a school district is ineligible for state financial aid, the commissioner of education may not approve payment of aid to the district until he receives a certification that the district has become eligible. If a district becomes eligible for state financial aid during a fiscal year, the commissioner of education may approve payment of all aid to which the district is entitled for that year, but the commissioner may not approve payments of state aid for a prior fiscal year in which a district was found ineligible for state aid.

(f) A decision by the State Board of Education under this section may be appealed as provided in Section 19, Administrative Procedure and Texas Register Act.[1]

[Added by Acts 1977, 65th Leg., 1st C.S., p. 31, ch. 1, § 16, eff. July 22, 1977.]

[1] Civil Statutes, art. 6252–13a.

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 11.80. School District Withdrawal from Noncomplying Tax Office

(a) A school district that is required by law or contract to impose property taxes on the basis of values determined by the assessor and board of equalization for a county or any other taxing unit other than the district may contract with some other taxing unit to appraise and assess property for its tax purposes if, because the office appraising and assessing property for the district's taxes refuses to comply or is unreasonably delaying compliance with the requirements of this subchapter, the district will lose its eligibility for state financial aid.

(b) A school district seeking to withdraw from a tax office pursuant to Subsection (a) of this section may petition the board for a determination of its eligibility to do so if the board has not yet found that the tax office is not in compliance with this subchapter. On receipt of the petition the board shall notify the office from which the district seeks to withdraw and hold a hearing. The board shall make a final determination within 90 days after the date the petition is filed.

(c) If the board has found a district's tax office is not in compliance with this subchapter, the district may withdraw from a tax office pursuant to Subsection (a) of this section without a board determination.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 32, ch. 1, § 16, eff. July 22, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 11.81. Contract with Complying Office

If a school district that operates its own tax office is found ineligible for state financial aid under this subchapter, the district may contract with any other tax office that is in compliance with this subchapter to appraise and assess property for the district's tax purposes.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 32, ch. 1, § 16, eff. July 22, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 11.82. Reports of School District Values

(a) Each office assessing property for school district taxes shall file an annual report listing:

(1) the total market value and the total assessed value of taxable property in the district;

(2) the kind and amount of any residence homestead exemption adopted pursuant to Article VIII, Section 1–b(b), of the Texas Constitution, the number of homesteads that have qualified for the exemptions, and the total market value exempted pursuant to the exemptions;

(3) the amount of additional taxes collected in the preceding year pursuant to Article VIII, Section 1–d(f), of the Texas Constitution or to any sanction prescribed by a statute enacted under Article VIII, Section 1–d–1, of the Texas

Constitution on land that had been appraised previously on the basis of its productivity; and

(4) other information required by the board.

(b) The report shall be on a form prescribed by the board and shall be delivered to the board before a date prescribed by the board.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 32, ch. 1, § 16, eff. July 22, 1977. Amended by Acts 1979, 66th Leg., p. 1320, ch. 602, § 16, eff. Aug. 27, 1979.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 11.83. Repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(e), eff. Jan. 1, 1980

Acts 1979, 66th Leg., ch. 841, repealing this section, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

The repealed section, relating to explanation of taxpayer remedies, was added by Acts 1977, 65th Leg., 1st C.S., p. 32, ch. 1, § 16.

§ 11.84. Property Tax Forms and Records Systems

(a) The board shall prescribe the contents of all forms necessary for the administration of the property tax system for offices engaged in appraising and assessing property for school district tax purposes and, on request, shall furnish sufficient copies of model forms of each type to the appropriate local officials. The board may require reimbursement from the office appraising and assessing property for school district purposes or from the school district for the costs of printing and distributing the forms.

(b) The board shall make the contents of the forms uniform to the extent practicable but may prescribe or approve additional or substitute forms for special circumstances.

(c) The board shall also prescribe a uniform record system to be used by all offices appraising or assessing property for school district tax purposes.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 32, ch. 1, § 16, eff. July 22, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 11.85. Professional and Technical Assistance

(a) The board may provide professional and technical assistance, at the request of a chief administrator or the governing body of a school district, in appraising property, installing or updating tax maps, purchasing equipment, developing recordkeeping systems, or performing other appraisal activities. The board may also provide professional and technical assistance, on request, to a board of equalization reviewing values assigned for school district tax purposes. The board shall require reimbursement for the costs of providing the assistance.

(b) The board may provide information to and consult with persons actively engaged in appraising and assessing property for school district tax purposes about any matter relating to property taxation for school districts without charge.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 33, ch. 1, § 16, eff. July 22, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 11.86. Determination of School District Index Values

(a) The board shall conduct a biennial study using comparable sales and other generally accepted techniques to determine the total taxable market value and index value of all taxable property in each school district. The study shall determine the taxable market value of all property and of each class of property within the district and the productivity value of all open-space, agricultural, or timber land that qualifies for appraisal pursuant to Article VIII, Section 1-d, of the Texas Constitution or pursuant to any statute enacted pursuant to Article VIII, Section 1-d-1, of the Texas Constitution. In conducting the studies, the board shall use appropriate standard valuation, statistical compilation, and analysis techniques to compute the total market value and productivity value. For the purposes of this section:

(1) "taxable market value" means market value less the total dollar amount of any exemptions of part but not all of the value of taxable property required by the constitution or a statute that a district lawfully granted in the year that is the subject of the study; and

(2) "index value" means taxable market value less the difference between the market value and the productivity value of land that qualifies for appraisal on the basis of its productivity. In no event shall the productivity value exceed the fair market value of the land.

(b) The study shall determine the values as of January 1 of each odd-numbered year.

(c) The board shall publish preliminary findings, listing values by district, before September 1 of each even-numbered year and on that date it shall certify its findings to the commissioner of education.

(d) A school district may protest the board's findings within 30 days after the date on which the findings are certified to the commissioner by filing a petition with the board specifying the grounds for its objection. After receipt of a petition, the board shall hold a hearing. If after a hearing the board concludes that its findings should be changed, the board shall order the changes it finds appropriate and shall certify the changes to the commissioner of education. The board shall complete all protest hearings and certify all changes before January 1 of each odd-numbered year.

(e) A school district may appeal a determination of a protest by the board to the state district court within whose jurisdiction a majority of the area making up the school district is located.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 33, ch. 1, § 16, eff. July 22, 1977. Amended by Acts 1979, 66th Leg., p. 1320, ch. 602, § 17, eff. Aug. 27, 1979.]

Section 2 of art. 3 of Acts 1979, 66th Leg., p. 687, ch. 302, conditionally added a subsec. (f) to this section which read:

"(f) Notwithstanding the other provisions in this section and Section 16.252 of this code, the determinations of market and index values of property in each school district for the tax years 1977 and 1979 under this section and Section 16.252 of this code shall exclude the estimated values of any property exempted or authorized to be exempted by Articles 7150.6, 7150.2, 7150.3, and 7150.5, Revised Civil Statutes of Texas, 1925, as amended. If Section 16.252 of this code is modified by S.B. No. 350 [ch. 602], Acts of the 66th Legislature, Regular Session, 1979, this subsection shall not be in effect."

Chapter 602 did amend § 16.252.

Section 18 of Acts 1979, 66th Leg., p. 1321, ch. 602, provided:

"If any statutes enacted pursuant to Article VIII, Section 1-d-1, of the Texas Constitution do not apply to the 1979 tax year, the School Tax Assessment Practices Board, in making its study pursuant to Section 11.86, Texas Education Code, for the 1979 tax year, shall determine productivity values as provided by that section on the basis of estimates of the amount of land that will qualify under any statutes that are enacted under that constitutional provision. If those statutes apply to the 1980 tax year, the board shall adjust the productivity values when the information becomes available in 1980 to show the actual amount of land that qualifies."

§ 11.87. Confidentiality

(a) All information the board obtains from a person, other than a government or governmental subdivision or agency, under an assurance that the information will be kept confidential, in the course of conducting a study of school district values is confidential and may not be disclosed except as provided in Subsection (b) of this section.

(b) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who gave the information to the board; or

(3) for statistical purposes if in a form that does not identify specific property or a specific property owner.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 34, ch. 1, § 16, eff. July 22, 1977.]

§ 11.88. Repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(e), eff. Jan. 1, 1980

Acts 1979, 66th Leg., ch. 841, repealing this article, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

The repealed section, relating to funding, was added by Acts 1977, 65th Leg., 1st C.S., p. 34, ch. 1, § 16.

CHAPTER 12. TEXTBOOKS

SUBCHAPTER A. GENERAL PROVISIONS

§ 12.01. Free Textbooks

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) Except as otherwise specifically defined in this chapter, "textbooks" or "books" as used herein shall mean books, systems of instructional materials, or combinations of books and supplementary instructional materials which convey information to the pupil or otherwise contribute to the learning process.

(d) No provision of this chapter is intended to limit the selection of instructional materials purchased by a local board of education with local funds, provided such selection procedures are not in conflict with State Board of Education policies.

[Amended by Acts 1977, 65th Leg., 1st C.S., p. 43, ch. 1, § 25, eff. Sept. 1, 1977.]

Section 30 of the 1977 amendatory act provided:

"The provisions of Sections 25, 26, 27, and 28 of this Act [amending this section and §§ 12.14, 12.15, and 12.18(e)] may not affect the selection of textbooks for the 1977-78 school year. For the 1978-79 school year, they may affect the selection of textbooks and other instructional materials only in the subject of reading. The provisions of these sections may be fully implemented beginning with materials selected for the 1979-80 school year."

SUBCHAPTER B. STATE ADOPTION PURCHASE ACQUISITION, AND CUSTODY

§ 12.11. State Textbook Committee

(a) The commissioner of education, annually at a meeting of the State Board of Education held on or before the second Saturday in May, shall recommend the names of 15 persons, no two of whom shall live in the same congressional district, for appointment to the textbook committee for a one-year term.

(b) Each of the persons so named shall be an experienced and active educator engaged in teaching in the public schools of Texas. At least a majority of the members of the committee shall be classroom teachers, and all members shall be appointed because of unusual backgrounds of training and recognized ability as teachers in the subject fields for which adoptions are to be made during the year of appointment. At least one member shall be knowledgeable in the field of special education.

[See Compact Edition, Volume 1 for text of (c) to (f)]

(g) The State Textbook Committee is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1989.

[Amended by Acts 1977, 65th Leg., p. 1271, ch. 493, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.153, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 769, ch. 335, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 1322, ch. 602, § 22, eff. Aug. 27, 1979.]

[1] Civil Statutes, art. 5429k.

§ 12.14. Multiple List for Elementary Grades

(a) As used in this section:

(1) "Textbooks" shall be consistent with the definition in legal use prior to the adoption of this section.

(2) "Learning systems" means a coordinated system of instructional materials, in one or more media, that conveys to the pupil information on a subject comparable to that contained in the approved textbooks.

(3) "Supplementary materials" means instructional materials, in any medium, that are used as an adjunct to a specific adopted textbook.

(4) Repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979.

(b) The State Board of Education shall select and adopt a multiple list of textbooks for use in the elementary grades of the public schools of Texas.

(c) The multiple list shall consist of not less than three nor more than five textbooks on the following subjects: spelling, reading (basal and supplementary), English language and grammar, geography, arithmetic, physiology-hygiene, civil government, driver education and safety, vocal music, elementary science, history of the United States (in which the Confederacy shall be fairly represented), history of Texas, agriculture, a system of writing books, and a system of drawing books.

(d) The board may also select and adopt textbooks for any additional subjects approved by the State Department of Education for teaching in the elementary schools, including but not limited to the foreign languages of German, Bohemian, Spanish, French, Latin, or Greek.

(e) The board may, if deemed necessary, adopt as textbooks a geography of Texas and a civil government of Texas.

(f) The board may select and adopt supplementary materials to be used in conjunction with approved textbooks.

(g) The board may select and adopt a multiple list of not less than two nor more than three learning systems in those subject areas it deems appropriate.

(h) No book adopted shall contain anything of a partisan or sectarian character.

[Amended by Acts 1977, 65th Leg., 1st C.S., p. 43, ch. 1, § 26, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1325, ch. 602, §§ 30, 35(a), eff. Aug. 27, 1979.]

§ 12.15. Multiple List for High Schools

(a) As used in this section:

(1) "Textbooks" shall be consistent with the definition in legal use prior to the adoption of this section.

(2) "Learning systems" means a coordinated system of instructional materials, in one or more media, that conveys to the pupil information on a subject comparable to that contained in the approved textbooks.

(3) "Supplementary materials" means instructional materials, in any medium, that are used as an adjunct to a specific adopted textbook.

(4) Repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979.

(b) The State Board of Education shall adopt a multiple list of books for use in the high schools of Texas.

(c) The multiple list shall include not fewer than three nor more than five textbooks on the following subjects: algebra, plane geometry, solid geometry, general science, biology, physics, chemistry, a one-year world history, American history, homemaking, physical geography, driver education and safety, vocal music, English composition, literature (including American literature and English literature), shop courses, physiology, agriculture, civil government, commercial arithmetic, bookkeeping, typewriting, shorthand, journalism, and the Latin, Spanish, German, Czech, and French languages.

(d) Free textbooks may also be adopted and provided for any additional courses or subjects approved by the Central Education Agency and accredited by the state accrediting committee.

(e) The board may select and adopt supplementary materials to be used in conjunction with approved textbooks.

(f) The board may select and adopt a multiple list of not less than two nor more than three learning systems in those subject areas it deems appropriate.

[Amended by Acts 1977, 65th Leg., 1st C.S., p. 44, ch. 1, § 27, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1325, ch. 602, §§ 31, 35(a), eff. Aug. 27, 1979.]

§ 12.18. Filing of Bids and Sample Copies

[See Compact Edition, Volume 1 for text of (a) to (d)]

(e) Information which shall also be printed, stamped, or pasted in each copy of each book filed with the commissioner of education shall be:

[See Compact Edition, Volume 1 for text of (e)(1)]

(2) a statement of the publisher's catalogue price of the book or special editions, together with trade discounts and the conditions under which, and the purchasers to whom, such discounts are allowed, and the place of delivery;

(3) a statement of the minimum wholesale price at which the book or special editions are sold f. o. b. the shipping point of the publisher and the name of the shipping point;

(4) to (6) Repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979.

[Amended by Acts 1977, 65th Leg., 1st C.S., p. 45, ch. 1, § 28, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979.]

§ 12.34. Continuing or Discontinuing Textbook

(a) It shall be the duty of the State Board of Education to meet annually at a date to be specified in the public notice required by Section 12.17, Texas Education Code, and at such other times as it may deem necessary for the purpose of considering the advisability of continuing or discontinuing, at the expiration of each current contract, any or all of the state-adopted textbooks in the public schools of Texas and for making such adoptions as are provided for in this chapter.

[See Compact Edition, Volume 1 for text of (b) to (j)]

(k) To insure that current material is always available to the schoolchildren of Texas and to enable the development of material in an orderly and efficient manner, the State Board of Education shall develop and implement a balanced adoption cycle for proclamation of needs for textbooks and other instructional materials. At a minimum, the adoption cycle shall:

(1) extend over a period of years determined by the State Board of Education to be the most beneficial and desirable time span to meet the textbook needs of Texas public schools;

(2) be planned on the basis of a cost to the state of not less than $15 per scholastic population for the first year of the cycle and adjusted thereafter to account for increasing costs due to inflation of the economy;

(3) be so arranged that the total cost of new adoptions shall be approximately equal for each year of the proposed cycle, except as adjusted for increasing costs and a growing scholastic population;

(4) be all-inclusive of all subjects required by statute or approved by the State Board of Education to be used in the public school system of Texas during the period of time encompassed by the cycle;

(5) be developed in such a manner that it will operate on a continuing basis so that providers of textbooks and other instructional materials shall be kept advised in advance of the subjects to be called for adoption each year; and

(6) provide that except under emergency conditions deemed necessary by the State Board of Education, all changes or amendments in the cycle shall be made in such manner and at such time as to give notice of the change to the providers of textbooks and other instructional materials as far in advance as possible.

[Amended by Acts 1977, 65th Leg., p. 1271, ch. 493, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1322, ch. 602, § 23, eff. Aug. 27, 1979.]

SUBCHAPTER C. LOCAL OPERATIONS

§ 12.63. Title, Custody, and Disposition

[See Compact Edition, Volume 1 for text of (a) to (e)]

(f) Pursuant to rules and regulations promulgated by the State Board of Education, the commissioner of education shall make available on request copies of discontinued textbooks for use in libraries maintained in city and county jails, institutions within the Department of Corrections, and other state agency institutions.

[Amended by Acts 1975, 64th Leg., p. 46, ch. 25, § 1, eff. Sept. 1, 1975.]

CHAPTER 13. TEACHERS

SUBCHAPTER D. TEACHERS' PROFESSIONAL PRACTICES

Section
13.2031. Application of Sunset Act.

§ 13.031. Commission on Standards for the Teaching Profession

Teaching is hereby declared to be and is recognized as a profession. The members of such profession shall accept responsibilities incumbent upon them to serve and improve the teaching profession in the state.

(a) The State Board of Education shall appoint the Commission on Standards for the Teaching Profession from a list of qualified individuals recommended by the commissioner of education. Professional organizations in the teaching profession shall be invited to nominate persons for appointment. The commissioner shall seek advice of the commission in making his recommendation for its membership. The commission shall be representative of the education profession and shall consist of teachers, school administrators, and representatives of higher education.

(b) It shall be the additive and cumulative duty of every person who is a state employee, teacher, professor, or officer of any of the state institutions of higher learning, and drawing a state warrant for salary as such, to serve as an ex officio member of the Commission on Standards for the Teaching Profession when called upon by the state commissioner of education for the performance of such ex officio duties.

(c) The State Board of Education shall promulgate rules under which the Commission on Standards for the Teaching Profession shall recommend standards for teacher education and certification for certified personnel in public school districts operating elementary and/or secondary schools.

(d) The Commission on Standards for the Teaching Profession is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the Commission is abolished effective September 1, 1989.

[Amended by Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.152, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1540, ch. 663, § 1, eff. Aug. 27, 1979.]

[1] Civil Statutes, art. 5429k.

Section 4 of the 1979 amendatory act provided:

"The Commission on Standards for the Teaching Profession shall conduct a study or studies on classes of certification, duration of certificate, and teacher minimum competence testing after graduation but prior to full certification of the teacher. Results of such studies, together with recommendations, shall be reported by the State Board of Education to the legislature no later than 60 days prior to the convening of the 67th Legislature."

SUBCHAPTER B. CERTIFICATION OF TEACHERS

§ 13.032. Rules and Regulations

(a) The State Board of Education, with the advice and assistance of the state commissioner of education, is authorized to establish such rules and regulations as are not inconsistent with the provisions of this chapter and which may be necessary to administer the responsibilities vested under the terms of this chapter concerning the issuance of certificates and the standards and procedures for the approval or disapproval of colleges and universities offering programs of teacher education.

(b) In order to secure professional advice, the State Board of Education shall consider recommendations of the Commission on Standards for the Teaching Profession, after a review by, and with the comments of, the state commissioner of education, in all matters covered by this subchapter. The State Board of Education shall either accept or reject without amendment all recommendations from the commission presented to it through the commissioner.

(c) In developing standards for programs in teacher education, the board shall provide each approved institution with a statement of the general qualifications required for each area of specialization for which a teaching certificate is authorized. The board may not require an institution to teach a particular doctrine or to conduct instruction on the basis of, or in accordance with, any particular pedagogical method, whether expressed in terms of behavioral or performance-based objectives, competencies, or other explicit assessment devices. A person who has been granted a degree upon completing a teacher-training program at an approved college or university for teacher education is entitled to an appropriate teaching certificate, provided he meets all other standards required by this code.

[Amended by Acts 1975, 64th Leg., p. 1815, ch. 551, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1541, ch. 663, § 2, eff. Aug. 27, 1979.]

§§ 13.033 to 13.043. Repealed by Acts 1979, 66th Leg., p. 1542, ch. 663, § 5, eff. Aug. 27, 1979

Prior to repeal, § 13.039 was amended by Acts 1977, 65th Leg., p. 5, ch. 4, § 1.

§ 13.045. Presentation and Recording of Certificates

(a) Any person who desires to teach in a public school shall present his certificate for filing with the employing district before his contract with the board of trustees of the district shall be binding.

(b) A teacher or superintendent who does not hold a valid certificate or emergency permit shall not be paid for teaching or work done before the effective date of issuance of a valid certificate or permit.

[Amended by Acts 1979, 66th Leg., p. 1541, ch. 663, § 3, eff. Aug. 27, 1979.]

§ 13.046. Suspension and Cancellation of Certificates

(a) Any teacher's certificate issued under the provisions of this code or under any previous statute relating to the certification of teachers may be suspended or cancelled by the state commissioner of education under any one or more of the following circumstances:

(1) on satisfactory evidence that the holder is conducting his school or his teaching activities in violation of the laws of this state;

(2) on satisfactory evidence that the holder is a person unworthy to instruct the youth of this state; or

(3) on complaint made by the board of trustees that the holder of a certificate after entering into a written contract with the board of trustees of the district has without good cause and without the consent of the trustees abandoned the contract.

(b) Before any certificate shall be suspended or cancelled the holder shall be notified and shall have an opportunity to be heard. Any person whose certificate is suspended or cancelled by the state commissioner of education shall have the right of appeal to the State Board of Education.

(c) The state commissioner of education shall have the authority, upon the presentation of satisfactory evidence, to reinstate any teacher's certificate suspended or cancelled under the provisions of this section. On a refusal of the commissioner so to reinstate a certificate, the applicant shall have the right of appeal to the State Board of Education.

(d) The state commissioner of education may suspend a teacher's certificate under the terms of this section for a period not to exceed one year.

(e) The state commissioner of education shall have the right to reprimand a teacher, rather than to suspend or cancel that teacher's certificate, in those cases the commissioner deems appropriate. A reprimand shall not be appealable.

[Amended by Acts 1979, 66th Leg., p. 666, ch. 294, § 1, eff. Aug. 27, 1979.]

SUBCHAPTER D. TEACHERS' PROFESSIONAL PRACTICES

§ 13.2031. Application of Sunset Act

The Teachers' Professional Practices Commission is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.156, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

§ 13.904. Minimum Sick Leave Program

[See Compact Edition, Volume 1 for text of (a)]

(b) Each district shall file, immediately after the regular term of the school year has been completed, a report with the Central Education Agency setting out the total number of days of sick leave utilized by teachers and other professional personnel, excepting excess units, approved and listed for foundation school program benefits. The Central Education Agency, each current scholastic year, shall calculate the cost of providing approved sick leave for each person listed at the rate of $20 per day and shall reimburse the participating local district on the basis of the percentage relationship between the state and the district in financing the cost of the foundation school program multiplied by the total approved sick leave expenditure for the year. Said reimbursement shall be paid from the Foundation Program Fund and this cost shall be considered by the Foundation School Fund Budget Committee in estimating the funds needed for foundation program purposes.

[See Compact Edition, Volume 1 for text of (c) and (d)]

[Amended by Acts 1979, 66th Leg., p. 1095, ch. 512, § 1, eff. Aug. 27, 1979.]

CHAPTER 14. SCHOLASTIC CENSUS [REPEALED]

Chapter 14, Scholastic Census, was repealed by Acts 1975, 64th Leg., p. 6, ch. 4, § 1.

§§ 14.01, 14.02. Repealed by Acts 1975, 64th Leg., p. 6, ch. 4, § 1, eff. Feb. 13, 1975

§§ 14.07 to 14.09. Repealed by Acts 1975, 64th Leg., p. 6, ch. 4, § 1, eff. Feb. 13, 1975

CHAPTER 15. STATE FUNDS FOR THE SUPPORT OF PUBLIC SCHOOLS

Section

15.13. Use of Commercial Banks as Agents for Collection of Income from Permanent School Fund Investments.
15.14. Participation in Fully Secured Securities Loan Programs.

§ 15.02. Investment of Permanent School Fund

(a) In compliance with provisions of this section, the State Board of Education is authorized and empowered to invest the permanent school fund in the types of securities, which must be carefully examined by the State Board of Education and be found to be safe and proper investments for the fund as specified below:

(1) securities, bonds, or other obligations issued, insured, or guaranteed in any manner by the United States Government or any of its agencies; and in bonds issued by the State of Texas;

(2) obligations and pledges of The University of Texas;

(3) corporate bonds, debentures, or obligations, of United States corporations of at least "A" rating;

(4) bonds issued, assumed, or guaranteed by the Inter-American Development Bank, the International Bank of Reconstruction and Development (the World Bank), and the Asian Development Bank;

(5) bonds of counties, school districts, incorporated cities or towns, road precincts, drainage, irrigation, navigation, and levee districts in Texas, under the following rules and regulations:

(A) such securities, prior to their purchase, must have been diligently investigated by the attorney general of Texas both as to their form and as to their legal compliance with applicable laws;

(B) the attorney general's certificate of validity procured by the party offering such bonds, obligations, or pledges must accompany these securities when they are submitted for registration to the state comptroller, who must preserve the certificates;

(C) these public securities, if purchased, and when certified and registered as specified above, shall be incontestable unless issued fraudulently or in violation of a constitutional limitation, and the certificates of the attorney general shall be prima facie evidence of the validity of the bonds and coupons thereto; and

(D) after the issuing political subdivision of Texas has received the proceeds from the sales of such public securities, the issuing agency shall be estopped to deny their validity, and the same shall be held to be valid and binding obligations;

(6) preferred stocks and common stocks as to the State Board of Education may deem to be proper investments for the permanent school fund, under the following rules and regulations:

(A) in making all such investments the State Board of Education shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital;

(B) stocks eligible for purchase are restricted to stocks of companies incorporated within the United States which have paid dividends for five consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors;

(C) not more than one percent of the permanent school fund may be invested in stock issued by one corporation nor shall more than five percent of the voting stock of any one corporation be owned;

(D) at the discretion of the State Board of Education, corporate securities of the permanent school fund may be sold and the proceeds reinvested for the fund under the terms of this code; and

(7) notwithstanding any other law or provisions in this code, first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States,[1] as amended from time to time, or in any other first lien real estate mortgage securities guaranteed in whole or in part by the United States Government or any agency thereof.

(b) to (g) Repealed by Acts 1979, 66th Leg., p. 1532, ch. 661, § 2, eff. June 13, 1979.

[Amended by Acts 1977, 65th Leg., p. 1957, ch. 779, § 1, eff. June 16, 1977; Acts 1979, 66th Leg., p. 1535, ch. 661, §§ 1, 2, eff. June 13, 1979.]

§ 15.03. Purchase and Sale or Exchange of Securities

(a) The State Board of Education may authorize the purchase of all of the types of securities in which it is authorized by law to invest the permanent school fund in either registered or negotiable form; and it may authorize the reissue of such securities held at any time for the account of the permanent school fund in either registered or negotiable form. The State Board of Education may authorize the sale of any of the securities held for the account of the permanent school fund and reinvest the proceeds of sale for the fund; and it may authorize the exchange of any of the securities held for the account of the permanent school fund.

(b) In making each and all of such purchases, sales, exchanges and reissues the State Board of Education shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital.

(c) When any securities are sold, reissued, or exchanged as provided in Subsection (a) of this section, the custodian of such securities shall make delivery of the securities sold, reissued, or exchanged in accordance with the directions of the State Board of Education.

[Amended by Acts 1977, 65th Leg., p. 1958, ch. 779, § 2, eff. June 16, 1977; Acts 1979, 66th Leg., p. 1537, ch. 661, § 8, eff. June 13, 1979.]

§ 15.11. Duties of the State Treasurer

[See Compact Edition, Volume 1 for text of (a) to (e)]

(f) The state treasurer shall be the custodian of all securities enumerated in Subdivision (5) of Subsection (a) of Section 15.02 of this code and of such other securities as may be designated from time to time by the State Board of Education in which the school funds of the state have been or may hereafter be invested, and shall keep these securities in his custody until paid off, discharged, delivered as required by the State Board of Education, or otherwise disposed of by the proper authorities of the state, and on the proper installment of any interest or dividend, shall see that the proper credit is given, and the coupons on bonds, when paid, shall be properly separated therefrom and cancelled by the treasurer.

[Amended by Acts 1979, 66th Leg., p. 1537, ch. 661, § 4, eff. June 13, 1979.]

§ 15.12. Use of Available School Fund

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) Repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979.

[Amended by Acts 1975, 64th Leg., p. 2378, ch. 734, § 8, eff. June 21, 1975; Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979.]

§ 15.13. Use of Commercial Banks as Agents for Collection of Income from Permanent School Fund Investments

(a) The State Board of Education is authorized and empowered to contract with a commercial bank or banks to receive payments of dividends and interest on securities in which the state permanent school funds are invested and to transmit such money with identification of their source to the state treasurer for the account of the available school fund by the fastest available means.

(b) In choosing each commercial bank or banks with which to contract as authorized in Subsection (a) of this section, the State Board of Education shall assure itself of:

(1) the financial stability of such commercial bank;

(2) the location of such commercial bank with respect to its proximity to the banks upon which checks are drawn in payment of dividends and interest on securities of the permanent school fund;

(3) the experience and reliability of such commercial bank in acting as agent for others in the similar collection and expeditious remittance of money; and

(4) the reasonableness of such commercial bank's charges for such services, both in amount of such charges and in relation to the increased investment earnings of the available school fund which will result from speedier receipt by the state treasurer of such money.

[Added by Acts 1979, 66th Leg., p. 1538, ch. 661, § 5, eff. June 13, 1979.]

§ 15.14. Participation in Fully Secured Securities Loan Programs

(a) The State Board of Education is authorized and empowered to contract with a commercial bank or banks to serve both as a custodian of securities in which the state permanent school funds are invested and to lend these securities, under the conditions set out in Subsection (b) of this section, to securities brokers and dealers on short-term loan.

(b) The State Board of Education may contract with a commercial bank or banks pursuant to this section only in accordance with the following requirements:

(1) the bank shall be located in a city having a major stock exchange;

(2) the bank shall be experienced in the operation of a fully secured securities loan program;

(3) the bank shall have adequate capital in the prudent judgment of the State Board of Education to assure the safety of the securities entrusted to it as a custodian;

(4) the bank shall require of any securities broker or dealer to which it lends securities owned by the state permanent school fund that such broker or dealer deliver to it cash collateral for such loan of securities, which cash collateral shall at all times be not less than 100 percent of the market value, from time to time, of such securities lent;

(5) the bank shall execute an indemnification agreement, satisfactory in form and content to the State Board of Education, fully indemnifying the permanent and available school funds against loss resulting from the bank's service as custodian of securities of the permanent school fund and its operation of a securities loan program using securities of the permanent school fund;

(6) the bank shall speedily collect and remit on the day of collection by the fastest available means to the state treasurer any dividends and interest collectible by it on securities held by it as custodian together with identification as to source; and

(7) the bank or banks chosen shall be the bank or banks agreeing to pay to the available school fund the largest sum or highest percentage of the income derived by it from use of the securities of the permanent school fund in the operation of a securities loan program.

[Added by Acts 1979, 66th Leg., p. 1538, ch. 661, § 6, eff. June 13, 1979.]

CHAPTER 16. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Section
16.001. State Policy.
16.002. Purpose of Foundation School Program.
16.003. Student Eligibility.
16.004. Scope of Program.
16.005. Administration of the Program.

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16.052. Operation of Schools.
16.053. Accreditation.
16.054. Student/Teacher Ratios.
16.055. Compensation of Professional and Paraprofessional Personnel.
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16.101. Personnel Support: General Rules.
16.102. Education Program Personnel.
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Section
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16.211. Purchase of Vehicles.
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SUBCHAPTER I. SCHOOL-COMMUNITY GUIDANCE CENTER-PILOT

16.401. Pilot Programs.
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SUBCHAPTER J. EDUCATIONAL PROGRAMS FOR THE GIFTED AND TALENTED STUDENTS

16.501. Exemplary Programs.
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Chapter 16, formerly consisting of Sections 16.01 to 16.98, was amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, to consist of Sections 16.001 to 16.304.

DISPOSITION TABLE

Showing where provisions of former Chapter 16 (Sections 16.01 to 16.98) are now covered in Sections 16.001 to 16.304 and elsewhere in the Education Code.

Former Sections	New Sections
16.01	16.002
16.02	—
16.03	—
16.04	16.003 16.102
16.07	—
16.08	21.913
16.11	16.101 16.102
16.12	—
16.13	16.102(c)
16.14	16.103
16.15	—
16.16	16.104
16.17 to 16.19	—
16.21	—
16.22	—
16.301(a)	16.055(a)
16.301(b) to 16.301(d)	—
16.302 to 16.309	—
16.310	16.055(b)
16.311	—
16.312	16.056(a) 16.056(b)
16.313	16.056(c)
16.314	—
16.315	—
16.316	16.056(d)
16.45	16.151 16.152
16.51	16.201
16.52	16.202
16.53	16.203
16.54	16.204
16.55	16.205
16.56	16.206
16.57	16.207
16.58	16.208
16.59	16.209
16.60	16.210
16.61	16.211
16.62	—
16.63	16.212 Rep.
16.71	16.251
16.711	—

Former Sections	New Sections
16.72 to 16.76	—
16.77	16.256 Rep.
16.78	16.253
16.79(a)	16.005
16.79(b) to 16.79(d)	16.254
16.80	19.246
16.81	19.247
16.82	—
16.85	16.255
16.861	21.008(b)
16.862	21.008(a)
16.863	21.008(c)
16.864	21.008(d) to 21.008(g)
16.971 to 16.975	—
16.98	—

SUBCHAPTER A. GENERAL PROVISIONS

§ 16.001. State Policy

It is the policy of the State of Texas that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to his or her educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 11, ch. 1, § 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1300, ch. 602, § 1, eff. Aug. 27, 1979.]

The 1975 Act, which by §§ 1 to 9 revised this Chapter 16 and made other conforming amendments, provided in §§ 12 to 15:

"Sec. 12. (a) The Legislative Budget Board shall conduct a performance audit and evaluation to determine that the methods by which state funds are allocated to vocational and special education programs are consistent with the objectives of the programs.

"(b) The State Board of Education in cooperation with the Legislative Budget Board shall develop appropriate criteria, including cost-effective or performance-based criteria, or both, for funding and evaluation of vocational and special education programs.

"(c) The Legislative Budget Board shall recommend funding levels for the programs at the beginning of each regular session of the legislature which will insure adequate delivery of services."

"Sec. 13. (a) Not later than July 15, 1975, the governor shall transmit to the commissioner of education the Official Compilation of 1974 School District Market Value Data prepared by his office with all necessary adjustments and corrections which the facts warrant.

"(b) The commissioner of education shall appoint a review panel consisting of five persons representing different areas of the state who are knowledgeable in the field of property taxation to review all questions relating to the property values reported for school districts in the official compilation and to recommend necessary adjustments based on factual evidence to the commissioner.

"(c) Members of the review panel are entitled to compensation of $75 per day and reimbursement for actual and necessary expenses incurred in carrying out their duties.

"(d) There is hereby appropriated to the commissioner of education from the General Revenue Fund for the biennium ending August 31, 1977, the sum of $200,000 to carry out the provisions of this section."

"Sec. 14. This Act takes effect on September 1, 1975, except that the section amending the Texas Unemployment Compensation Act and the section providing for the adjustments and corrections of the Official Compilation of 1974 School District Market Value Data take effect immediately.

"Sec. 15. If any provision of this Act or the application thereof to any person or circumstance is declared invalid, such invalidity shall not affect any other provision or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable."

The 1977 Act, which by §§ 1 to 31 amended various sections of this Chapter and made other conforming amendments, provided in §§ 33 and 34:

"Sec. 33. (a) Subsections (a) and (b) of Section 20.03, Texas Education Code, as amended by Section 15 of this Act, and Section 16 of this Act, and Subsection (d), Section 16.252, Texas Education Code, as amended by Section 11 of this Act, take effect on the passage of this Act. Subsections (c), (d), (e), and (f) of Section 20.03, Texas Education Code, as amended by Section 15 of this Act, take effect on January 1, 1978. All other sections of this Act take effect on September 1, 1977.

"(b) Records and materials compiled by, transferred to, or in the possession of the governor pursuant to Section 10, Chapter 334, Acts of the 64th Legislature, 1975, are transferred to the School Tax Assessment Practices Board to assist it in performing its duties under this Act.

"(c) There are hereby appropriated out of the Foundation School Fund, or out of the General Revenue Fund as may be necessary from time to time, additional funds which, together with the appropriations made specifically in House Bill No. 510, Acts of the 65th Legislature, Regular Session, 1977, will be sufficient to carry out the purposes of this Act. The appropriations shall include additional funds for the vocational education, comprehensive special education, statewide visually handicapped, regional school for the deaf, bilingual education, and preschool non-English programs which, together with the sums certain appropriated in House Bill No. 510 for those purposes, will be sufficient to provide the salary increases authorized by this Act for personnel employed in vocational education, comprehensive special education, statewide visually handicapped, regional schools for the deaf, bilingual education, and preschool non-English programs.

"In addition, there is hereby appropriated to the Central Education Agency out of the General Revenue Fund an amount, not to exceed $3,000,000 in the biennium ending August 31, 1979, sufficient to carry out the purposes of Senate Concurrent Resolution No. 29 and Senate Concurrent Resolution No. 30, Acts of the 65th Legislature, Regular Session, 1977.

"There is hereby appropriated to the Central Education Agency out of the Foundation School Fund or the General Revenue Fund an amount not to exceed $500,000 in the biennium ending August 31, 1979, sufficient funds as may be necessary to finance the purposes of Senate Bill No. 91, Acts of the 65th Legislature, Regular Session, 1977 [Chapter 736, adding §§ 16.401 to 16.406 to this Code].

"(d) There is hereby appropriated out of the General Revenue Fund to the Joint Advisory Committee on Educational Services to the Deaf the sum of $35,904 for the fiscal year ending August 31, 1978, and the sum of $28,112 for the fiscal year ending August 31, 1979.

"Sec. 34. If any article, section, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such invalid portion shall not affect the validity of the remaining portions of this Act. The legislature hereby declares that it would have passed the valid portions of this Act irrespective of the fact that any one or more portions be declared unconstitutional."

Section 34 of the 1979 amendatory act provided:

"It is the intent of the legislature that the school districts of this state be entitled to additional funds to replace the revenues lost as a result of the passage of House Joint Resolution 1 of the 2nd Called Session of the 65th Legislature. In this Act, it is the express intent of the legislature that a portion of the increased state funding for current operating expenses and the amount of additional state aid created by reduction of local fund assignments be utilized by the school districts to substantially replace local revenues lost as a result of the implementation of the Tax Relief Amendment."

§ 16.002. Purpose of Foundation School Program

The purpose of the Foundation School Program set forth in this chapter is to guarantee that each school district in the state has adequate resources to provide each eligible student a basic instructional program suitable to his educational needs.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.003. Student Eligibility

A student is entitled to the benefits of the Foundation School Program if he is 5 years of age or older and under 21 years of age at the beginning of the scholastic year and has not graduated from high school. A child is not eligible for enrollment in the first grade unless he is at least six years of age at the beginning of the scholastic year or has been enrolled in the first grade in the public schools in another state prior to transferring to a Texas public school.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1435, ch. 580, § 1, eff. Aug. 29, 1977.]

§ 16.004. Scope of Program

Under the Foundation School Program, a school district may receive state financial aid for minimum personnel salaries, current operating expenses, categorical program aid, and transportation services. The amount of state aid to each school district shall be based on the district's ability to support its public schools.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.005. Administration of the Program

The commissioner of education, with the approval of the State Board of Education, shall take such action, require such reports, and make such rules and regulations consistent with the terms of this chapter as may be necessary to implement and administer the Foundation School Program.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

[Sections 16.006 to 16.050 reserved for expansion]

SUBCHAPTER B. REQUIREMENTS FOR DISTRICT PARTICIPATION IN THE FOUNDATION SCHOOL PROGRAM FUND

§ 16.051. Required Compliance

In order to receive financial support from the Foundation School Fund, a school district must comply with the standards set forth in this subchapter.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.052. Operation of Schools

(a) Each school district must provide for not less than 175 days of instruction for students and not less than 10 days of inservice training and preparation for teachers for the 1977–1978 school year and not less than 175 days of instruction for students and not less than eight days of inservice training and preparation for teachers for each school year thereafter, except as provided in Subsection (b) of this section.

(b) The commissioner of education may approve the operation of schools for less than the number of days of instruction and inservice training and preparation otherwise required when disasters, floods, extreme weather conditions, fuel curtailments, or other calamities have caused the closing of the school.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 100, ch. 46, § 1, eff. April 5, 1977; Acts 1977, 65th Leg., 1st C.S., p. 12, ch. 1, § 2, eff. Sept. 1, 1977.]

§ 16.053. Accreditation

Beginning with the 1977–1978 school year each school district must be accredited by the Central Education Agency.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.054. Student/Teacher Ratios

Each school district must employ a sufficient number of certified teachers to maintain an average ratio of not less than one teacher for each 25 students in average daily attendance.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.055. Compensation of Professional and Paraprofessional Personnel

(a) A school district must pay each employee who is qualified for and employed in a position classified under the Texas Public Education Compensation Plan set forth in Section 16.056 of this chapter not less than the minimum monthly base salary, plus increments for teaching experience, specified for the position.

(b) Contracts for personnel shall be made on the basis of a minimum of 10 months' service, which must include the number of days of instruction for students and days of inservice training and preparation for personnel required by Section 16.052 of this code. The days of inservice training and preparation required herein shall be conducted by local boards of education under rules and regulations established by the State Board of Education that are consistent with the state accreditation standards for program planning, preparation, and improvement. Personnel employed for more than 10 months shall be paid not less than the minimum monthly base pay plus increments for experience for each month of actual employment. Personnel employed for 11 months at pay grades 1–11 must render 202 days of service, and personnel employed for 12 months at pay grades 1–11 must render 220 days of service. Personnel employed for 11 months at pay grades 12–18 must render 207 days of service, and personnel employed for 12 months at pay grades 12–18 must render 226 days of service. However, the number of days of service required by this subsection may be reduced by the commissioner under Section 16.052(b) of this code, and the reduction shall not reduce the total salaries of personnel.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 100, ch. 46, § 2, eff. April 5, 1977; Acts 1977, 65th Leg., 1st C.S., p. 12, ch. 1, § 3, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1301, ch. 602, § 2, eff. Aug. 27, 1979.]

§ 16.056. Texas Public Education Compensation Plan

(a) School district personnel who are qualified for and employed in positions authorized in Subsection (d) of this section shall be paid not less than the monthly base salary, plus increments for teaching experience, for the applicable pay grade computed on the basis of the salary index set forth in Subsection (c) of this section except as otherwise provided by this subsection. The value of each cell in the

salary index shall be determined by multiplying the index factor for the cell by $997 for the 1979–1980 school year and by $1,048 for each school year thereafter, or by such greater sum as may be provided by the General Appropriations Act. The minimum salary for school district personnel who do not advance one step over the prior year shall be 102 percent of the minimum salary specified for the step in which the individual is placed.

(b) An individual shall advance one step for each year of experience until step 10 is reached. Thereafter, a person must serve at step 10 for two years before advancing to step 11, at step 11 for two years before advancing to step 12, at step 12 for two years before advancing to step 13, and at step 13 for two years before advancing to step 14.

(c) Salary index by steps

Pay Grade	Personnel Unit Value	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	.55	.460	.480	.500	.520	.540	.560	.580	.610	.630	.650	.670	.690	.710	.730	.750
2	.60	.530	.550	.570	.590	.610	.630	.660	.690	.720	.750	.780	.810	.820	.830	.840
3	.75	.630	.650	.670	.700	.730	.760	.790	.820	.830	.840	.850	.860	.870	.880	.890
4	.80	.680	.710	.740	.770	.800	.830	.860	.900	.940	.980	1.020	1.060	1.100	1.140	1.180
5	.90	.720	.750	.780	.820	.860	.900	.940	.980	1.030	1.080	1.130	1.180	1.230	1.280	1.350
6	.95	.780	.810	.840	.880	.920	.960	1.000	1.050	1.100	1.150	1.200	1.250	1.300	1.350	1.500
7	1.00	.900	.930	.963	1.000	1.040	1.083	1.130	1.180	1.234	1.290	1.350	1.410	1.470	1.530	1.590
8	1.00	.963	1.000	1.040	1.083	1.130	1.180	1.234	1.290	1.350	1.410	1.470	1.530	1.590	1.650	1.710
9	1.15	.980	1.020	1.060	1.100	1.150	1.210	1.270	1.330	1.390	1.450	1.520	1.590	1.660	1.730	1.800
10	1.20	.990	1.040	1.090	1.140	1.190	1.250	1.310	1.370	1.430	1.490	1.560	1.630	1.700	1.770	1.840
11	1.25	1.050	1.090	1.140	1.190	1.250	1.310	1.370	1.430	1.490	1.550	1.610	1.670	1.730	1.790	1.850
12	1.30	1.074	1.127	1.179	1.231	1.283	1.335	1.387	1.450	1.523	1.596	1.669	1.753	1.836	1.919	2.002
13	1.40	1.158	1.210	1.262	1.314	1.367	1.419	1.481	1.544	1.617	1.690	1.773	1.857	1.930	2.013	2.096
14	1.50	1.236	1.288	1.341	1.393	1.456	1.519	1.582	1.644	1.718	1.791	1.875	1.959	2.053	2.147	2.241
15	1.75	1.330	1.393	1.456	1.519	1.582	1.644	1.728	1.812	1.896	1.990	2.095	2.200	2.304	2.409	2.513
16	2.00	1.487	1.561	1.634	1.707	1.781	1.864	1.948	2.042	2.137	2.241	2.357	2.472	2.587	2.702	2.817
17	2.25	1.728	1.781	1.843	1.906	1.990	2.074	2.168	2.273	2.378	2.493	2.618	2.744	2.870	2.996	3.122
18	2.50	1.781	1.875	1.969	2.074	2.189	2.304	2.419	2.535	2.650	2.765	2.880	2.996	3.111	3.226	3.341

(d) The positions, pay grades, titles, and except as otherwise authorized by law, the number of annual contract months for each position under the Texas Public Education Compensation Plan are as follows:

Pay Grade	No. Months Paid	Class Title
1	10	Educational Aide I
1	10	Educational Secretary I
2	10	Educational Aide II
2	10	Educational Secretary II
3	10	Educational Aide III
3	10	Educational Secretary III
4	10	Teacher Trainee I
5	10	Teacher Trainee II
5	10	Certified Nondegree Teacher
7	10	Nurse, R.N. and/or Bachelor's Degree
7	10	Special Education Related Service Personnel, Bachelor's Degree
7	10	Teacher, Bachelor's Degree
7	10	Vocational Teacher,
	11	Bachelor's Degree and/or
	12	Certified in Field
7	10	Librarian I, Bachelor's Degree
7	10	Visiting Teacher I, Psychological Associate, Bachelor's Degree
8	10	Special Education Related Service Personnel, Master's Degree
8	10	Teacher, Master's Degree

Pay Grade	No. Months Paid	Class Title
8	10	Vocational Teacher,
	11	Master's Degree
	12	
8	10	Librarian II, Master's Degree
8	10	Physician, M.D.
9	10	Teacher, Bachelor of Laws or Doctor of Jurisprudence Degree
9	10	Teacher, Doctor's Degree
9	10	Special Duty Teacher, Master's Degree
10	10	Educational Diagnostician
10	10	Visiting Teacher II, Master's Degree
10	10	Counselor I, Psychologist
10	10	Supervisor I
10	10	Part-time Principal—11 or fewer teachers on campus
10	10	Instructional/Administrative Officer I
11	10	Assistant Principal—20 or more teachers on campus
11	10	Instructional/Administrative Officer II
12	11	Principal—19 or fewer teachers on campus
12	10	Instructional/Administrative Officer III
13	11	Principal—20–49 teachers on campus
13	11	Instructional/Administrative Officer IV
14	11	Principal—50–99 teachers on campus
14	12	Principal—100 or more teachers on campus
14	12	Instructional/Administrative Officer V
14	12	Superintendent—District with 400 or less ADA
15	12	Instructional/Administrative Officer VI
15	12	Superintendent—District with 401–3,000 ADA
16	12	Instructional/Administrative Officer VII
16	12	Superintendent—District with 3,001–12,500 ADA
17	12	Instructional/Administrative Officer VIII
17	12	Superintendent—District with 12,501–50,000 ADA
18	12	Superintendent—District with 50,000 or more ADA

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(e) With the approval of the State Board of Education, the commissioner of education may add additional positions and months of service to the Texas Public Education Compensation Plan to reflect curriculum and program changes authorized by law. The pay grade assigned to each new position shall be comparable to the pay grade for authorized personnel with similar academic training, experience, and duties. With the approval of the board, the commissioner shall also develop policies for the implementation and administration of the compensation plan. The policies shall provide for the adjustment of salaries for promotions and demotions within grades and the placement of personnel with prior educational experience into the compensation plan.

(f) A person certified to teach in the public schools of Texas who holds a bachelor of laws or doctor of jurisprudence degree from an accredited law school shall have his minimum salary calculated on the basis of a master's degree.

(g) Each person employed in the public schools of this state who is assigned to a position classified under the Texas Public Education Compensation Plan must be certified according to the certification requirements or standards for each position as established by rule adopted by the State Board of Education.

(h) The State Board of Education shall prescribe the general duties and required preparation and

education for the positions listed in Subsection (d) of this section.

(i) Repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1029, ch. 377, § 23, eff. June 10, 1977; Acts 1977, 65th Leg., 1st C.S., p. 12, ch. 1, § 4, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1301, ch. 602, §§ 4, 35(a), eff. Aug. 27, 1979.]

[Sections 16.057 to 16.100 reserved for expansion]

SUBCHAPTER C. PERSONNEL SUPPORT COMPONENT

§ 16.101. Personnel Support: General Rules

A school district's entitlement for personnel support is equal to the aggregate minimum salaries required by law for personnel units allotted to the district in accordance with the provisions of this subchapter.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1301, ch. 602, § 3, eff. Aug. 27, 1979.]

§ 16.102. Education Program Personnel

(a) Education program personnel units shall be allotted to each school district on the basis of the district's current average daily attendance for the best five six-week reporting periods of the school term unless exceptions are authorized by other sections of this code.

(b) The attendance of kindergarten students may not be counted for personnel unit allotment purposes for more than one-half of a school day during the full school year or for the full school day for more than one-half of the school year unless the student is educationally handicapped. An educationally handicapped student is a student who cannot speak and comprehend the English language or who is from a family whose income, according to standards promulgated by the State Board of Education, is at or below a subsistence level.

(c) Each school district shall be allotted personnel units on the basis of the district's average daily attendance in education programs as follows:

(1) one personnel unit for each 18.5 students in average daily attendance in kindergarten and grades 1 through 3;

(2) one personnel unit for each 21 students in average daily attendance in grades 4 through 6;

(3) one personnel unit for each 20 students in average daily attendance in grades 7 through 9; and

(4) one personnel unit for each 18 students in average daily attendance in grades 10 through 12.

(d) The personnel unit allotment for a school district which contains at least 300 square miles and which has not more than 1,000 students in average daily attendance in its education program shall be adjusted according to the following formula:

$$[1 + (1000 - ADA)\ (.000455)] \times PU = APU$$

where PU is the district's personnel units determined in accordance with Subsection (c) of this section; and APU is the district's adjusted personnel units.

(e) The personnel unit allotment for a school district which contains less than 300 square miles and has not more than 1,000 students in average daily attendance in its education program shall be adjusted according to the following formula:

$$[1 + (1000 - ADA)\ (.0003)] \times PU = APU$$

where PU is the district's personnel units determined in accordance with Subsection (c) of this section; and APU is the district's adjusted personnel units.

(f) Fractional personnel units in excess of one-half shall be counted as whole units.

(g) A district's total personnel units, as adjusted, shall be reduced by an amount equal to one-half of the sum of the personnel unit values for vocational personnel allocated to the district under the provisions of Section 16.103 of this chapter, and by an amount equal to one-fourth of the sum of the personnel unit values for special education personnel allocated to the district under the provisions of Section 16.104 of this code.

(h) Under rules of the State Board of Education, the commissioner shall adjust a district's personnel units to take into account cooperative programs and contract services.

(i) A school district may use its personnel units for any combination of personnel classified under the Texas Public Education Compensation Plan which the district feels will best meet the needs of the students in the district, provided that the total of the number of personnel units for each position chosen multiplied by the personnel unit value for that position specified on the salary schedule, does not exceed the total number of personnel units to which the district is entitled under the provisions of this section. The commissioner, with the approval of the State Board of Education, shall establish minimum standards for staffing patterns for all personnel.

(j) A district need not employ personnel for the full number of personnel units to which it is entitled.

(k) Notwithstanding the provisions of Subsection (i) of this section, 95 percent of the personnel units, excluding fractional units, earned by a school district as a result of student attendance in kindergarten and grade one pursuant to Subsection (c) of this

section shall be used to employ personnel assigned instructional duties in kindergarten or grade one. Eighty percent of the personnel units, excluding fractional units, earned by a school district as a result of student attendance in grades two and three shall be used to employ personnel assigned instructional duties in grade two or three. This section does not prohibit a teacher or aide from performing instructional duties in more than one grade, and, for purposes of determining compliance with the provisions of this subsection, the State Board of Education shall promulgate rules governing the calculation of fractional personnel unit values based on class time to be assigned to personnel who teach at more than one grade level. Regular teachers assigned to classroom teaching duties, special area teachers, educational aides, and librarians assigned to these grades shall be included in these calculations. The commissioner of education may make a limited waiver of the provisions of this subsection for a period not to exceed two years for school districts that demonstrate an inability to assign personnel as required by this subsection because of a lack of classroom space.

(*l*) A qualified teacher, educational aide, or counselor may perform services in a combination of regular, special, or vocational education programs, and the State Board of Education shall promulgate rules governing the distribution of the personnel units utilized and the salary allocated among the programs involved in proportion to the services performed in each program.

(m) Where a school district is consolidated or contracted with another district, or annexed in whole or part to another district or districts, or where the number of grades taught has been reduced, or where the scholastics are transferred to another district, or where there is an annual fluctuation in the attendance in the district, or where for any reason there is a marked increase or decrease in the attendance of any school district, adjustments in personnel allotments shall be made by the state commissioner of education.

(n) Notwithstanding Subsections (d) and (e) of this section, a school district that has 1,000 or fewer students in average daily attendance shall be allotted not less than 12 personnel units if it offers a kindergarten through grade 12 program and has a prior year's average daily attendance of at least 90 students or is 30 miles or more by bus route from the nearest high school district. A district offering a kindergarten through grade 8 program whose prior year's average daily attendance was at least 50 students or is 30 miles or more by bus route from the nearest high school district shall be allotted not less than 7.2 personnel units. Not less than 4.2 personnel units shall be allotted if a district offers a kindergarten through grade 6 program and has a prior year's average daily attendance of at least 40 students or is 30 miles or more by bus route from the nearest high school district. In addition, each school district that has 1,000 or fewer students in average daily attendance shall be allotted .6 personnel unit to be used cooperatively with other districts to provide support services necessary to meet accreditation standards. [Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 17, ch. 1, § 5, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1304, ch. 602, § 5, eff. Aug. 27, 1979.]

§ 16.103. Vocational Personnel Units

(a) Vocational personnel units for each school district shall be determined and allotted as prescribed by this section.

(b) Each school district having a four-year accredited high school shall be eligible, under rules and regulations of the State Board of Education, for two vocational teacher units to teach one or more vocational programs provided there is a need thereof, and provided the programs have been approved by the commissioner of education.

(c) Additional vocational teacher units for districts with four-year accredited high schools may be allotted according to needs determined by a survey of the community and approved by the commissioner of education.

(d) A district having an accredited high school which qualifies, according to the rules and regulations of the State Board of Education, for less than one vocational teacher unit, may be allotted by the commissioner of education a fractional part of a vocational teacher professional unit. A fractional part of a vocational teacher professional unit shall entitle a district to employ a part-time vocational teacher or assign a classroom teacher to serve as part-time vocational teacher.

(e) Each school district having a four-year accredited high school shall be eligible, under rules and regulations approved by the State Board of Education, for such specialized vocational supervisor units and vocational counselor units as there is a need, and in the number determined by application of formulas adopted by the State Board of Education and subject to approval by the commissioner of education.

(f) Vocational professional unit allotments, except classroom teachers who also served as part-time vocational teachers, shall be made in addition to other professional unit allotments. Any school district may, with the commissioner's approval, utilize its vocational professional unit allotments to employ vocational teachers, vocational supervisors, vocational counselors, and job placement coordinators on a 10-, 11-, or 12-month basis, in accordance with rules adopted by the State Board of Education. Vocational administrative units shall be approved on a 12-month contract, based on need. In addition to the

regular operating allowance, there shall be an additional allocation of $400 for each vocational teacher unit which shall be used for instructional materials related to vocational education programs operated by the district.

(g) School districts which, because of limited enrollments, tax resources, or facilities are unable to offer appropriate vocational education in all occupational areas needed may enter into contracts with post-secondary public institutions, as defined by the State Board of Education, to provide for such appropriate vocational education instruction provided the instructors and instructional materials and equipment utilized meet secondary school program requirements.

(h) The contract shall be executed pursuant to rules and regulations of the State Board of Education and the cost to the state shall not exceed the cost that would result if the programs were operated by the respective school districts entering into the contracts.

(i) The legislature shall set a limit on the amount of funds that may be expended under the provisions of this section each year in the General Appropriations Act. Should the amount of funds required to fully fund the provisions of this section pursuant to the rules and regulations of the State Board of Education exceed the amount set by the legislature, the commissioner, with the approval of the board, shall make such adjustments as are necessary to reduce the total cost of the vocational education program to the limit set by the legislature.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 19, ch. 1, § 6, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1304, ch. 602, § 6, eff. Aug. 27, 1979.]

§ 16.104. Comprehensive Special Education Program for Handicapped Children

(a) The commissioner of education, with the approval of the State Board of Education, shall develop, and modify as necessary, a statewide design for the delivery of services to handicapped children in Texas which includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all handicapped children between the ages of three and 21 by no later than September 1, 1980. The statewide design shall include, but may not be limited to, the provision of services primarily through local school districts and special education cooperatives, supplemented by a regional delivery structure. The commissioner shall further develop and implement a statewide plan with programmatic content which includes procedures designed to:

(1) ensure state compliance with requirements for supplemental federal funding for all state-administered programs involving the delivery of instructional or related services to handicapped students as defined in this section;

(2) facilitate interagency coordination when state agencies other than the Central Education Agency are involved in the delivery of instructional or related services to handicapped students;

(3) assess statewide personnel needs in all areas of specialization related to special education on a periodic basis and pursue strategies to meet those needs through a consortium of representatives from regional education service centers, local education agencies, and institutions of higher education and through other available alternatives;

(4) ensure that regional education service centers throughout the state maintain a regional support function, which may include direct service delivery and a component designed to facilitate the placement of handicapped students who cannot be appropriately served within their resident districts;

(5) allow the Central Education Agency to effectively monitor and periodically conduct site visits of all local districts to ensure that agency rules adopted under this section are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts are accurate and complete;

(6) ensure the availability of sequentially related, field-based, inservice special education training programs for regular and special educators serving handicapped students and further ensure that all local districts dedicate at least the equivalent of one full day of their required inservice program per school year to that special education inservice training for those personnel;

(7) ensure that appropriately trained personnel are involved in the diagnostic and evaluation procedures operating in all local districts and that those personnel routinely serve on local district admissions, review, and dismissal teams;

(8) ensure that an individualized education plan for each handicapped student is properly developed, implemented, and maintained in the least restrictive environment which is appropriate to meet the student's educational needs;

(9) ensure that, when appropriate, each handicapped student is provided an opportunity to participate in vocational and physical education classes, in addition to participation in regular or special classes; and

(10) ensure that each handicapped student is provided necessary related services.

(b) As used in this section:

(1) "Special services" means:

(A) "special teaching," which may be provided by professional and paraprofessional personnel in the following instructional settings:

(i) resource room;

(ii) self-contained classroom, regular or special campus;

(iii) hospital or community class;

(iv) homebound or bedside;

(v) speech or hearing therapy class; or

(B) "related services," which are developmental, corrective, supportive, or evaluative services, not instructional in nature, that may be required for the proper development and implementation of a handicapped student's individualized educational plan, including but not limited to special transportation, school health services, counseling with students or families, psychological services, audiological services, visual training, medical or psychiatric diagnostic services, occupational therapy, physical therapy, recreational therapy, social work services, parent counseling and training, adaptive equipment, special seating, orientation and mobility training, speech therapy, music therapy, and corrective therapy.

(2) "Resident district" means the local school district in which the parent or other person who has the primary legal obligation for care, control, and custody of a handicapped student resides, except that if the state is managing conservator of the student, the resident district is the district within which the student is placed by the state.

(c) The commissioner, with the approval of the State Board of Education, shall develop specific eligibility criteria based on the general classifications established by this section with reference to contemporary diagnostic or evaluative terminologies and techniques. Eligible handicapped students shall enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through contracts approved under this section. Instruction shall be supplemented by the provision of related services when appropriate. The following classifications of handicapped students shall serve as the general eligibility criteria for participation in a district's special education program:

(1) "Handicapped students" means students between the ages of 3 and 21, inclusive;

(A) with educational handicaps (physically handicapped, auditorially handicapped, visually handicapped, mentally retarded, emotionally disturbed, learning disabled, speech handicapped, autistic, or multiply handicapped); and children leaving and not attending public school for a time because of pregnancy; and

(B) whose disabilities are so limiting as to require the provision of special services in place of or in addition to instruction in the regular classroom.

(2) "Physically handicapped students" means students whose body functions or members are so impaired from any cause that they cannot be adequately or safely educated in the regular classes of the public schools without the provision of special services.

(3) "Auditorially handicapped students" means students whose hearing is so impaired that they cannot be adequately educated in the regular classes of the public schools without the provision of special services.

(4) "Visually handicapped students" means students whose sight is so impaired that they cannot be adequately or safely educated in the regular classes of the public schools without the provision of special services.

(5) "Mentally retarded students" means students with significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior and manifested during the developmental period such that they cannot be adequately educated in the regular classes of the public schools without the provision of special services.

(6) "Emotionally disturbed students" means students whose emotional condition is psychologically or psychiatrically determined to be such that they cannot be adequately and safely educated in the regular classes of the public schools without the provision of special services.

(7) "Learning disabled students" means students:

(A) who demonstrate a significant discrepancy between academic achievement and intellectual abilities in one or more of the areas of oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation, mathematics reasoning, or spelling;

(B) for whom it is determined that the discrepancy is not primarily the result of visual handicap, hearing impairment, mental retardation, emotional disturbance, or environmental, cultural, or economic disadvantage; and

(C) for whom the inherent disability exists to a degree such that they cannot be adequately served in the regular classes of the public schools without the provision of special services.

(8) "Speech handicapped students" means students whose speech is so impaired that they cannot be adequately educated in regular classes of the public schools without the provision of special services.

(9) "Autistic students" means students whose disturbances of speech and language, relatedness, perception, developmental rate, and motility are such that they cannot be adequately educated in the regular classes of the public schools without the provision of special services.

(10) "Multiply handicapped students" means students handicapped by any two or more of the handicapping conditions described in Subdivisions (2) through (9) of this subsection that may result in multisensory or motor deficiencies and developmental lags in the cognitive, affective, or psychomotor areas such that they cannot be adequately educated in the regular classes of the public schools without the provision of special services.

(d)(1) Except as provided in Subdivision (2) of this subsection a school district is allocated 30 special education personnel units for the first 3,000 students in refined average daily attendance, one special education personnel unit for each additional 100 students in refined average daily attendance up to a total of 6,000 students in refined average daily attendance, and .85 special education personnel unit for each additional 100 students in refined average daily attendance thereafter. The units may be used only for personnel listed in Subsections (e) and (f) of this section.

(2) If less than 12 percent of the district's students are identified as eligible handicapped students and provided with special services by the district's special education personnel, the number of special education personnel units to which the district is entitled under Subdivision (1) of this subsection shall be reduced to a percent of full allocation based on the percent of students served according to the following schedule:

Percent served	Percent of full allocation
12%	100%
11%	94%
10%	88%
9%	82%
8%	76%
7%	70%
6%	63%
0–5%	set by commissioner, not to exceed 56%

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(3) The percent of students served is determined by dividing the number of identified and eligible handicapped students served by the district's special education personnel by the district's refined average daily attendance and rounding the dividend to the nearest 10th. A district that serves less than 12 percent of the students in refined average daily attendance is entitled to an increase in the percent of allocation for a percent of students served specified in the schedule above equal to one percent of full allocation for each additional one-tenth of one percent of the students served but not exceeding the allocation specified on the schedule for the next highest percent of students served.

(4) Local districts may receive an additional allocation of $100 per personnel unit as a start-up allocation during the first year of a new unit's activation.

(5) In addition to all other allocations authorized in this section, any local district may receive supplemental special education personnel unit allocations through application by the district to the commissioner of education. The application shall include a thorough demonstration of the particular needs which justify the requested supplemental allocation. Under rules adopted by the State Board of Education, the commissioner may approve the allocations on a discretionary basis, having primary regard for those requests which demonstrate such circumstances as:

(A) an unusually high concentration of handicapped students or an unusually high concentration of severely handicapped students eligible to receive services required by law to be provided by the applicant district's personnel and to whom the actual demonstrated cost of providing an appropriate education to those students either individually or collectively overcomes the district's ability to meet those needs after a proper utilization of that district's allocations under this section;

(B) an unusual cost burden imposed on a rural school district due to the difficulty involved in serving handicapped students in sparsely populated areas; or

(C) an unusual difficulty involved in the administration of a special education cooperative which indicates a need for additional support personnel.

(6) Each local district is entitled to a basic support allocation of $400 for each personnel unit activated under this section. Local districts may expend these funds to provide special instructional materials and related services or for consultant services, pupil evaluation services, or personnel travel in multicounty or multicity school districts in accordance with rules adopted by the State Board of Education.

(7) Any personnel units allocated under this subsection but not utilized by the local district may be reallocated by the commissioner in the manner described in Subdivision (5) of this subsection.

(e) Professional personnel for the operation and maintenance of a program of special education shall be:

(1) handicapped students' teachers, including itinerant teachers whose duties may or may not be performed in whole or in part on the campus of a school;

(2) special education related service personnel, including occupational therapists, physical therapists, nurses, orientation and mobility instructors, and other noneducational personnel who are otherwise professionally licensed by state or national certification recognized by the commissioner of education; and

(3) special education support personnel, including special education directors, special education supervisors, special education counselors, special education visiting teachers, psychologists, educational diagnosticians, and other pupil evaluation specialists.

(f) Paraprofessional personnel for the operation and maintenance of a program of special education shall consist of persons engaged as teacher aides, who may or may not hold a teacher certificate.

(g) Certification standards for professional and paraprofessional personnel authorized in Subsections (e) and (f) of this section shall be developed by the commissioner, approved by the State Board of Education, and reviewed periodically. The standards shall be independent of certification or endorsement in other fields and shall include requirements for additional training and recertification as necessary.

(h) Except as provided by Subsection (i) of this section, the minimum salary levels, months of service, and personnel unit values for all authorized personnel shall be determined by the provisions of Section 16.056 of this code. If positions authorized in this section are not specifically provided for in Section 16.056, the commissioner shall add those positions to the Texas Public Education Compensation Plan in accordance with Subsection (e) of Section 16.056 of this code.

(i) Special education unit personnel may be employed on a full-time, part-time, or consultative basis. Any school district may, with the commissioner's approval, utilize its personnel unit allocations to employ authorized personnel on a 10-, 11-, or 12-month basis in accordance with rules adopted by the State Board of Education. Handicapped students' teachers, paraprofessional personnel, or related service personnel employed on an extended basis under this subsection shall, during the extended period of their contract, only be engaged in pupil evaluations or in direct service delivery to handicapped students for which the disruption of continuous services may result in severe regression.

(j) In accordance with rules adopted by the State Board of Education, local districts may jointly operate their special education programs. Personnel units and other funds to which the cooperating districts are entitled under this section may be allocated to the districts jointly as cooperative units or cooperative funds in accordance with the cooperative districts' agreement.

(k) Any local district, special education cooperative, or regional education service center may contract with any public or private facility, institution, or agency within or outside of this state for the provision of services to handicapped students under rules adopted by the State Board of Education. Contracts for residential placements, including placements with the Texas Department of Mental Health and Mental Retardation and its community facilities, Texas School for the Blind, Texas School for the Deaf, and other public or private agencies, institutions, or facilities, shall be approved by the commissioner. The rules shall provide for approval of residential placement contracts only after at least a programmatic evaluation of personnel qualifications, adequacy of physical plant and equipment, and curriculum content. Either the whole or a part of a facility or program may be approved. Rules relating to the residential contract approval process shall include provisions designed to ensure that no contract is approved which:

(1) involves the delivery of unapproved services;

(2) involves the delivery of services which the district is capable of providing or is developing the capability to provide; or

(3) is not cost-effective when compared with other alternatives.

(*l*) Except as provided by Subsection (m) of this section, contracts for residential placements when approved may be paid for from a combination of federal, state, and local funds. The local share of the total contract cost per pupil is that portion of the local tax effort (total dollars generated by debt service and maintenance taxes) which exceeds the district's local fund assignment, divided by the average daily attendance in the district. If the contract involves a private facility, the state share of the total contract cost is that which remains after subtracting the local share. If the contract involves a public facility other than a program or facility administered by the Central Education Agency, the state share is that which remains after subtracting the local share from that portion of the contract which involves the costs of instructional and related services. If the contract involves a program or facility administered by the Central Education Agency, there is no state share paid from this program.

(m) If the state is managing conservator of a student placed in a private residential facility, the total cost of the residential placement shall be paid from state and federal funds. If the contract involves a public facility other than a program or facility administered by the Central Education Agency, the total of that portion of the contract which involves the costs of instructional and related services shall be paid from state and federal funds. If the contract involves a program or facility administered by the Central Education Agency, there is no state share paid from this program. The State Board of Education shall adopt rules governing the use of federal funds as supplemental or partial payment of the local or state share under Subsections (*l*) and (m) of this section.

(n) The resident district has the ultimate responsibility for providing or causing the provision of appropriate services to each handicapped student. If the district contracts for the provision of services rather than providing the services of its own accord, then that district retains the responsibility of overseeing the implementation of the student's individualized education plan as well as the responsibility of an annual reevaluation of the appropriateness of the arrangement. An approved facility, institution, or agency with whom the district contracts shall assume as a part of the contract the responsibility of providing the district with periodic reports of services the student has received or will receive in accordance with the terms of the contract as well as diagnostic or other evaluative information which the district requires in order to fulfill its obligations under this section. The State Board of Education shall adopt rules designed to effectuate this subsection.

(*o*) The salary costs of special education teacher units, other professional and paraprofessional units authorized in this section, operating costs as provided in Subsection (d)(6) of this section and state-portion contract costs as provided in Subsections (*l*) and (m) of this section, computed as other costs of the Foundation School Program for local fund assignment purposes, shall be paid from the Foundation School Program Fund. Provided further, that any school district may supplement any part of the comprehensive special education program it operates or participates in with funds or resources available to it from local sources, public or private. Local enrichment may take the form of but is not limited to employing personnel in excess of the state allocation or supplementing minimum salaries of any personnel employed by the district, and any district may at local expense pay for all or part of further or continuing training or education of its special education personnel.

(p) The legislature shall set a limit on the amount of funds that may be expended under the provisions of this section each year in the General Appropriations Act. Should the amount of funds required to fully fund the provisions of this section pursuant to the rules and regulations of the State Board of Education exceed the amount set by the legislature, the commissioner, with the approval of the board, shall make such adjustments as are necessary to reduce the total cost of the special education program to the limit set by the legislature. The commissioner may make allocations under Subsection (d)(5) of this section not to exceed $3 million a year from the sum appropriated to fund the provisions of this section. The restriction on the dollar amount available under Subsection (d)(5) of this section does not apply to any funds remaining from the sum appropriated after all other allocations are made or to the remaining balance of unexpended funds carried over from the previous fiscal year.

(q) The commissioner, with the approval of the State Board of Education, shall adopt rules necessary to ensure that services to handicapped children shall be provided first to handicapped children not receiving an education and then to handicapped children, within each disability, with the most severe handicaps, who are receiving an inadequate education. The State Board of Education shall approve the definitions of levels of severity that the commissioner develops for the purposes of this subsection. The commissioner shall further develop rules necessary to ensure that sufficiently detailed records are kept and reports received to allow meaningful evaluation of the effectiveness of the policies and procedures adopted under this subsection.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1; Acts 1977, 65th Leg., 1st C.S., p. 19, ch. 1, § 7, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1304, ch. 602, §§ 7, 35(b), eff. Aug. 27, 1979.]

Repeal

Subsection (q) of this section is repealed effective September 1, 1980, under the provisions of Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(b).

Section 33 of the 1979 amendatory act provided:

"All residential placements of handicapped persons made prior to the effective date of this Act are subject to Subsections (k), (*l*), and (m), Section 16.104, Texas Education Code, as amended by this Act."

§ 16.105. [Blank]

§ 16.106. Support for Fast-Growing School Districts

(a) It is the purpose of this section to provide state aid to local school districts which experience unusually rapid growth in student enrollment from one year to the next so as to assist those districts in sustaining an adequate educational program for all students.

(b) A district is eligible to receive aid under this section if:

(1) the district's effective tax rate as determined under Subsection (c) of this section is greater than the statewide average effective tax rate as determined under that subsection;

(2) the district's current year's total number of students in average daily attendance as determined under Section 16.102 of this code is equal to or greater than 106 percent of its prior year's total number of students in average daily attendance; and

(3) the district raises its local fund assignment.

(c) For purposes of this section, a district's effective tax rate shall be determined by dividing the total amount of ad valorem tax revenue collected in the immediately preceding school year in the district by the total value of property which is used to calculate the district's local fund assignment. The statewide average effective tax rate shall be determined by dividing the total amount of ad valorem tax revenue collected by all the school districts in the state in the immediately preceding school year by the total index value of property in the state as determined pursuant to Section 11.86 of this code. For the 1979–1980 and 1980–1981 school years, the index values used herein shall be determined in accordance with Section 16.252(b) of this chapter.

(d) For the 1979–1980 school year and for each school year thereafter, the amount of state aid for each eligible school district under this section shall be determined by the formula:

$$FGA = \left(\frac{PDG}{.06} - 1\right) \times CADA \times \$30$$

where

"FGA" is the district's fast growth allotment;

"PDG" is the percentage of the district's student growth, as determined by dividing the difference between the district's current and previous year's number of students in average daily attendance by the district's previous year's number of students in average daily attendance; and

"CADA" is the district's current year's number of students in average daily attendance as determined under Section 16.102 of this code.

(e) If the district's index value per student in average daily attendance as determined under Section 16.252(b) of this code is more than $150,000 for each student in average daily attendance, the state aid provided in this section shall be determined by multiplying the following fraction to the otherwise computed amount:

$$\frac{1 - (\text{District's index value per ADA} - \$150{,}000)}{\$100{,}000}$$

(f) If the total amount of state aid under Subsections (d) and (e) of this section exceeds $2.5 million per year, each district's allotment shall be ratably reduced until the amount of state aid allocated equals $2.5 million per year.

[Added by Acts 1979, 66th Leg., p. 1313, ch. 602, § 10, eff. Aug. 27, 1979.]

§ 16.161. Responsiveness to Special Needs of Blind and Deaf Children

Text of Section 16.161, as added by Acts 1975, 64th Leg., p. 2399, ch. 734, § 25

In addition to the meaning of certain terms defined in the foregoing Section 16.16 of this code, when comprehensive special education services are required for children with serious visual or hearing handicaps or a combination of such handicaps, the following terms, in addition to continuing to have their usual defined meaning to the extent not inconsistent with the language of this chapter, shall have the following meanings:

(1) "Exceptional children" includes children from date of birth through age 22, inclusive;

(2) "Special services" includes parental counseling and training, competent orientation and mobility training, and express authority to provide nonacademic services either directly or through contract or working arrangements with other organizations, either within or without the classroom.

[Added by Acts 1975, 64th Leg., p. 2399, ch. 734, § 25, eff. June 21, 1975.]

Acts 1975, 64th Leg., ch. 734, § 25, added this Section 16.161 without reference to revision of this Chapter 16 by Acts 1975, 64th Leg., ch. 334.

[Sections 16.107 to 16.150 reserved for expansion]

SUBCHAPTER D. CURRENT OPERATING COST COMPONENT

§ 16.151. Operating Cost Allotment

Each school district shall be allotted $128 for each student in average daily attendance during the 1979–1980 school year and $139 for each student in average daily attendance each school year thereafter.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 23, ch. 1, § 8, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1311, ch. 602, § 8, eff. Aug. 27, 1979.]

§ 16.152. Use of Operating Allotment

A school district may use its operating cost allotment for current operating expenses other than professional salaries.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

[Sections 16.153 to 16.175 reserved for expansion]

SUBCHAPTER E. CATEGORICAL PROGRAM AID COMPONENT

§ 16.176. Support for Educationally Disadvantaged Pupils

(a) In this section "educationally disadvantaged pupils" are pupils who are eligible for the free and reduced lunch program under the provisions of the national school lunch program. The commissioner of education with the approval of the State Board of Education shall review the standards established for educationally disadvantaged pupils and adjust the standards if they perpetuate inequities or become obsolete.

(b) Each school district which is eligible and which also receives aid under the national school lunch program is eligible to receive an allotment of $44 for each educationally disadvantaged pupil enrolled in its public schools. For purposes of the allocation made pursuant to this section, the number of educationally disadvantaged pupils in each district shall be determined by averaging the best six months' enrollment in the free and reduced lunch program for the 1978–1979 school year.

(c) Beginning with the 1979–1980 school year, and each year thereafter the Central Education Agency shall adopt and administer appropriate criterion referenced assessment instruments designed to assess minimum basic skills competencies in reading, writing, and mathematics for all pupils at the fifth grade level and shall also adopt and administer to all ninth grade pupils secondary exit level assessment instruments designed to assess minimum mathematics and English language arts competencies which it deems appropriate for a high school graduate. All ninth grade students who fail to demonstrate mastery of minimum exit level competencies shall be given the opportunity to retake the assessment instrument each year the assessment instrument is administered. Beginning with the 1980–1981 school year and each year thereafter, the Central Education Agency shall adopt and administer appropriate criterion referenced assessment instruments designed to assess basic skills competencies among all students at the third grade level. In addition to the assessment instruments adopted and administered by the Central Education Agency, a local school district may adopt and administer criterion and/or norm referenced assessment instruments at any grade level. Any student who has a physical or mental impairment or a learning disability that prevents the student from mastering the competencies which the assessment instruments are designed to measure may be exempted from the requirements of this section.

(d) In adopting assessment instruments pursuant to this section, the Central Education Agency and/or a local school district shall insure the security of the instruments in their preparation, administration, and grading. Meetings or portions of meetings held by the Central Education Agency and/or a local school district at which individual assessment instruments or assessment instrument items are discussed or adopted are not open to the public under Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the assessment instruments and items are confidential.

(e) The results of individual student performance on assessment instruments administered pursuant to this section are confidential and may be made available only to the student, the student's parent or guardian, and to the school personnel directly involved with the student's educational program. However, overall student performance data shall be aggregated by campus and district and made available to the public, with appropriate interpretations, at regularly scheduled meetings of the governing board of each school district. The information may not contain the names of individual students or teachers. The commissioner of education shall compile all of the data and report it to the legislature, lieutenant governor, and governor no later than January 1 of each odd-numbered year.

(f) Each school district shall utilize the student performance data resulting from the assessment instruments administered pursuant to this section to design and implement appropriate compensatory instructional services for students in the district's schools and shall submit an annual report to the commissioner of education which describes how state compensatory funds received pursuant to this section have been used to provide for those services.

(g) If the total amount of compensatory education aid required by this section exceeds $42,900,000 per year, each district's allotment shall be reduced proportionately until the amount of aid allocated equals $42,900,000 per year.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1655, ch. 651, § 1, eff. June 15, 1977; Acts 1979, 66th Leg., p. 1311, ch. 602, § 9, eff. Aug. 27, 1979.]

§ 16.177. Driver Education

(a) The Central Education Agency shall develop a program of organized instruction in driver education and traffic safety for public school students who are 15 years of age or older.

(b) With the approval of the State Board of Education, the commissioner of education shall establish standards for the certification of professional and paraprofessional personnel who conduct the programs in the public schools.

(c) Beginning with the 1975–1976 school year, a school district is eligible to receive annually funds to finance a driver education program in an amount

not to exceed $25 multiplied by 20 percent of its high school enrollment in grades 10–12, but in no instance shall the allotment made to the district exceed $25 multiplied by the number of students actually enrolled in driver education during the school year for which the funds were provided.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.178. Support for Demonstration Programs for the Gifted and Talented

(a) The purpose of this section is to provide state assistance to local school districts or combinations of school districts, pursuant to the applicable provisions of this code, for the establishment of demonstration programs for gifted and talented students in various regions of the state.

(b) Any school district or combination of school districts may make application to the state director of programs for the gifted and talented pursuant to the applicable provisions of this code.

(c) If the total cost of all approved demonstration programs for the gifted and talented exceeds the amount provided by Subsection (d) of this section, the allotment for each approved demonstration program shall be ratably reduced until the total amount of state aid allocated equals the applicable amount.

(d) For the 1979–1980 school year, the maximum allotment under this section shall be $2 million. For the 1980–1981 school year, the maximum allotment shall be $3 million. Thereafter, the maximum allotment shall be set in the General Appropriations Act.

[Added by Acts 1979, 66th Leg., p. 1314, ch. 602, § 11, eff. Aug. 27, 1979.]

[Sections 16.179 to 16.200 reserved for expansion]

SUBCHAPTER F. TRANSPORTATION COMPONENT

§ 16.201. Transportation Services

Transportation services shall be provided and allotments therefor shall be determined according to the provisions of this subchapter.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.202. Public School Transportation System

(a) The county school boards, where funded under law, or local district school boards, subject to approval by the state commissioner of education, are authorized to establish and operate an economical public school transportation system within their respective counties or school districts.

(b) In establishing and operating such transportation systems, the county or local district school boards shall:

(1) requisition buses and supplies from the state board of control as provided for in this subchapter;

(2) prior to June 1 of each year, with the commissioner's approval, establish school bus routes in their respective counties or districts for the succeeding school year;

(3) employ school bus drivers certified in accordance with standards and qualifications promulgated jointly by the Central Education Agency and the Texas Department of Public Safety as required by law; and

(4) be responsible for the maintenance and operation of school buses.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1314, ch. 602, § 12, eff. Aug. 27, 1979.]

§ 16.203. County and District Transportation Funds

State warrants for transportation, payable to the county or district school transportation fund, shall be for the total amount of transportation funds for which the county or district is eligible under the provisions of this subchapter.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1314, ch. 602, § 12, eff. Aug. 27, 1979.]

§ 16.204. Use of Buses for Extracurricular Activities, etc.

(a) The county or district school boards and the state commissioner of education shall promulgate regulations in regard to the use of school buses, for other than transporting eligible children to and from school. Under rules and regulations of the State Board of Education, the appropriate allocation in the county transportation fund, when approved by the county school board, or the district transportation fund, when approved by the board of trustees of the independent school district operating its own transportation system, may be used for school bus transportation of its pupils and necessary personnel on extracurricular activities and field trips sponsored by the respective district.

(b) Subject to the rules of the commissioner of education, a school district or county school board governing a countywide transportation system may contract with nonschool organizations for the use of school buses. The district may provide services relating to the maintenance and operation of the buses in accordance with the terms of the contract.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1884, ch. 750, § 1, eff. June 16, 1977; Acts 1977, 65th Leg., p. 2191, ch. 864, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 773, ch. 339, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1314, ch. 602, § 12, eff. Aug. 27, 1979.]

§ 16.205. Approved School Bus Routes

School buses shall be operated to and from school on approved school bus routes and no variations shall be made therefrom. The penalty for varying from authorized routes and for unauthorized use of buses shall be the withholding of transportation funds from the offending county or school district. In the event the violation is committed by a district which receives no Foundation School Program funds, the penalty provisions of Section 4.02 of this code shall be applied.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.206. Calculation of Allotment

(a) The total annual regular transportation cost allotment for each district or county shall be based on the rules and formulas of this section.

(b) As used in this section:

(1) "Regular eligible pupil" means a pupil who resides two or more miles from his or her campus of regular attendance, measured along the shortest route that may be traveled on public roads, and who is not classified as an eligible handicapped pupil.

(2) "Eligible handicapped pupil" means a pupil who is handicapped as defined in Section 16.104 of this code and who would be unable to attend classes without special transportation services.

(3) "Linear density" means the average number of regular eligible pupils transported daily, divided by the approved daily route miles traveled by the respective transportation system.

(c) For the 1979–1980 and 1980–1981 school years, allowable total base costs of maintenance, operation, salaries, depreciation, etc., for each bus route shall be:

Linear Density Grouping	Allocation per mile of approved route
2.40 and above	$ .94
1.65 to 2.40	.75
1.15 to 1.65	.68
.90 to 1.15	.59
.65 to .90	.52
.40 to .65	.48
up to .40	.44

Density grouping shall be based on the 1977–78 data compiled by the commissioner of education pursuant to Section 10, Chapter 1, Acts of the 65th Legislature, 1st Called Session, 1977.

(d) For the 1981–82 school year and thereafter, the commissioner of education shall determine the daily cost per regular eligible pupil of operating and maintaining the regular transportation system based on the linear density of that system. In determining the cost, the commissioner shall give consideration to factors affecting the actual cost of providing these transportation services in each district. The average actual cost is to be computed by the commissioner of education and included for consideration by the Foundation School Program Committee and the legislature in the General Appropriations Act.

(e) A district may apply for and on approval of the commissioner of education receive an additional amount of up to 10 percent of its regular transportation allotment to be used for the transportation of children living within two miles of the school they attend who would be subject to hazardous traffic conditions if they walked to school. Each board of trustees shall provide to the commissioner the definition of hazardous conditions applicable to that district and shall identify the specific hazardous areas for which the allocation is requested. A hazardous condition exists where no walkway is provided and children must walk along or cross a freeway or expressway, an underpass, an overpass or a bridge, an uncontrolled major traffic artery, an industrial or commercial area, or another comparable condition.

(f) The state commissioner of education may grant an amount not exceeding $600 per pupil per year in 1979–1980 and 1980–1981 for private or commercial transportation for eligible pupils from isolated areas. The per pupil per year allowable for the 1981–1982 school year and thereafter shall be determined by the commissioner of education and included for consideration by the Foundation School Program Committee and the legislature in the General Appropriations Act. The need for this type of transportation grant shall be determined on an individual basis and the amount granted shall not exceed the actual cost. The grants shall be made only in extreme hardship cases, and no grants shall be made if the pupils live within two miles of an approved school bus route.

(g) The cost of transporting vocational education students from one campus to another inside a district or from a sending district to another secondary public school for a vocational program or an area vocational school or to an approved post-secondary institution under a contract for instruction approved by the Central Education Agency shall be reimbursed based on the number of actual miles traveled times the district's official extracurricular travel per mile rate as set by their local board of trustees and approved by the Central Education Agency.

(h) A school district that provides special transportation services for eligible handicapped pupils is entitled to a state allocation. Allocations for handicapped transportation in district- or county-operated school buses shall be paid on a previous year's cost-per-mile basis. For the 1979–1980 and 1980–1981 school years, the maximum allowable per mile cost will be 80 cents. For the 1981–1982 and 1982–1983 school years and thereafter, the maximum rate per

mile allowable shall be recalculated based on data gathered from the first year of each preceding biennium. Districts may use a portion of their support allocation to pay transportation costs, if necessary. The commissioner of education may grant an amount not to exceed 18 cents per mile or a maximum of $600 per pupil per year for private transportation to reimburse parents or their agents for transporting eligible handicapped pupils. For the 1981–1982 and 1982–1983 school years and thereafter, the rate per mile and the maximum allowable per pupil will be determined by the commissioner of education for consideration by the Foundation School Program Committee and the legislature in the General Appropriations Act. The mileage allowed shall be computed along the shortest public road from the pupil's home to school and back, morning and afternoon. The need for this type transportation shall be determined on an individual basis and shall be approved only in extreme hardship cases.

(i) The allocation for eligible regular students transported by the regular transportation system shall be increased by five percent for any district or county school board which has complied with the provisions of Section 21.173 of this code in accordance with rules adopted by the State Board of Education.

(j) The total allocation for a district or county transportation unit for the 1979–1980 or 1980–1981 school year shall not be less than the total allocation received for the 1978–1979 school year based on an equal number of state-approved bus routes. If the district or county has deleted routes, the minimum allocation shall be proportionately reduced.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 23, ch. 1, § 9, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1314, ch. 602, § 12, eff. Aug. 27, 1979.]

Section 10 of the 1977 amendatory act provided:

"(a) Prior to the convening of the 66th Legislature, the commissioner of education shall determine the actual cost for regular transportation services per eligible student mile in each school district. The costs shall include the total base costs for transporting eligible students for maintenance, operation, salaries, depreciation, and all other costs attributable to the transportation of eligible students, including combined state and local expenditures for each school district. The cost per eligible student mile shall be derived by dividing the average actual daily cost by the average number of eligible student miles traveled daily.

"(b) An 'eligible student,' for purposes of this section, is a student who lives two or more miles from the school to which he is assigned.

"(c) For purposes of determining the actual costs in each school district, the commissioner shall designate one day per month on which each school district shall report the actual number of eligible students transported and the total route miles of operation required to transport the students. The average number of eligible students transported daily, divided by the average number of route miles traveled daily, shall determine the classification of school districts into eligible student population categories. The number of the eligible student population categories shall be determined by the commissioner.

"(d) The commissioner shall determine the average actual cost for regular transportation services per eligible student mile, including state and local expenditures, within each student population category for the 1977–1978 and 1978–1979 school years.

"(e) The commissioner may require any reports and information necessary to develop the cost data required by this section and shall establish any additional rules necessary to implement this section.

"(f) The commissioner shall prepare and submit to the 66th Legislature when it convenes in 1979 a recommended plan for funding transportation of eligible students."

§ 16.207. Routes and Systems: Evaluation and Approval

(a) All bus routes and transportation systems shall be reviewed by the state commissioner of education and he shall be responsible for establishing criteria for evaluating the several transportation systems of this state, but all the criteria shall be subject to approval by the State Board of Education.

(b) The commissioner shall evaluate all transportation systems as rapidly as possible.

(c) No new bus routes or extensions shall be approved prior to the survey of the transportation system of the district or county requesting them.

(d) In approving a transportation system for a district or county, consideration shall be given to providing transportation for only those pupils who reside in hazardous areas or live two or more miles from the school they attend except handicapped pupils. No consideration shall be given to providing transportation for pupils transferred from one district to another when their grades are taught in their home district unless transferred as provided by law and transportation has been approved as provided by law.

(e) There shall be no duplication of bus routes and services within sending districts by buses operated by two school districts and/or counties except on approval by the state commissioner of education.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 48, ch. 1, § 35, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1314, ch. 602, § 12, eff. Aug. 27, 1979.]

§ 16.208. Use of Transportation Funds for Other Purposes

No funds paid to the several transportation units for the operation of transportation systems in this state shall be expended for any other purpose.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.209. Rules of Commissioner

The commissioner of education shall formulate rules and regulations, subject to approval by the State Board of Education for enforcing the provisions of this subchapter.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.210. Appeals

Appeals to the commissioner of education and to the State Board of Education may be had from policy decisions of the school boards affecting transportation.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1314, ch. 602, § 12, eff. Aug. 27, 1979.]

§ 16.211. Purchase of Vehicles

(a) Motor vehicles used for the purpose of transporting school children, including school buses, their chassis and/or bodies purchased through the state board of control, shall be paid for by the state board of control as set out in applicable laws. The legislature may appropriate out of any money in the state treasury not otherwise appropriated a sum not exceeding $250,000, or as much thereof as necessary, for the state board of control to be used for such purposes.

(b) Any sum appropriated shall be known as the school bus revolving fund. When motor vehicles and school buses are delivered to the various schools coming within the provisions of this chapter, the governing bodies of those schools shall reimburse the state board of control for the money expended for such school buses including their chassis and/or bodies and the money shall be deposited by the state board of control in the school bus revolving fund.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.212. Contract With Public Transportation Company

(a) As an alternative to maintaining and operating a complete public school transportation system under this subchapter, a county or district school board may contract with public transportation companies for all or any part of its public school transportation if the board is able to obtain an economically advantageous contract.

(b) A contract is economically advantageous if the cost of the service contracted for is equal to or less than the total cost to the school district for providing its own complete bus service. The total cost to the school district is the state transportation cost allotment plus the supplementary funds necessarily provided by the local school district to provide complete transportation services.

(c) This section in no way prohibits the local school board from supplementing the state transportation cost allotment with local funds necessary to provide complete transportation services.

(d) The state commissioner of education, subject to the approval of the State Board of Education, shall make rules for the administration of this section.

(e) Contracts for alternative public school transportation may include provisions for transporting students to and from approved school activities.

(f) Upon approval of the contract by the State Board of Education, the portion of the annual transportation allotment which is to be used to finance the contract for alternative transportation services shall be included in the annual transportation cost allotment for the respective county or district.

[Added by Acts 1979, 66th Leg., p. 1314, ch. 602, § 12, eff. Aug. 27, 1979.]

Section 16.63, derived from Acts 1969, 61st Leg., p. 2823, ch. 889, § 1, as amended by Acts 1975, 64th Leg., p. 1862, ch. 583, § 1, contained provisions identical to this section with the exception that in subsec. (a) no reference was made to a district school board.

Former § 16.212, derived from Acts 1975, 64th Leg., p. 877, ch. 334, § 1, and repealed by Acts 1977, 65th Leg., 1st C.S., p. 48, ch. 1, § 35, contained similar provisions.

[Sections 16.213 to 16.250 reserved for expansion]

SUBCHAPTER G. FINANCING THE PROGRAM

§ 16.251. Financing; General Rule

(a) The sum of the approved minimum salaries for personnel, current operating expenses, categorical program aid, and transportation services for each district, computed in accordance with the provisions of this chapter, constitute the total cost of the Foundation School Program.

(b) The program shall be financed by:

(1) ad valorem tax revenue generated by an equalized local school district effort;

(2) state available school funds distributed in accordance with law; and

(3) state funds appropriated for the purposes of public school education and allocated to each district in an amount sufficient to finance the cost of each district's Foundation School Program not covered by other funds specified in this subsection.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 26, ch. 1, § 12, eff. Sept. 1, 1977.]

§ 16.252. Local Share of Program Cost

(a) For the 1981–1982 school year and each year thereafter, each school district's share of its guaranteed entitlement under the Foundation School Program shall be an amount equal to the product of an index rate of .0016 multiplied by the index value of property determined pursuant to Section 11.86 of this code. The commissioner of education shall utilize the official biennial report of the School Tax Assessment Practices Board estimates of index value in each school district for determining the local fund assignment.

(b) For the 1979–1980 school year, each school district's share of its guaranteed entitlement under the Foundation School Program shall be an amount equal to the product of an index rate of .0015 multiplied by the full market value of property in the district determined by Subsection (d) of this section or the product of an index rate of .00175 multiplied by the index value of property in the district determined by Subsection (e) of this section, whichever amount is smaller.

(c) For the 1980–1981 school year, each school district's share of its guaranteed entitlement under the Foundation School Program shall be an amount equal to the product of .0016 multiplied by the index

value of property in the district determined by Subsection (e) of this section.

(d) In determining the full market value of property, the commissioner of education shall utilize the official 1979 report of the School Tax Assessment Practices Board estimates of market value with the following adjustments:

(1) deduction of Category N (Intangible Personal Property); and

(2) deduction of that portion of Category M (Personal Property) which represents the estimated value of household and farm personal property exempt under the provisions of Article VIII, Section 1, of the Texas Constitution;

(3) deduction of that portion of Category H (Motor Vehicles) which represents the estimated value of motor vehicles exempted from school district taxation under the provisions of House Bill 1060, Acts of the 66th Legislature, Regular Session, 1979; [1]

(4) deduction of estimates of the value of homestead exemptions granted under the provisions of House Bill 1060, Acts of the 66th Legislature, Regular Session, 1979.

(e) In determining the index value of property, the commissioner of education shall make the following adjustments to the full market value of the district:

(1) deduction of the market value of open-space land devoted to agricultural production; and

(2) addition of the agricultural productivity value of open-space land devoted to agricultural production.

In making the calculations described in this subsection, the commissioner of education shall utilize wherever possible data provided by the School Tax Assessment Practices Board.

(f) For the 1979–1980 school year and each year thereafter, no district's local fund assignment as determined pursuant to this section shall exceed 120 percent of its prior year's local fund assignment.

(g) The commissioner of education shall adjust the values reported in the official report of the School Tax Assessment Practices Board to reflect reductions in taxable value of property resulting from natural or economic disaster after January 1 in the year in which the valuations are determined. The decision of the commissioner of education shall be final. Appeals of district values shall be held pursuant to Subsection (d) of Section 11.86 of this code.

(h) A district need not raise its total local share of its program cost.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 25, ch. 1, § 11, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1318, ch. 602, § 13, eff. Aug. 27, 1979.]

[1] Acts 1979, 66th Leg., p. 680, ch. 302.
Section 33(a) of the 1977 amendatory act provides, in part, that subsec. (d) of this section shall take effect on the passage of the Act (July 22, 1977) and that all other sections of the Act take effect on September 1, 1977.

§ 16.253. Excess of Local Funds Over Amount Assigned

Local maintenance funds in excess of the amount assigned to a district may be expended for any lawful school purpose or carried over to the next school year.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.254. Distribution of Foundation School Fund

(a) The commissioner of education shall determine annually:

(1) the amount of money necessary to operate a Foundation School Program in each school district;

(2) the amount of local funds assigned to each school district for the support of the program; and

(3) the amount of state available school funds distributed to each school district.

(b) The commissioner of education shall then grant to each school district from the Foundation School Program appropriation the amount of funds necessary to provide the difference between Subdivision (1) and the sum of Subdivisions (2) and (3) of Subsection (a) of this section.

(c) The commissioner shall approve warrants to each school district equaling the amount of its grant. Warrants for all money expended according to the provisions of this chapter shall be approved and transmitted to treasurers or depositories of school districts in the same manner as warrants for state apportionment are transmitted.

(d) Notwithstanding the provisions of Subsection (b) of this section, for the 1979–1980 school year and each year thereafter, no school district shall receive less state aid, plus pay raises exclusive of service increments, for foundation personnel provided by Section 16.055(b) of this code, per student in average daily attendance than it received per student in average daily attendance under the Foundation School Program for the 1978–1979 school year.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 26, ch. 1, § 13, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1325, ch. 602, § 32, eff. Aug. 27, 1979.]

§ 16.255. Falsification of Records; Report

(a) When, in the opinion of the director of school audits of the Central Education Agency, audits or reviews of accounting, enrollment, or other records of a school district reveal deliberate falsification of the records, or violation of the provisions of this chapter, whereby the district's share of state funds

allocated under the authority of this chapter would be, or has been, illegally increased, the director shall promptly and fully report the fact to the State Board of Education and the state auditor.

(b) In the event of overallocation of state funds, as determined by the State Board of Education or the state auditor by reference to the director's report, the Central Education Agency shall, by withholding from subsequent allocations of state funds, recover from the district an amount, or amounts, equal to the overallocation.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.256. Repealed by Acts 1977, 65th Leg., 1st C.S., p. 48, ch. 1, § 35, eff. Sept. 1, 1977

The repealed section, relating to duties of tax assessors, was derived from former § 16.77, as amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, as § 16.256.

[Sections 16.257 to 16.300 reserved for expansion]

SUBCHAPTER H. EQUALIZATION AID FOR PROGRAM ENRICHMENT

Subchapter H, formerly consisting of §§ 16.301 to 16.304, was revised by Acts 1979, 66th Leg., p. 1319, ch. 602, § 14, to consist of §§ 16.301 to 16.303.

Disposition Table

Showing where provisions of former Subchapter H (§§ 16.301 to 16.304) are now covered in §§ 16.301 to 16.303.

Former Section	New Section
16.301	—
16.302	16.301
16.303	—
16.304	16.303

§ 16.301. Determination of Equalization Aid Entitlement

The amount of state equalization aid to which a district is entitled is determined by the formula:

$$SEA = 1 - \frac{DPV}{(SPV/ADA \times 1.10)} \times ADA \times MAXENT$$

where

"SEA" is the state equalization aid guaranteed to the district;

"DPV/ADA" is the average of the district's full market value of property and index value of property as used in determining the district's local fund assignment for the 1979–1980 school year and the average of the district's market value and index value of property as determined pursuant to Section 11.86 of this code for the 1981–1982 school year and thereafter, divided by the number of students in average daily attendance in the district;

"SPV/ADA" is the average of the total statewide full market value of property and index value of property used in determining local fund assignment for the 1979–1980 school year and the average of the total statewide market value and index value of property as determined pursuant to Section 11.86 of this code for the 1981–1982 school year and thereafter, divided by the total number of students in average daily attendance in the state;

"MAXENT" is the maximum entitlement per ADA, which for the 1979–1980 school year is $275 and for the 1980–1981 school year thereafter is $290;

"ADA" is the number of students in average daily attendance in the district.

[Amended by Acts 1979, 66th Leg., p. 1319, ch. 602, § 14, eff. Aug. 27, 1979.]

§ 16.302. Districts in Major Disaster Areas

If a school district is within an area that has been declared a major disaster area by the governor and has suffered a property value loss equivalent to 12½ percent or more of its prior year valuations for tax purposes, the school district shall be eligible under rules and regulations of the commissioner of education for the maximum entitlement provided by this section for the two subsequent school years.

[Amended by Acts 1979, 66th Leg., p. 1319, ch. 602, § 14, eff. Aug. 27, 1979.]

§ 16.303. Payment of State Aid

(a) The state's equalization aid for program enrichment shall be paid from the Foundation School Fund pursuant to regulations of the State Board of Education.

(b) If the amount of state aid required by this subchapter exceeds $202 million for the 1979–1980 school year or $215 million for the 1980–1981 school year, the amount of state equalization aid guaranteed to each district shall be reduced proportionately until the total amount of funds required equals $202 million or $215 million, as applicable.

[Amended by Acts 1979, 66th Leg., p. 1319, ch. 602, § 14, eff. Aug. 27, 1979.]

[Sections 16.305 to 16.400 reserved for expansion]

SUBCHAPTER I. SCHOOL–COMMUNITY GUIDANCE CENTER PILOT PROGRAMS

Text of Subchapter I effective until September 1, 1981

§ 16.401. Pilot Programs

(a) With the approval of the commissioner of education, a school district may establish a school-community guidance center pilot program designed to locate and assist children with problems which interfere with their education, including but not limited to juvenile offenders and children with severe beha-

vioral problems or character disorders. The centers shall coordinate the efforts of school district personnel, local police departments, truant officers, and probation officers in working with students, dropouts, and parents in identifying and correcting factors which adversely affect the education of the children.

(b) The commissioner of education may not approve more than 10 pilot programs for the state. School districts with an average daily attendance of less than 6,000 students may cooperatively apply with other districts of that size for approval of a common center.

[Added by Acts 1977, 65th Leg., p. 1858, ch. 736, § 1, eff. Aug. 29, 1977.]

§ 16.402. Cooperative Programs

The commissioner may authorize the board of trustees of a school district to develop cooperative programs with state youth agencies for children found guilty of delinquent conduct.

[Added by Acts 1977, 65th Leg., p. 1858, ch. 736, § 1, eff. Aug. 29, 1977.]

§ 16.403. Guidance Center Personnel Allotments

(a) Each pilot school-community guidance center is eligible for two guidance center teachers, one attendance consultant, and one teacher aide. Each center is also eligible for one additional guidance center teacher for each 7,500 students in average daily attendance above 6,000 students in the district or cooperating districts. One additional attendance consultant and one additional teacher aide shall be provided for every two additional guidance center teachers.

(b) The commissioner shall determine the qualifications and applicable pay grade under the Texas State Public Education Compensation Plan [1] for the guidance center teachers, attendance consultants, and teacher aides employed at a center.

(c) The commissioner may authorize local boards of trustees to enter into contracts with state youth agencies for funding of personnel involved in cooperative programs.

[Added by Acts 1977, 65th Leg., p. 1858, ch. 736, § 1, eff. Aug. 29, 1977.]

[1] See § 16.056.

§ 16.404. Operating Costs

The cost of operating an approved school-community guidance center pilot program shall be borne by the state and each participating district on the same percentage basis that applies to financing the Foundation School Program within the district. The state's share of the cost shall be paid from the Foundation School Program Fund.

[Added by Acts 1977, 65th Leg., p. 1859, ch. 736, § 1, eff. Aug. 29, 1977.]

§ 16.405. Cooperation of Governmental Agencies

Each governmental agency concerned with children in the school district shall cooperate with the school-community guidance centers on the request of the superintendent of schools and shall designate liaison persons to work with the centers in identifying and correcting problems affecting school-age children in the district.

[Added by Acts 1977, 65th Leg., p. 1859, ch. 736, § 1, eff. Aug. 29, 1977.]

§ 16.406. Termination Date

The commissioner of education shall evaluate the school-community guidance center pilot program and report to the 67th Legislature. Unless continued by law, the pilot program is abolished and this Act expires effective September 1, 1981.

[Added by Acts 1977, 65th Leg., p. 1859, ch. 736, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER J. EDUCATIONAL PROGRAMS FOR GIFTED AND TALENTED STUDENTS

§ 16.501. Exemplary Programs

(a) As used in this section, "gifted and talented student" means a student who, by virtue of outstanding mental abilities, is capable of high performance. The student may demonstrate, singly or in combination, above-average achievement or potential in such areas as general intellectual ability, specific subject matter aptitude, ability in creative and productive thinking, and leadership ability. The phrase does not include students who demonstrate above-average achievement or potential in areas relating to physical abilities.

(b) The Central Education Agency shall establish exemplary programs for gifted and talented students in various regions of the state. The exemplary programs shall reflect different approaches and alternatives suitable to the needs of the gifted and talented and commensurate with their learning abilities and special talents. The exemplary programs shall be representative of different types of districts in various parts of the state in terms of size, composition, geographical influences, and shall be proportionate to the number of gifted and talented students and districts to benefit by their establishment.

(c) Students shall be identified as gifted and talented for the exemplary programs through the use of criteria established by the commissioner of education.

(d) A school district or a combination of school districts electing to establish an exemplary program for gifted and talented students shall submit an application to the Central Education Agency based on guidelines established by the commissioner of education. To be eligible for funding consideration, an educational program for gifted and talented stu-

dents shall be planned and conducted for no less than a full school year.

(e) The Central Education Agency shall develop and periodically update a state plan for the education of the gifted and talented to guide local education agencies in establishing and improving programs for students identified as gifted and talented. The Central Education Agency shall assist local education agencies in the development of planned programs which are appropriately designed to meet the special needs of gifted and talented students.

[Added by Acts 1979, 66th Leg., p. 1161, ch. 562, § 1, eff. Aug. 27, 1979.]

§ 16.502. Funding

(a) The funds for the exemplary programs for gifted and talented students shall be administered by the Central Education Agency. The total cost to the state for the exemplary programs for gifted and talented students conducted during each school year may not exceed $5 million. If the total amount of aid requested by applying eligible districts for exemplary programs for gifted and talented students exceeds $5 million, the Central Education Agency shall select programs to be funded based on the criteria in Subsection (b) of Section 16.501 and the guidelines established by the commissioner of education pursuant to Subsection (d) of Section 16.501. The state's share of the cost shall be paid from the foundation school fund and shall be considered by the foundation school fund budget committee in estimating the funds needed for foundation school program purposes.

(b) Applying eligible districts shall receive an allotment of $150 per pupil identified and served by the district in an exemplary program. A district or combination of districts must identify a minimum of 20 students to be eligible for an allotment. For the purposes of receiving funds under this section, no district may count as pupils served more than five percent of its total average daily attendance and no district shall receive in excess of $100,000.

(c) Up to 10 percent of the funds allocated for the establishment of the exemplary programs may be reserved by the commissioner of education for program administration in coordination with the regional education service centers for program planning, technical assistance, and statewide staff development.

[Added by Acts 1979, 66th Leg., p. 1161, ch. 562, § 1, eff. Aug. 27, 1979.]

CHAPTER 17. COUNTY ADMINISTRATION

SUBCHAPTER G. TERMINATING STATE FISCAL SUPPORT FOR COUNTY SCHOOL ADMINISTRATION

Section
17.94. Termination of State Fiscal Support.
17.95. Abolition of Certain County School Administrative Offices.
17.96. Transfer of Certain Powers and Duties.
17.97. Transfer of Records and Funds.
17.98. Composition, Powers, and Duties of County Administrations Established by Contract Among School Districts.
17.99. Reclassification of Certain School Districts.

SUBCHAPTER B. POWERS AND DUTIES

§§ 17.24 to 17.30. Repealed by Acts 1979, 66th Leg., p. 1796, ch. 729, § 9, eff. June 13, 1979

SUBCHAPTER C. COUNTY SUPERINTENDENT

§ 17.41. Repealed by Acts 1979, 66th Leg., p. 1796, ch. 729, § 9, eff. June 13, 1979

§ 17.43. Repealed by Acts 1979, 66th Leg., p. 1796, ch. 729, § 9, eff. June 13, 1979

§§ 17.51 to 17.54. Repealed by Acts 1979, 66th Leg., p. 1796, ch. 729, § 9, eff. June 13, 1979

§§ 17.56 to 17.60. Repealed by Acts 1979, 66th Leg., p. 1796, ch. 729, § 9, eff. June 13, 1979

§ 17.63. Repealed by Acts 1979, 66th Leg., p. 1796, ch. 729, § 9, eff. June 13, 1979

§ 17.64. Abolition of Office

(a) Upon a petition of 10 percent of the qualified voters who cast a vote in the governor's race at the preceding general election in counties of less than 100,000 population according to the last federal census; or upon a petition of 20 percent of the qualified voters who cast a vote in the governor's race at the preceding general election in counties of 100,000 or more population according to the last federal census, the county judge shall within 90 days of the receipt of such petition call an election to determine by majority vote whether the office of county superintendent (or ex officio county superintendent and the county school board in counties having an ex officio county superintendent) shall be abolished. At such an election all ballots shall have printed to provide for voting for or against the proposition:

"The abolishment of the office of county superintendent" or

"the abolishment of the office of an ex officio county superintendent and the county school board" (as the case may be).

[See Compact Edition, Volume 1 for text of (b) to (e)]

(f) If the county school superintendent of a county which contains one or more common school districts fails to qualify for office after having been duly elected or, having qualified, resigns or dies during his term of office, the county board of school

trustees and the commissioners court by joint resolution may either fill the vacancy created or may declare the office to be abolished. If the office is abolished pursuant to this subsection, the county judge shall serve as ex officio county superintendent and shall receive a salary not exceeding $2,600 per year. The county board of school trustees may employ an assistant county superintendent and other staff to assist the county judge, but the total cost for salaries for the assistant and staff may not exceed $15,000 per year from state funds. The board may provide for office expenses not exceeding $1,080 per year. The commissioners court may supplement the salaries authorized in this subsection with county funds.

[Amended by Acts 1975, 64th Leg., p. 1342, ch. 501, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1354, ch. 511, § 1, eff. June 19, 1975.]

SUBCHAPTER E. COUNTY SCHOOL LANDS

§ 17.84. Taxes on Agricultural Grazing Land Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

SUBCHAPTER F. SOCIAL SECURITY FOR EMPLOYEES

§ 17.91. Authority of Governing Board

The county school trustees or county board of education, as the case may be, of each county in this state may enter into all necessary agreements with the Employees Retirement System of Texas to provide for coverage under the Old Age and Survivors Insurance provisions of the Federal Social Security Act [1] of all persons who qualify under applicable federal regulations and whose salaries, wages or other compensation are paid from the county administration fund, the county transportation fund, or any other fund or funds administered by such governing board. With reference to these agreements, the county governing board shall have the same authority as that of counties, municipalities, and other political subdivisions with respect to participation of employees in the Federal Old Age and Survivors Insurance program.

[Amended by Acts 1975, 64th Leg., p. 966, ch. 366, § 1(c), eff. Sept. 1, 1975.]

[1] 42 U.S.C.A. § 401 et seq.

SUBCHAPTER G. TERMINATING STATE FISCAL SUPPORT FOR COUNTY SCHOOL ADMINISTRATION

§ 17.94. Termination of State Fiscal Support

After December 31, 1978, no state funds shall be used to support the offices of county school superintendent or ex officio county school superintendent or a board of county school trustees or a county school board in counties with no common school districts or rural high school districts but the offices and boards may be supported by ad valorem tax revenue generated in accordance with the provisions of Chapter 18 of this code,[1] or by funds provided by the school districts in accordance with the provisions of a voluntary contract as provided in Section 17.98 of this Chapter.

[Added by Acts 1975, 64th Leg., p. 1275, ch. 478, § 1, eff. June 19, 1975. Amended by Acts 1978, 65th Leg., 2nd C.S., p. 13, ch. 7, § 1, eff. Aug. 14, 1978.]

[1] Section 18.01 et seq.

§ 17.95. Abolition of Certain County School Administrative Offices

(a) On December 31, 1978, all offices of county school superintendent and ex officio county school superintendent and all county boards of school trustees and county school boards in counties with no common school districts or rural high school districts which are not supported by ad valorem tax revenue generated under the provisions of Chapter 18 of this code [1] or by voluntary local contract in accordance with Section 17.98 are abolished.

(b) After December 31, 1978, if at any time all school districts within a county become independent, the office of county school superintendent or ex officio county school superintendent, and the county board of school trustees or the county school board, shall be automatically abolished as of the date the last common or rural high school district becomes independent.

[Added by Acts 1975, 64th Leg., p. 1275, ch. 478, § 1, eff. June 19, 1975. Amended by Acts 1978, 65th Leg., 2nd C.S., p. 13, ch. 7, § 2, eff. Aug. 14, 1978; Acts 1979, 66th Leg., p. 1795, ch. 729, § 1, eff. June 13, 1979.]

[1] Section 18.01 et seq.

§ 17.96. Transfer of Certain Powers and Duties

(a) The powers and duties of abolished offices of county school superintendent and ex officio county superintendents and of abolished county boards of school trustees and county school boards vest in the officials designated in the following subsections of this section, and the officials are not entitled to additional compensation for performing the duties.

(b) The powers and duties of an abolished office of county school superintendent or ex officio county school superintendent relating to the approval of or recommendations concerning the operation of a

school district in the county vest in the governing board of the district.

(c) The powers and duties of an abolished office of county school superintendent or ex officio county school superintendent relating to cooperative agreements between districts for the employment of special service teachers, counselors, supervisors, or other personnel vest in the governing board of the regional education service center embracing the county.

(d) The authority to annually prorate the available county school fund, if any, among the several districts in the county vests in the county judge, and he shall certify to the Central Education Agency the amount prorated to each district.

(e) The powers and duties of abolished offices of county school trustees or county school boards concerning annexation of school districts, detachment of territory from school districts, or alteration of school district boundaries vest in the commissioners court of the county.

(f) The powers and duties of abolished offices of county school trustees or county school boards relating to the administration or operation of schools in the county vest in the governing boards of the districts concerned.

(g) All powers and duties of the abolished offices and boards not otherwise vested by this section vest in the county judge.

(h) In a county in which the county board of school trustees and the office of county school superintendent have been abolished, the appeal of a decision of a local school board required by law to be heard by the county school superintendent or the county board of school trustees shall be heard by the commissioner of education in the manner provided by Section 11.13 of this code.

[Added by Acts 1975, 64th Leg., p. 1275, ch. 478, § 1, eff. June 19, 1975. Amended by Acts 1979, 66th Leg., p. 1796, ch. 729, § 2, eff. June 13, 1979.]

§ 17.97. Transfer of Records and Funds

(a) In all counties in which the county school administrative offices are abolished pursuant to Section 17.95 of this subchapter, all unused county administration budget funds remaining at the time the offices are abolished shall revert back to their source.

(b) All records of school districts maintained by county administrative offices that are abolished pursuant to Section 17.95 of this subchapter shall be transferred to the respective school districts concerned except for original financial records, which shall be retained by the county treasurer and made available for examination or for reproduction at district expense where needed.

[Added by Acts 1975, 64th Leg., p. 1275, ch. 478, § 1, eff. June 19, 1975.]

§ 17.98. Composition, Powers, and Duties of County Administrations Established by Contract Among School Districts

Funding for the offices of county school superintendent or ex officio county school superintendent or a board of county school trustees or a county school board may be provided by a voluntary contract among the independent school districts of a county, with such powers and duties as such contract shall provide.

[Added by Acts 1975, 64th Leg., p. 1275, ch. 478, § 1, eff. June 19, 1975.]

§ 17.99. Reclassification of Certain School Districts

On September 1, 1978, all common school districts and rural high school districts located in counties that do not support county school administration from ad valorem tax revenue generated pursuant to the provisions of Chapter 18 of this code shall be reclassified as independent school districts by the Central Education Agency, unless requested not to do so by resolution duly adopted by the board of trustees of such district, and thereafter the districts shall be governed by the provisions of law applicable to independent school districts. Members of the governing boards of a common school district reclassified as an independent school district shall continue to serve as trustees of the district until their respective terms of office expire. Each district shall continue to be governed by the same number of trustees elected for the same terms of office in effect immediately preceding the district's reclassification.

[Added by Acts 1975, 64th Leg., p. 1275, ch. 478, § 1, eff. June 19, 1975. Amended by Acts 1978, 65th Leg., 2nd C.S., p. 14, ch. 7, § 3, eff. Aug. 14, 1978; Acts 1979, 66th Leg., p. 5, ch. 5, § 1, eff. Feb. 22, 1979.]

CHAPTER 18. COUNTYWIDE EQUALIZATION FUND OR COUNTY UNIT SYSTEM OF EQUALIZATION TAXATION

§ 18.13. Assessment and Collection of Tax

Text of section effective January 1, 1982

(a) The county equalization tax shall be imposed on all taxable property in the county.

(b) The county tax assessor and collector shall assess and collect the county equalization tax.

(c) The tax collector shall, upon the authorization of the county governing board as provided in Section 18.14 of this code, place to the credit of the common school districts in the county such money as is apportioned to them, the funds to be protected as provided by existing depository laws.

(d) The tax collector shall honor all warrants issued by the county governing board in allocating money from the county equalization fund to inde-

pendent school districts within the county, and the funds so received by the independent school districts shall be protected in accordance with existing depository laws.

[Amended by Acts 1979, 66th Leg., p. 2317, ch. 841, § 4(k), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 18.25. Meeting to Determine Tax Required

Text of section effective January 1, 1982

If the vote be in favor of such tax, the County School Trustees of such county shall as soon thereafter as practicable hold a meeting for the purpose of determining the amount of money required for equalization purposes, and for the payment of administration expense in such counties, and they shall thereupon make their order setting forth the estimated amount of money required for such purposes, and the rate of tax to be levied to raise such sums, and shall certify the same to the Commissioners' Court; and the Commissioners' Court shall levy the rate so certified to them by the said County School Trustees, not to exceed the rate fixed by this chapter, and cause such tax to be assessed and collected.

[Amended by Acts 1979, 66th Leg., p. 2317, ch. 841, § 4(k), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 18.27. Tax Lien

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER 19. CREATION, CONSOLIDATION, AND ABOLITION OF SCHOOL DISTRICTS

SUBCHAPTER H. CONSOLIDATION OF SCHOOL DISTRICTS

Section
19.246. Dormant School Districts.
19.247. Territory Not in School District.

SUBCHAPTER B. CREATION OF COUNTY-WIDE COMMON SCHOOL DISTRICTS

§ 19.068. Trustees; Powers, Etc.

[See Compact Edition, Volume 1 for text of (a) and (b)]

Text of subsection effective January 1, 1982

(c) The boards of trustees shall have all rights and powers of taxation as provided for independent school districts, including assessing property for taxation, fixing tax rates, and issuing bonds.

For text of subsection effective until January 1, 1982, see Compact Edition, Volume 1

[Amended by Acts 1979, 66th Leg., p. 2320, ch. 841, § 4(*l*), eff. Jan. 1, 1982.]

SUBCHAPTER F. MUNICIPAL SCHOOL DISTRICTS —CREATION, CONVERSION, ETC.

§ 19.161. City May Acquire Control of Schools

(a) Any city or town in this state may acquire the exclusive control of the public free schools within its limits by a majority vote of the property taxpaying voters of the city or town voting at an election held for that purpose as herein provided. However, if the territory to be detached from any existing district by creation of a municipal school district exceeds 10 percent of the total area of the existing district, the proposed detachment must be approved by a majority vote of the residents of each district affected.

[See Compact Edition, Volume 1 for text of (b) to (d)]

[Amended by Acts 1977, 65th Leg., p. 1161, ch. 441, § 1, eff. June 15, 1977.]

SUBCHAPTER G. CONVERSION OF COMMON SCHOOL DISTRICT TO INDEPENDENT SCHOOL DISTRICT

§ 19.201. Qualifications

Any common school district may, by the method herein provided, form an incorporation for free school purposes only and become an independent school district.

[Amended by Acts 1975, 64th Leg., p. 1311, ch. 493, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1796, ch. 729, § 3, eff. June 13, 1979.]

SUBCHAPTER H. CONSOLIDATION OF SCHOOL DISTRICTS

§ 19.233. Election Order; Notice

Upon the receipt of a petition fulfilling the qualifications of Section 19.232 of this code, each county judge shall:

(1) issue an order for an election to be held on the same day in each district included in the proposed consolidated district; and

(2) give notice of the date and purpose of the election by publication of the order in some newspaper published in the county two times at least 20 days prior to the date on which the elections are to be held and by posting a notice of the election in each of the districts.

[Amended by Acts 1977, 65th Leg., p. 1492, ch. 606, § 1, eff. Aug. 29, 1977.]

§ 19.246. Dormant School Districts

(a) The county school boards of all counties of the state shall consolidate by order of the board each dormant school district within the county with an adjoining district or districts.

(b) The term "dormant school district" means any school district that fails to operate a school in the district each school year.

(c) The governing board of the district with which a dormant school district is consolidated shall continue to be the governing board for the new district.

(d) In each case, the consolidation order of the county school board shall define by legal boundary description the territory of the new district as so enlarged and shall be recorded in the minutes of the county school board as provided by law.

(e) Elections shall be held when required by law in such consolidated districts for the assumption of outstanding bonds, if any, for the levying of taxes therefor, and for the levying of a local maintenance tax.

(f) If a county-line district is or becomes dormant, the consolidation provisions of this section shall apply to all counties affected to the extent of territory in each.

[Added by Acts 1975, 64th Leg., p. 895, ch. 334, § 3, eff. Sept. 1, 1975.]

§ 19.247. Territory Not in School District

(a) All property subject to school district taxation in the state must be included within the limits of a school district and a proper and proportionate tax paid thereon for school purposes. Therefore, at any time it may be determined there is territory located in a county but not within the described limits of a school district, the county school board shall add the territory to an adjoining district or districts.

(b) In each case, the order of consolidation shall define by legal boundary description the territory of the new district and shall be recorded in the minutes of the county school board as provided by law.

[Added by Acts 1975, 64th Leg., p. 895, ch. 334, § 3, eff. Sept. 1, 1975.]

[Sections 19.248 to 19.260 reserved for expansion]

CHAPTER 20. SCHOOL DISTRICT FUNDS

SUBCHAPTER C. MISCELLANEOUS PROVISIONS

Section
20.52. Authorized but Unissued Bonds.
20.53. Authority to Charge Fees.

SUBCHAPTER D. STATE PAYMENTS TO REPLACE SCHOOL TAXES LOST BECAUSE OF STATE-MANDATED REDUCTION OF THE AD VALOREM TAX BASE

20.81. Replacement of Lost School District Revenue.
20.82. Taxable Value Lost on Residence Homesteads.
Section
20.83. Taxable Value Lost on Agricultural and Timber Land.
20.84. Application for Payment.
20.85. Procedure for Payments.
20.86. Agency Audits.
20.87. Challenge of Board or Agency Determinations.
20.88. Effect of Land Use Change.

SUBCHAPTER A. SCHOOL DISTRICT TAX BONDS AND MAINTENANCE TAXES

§ 20.03. Assessment of Property; Tax Rates

(a) Notwithstanding a provision of general or local law to the contrary, a school district required by law or contract to use the tax office of another taxing unit may adopt its own assessment ratio and tax rate. The district shall use the appraised values determined by the office required by law or contract to assess its taxes, but may impose taxes on the basis of a different proportion of appraised value than that of the taxing unit administering the tax office.

(b) A school district may not levy a tax for the maintenance and operation of its schools which would generate an amount of local maintenance revenues in excess of the amount determined by multiplying an index rate of $1.40 per $100 of the total market value of the district's taxable property as determined by the State Property Tax Board for the year on which the local fund assignment is based. Provided, however, that for the 1977–1978 and 1978–1979 school years the total market value of the district's taxable property shall be that determined by the Governor's Office, Education Resources.

(c) to (e) Repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979.

(f) The assessor for each school district shall prepare and mail a tax bill to each person in whose name the property is listed on the tax roll or to his authorized agent. The assessor shall mail tax bills by October 1 or as soon thereafter as practicable.

(g) The tax bill or a separate statement accompanying the tax bill shall:

(1) identify the property subject to the tax;

(2) state the appraised value and assessed value of the property;

(3) if the property is designated for agricultural use, state the market value and assessed value for purposes of deferred taxation;

(4) state the assessment ratio for the school district;

(5) state the type and amount of any partial exemption applicable to the property;

(6) state the total tax rate for the school district;

(7) state the amount of tax due and due date; and

(8) state the rates of penalty and interest imposed for delinquent payment of the tax.

[Amended by Acts 1975, 64th Leg., p. 1308, ch. 491, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 27, ch. 1, § 15; Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2329, ch. 841, § 5(b), eff. Jan. 1, 1980.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Section 33(a) of the 1977 amendatory act provides, in part, that subsecs. (a) and (b) of this section shall take effect on the passage of the Act (July 22, 1977), that subsecs. (c) to (f) shall take effect on January 1, 1978, and that all other sections of the Act take effect on September 1, 1977.

§ 20.04. Bond and Tax Elections

Acts 1979, 66th Leg., p. 680, ch. 302, relating to school taxes, appraisal of agricultural and timber land, residence homestead exemptions, state payments to replace school district revenue lost due to reduction of the ad valorem tax base, and to a limit on the rate of growth of appropriations, provided in § 1 of art. 10:

"A school district may issue tax bond indebtedness voted prior to August 31, 1979, notwithstanding the 10 percent tax bond indebtedness limitation imposed by Section 20.04(c), Texas Education Code."

SUBCHAPTER C. MISCELLANEOUS PROVISIONS

§ 20.42. Investment of Bond Proceeds in Obligations of United States; Interest Bearing Secured Time Bank Deposits

From and after the effective date of this code, any school district within the state which has or may have on hand any sums of money which are proceeds received from the issue and sale of bonds or certificates of indebtedness of any such school district, either before or after the effective date of this code, which proceeds are not immediately needed for the purposes for which such bonds or certificates of indebtedness were issued and sold, may, upon order of the board of trustees of such school district, place the proceeds of such bonds or certificates of indebtedness on interest bearing time deposit, secured in the manner provided in Section 23.79 of this code, with a state or national banking corporation within this state the deposits of which are insured by the Federal Deposit Insurance Corporation, or invest the proceeds of such bonds or certificates of indebtedness in bonds of the United States of America or in other obligations of the United States of America, as may be determined by the board of trustees of the school district; but such interest bearing secured time deposits or bonds or other obligations of the United States of America shall be of a type which cannot be cashed, sold or redeemed for an amount less than the sum deposited or invested therein by such school district; and when such sums so placed or so invested by a school district are needed for the purposes for which the bonds or certificates of indebtedness of the school district were originally authorized, issued and sold, such time deposits or bonds or other obligations of the United States of America in which such sums have been placed or invested shall be cashed, sold or redeemed and the proceeds thereof shall be used for the purposes for which the bonds or certificates of indebtedness of the school district were originally authorized, issued and sold.

[Amended by Acts 1979, 66th Leg., p. 2167, ch. 829, § 1, eff. Aug. 27, 1979.]

§ 20.43. Interest Bearing Time Warrants

(a) Any school district in the State of Texas in need of funds to repair or renovate school buildings; purchase school buildings and school equipment; to equip school properties with necessary heating, water, sanitation, lunchroom and electric facilities; or is in need of funds with which to employ an individual firm or corporation deemed to have special skill and experience to compile taxation data for use by its board of equalization; and said school district is financially unable out of available funds to make such repairs, renovations of school buildings, purchase school buildings, purchase school equipment, to equip school properties with necessary heating, water, sanitation, lunchroom or electric facilities or is unable to pay such individual or corporation for the performance of the professional duties hereinabove mentioned, may, subject to the provisions hereof, issue interest-bearing time warrants, in amounts sufficient to make such purchase and improvements, to pay all or part of the compensation of such individual, firm or corporation to compile such data, any law to the contrary notwithstanding. Such warrants shall mature in serial installments of not more than five years from their date of issue, and to bear interest at a rate not to exceed six percent per annum. Such warrants shall upon maturity be payable out of any available funds of such school district in the order of their maturity dates. Any such interest-bearing time warrants so issued may be issued and sold by such district for not less than their face value, and the proceeds thereof used to provide funds required for the purpose for which they are issued. Such warrants shall be entitled to first and prior payment out of any available funds of such district as they become due. Included in such purposes is the payment of any amounts owed by said school districts, which indebtedness was incurred in carrying out any of such purposes.

(b) No such interest-bearing time warrants shall be issued or sold by a common school district or rural high school district until the same shall have been approved by the county board of school trustees; and said board shall, upon application of such school district, inquire into the financial conditions and needs of such district, and shall not approve the issuance of such interest-bearing time warrants un-

less in its opinion said district is in need of such repair and renovation of school building, and school equipment and to equip school properties with necessary heating, water, sanitation, lunchroom and electric facilities, and will be able with the resources in prospect to liquidate said warrants at their maturity.

(c) No school district in the State of Texas shall issue such interest-bearing time warrants in excess of two percent of the assessed valuation of the district, for the year in which such interest-bearing time warrants are issued; nor shall the payment of such interest-bearing time warrants in any one year exceed the anticipated surplus income of the district for the year in which the warrants are issued. Based on the budget of the district for said year, such anticipated income to be computed by taking the entire expected income of such school district from every source for the year in which such interest-bearing time warrants are issued, less teachers' salaries, bus aid included in the foundation fund, and that part of the local maintenance tax earmarked for salaries and known in the Gilmer-Aiken Law as the economic index or fund assignment. The anticipated income computation as herein defined shall be exclusive of all bond taxes. No school district shall have outstanding at any one time warrants totaling in excess of $60,000 under the provisions of this section.

(d) In every instance wherein interest-bearing time warrants or other evidence of indebtedness have been issued by school districts within the State of Texas for any of the purposes herein provided for, the act of the board of trustees, and/or governing board of such district in issuing such interest-bearing time warrants are each and all hereby expressly validated. The indebtedness thus attempted to be created by such action is hereby declared to be the indebtedness of such district and shall be paid out of available funds as herein provided.

(e) Whenever any such interest-bearing time warrants have been issued under this section, and so long as any of them may be outstanding the officer in charge of the collection of delinquent taxes shall pay the same to legal depository of the district, to be deposited and held in a special fund for the payment of such interest-bearing time warrants, and except as herein otherwise provided, no part thereof shall be applied or used for any other purpose.

(f) Interest and penalties on delinquent taxes shall be deemed a part of such taxes for the purpose of this section. Should any delinquent taxes, including interest and penalties, be cancelled, waived, released or reduced either by such school district or in any other way, with or without its consent, the amount of the loss so sustained shall be paid by the district to the special fund provided for herein out of funds not otherwise pledged to such special fund.

(g) All school districts issuing interest-bearing time warrants shall have the power to fix lien on and encumber and mortgage any and all property purchased with the proceeds of such warrants, and to fix a lien on and encumber any property, including teacherages owned by the district to secure the payment of legally incurred obligations. Provided, however, there shall never be a valid lien authorized or fixed on any school building wherein actual classroom instruction of pupils attending such school is being carried on or conducted.

(h) The word "interest-bearing time warrant" as used in this section means promissory note, interest-bearing time warrant, obligation or other evidence of indebtedness issued under this section.

(i) Taxes levied in any year to pay principal and interest of bonds and which taxes subsequently become delinquent for the purpose of this section, shall not be included in the term taxes or revenues or delinquent taxes as herein used.

[Amended by Acts 1978, 65th Leg., 2nd C.S., p. 14, ch. 7, § 4, eff. Aug. 14, 1978.]

§ 20.44. Delinquent Tax Penalties in Independent Districts Having City of 275,000

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 20.48. Authorized Expenditures

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) All independent school districts having within their limits a city with a population of 150,000 or more according to the last preceding federal census, or embracing at least 170 square miles of territory, having $850 million or more assessed value of taxable property on the latest approved tax roll, and having a growth in student average daily attendance of 11 percent or more for each of the preceding five years as determined by the Central Education Agency, shall, in addition to the powers now possessed by them for the use and expenditure of local school funds and for the issuance of school bonds, be expressly authorized and empowered, at the option of the governing body of any such school district, in the buying of school sites and/or additions to school sites and in the building of school houses, to issue and deliver notes of the school district, negotiable or non-negotiable in form, representing all or a part of the purchase price or cost to the school district of the land and/or building so purchased or built, and to secure such notes by a vendor's lien and/or deed of trust lien against such land and/or building, and, by resolution or order of the governing body of the

school district made at or before the delivery of such notes, to set aside and appropriate as a trust fund, and the sole and only fund, for the payment of the principal of and interest on such notes such part and portion of the local school funds, levied and collected by the school district in that year and/or subsequent years, as the governing body of the school district may determine, provided that in no event shall the aggregate amount of local school funds set aside in or for any subsequent year for the retirement of such notes exceed, in any one such subsequent year, 10 percent of the local school funds collected during such year. The district may issue the notes only if approved by majority vote of the resident, qualified electors voting in an election conducted in the manner provided by Section 20.04 of this code for approval of bonds.

[Amended by Acts 1979, 66th Leg., p. 1889, ch. 764, § 1, eff. June 13, 1979.]

§ 20.52. Authorized but Unissued Bonds

This section shall apply to any independent school district which has previously voted or authorized school bonds for a specific purpose or purposes and the purpose or purposes have been accomplished by other means or have been abandoned and all or a portion of the bonds authorized remain unissued. In those cases, the board of trustees of the independent school district may, on its own motion, order an election for the purpose of submitting to the qualified voters of the district the proposition of whether or not the authorized but unissued bonds may be issued, sold, and delivered for other and different purposes specified in the election order and the election notice. The election shall be ordered, held, and conducted in the same form and manner as that at which the bonds were originally authorized. If a majority of those voting at the election vote in favor of the sale and delivery of the unissued bonds and the use of the proceeds of the bonds for the purpose or purposes specified in the election order and the election notice, the board of trustees of the independent school district shall be authorized to issue, sell, and deliver the bonds and use the proceeds of the bonds for the purpose or purposes authorized at the election.

[Added by Acts 1979, 66th Leg., p. 2201, ch. 836, § 1, eff. June 14, 1979.]

§ 20.53. Authority to Charge Fees

(a) A school board is authorized to require payment of fees in the following areas:

(1) in any program where the resultant product in excess of minimum requirements and at the pupil's option becomes the personal property of the pupil, not to exceed cost of materials;

(2) membership dues in student organizations or clubs and admission fees or charges for attending extracurricular activities when membership or attendance is voluntary;

(3) a security deposit for the return of materials, supplies, or equipment;

(4) personal physical education and athletic equipment and apparel, although any pupil may provide his or her own if it meets reasonable requirements and standards relating to health and safety established by the school board;

(5) items of personal use or products which a student may purchase at his or her own option such as student publications, class rings, annuals, and graduation announcements;

(6) fees specifically permitted by any other statute;

(7) any authorized voluntary student health and accident benefit plan;

(8) a reasonable fee not to exceed the actual annual maintenance cost for the use of musical instruments and uniforms owned or rented by the district;

(9) items of personal apparel which become the property of the student and which are used in extracurricular activities;

(10) parking fees and fees for identification cards;

(11) driver training courses, provided that such fees shall not exceed the difference between the average statewide cost per student in the programs for the prior school year or the actual district cost per student in such programs for the current school year, whichever is less, and the payment per student from state funds for such programs; or

(12) courses offered for credit where the activity necessitates the use of facilities not available on the school premises, and participation in the course is optional on the part of the student.

(b) A school board is not authorized to charge fees in the following areas:

(1) textbooks, workbooks, laboratory supplies, or other supplies necessary for participation in any instructional course except as authorized under this code;

(2) field trips which are required as a part of a basic education program or course;

(3) any specific form of dress necessary for any required educational program or diplomas;

(4) instructional costs for necessary school personnel employed in any course or educational program required for graduation;

(5) library books required to be utilized for any educational course or program, except that fines may be assessed for lost, damaged, or overdue books;

(6) admission fees, dues, or fees for any activity the pupil is required to attend as a prerequisite to graduation;

(7) any admission or examination cost for any required educational course or program; or

(8) lockers.

(c) The State Board of Education pursuant to administrative procedures and consistent with the general policy of this state shall have the power to specify further authorized and prohibited fees and to adopt rules and regulations for the purposes of such policies.

(d) Students may be required to furnish personal or consumable items including pencils, paper, pens, erasers, and notebooks.

(e) This section does not preclude the operation of a school store wherein pupils may purchase school supplies and materials.

(f) A school district shall adopt reasonable procedures for waiving a deposit or fee if a pupil and his or her parent or guardian is unable to pay it. This policy shall be posted in a central location in each school facility, in the school policy manual, and in the student handbook.

(g) This section shall not be construed to prohibit a school board from charging reasonable fees for goods and services provided in connection with any postsecondary instructional program, including but not limited to vocational-technical, adult, veterans, continuing education, community services, evening school, and general educational development programs.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 34, ch. 1, § 17, eff. Sept. 1, 1977.]

SUBCHAPTER D. STATE PAYMENTS TO REPLACE SCHOOL TAXES LOST BECAUSE OF STATE-MANDATED REDUCTION OF THE AD VALOREM TAX BASE

This subchapter was added by Acts 1979, 66th Leg., p. 692, ch. 302, art. 8, § 1. Section 2 of art. 8 of said Act provided:

"Pursuant to the provisions of The Tax Relief Amendment to the Texas Constitution, [Acts 1978, 65th Leg., 2nd C.S., p. 54, H.J.R. No. 1] it is the intent of the legislature that this article fulfill the constitutional mandate to replace school district revenues lost as a result of implementation of The Tax Relief Amendment. It is further the intent of the legislature that the revenues distributed under the provisions of this article be utilized by school districts in such a manner as to provide the tax relief adopted by the voters of this state under the provisions of The Tax Relief Amendment."

§ 20.81. Replacement of Lost School District Revenue

Text of section added effective until August 31, 1981

(a) A school district other than a junior college district is entitled to an annual payment from the state, to the extent provided by legislative appropriation, to replace ad valorem tax revenue lost because of the residence homestead exemptions prescribed by Article 7150.5, Revised Civil Statutes of Texas, 1925, and because of appraisal of eligible timber and agricultural land as prescribed by Articles 7174A and 7174B, Revised Civil Statutes of Texas, 1925.

(b) The amount of the payment is determined by multiplying the total taxable value actually lost by application of Articles 7150.5, 7174A, and 7174B by the ratio of assessment in effect for the district and multiplying the product by the tax rate in effect for the district. The amount of the payment shall be further modified as directed in this subchapter.

[Added by Acts 1979, 66th Leg., p. 692, ch. 302, art. 8, § 1, eff. May 31, 1979.]

Section 1(d) of art. 13 of the 1979 Act provided that arts. 3 to 8 and 10 to 13 of said Act were to "take effect immediately and apply to ad valorem taxes imposed for the 1979 tax year."

This section expires effective August 31, 1981, under the provisions of § 20.85(i).

§ 20.82. Taxable Value Lost on Residence Homesteads

The amount of taxable value actually lost by application of Article 7150.5, Revised Civil Statutes of Texas, 1925, is the sum of the amounts of residence homestead exemptions granted under Article 7150.5 to each residence homestead, except that the amount of the exemptions applicable to a residence homestead for the purpose of this subsection may not exceed its market value according to the school district's tax roll.

[Added by Acts 1979, 66th Leg., p. 692, ch. 302, art. 8, § 1, eff. May 31, 1979.]

§ 20.83. Taxable Value Lost on Agricultural and Timber Land

The amount of taxable value lost by application of Articles 7174A and 7174B, Revised Civil Statutes of Texas, 1925, is the difference between the total of the market values or, if some parcels qualified for assessment under Article VIII, Section 1-d, of the Texas Constitution, the productive values, as determined by the school district in the 1978 tax year, of all parcels that are appraised as provided by Article 7174A or 7174B and the total of the productive values of those parcels as provided by Article 7174A or 7174B, as determined by the school district for the current year. In the case of property which is in a different district in the current year than in the 1978 tax year, the taxable value lost under the provisions of this section shall be calculated under rules adopted by the School Tax Assessment Practices Board

consistent with the treatment of other land under this section.

[Added by Acts 1979, 66th Leg., p. 692, ch. 302, art. 8, § 1, eff. May 31, 1979.]

§ 20.84. Application for Payment

(a) To receive the payment prescribed by this subchapter, a school district must file a completed application for the payment with the School Tax Assessment Practices Board, on a form prescribed by that board in conjunction with the commissioner of education, before November 1. However, for good cause the board may extend the filing deadline by not more than 60 days.

(b) In prescribing the form, the board shall ensure that it requires a school district to provide all the information necessary to administer this subchapter.

[Added by Acts 1979, 66th Leg., p. 692, ch. 302, art. 8, § 1, eff. May 31, 1979.]

§ 20.85. Procedure for Payments

Text of section added effective until August 31, 1981

(a) The School Tax Assessment Practices Board shall determine, using the district's application, its own records, and other available information, the amount of the taxable value lost by each school district. Before January 1, unless an extension has been granted under Section 20.84 of this code, the board shall notify the district of the determinations required by this section and shall certify them to the commissioner of education. In making this determination for years after the 1980 fiscal year, the board shall adopt procedures to ensure that no district receives an increased entitlement as a result of reduced appraisal level and that no district receives a reduction in entitlement from an increase in appraisal level in conjunction with changes in ratio of assessment or tax rate.

(b) After receipt of the School Tax Assessment Practices Board's certifications, the commissioner shall calculate the amount of the payment each district is entitled to receive.

(c) In calculating this amount for the 1979–80 and 1980–81 school years, the commissioner shall adjust the amount of the payment by deducting the following increases in state financial aid to the school district:

(1) any increase in state financial support caused by a reduction in a district's share of the Foundation School Program from the local shares which would be derived under the provisions of Section 16.252 of this code in effect on January 1, 1979, for the school years 1979–80 and 1980–81, excluding any portion of the local share attributable to values of property exempted by or authorized to be exempted by Articles 7150.6, 7150.2, and 7150.3, Revised Civil Statutes of Texas, 1925; and

(2) any allotment for current operating expenses under the provisions of Section 16.151 of this code above $125 per student in average daily attendance in the 1979–80 school year and $130 per student in the 1980–81 school year.

(d) For the fiscal year ending August 31, 1980, the entitlement calculated under Subsection (c) of this section shall not be less than 45 percent of the certified amount of revenue loss for the district. For the fiscal year ending August 31, 1981, the entitlement calculated under Subsection (c) of this section shall not be less than 45 percent, or such greater percentage as calculated under the provisions of Subsection (f) of this section, of the certified amount of revenue loss for the district.

(e) In the event that Section 16.151 and Section 16.252 of this code are not modified by the Acts of the 66th Legislature prior to January 1, 1980, total payments under this section shall not exceed $192,000,000 for the fiscal year ending August 31, 1980, and $192,000,000 for the fiscal year ending August 31, 1981, plus the unexpended balances from the prior fiscal year. In the event that Section 16.151 and Section 16.252 of this code are modified by the Acts of the 66th Legislature prior to January 1, 1980,[1] total payments under this section shall not exceed $107,500,000 for the fiscal year ending August 31, 1980, and $112,500,000 for the fiscal year ending August 31, 1981, plus the unexpended balances from the prior fiscal year. Any balances in the School Taxing Ability Protection Fund in excess of the amounts specified in this subsection shall be transferred by the comptroller of public accounts to the Foundation School Fund during the fiscal years 1980 and 1981.

(f) If the total of the amounts all districts are entitled to receive for the fiscal year ending August 31, 1981, is less than the amount provided by Subsection (e) of this section, the commissioner shall increase the minimum percentage of reimbursement to a level necessary to raise entitlements to the limit specified in Subsection (e) of this section.

(g) If the total of the amounts all districts are entitled to receive exceeds the amount provided by Subsection (e) of this section for that purpose, the amount of the payment to each district is determined by multiplying the maximum amount under Subsection (e) of this section by a fraction, the denominator of which is the total of the amounts all districts are entitled to receive and the numerator of which is the amount the district is entitled to receive.

(h) The commissioner shall calculate the amount of the payment to each district and certify that amount to the comptroller of public accounts. The comptroller shall pay each district from the School Taxing Ability Protection Fund the amount certified by the commissioner in six monthly installments beginning in January.

(i) This section and Section 20.81 of this code shall expire August 31, 1981.

[Added by Acts 1979, 66th Leg., p. 692, ch. 302, art. 8, § 1, eff. May 31, 1979.

[1] Sections 16.151 and 16.252 were amended by Acts 1979, 66th Leg., p. 1311, ch. 602, §§ 8, 13, eff. Aug. 27, 1979.

§ 20.86. Agency Audits

(a) At least once in each two-year period, the Central Education Agency with the assistance of the School Tax Assessment Practices Board shall conduct an audit of each school district tax office to determine if the district's applications under this subchapter are accurate, if the tax office administration of Articles 7150.5, 7174A, and 7174B, Revised Civil Statutes of Texas, 1925, conforms to the requirements of law, and if the market values the district's tax office assigns to property affected by those articles are consistent with and not higher than the market values assigned to other, similar property not affected by those articles.

(b) If the agency determines by audit or otherwise that a district has received a greater payment under this subchapter than it was entitled to receive because it improperly granted residence homestead exemptions, improperly granted eligibility pursuant to Article 7174A or 7174B, assigned excessive value to property affected by Article 7150.5, 7174A, or 7174B, or otherwise overstated the amount it was entitled to receive, the agency shall notify the district of its determination and the reasons for it and shall reduce the amount of the next and, if necessary, subsequent certifications under Section 20.85 of this code or payments of state aid under Sections 16.254(b) and 16.254(c) of this code until the amount of the overpayment is recovered.

[Added by Acts 1979, 66th Leg., p. 692, ch. 302, art. 8, § 1, eff. May 31, 1979.]

§ 20.87. Challenge of Board or Agency Determinations

(a) A school district may challenge a determination by the School Tax Assessment Practices Board or the Central Education Agency under Section 20.85 or 20.86 of this code by filing a petition with the appropriate agency specifying the grounds for the challenge within 30 days after the date on which the district receives notice of the agency's determination.

(b) The appropriate agency shall hold a hearing on the challenge within 60 days after the date on which it receives the petition. After the hearing, the agency shall issue an order based on evidence presented at the hearing reversing, modifying, or affirming its determination.

[Added by Acts 1979, 66th Leg., p. 692, ch. 302, art. 8, § 1, eff. May 31, 1979.]

§ 20.88. Effect of Land Use Change

Prior to April 1, each school district shall notify the Central Education Agency of the amount of payments received during the prior 12 months under the provisions of Section 5 of Article 7174A, Revised Civil Statutes of Texas, 1925, Section 6 of Article 7174B, and Section 1–d(f) of Article VIII of the Texas Constitution. Fifty percent of this amount shall be deducted from either current or subsequent payments under this subchapter or payments of state aid under Sections 16.254(b) and (c).

[Added by Acts 1979, 66th Leg., p. 692, ch. 302, art. 8, § 1, eff. May 31, 1979.]

CHAPTER 21. PROVISIONS GENERALLY APPLICABLE TO SCHOOL DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Section
21.008. Semester System.

SUBCHAPTER B. ADMISSION AND ATTENDANCE

21.0311. Tuition for Certain Children From Other States.

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21.914. Breakfast Programs.
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21.916. Use of Private Employment Agencies.

SUBCHAPTER A. GENERAL PROVISIONS

§ 21.008. Semester System

(a) Each school district shall operate for either two or three semesters during each school year, at the option of the district. The semesters must provide the required number of days of instruction for students and inservice education and preparation for teachers, except as provided under Section 16.052(b) of this code.

(b) The Central Education Agency shall prepare a curriculum based on the operation of the schools on a two- or three-semester basis. The curriculum shall be so structured that material formerly covered in three three-month quarters is covered in two or

three semesters. The curriculum for operation of the schools for three semesters shall be based on at least 70-minute class periods.

(c) For the 1979–1980 school year, a school district may operate schools on either a semester basis or on a quarter system in accordance with prior law. For the 1980–1981 school year, and each year thereafter, each district shall operate schools on a semester basis in accordance with this section.

[Added by Acts 1975, 64th Leg., p. 894, ch. 334, § 2, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 101, ch. 46, § 3, eff. April 5, 1977; Acts 1977, 65th Leg., 1st C.S., p. 43, ch. 1, § 24, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 603, ch. 280, § 1, eff. May 24, 1979.]

[Sections 21.009 to 21.030 reserved for expansion]

SUBCHAPTER B. ADMISSION AND ATTENDANCE

§ 21.031. Admission

(a) All children who are citizens of the United States or legally admitted aliens and who are over the age of five years and under the age of 21 years on the first day of September of any scholastic year shall be entitled to the benefits of the Available School Fund for that year.

(b) Every child in this state who is a citizen of the United States or a legally admitted alien and who is over the age of five years and not over the age of 21 years on the first day of September of the year in which admission is sought shall be permitted to attend the public free schools of the district in which he resides or in which his parent, guardian, or the person having lawful control of him resides at the time he applies for admission.

(c) The board of trustees of any public free school district of this state shall admit into the public free schools of the district free of tuition all persons who are either citizens of the United States or legally admitted aliens and who are over five and not over 21 years of age at the beginning of the scholastic year if such person or his parent, guardian or person having lawful control resides within the school district.

(d) In order for a person under the age of 18 years to establish a residence for the purpose of attending the public free schools separate and apart from his parent, guardian, or other person having lawful control of him under an order of a court, it must be established that his presence in the school district is not for the primary purpose of attending the public free schools. The board of trustees shall be responsible for determining whether an applicant for admission is a resident of the school district for purposes of attending the public schools.

(e) A child placed in foster care by an agency of the state or a political subdivision shall be permitted to attend the public free schools in the district in which the foster parents reside free of any charge to the foster parents or the agency. No durational residence requirement may be used to prohibit such a child from fully participating in any activity sponsored by the school district.

[Amended by Acts 1975, 64th Leg., p. 896, ch. 334, § 4, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1012, ch. 376, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1125, ch. 537, § 1, eff. June 11, 1979.]

§ 21.0311. Tuition for Certain Children From Other States

(a) Notwithstanding any other provision of this code, a child who resides at a child-caring institution and whose maintenance expenses are paid in whole or in part by another state may not be admitted to a public school unless the child-caring institution pays tuition for the child equal to the actual cost of educating a child enrolled in a similar educational program in the district.

(b) The State Board of Education shall establish formulas governing the calculation of tuition rates. All tuition charges shall be submitted to the commissioner of education for approval.

(c) The attendance of the child shall not be counted for purposes of allocating state funds to the district.

[Added by Acts 1975, 64th Leg., p. 1345, ch. 504, § 1, eff. Sept. 1, 1975.]

§ 21.033. Exemptions

(a) The following classes of children are exempt from the requirements of compulsory attendance:

(1) any child in attendance upon a private or parochial school which shall include in its course a study of good citizenship;

(2) any child who is handicapped as defined in Section 16.104 of this code and who cannot be appropriately served by the resident district in accordance with the requirements of Section 21.032 of this code;

(3) any child who has a physical or mental condition of a temporary and remediable nature which renders such child's attendance infeasible and who holds a certificate from a qualified physician specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from such remedial treatment;

(4) any child more than 17 years of age who has satisfactorily completed the work of the ninth grade and who presents to the chief administrator of the school which such child would otherwise attend satisfactory evidence showing that his services are needed in support of a parent or other person standing in a parental relation to the child; and

(5) any child expelled in accordance with the requirements of law.

(b) This section does not relieve a resident district as defined by Section 16.104 of this code of its fiscal and administrative responsibilities under that section or of its responsibility to provide a handicapped child with a free appropriate public education.

[Amended by Acts 1975, 64th Leg., p. 2378, ch. 734, § 2, eff. June 21, 1975; Acts 1979, 66th Leg., p. 1321, ch. 602, § 21, eff. Aug. 27, 1979.]

§ 21.0331. Repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979

See, now, § 16.104.

§ 21.035. Violations of Attendance Requirements

[See Compact Edition, Volume 1 for text of (a) to (e)]

(f) A person who is a member of the Jewish faith shall be excused from attending school on the days that Rosh Hashanah and Yom Kippur are observed, but shall be counted as if he attended school for purposes of calculating the average daily attendance of students in the school district.

[Amended by Acts 1975, 64th Leg., p. 1902, ch. 610, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER C. TRANSFERS AND SCHOOL ASSIGNMENTS

§ 21.066. Repealed by Acts 1979, 66th Leg., p. 1796, ch. 729, § 9, eff. June 13, 1979

§ 21.081. Transfer of Children of Employees of Texas Youth Council Facilities

A school age child of an employee of a facility of the Texas Youth Council is entitled to attend school in a school district adjacent to the district in which he resides free of any charge to his parents or guardian. Any tuition charge required by the admitting school district shall be paid by the school district from which the student transfers out of any funds appropriated to the facility by the legislature.

[Added by Acts 1977, 65th Leg., p. 1454, ch. 592, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1053, ch. 483, § 1, eff. June 7, 1979.]

SUBCHAPTER D. COURSES OF STUDY

§ 21.120. Economic Education

(a) This section shall be known and may be cited as the "Economic Education Act of 1977."

(b) As used in this section, the term "economic education" means citizenship competencies needed by the individual for effectively performing his decision-making roles as a consumer, a worker making career choices, and a voter on personal and societal economic issues.

(c) The purpose of this section is to insure the development of a comprehensive economic education program for all children in grades 1 through 12 in the public schools of this state. It is the legislative intent that this program shall teach a positive understanding of the American economy, how it functions, and how the individual can function effectively within our economy as a consumer, worker, and voter. While dealing with economic problems and issues, the program shall teach the positive values of a basically private-enterprise economy which underscores the worth and dignity of the individual.

(d) The Central Education Agency shall administer this section pursuant to regulations adopted by the State Board of Education. Support may be provided by the state senior colleges and universities in the pre-service preparation of teachers to carry out the provisions of this section. These institutions of higher education are also encouraged to establish formal economic education centers to assist the public schools with curriculum planning, in-service training, and further work in the development of instructional materials.

(e) In administering this section, the State Board of Education and the Central Education Agency shall:

(1) develop general guidelines and implement in-service education programs for teachers, administrators, and other personnel;

(2) implement provisions of this section in the most expeditious manner possible, commensurate with the availability of teaching personnel;

(3) implement local school system evaluation of the effectiveness of the economic education program prescribed by this section;

(4) recommend programs and short course seminars for the preparation of economic education teaching personnel; and

(5) require all Texas public high schools to give instruction on the essentials and benefits of the American economic system. The effective date for this section shall be September 1, 1978.

(f) The State Board of Education shall adopt regulations to insure the teaching of economic education to all pupils in grades 1 through 12 on a minimum time schedule of grades 10 through 12 by the 1978–79 school year, grades 7 through 9 by the 1979–80 school year, grades 4 through 6 by the 1980–81 school year, and grades 1 through 3 by the 1981–82 school year.

(g) In implementing this section, the State Board of Education shall make every effort to combine funds appropriated for this purpose with funds available from all other appropriate sources, public and private, in order to achieve maximum benefits for improving economic education.

(h) The Central Education Agency, at least 30 days prior to each regular session of the legislature, shall transmit to the members of the State Board of Education, the lieutenant governor, the speaker of the house of representatives, and the chairmen of the senate and house education committees, a report as to the status of the economic education program together with any recommendations for further improvement, modification, or additional legislation.
[Added by Acts 1977, 65th Leg., p. 1004, ch. 371, § 1, eff. Sept. 1, 1978.]

§ 21.121. American Sign Language

American Sign Language is recognized as a language and may be taught in public schools in educational programs for both hearing and deaf students.
[Added by Acts 1979, 66th Leg., p. 735, ch. 327, § 1, eff. Aug. 27, 1979.]

SUBCHAPTER F. SCHOOL BUSES

§ 21.163. Repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979

§ 21.165. Purchase Through Board of Control

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) If the requisition is for the purchase of a motor vehicle, bus, bus body, or bus chassis, it must be approved by either the county school board when funded under law or the board of trustees of a school district and by the commissioner of education.

(e) If the requisition is for the purchase of tires and tubes, it must be approved by the county superintendent or the chief administrative officer of a school district.

[See Compact Edition, Volume 1 for text of (f) and (g)]

[Amended by Acts 1979, 66th Leg., p. 1321, ch. 602, § 19, eff. Aug. 27, 1979.]

§ 21.167. Sale of Buses

When any school buses owned by any county or school district are to be sold, traded in, or otherwise disposed of, they must be disposed of by the Board of Control or by the county school trustees or the trustees of the school district under such rules and regulations as the Board of Control may provide.
[Amended by Acts 1979, 66th Leg., p. 1321, ch. 602, § 20, eff. Aug. 27, 1979.]

§ 21.170. Repealed by Acts 1979, 66th Leg., p. 1326, ch. 602, § 35(a), eff. Aug. 27, 1979

Prior to repeal, this section was amended by Acts 1979, 66th Leg., p. 603, ch. 279, §§ 1, 2, eff. May 24, 1979, by repealing subsec. (c) and deleting the last portion of the last sentence of subsec. (d).

§ 21.173. Standees

(a) Except as otherwise provided by this section, a school district that receives funding under Subsection (i) of Section 16.206 of this code may not require or allow a child to stand on a school bus that is in motion.

(b) A school district may apply to the commissioner of education for permission to operate a school bus with standees. If the commissioner finds good cause, the commissioner may order that the district be permitted to operate the school bus with standees.

(c) If a district's application under Subsection (b) of this section is not acted on within a reasonable amount of time as determined by rule of the State Board of Education permission to operate buses with standees is considered to have been granted without regard to subsequent action by the commissioner.

(d) A school district that operates a bus with standees under Subsection (b) or (c) of this section may not operate one or more buses with standees for more than a total of 10 days during any school year, and the district may not permit more than one child per seat to stand while a bus is in motion.

(e) The State Board of Education shall adopt rules necessary to carry out this section. The rules shall include guidelines describing situations that justify operation of a bus with standees and shall provide a mechanism that ensures that applications under Subsection (b) of this section are acted on without delay.
[Added by Acts 1979, 66th Leg., p. 1325, ch. 602, § 29, eff. Aug. 27, 1979.]

SUBCHAPTER H. RECORDS AND REPORTS

§ 21.256. Annual Audit; Report

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) A copy of the annual audit report, approved by the board of school trustees, shall be filed by the district with the Central Education Agency within 120 days of the close of the fiscal year for which audit was made. Where the board of trustees declines or refuses to approve its auditor's report, it shall nevertheless file with the Central Education Agency a copy of the audit report with its statement detailing reasons for failure to approve same.

[See Compact Edition, Volume 1 for text of (e) and (f)]

[Amended by Acts 1977, 65th Leg., p. 1378, ch. 549, § 1, eff. June 15, 1977.]

SUBCHAPTER I. DISCIPLINE, LAW AND ORDER

§ 21.301. Suspension of Incorrigible Pupil

(a) The board of trustees of any school district may suspend from the privileges of the schools any pupil found guilty of incorrigible conduct, but such

suspension shall not extend beyond the current term of the school.

(b) A teacher may remove a pupil from class in order to maintain effective discipline in the classroom. The principal shall respond by employing disciplinary alternatives consistent with local policy.

(c) A teacher may recommend for suspension, and remove from class immediately, any pupil who assaults that teacher on school property as defined in Section 4.23(b) of this code, or has been documented in that teacher's opinion to repeatedly interfere with that teacher's ability to communicate effectively with the majority of students in the class.

(d) Upon a recommendation for suspension under Subsection (c) of this section, the principal shall schedule a hearing within three class days following the pupil's removal between the principal, or a designated representative, a parent or guardian of the pupil, the teacher, and the pupil. Following the hearing, and whether or not all requested parties are in attendance after valid attempts to require their attendance, the principal shall:

(1) suspend the pupil from the privileges of the schools for any period of time consistent with local policy, but not beyond the current term of school; or

(2) suspend the pupil from the class for any period of time not to extend beyond the current term of school; or

(3) place the pupil back in that class. If the pupil commits a second offense under this section, the pupil may be removed from that class immediately by the teacher, and following the teacher's recommendation for suspension may not return to that class during the current term of school without the teacher's approval. The recommendation of the teacher may only be reversed by action of the superintendent at the request of the principal. Upon any third or subsequent offense under this section by the same pupil, only the board of trustees may return that pupil to that class during the current term of school after the teacher's recommendation has been reversed by the principal and superintendent.

(e) Regardless of the decision at any hearing, any party may appeal the decision to the superintendent of schools and thereafter, if desired, to the board of trustees.

[Amended by Acts 1979, 66th Leg., p. 1130, ch. 541, § 1, eff. Aug. 27, 1979.]

SUBCHAPTER L. BILINGUAL EDUCATION

§ 21.453. Establishment of Bilingual Programs

[See Compact Edition, Volume 1 for text of (a)]

(b) Each school district which has an enrollment of 20 or more children of limited English-speaking ability in any language classification in the same grade level during the preceding scholastic year, and which does not have a program of bilingual instruction which accomplishes the state policy of facilitating integration into the regular school curriculum as set out in Section 21.451 of this article, shall institute a program of bilingual instruction for the children in each language classification in kindergarten, first grade, and second grade by the 1975–76 school year and also in the third grade by the 1976–77 school year. Bilingual instruction may be offered in the fourth and fifth grades for students who have not progressed sufficiently to participate in the regular school curriculum. Any bilingual program beyond the fifth grade shall be at the expense of the respective local school district. The board may establish a program with respect to a language classification with less than 20 children.

[Amended by Acts 1975, 64th Leg., p. 897, ch. 334, § 6, eff. Sept. 1, 1975.]

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

§ 21.901. Contracts—Competitive Bidding

(a) Except as provided in Subsection (e) of this section, all contracts proposed to be made by any Texas public school board for the purchase of any personal property shall be submitted to competitive bidding, if the average daily attendance during the previous school year in that school district exceeded 3,000 pupils, when said property is valued at $5,000 or more, and if the average daily attendance during the previous school year in that school district was 3,000 pupils or less, when said property is valued at $2,000 or more.

(b) Except as provided in Subsection (e) of this section, all contracts proposed to be made by any Texas public school board for the construction, maintenance, repair or renovation of any building or for materials used in said construction, maintenance, repair or renovation, shall be submitted to competitive bidding, if the average daily attendance during the previous school year in that school district exceeded 3,000 pupils, when said contracts are valued at $5,000 or more, and if the average daily attendance during the previous school year in that school district was 3,000 pupils or less, when said property is valued at $2,000 or more.

[See Compact Edition, Volume 1 for text of (c)]

(d) Notice of the time when and place where such contracts will be let and bids opened shall be published in the county where the purchasing school is located, once a week for at least two weeks prior to the time set for letting said contract and in two other newspapers that the school board may designate. Provided, however, that on contracts involv-

ing less than $25,000, such advertising may be limited to two successive issues of any newspaper published in the county in which the school is located, and if there is no newspaper in the county in which the school is located, then said advertising shall be for publication in some newspaper in some county nearest the county seat of the county in which the school is located.

(e) If a school building or school equipment is destroyed or severely damaged, and the school board determines that the time delay posed by the competitive bidding process would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of such building or equipment may be made without resort to competitive bidding as otherwise required by this section.

[Amended by Acts 1977, 65th Leg., p. 1224, ch. 472, §§ 1, 2, eff. Aug. 29, 1977.]

§ 21.911. Financial Support for Instructional Television Services

Renumbered as § 21.915

§ 21.913. Duties of Public School Principals

(a) Public school principals, who shall hold valid administrative certificates, shall be responsible for:

(1) assuming administrative responsibility and instructional leadership, under the supervision of the superintendent, for discipline, and the planning, operation, supervision, and evaluation of the educational program of the membership area in which he is assigned;

(2) submitting recommendations to the superintendent concerning assignment, evaluation, promotion, and dismissal of all personnel assigned to the membership center; and

(3) performing any other duties assigned by the superintendent pursuant to school board policy.

(b) Nothing herein shall be construed as a limitation on the powers, responsibilities, and obligations of the school board as now prescribed by law.

[Added by Acts 1975, 64th Leg., p. 896, ch. 334, § 5, eff. Sept. 1, 1975.]

§ 21.914. Administering of Medication by School District Employees; Immunity From Liability

Text as added by Acts 1977, 65th Leg., p. 1268, ch. 491, § 1

(a) As used in this section, "employees" means superintendents, principals, classroom teachers, supervisors, counselors, registered nurses, teachers aides, secretaries, or any other classified person employed by a school district.

(b) The board of trustees of each school district shall adopt policies concerning the administering of medication to students by employees of the district.

(c) On the adoption of policies as provided in Subsection (b) of this section, the school district, its board of trustees, and its employees shall have immunity from civil liability from damages or injuries resulting from the administering of medication to a student, if:

(1) the school district has received a written request to administer the medication from the parent, legal guardian, or other person having legal control of the student; and

(2) when administering prescription medication, the medication appears to be in the original container and to be properly labeled.

(d) Nothing herein shall be construed to grant immunity from civil liability for injuries resulting from gross negligence.

[Added by Acts 1977, 65th Leg., p. 1268, ch. 491, § 1, eff. June 15, 1977. Amended by Acts 1979, 66th Leg., p. 1072, ch. 502, § 1, eff. June 7, 1979.]

For text as added by Acts 1977, 65th Leg., p. 2019, ch. 807, § 1, see § 21.914, post

§ 21.914. Breakfast Programs

Text as added by Acts 1977, 65th Leg., p. 2019, ch. 807, § 1

If at least 10 percent of the students enrolled in one or more schools in a school district are eligible for free or reduced-price breakfasts under the national school breakfast program provided for by the Child Nutrition Act of 1966 (42 U.S.C. Subsection 1773), the governing board of the district shall participate in the program and make the benefits of the program available to all eligible students in said schools.

[Added by Acts 1977, 65th Leg., p. 2019, ch. 807, § 1, eff. Aug. 29, 1977.]

For text as added by Acts 1977, 65th Leg., p. 1268, ch. 491, § 1, see § 21.914, ante

Section 2 of the 1977 Act provided:

"This Act is effective for the 1978–1979 school year and thereafter for school districts with food service facilities. The effective date of this Act for other school districts shall be the 1981–1982 school year and thereafter."

§ 21.915. Financial Support for Instructional Television Services

(a) Any school district of this state classified common, independent school district or rural high school district whose governing board elects to contract for and utilize instructional television programs and services as an integral part of its classroom instruction with noncommercial FCC licensed stations and other nonprofit originating video communication systems to provide programs and instructional television utilization services shall, upon application and pursuant to regulations prescribed by the Central Education Agency, be reimbursed for such costs from state funds to the extent herein authorized. The regulations shall contain provisions whereby the

local board of trustees may, at their option, become the prime fiscal agent and contract with noncommercial FCC licensed stations and other nonprofit originating video communication systems in order to permit development of instructional television programs specifically designed to enhance the local district's instructional program.

(b) The annual cost of such television service programs of the district shall be borne by the state but shall not exceed $1.50 per pupil determined on the Average Daily Attendance (ADA) of the district for the preceding school year.

(c) The state's cost shall be paid from the foundation school fund, and this cost shall be considered by the Foundation School Fund Budget Committee in estimating the funds needed for foundation school program purposes.

(d) The commissioner of education shall appoint an advisory committee to make recommendations regarding governance, planned needs, criteria for establishing eligibility, and a process for program and fiscal accountability under this section. This advisory committee shall include representation from each instructional FCC licensed television broadcasting service and representation of educational consumers.

(e) Combined expenditures under this section for each year may not exceed $1,625,000.

[Renumbered from § 21.911 and amended by Acts 1977, 65th Leg., 1st C.S., p. 45, ch. 1, § 29, eff. Sept. 1, 1977.]

§ 21.916. Use of Private Employment Agencies

(a) A school district may not list employment opportunities with a private employment agency and may not pay a fee to a private employment agency for the referral of potential employees.

(b) A school district may not employ in any position an applicant who is referred to the district for employment by a private employment agency. Any contract between the district and an applicant who is referred to the district by a private employment agency is void.

(c) In this section, "private employment agency" means a private employment agency subject to Chapter 245, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 5221a–6, Vernon's Texas Civil Statutes).[1]

[Added by Acts 1979, 66th Leg., p. 1047, ch. 477, § 1, eff. Aug. 27, 1979.]

[1] Repealed; see, now, Civil Statutes, art. 5221a–7.

CHAPTER 22. COMMON SCHOOL DISTRICTS

§ 22.08. Powers and Duties of Common Consolidated School District Trustees

[See Compact Edition, Volume 1 for text of (a) to (e)]

(f) The trustees of a common or common consolidated school district may dismiss teachers or other employees, but a teacher or other official dismissed shall have the right of appeal to the commissioner of education.

[See Compact Edition, Volume 1 for text of (g)]

(h) The amount contracted by trustees to be paid a teacher or other employee shall be paid on a check drawn on the county depository for the district, signed or drawn upon order authorized by a majority of the trustees of the district.

(i) The trustees of a common or common consolidated school district shall supply all information required of them by the Central Education Agency for the proper operation of the foundation school program within the district or for carrying out the objectives of the Central Education Agency.

[Amended by Acts 1979, 66th Leg., p. 1796, ch. 729, §§ 4 to 6, eff. June 13, 1979.]

§ 22.09. Repealed by Acts 1979, 66th Leg., p. 1796, ch. 729, § 9, eff. June 13, 1979

§ 22.10 Acquisition and Sale of School Property

(a) The trustees of a common school district may contract for the erection of school buildings, provided that;

[See Compact Edition, Volume 1 for text (a)(1) and (a)(2)]

(3) payment shall be made by the district trustees; and

[See Compact Edition, Volume 1 for text of (a)(4)]

(b) The trustees of a common or common consolidated school district may sell any property belonging to the school district, provided that the proceeds of the sale must be used to purchase necessary grounds or to build or repair school buildings or be placed to the credit of the local maintenance school fund of the district.

[Amended by Acts 1979, 66th Leg., p. 1796, ch. 729, §§ 7, 8, eff. June 13, 1979.]

§ 22.11. Taxation

[See Compact Edition, Volume 1 for text of (a)]

(b) All property appraised for school purposes in a common or common consolidated school district shall be appraised at the same value as that property is appraised for state and county purposes, but the property may be assessed at a percentage of appraised value other than that used for state and county purposes if that action has been authorized at an election held for that purpose.

[See Compact Edition, Volume 1 for text of (c) to (f)]

Text of subsection effective January 1, 1982

(g) The county tax collector shall collect taxes levied upon the property of a common or common consolidated school district and shall pay all such taxes to the county treasurer.

[For text of subsection effective until January 1, 1982, see Compact Edition, Volume 1]

[See Compact Edition, Volume 1 for text of (h)]

[Amended by Acts 1975, 64th Leg., p. 1308, ch. 491, § 2, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 2320, ch. 841, §§ 4(m), 6(a)(2), eff. Jan. 1, 1982.]

Repeal

Subsections (b), (d) and (f) of this section are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 22.12. Common or Common Consolidated County-Line School Districts

Repeal

Subsection (g) of this section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER 23. INDEPENDENT SCHOOL DISTRICTS

SUBCHAPTER A. INDEPENDENT SCHOOL DISTRICTS

Section
23.022. Districts With Fewer Than 150 Students.
23.023. Districts With 66,000 or More Scholastics.

SUBCHAPTER A. BOARD OF TRUSTEES

§ 23.01. Number of Trustees

The public schools of an independent school district shall be under the control and management of a board of seven trustees.

[Amended by Acts 1978, 65th Leg., 2nd C.S., p. 16, ch. 7, § 5, eff. Aug. 14, 1978.]

§ 23.02. Repealed by Acts 1978, 65th Leg., 2nd C.S., p. 17, ch. 7, § 14, eff. Aug. 14, 1978

See, now, § 23.022.

§ 23.022. Districts With Fewer Than 150 Students

(a) In accordance with this section, an independent school district with fewer than 150 students in gross average daily attendance may be governed by a board of three or five trustees.

(b) If at least 10 percent of the registered voters of the district sign and present to the board a petition requesting submission to the voters of the proposition that the district be governed by a board of three trustees or by a board of five trustees, the board shall order the proposition placed on the ballot at the next regular school board election. The petition must be presented before the 25th day preceding the election at which the proposition is to be submitted and must specify the number of trustees sought to govern the district.

(c) The board of trustees on its own motion may order by resolution that the proposition that the district shall be governed by a board of three trustees or by a board of five trustees be placed on the ballot at the next regular school board election. The order must be entered before the 25th day preceding the election at which the first three-member or five-member board is to be elected.

(d) Approval of the proposition is by majority vote. If the proposition is approved, the district shall be governed by a board of three or five trustees, as applicable, beginning with the next following regular school board election.

(e) At the first election following approval of a proposition, that the district shall be governed by a board of three or five trustees, all positions on the board shall be filled. If the board is to be composed of three trustees, the trustees then elected shall draw lots so that one member shall serve for a term of one year, one shall serve for a term of two years, and one shall serve for a term of three years. If the board is to be composed of five trustees, the trustees then elected shall draw lots so that one member will serve for a term of one year, two shall serve for terms of two years, and two shall serve for terms of three years. Thereafter, one or two members, as applicable, shall be elected annually to a term of three years.

(f) In an independent school district with a board of three trustees or a board of five trustees, the ballot shall be prepared and the election shall be conducted in the same manner as provided by this chapter for other independent school districts.

(g) An independent school district that adopts a three-member or a five-member board of trustees as provided by this section shall remain governed by a board of that size even if the gross average daily attendance increases to 150 or more students. If the attendance so increases, the membership of the board may be increased to seven members in the manner provided for special law districts under Section 23.021 of this code.

[Amended by Acts 1979, 66th Leg., p. 1786, ch. 725, § 1, eff. Aug. 27, 1979.]

§ 23.023. Districts With 66,000 or More Scholastics

(a) Any independent school district, whether created by special or general law, with 66,000 or more students in average daily attendance for the 1975–

1976 school year or thereafter shall be under the management and control of a board of nine trustees elected in accordance with the provisions of this section.

(b) At all elections held after December 31, 1977, seven members of the board of trustees shall be elected by the qualified voters of single-member districts and two members, who shall be the president and vice-president of the board, shall be elected at large.

(c) At least 120 days before the school board election to be held in April, 1978, the board shall divide the school district into seven trustee districts which are compact, contiguous, and contain as nearly as practicable an equal population according to the last preceding federal decennial census.

(d) Except as provided for the initial election under single-member districts, a candidate seeking to represent a trustee district must reside in the district he seeks to represent, and vacates his office if he ceases to reside in that district. A candidate for president or vice-president may seek election to only one position and shall be designated on the official ballot according to the position for which he seeks election. A candidate for president or vice-president must reside in the school district, and vacates his office if he ceases to reside in the district.

(e) The candidate receiving a majority of the votes cast in each position is elected. If no candidate receives a majority of the votes cast for that position, the board shall order a runoff to be held on the third Saturday in April immediately following the first election, and only the names of the two candidates receiving the highest number of votes in the first election shall be listed on the ballot. The candidate receiving the majority of the votes cast in the runoff election is elected.

(f) A member of the board may resign his position to seek election to the office of president or vice-president.

(g) At least 120 days before an election to be held in the second year following the calendar year in which the federal decennial census is taken, the board shall redivide the district into seven trustee districts if the census data indicate that the population of the most populous district exceeds the population of the least populous district by more than 10 percent.

(h) In districts with seven board members on January 1, 1978, members of the board serving on that date shall serve for the remainder of their terms, except those choosing to resign. At the election held in April, 1978, four members shall be elected—the president, vice-president, and two regular members. The president and vice-president then elected shall serve for a term of two years. The other two members then elected shall draw lots so that one will serve for a term of two years, and one will serve for a term of four years. The five members of the board holding the offices for which there was no election shall draw lots to determine which trustee district they will represent during the remainder of their terms. Thereafter, all members shall be elected to staggered terms of four years.

(i) A school district having 66,000 or more students in average daily attendance for the 1975–1976 school year or thereafter which has previously adopted single-member district representation may continue to operate under that plan.

(j) This section does not apply to a district with 66,000 or more students in average daily attendance for the 1975–1976 school year or thereafter all or part of which is located in a city with a population of between 600,000 and 700,000 according to the 1970 federal census.

(k) A school district with less than 66,000 students in average daily attendance for the 1975–1976 school year that later becomes subject to this section shall begin electing trustees from single-member districts in accordance with this section no later than the first regular election following the next calendar year in which the federal census is taken. A school district subject to this section whose average daily attendance drops below 66,000 students shall continue to be governed by this section.

[Added by Acts 1977, 65th Leg., p. 2134, ch. 852, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act provides:

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Section 3 of the 1977 Act, the emergency clause, provides in part:

"The legislature finds:

"(1) that in the school districts with the largest number of students, the at-large election of all members of the board of trustees increases the number of constituents represented by each trustee and hinders communication between the trustee and the constituents, and therefore makes the representation of those constituents less effective;

"(2) that in the school districts with the largest number of students, the at-large election of all members of the board of trustees may work to dilute the voting power of identifiable ethnic groups;

"(3) that in structuring solutions to the dilution of ethnic group voting power, the federal courts have decided that preference should be given to some form of single-member district representation; and

"(4) that the need for increasing the effectiveness of political representation, preserving the voting power of all ethnic groups, complying with the preference for single-member district representation, and assuring the participation of all people in the political process creates an emergency * * *."

§ 23.03. Application to Get on Ballot

(a) Applications of candidates for a place on the ballot shall be filed not less than 30 days prior to the day of the election, and no candidate shall have his name printed on said ballot unless there has been compliance with the provisions of this section.

(b) Candidates for office of trustee of an independent school district must file their applications with the secretary of the school board of trustees.

(c) In those districts in which the positions on the board of trustees are authorized to be designated by number, as provided in Section 23.11 of this code, each applicant shall also state the number of the

position for which he is filing as candidate. No candidate shall be eligible to have his name placed on the official ballot under more than one position to be filled at such election.

(d) In those districts in which the positions on the board of trustees are not authorized to be designated by number, it shall not be necessary for an applicant to state which other candidate, if any, he is opposing.
[Amended by Acts 1978, 65th Leg., 2nd C.S., p. 16, ch. 7, § 6, eff. Aug. 14, 1978.]

§ 23.05. Repealed by Acts 1978, 65th Leg., 2nd C.S., p. 17, ch. 7, § 14, eff. Aug. 14, 1978

§ 23.06. Ballots

(a) Ballots for the election of school trustees for independent school districts shall be prepared as ordered by the trustees of the district and must fulfill the requirements of this section.

(b) The ballots must be of uniform style and dimension and must be of the stub type provided for in the general election laws.

(c) The ballots must be printed with black ink on clear white paper of sufficient thickness to prevent the marks thereon from being seen through the paper.

(d) The ballots shall have printed at the top, "Official Ballot, ---------- Independent School District," specifying the name of the school district.

(e) The names of all eligible persons who have properly qualified as candidates for school trustee of the district shall be included, and if the positions on the board are designated by number as provided in Section 23.11 of this code, the position for which each person is a candidate shall be clearly shown.
[Amended by Acts 1978, 65th Leg., 2nd C.S., p. 16, ch. 7, § 7, eff. Aug. 14, 1978.]

§ 23.10. Returns; Canvass

The election returns certified to by the election officers shall be made to the board of school trustees which shall canvass the returns, declare the results of the election, and issue certificates of election to the persons shown to be elected.
[Amended by Acts 1978, 65th Leg., 2nd C.S., p. 16, ch. 7, § 8, eff. Aug. 14, 1978.]

§ 23.11. Election by Position

[See Compact Edition, Volume 1 for Text of (a) and (b)]

(c) The positions on the board of trustees shall be designated by number in any independent school district in which the board of trustees, by appropriate action as specified below, orders that all candidates for trustee be voted upon and elected separately for positions on the board of trustees and that all candidates be designated on the official ballot according to the number of the positions for which they seek election.

[See Compact Edition, Volume 1 for text of (d) to (h)]

[Amended by Acts 1978, 65th Leg., 2nd C.S., p. 17, ch. 7, § 9, eff. Aug. 14, 1978.]

§ 23.12. Districts Converted from Common School Districts

(a) This section shall apply to any independent school district incorporated under the provisions of Subchapter G, Chapter 19 of this code or reclassified under Section 17.99 of this code, having a board of seven trustees whereunder in alternate years four trustees are elected for two-year terms and three trustees are elected for two-year terms.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1978, 65th Leg., 2nd C.S., p. 17, ch. 7, § 10, eff. Aug. 14, 1978.]

SUBCHAPTER D. TREASURER OR DEPOSITORY

§§ 23.61 to 23.64. Repealed by Acts 1979, 66th Leg., p. 2173, ch. 829, § 3, eff. Aug. 27, 1979

Prior to repeal, § 23.61 was amended by Acts 1978, 65th Leg., 2nd C.S., p. 17, ch. 7, § 11.

SUBCHAPTER E. SCHOOL DEPOSITORY ACT

§ 23.71. Short Title

This subchapter may be cited as the School Depository Act.
[Amended by Acts 1979, 66th Leg., p. 2167, ch. 829, § 2, eff. Aug. 27, 1979.]

§ 23.72. Selection of Depository

The school depository or depositories of every independent school district shall be selected only as provided by this subchapter.
[Amended by Acts 1978, 65th Leg., 2nd C.S., p. 17, ch. 7, § 12, eff. Aug. 14, 1978; Acts 1979, 66th Leg., p. 2167, ch. 829, § 2, eff. Aug. 27, 1979.]

§ 23.73. Definitions

As used in this Act, unless otherwise clearly indicated by the context:

(1) "School district" means any public independent school district.

(2) "Bank" means a state bank authorized and regulated under the laws of the state pertaining to banking and in particular authorized and regulated by the Banking Department Self-Support and Administration Act,[1] or a national bank authorized and regulated by federal law, but does not include any bank the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(3) "Time Deposit," including "time certificate," "certificate of deposit," and "time deposit-open account," have the same definitions as adopted for said terms by the Board of Governors of the Federal Reserve System.

(4) "Approved securities" means:

(A) bonds of the State of Texas, bonds of the counties of the State of Texas, bonds of school districts of the State of Texas, bonds of any town or city of the State of Texas, and bonds of any agency, district or political subdivision of the State of Texas; or

(B) all evidences of indebtedness legally issued by the board of trustees of the depositing school district, all debt securities which are a direct obligation of the treasury of the United States, all debt securities except reducing principal balance securities the principal of which is unconditionally guaranteed in the event of default by the full faith and credit of the United States, and those securities provided for by Article 842, Revised Civil Statutes of Texas, 1925, as amended, and Section 1, Chapter 160, General Laws, Acts of the 43rd Legislature, 1933, as amended (Article 842a, Vernon's Texas Civil Statutes).

[Amended by Acts 1978, 65th Leg., 2nd C.S., p. 17, ch. 7, § 13, eff. Aug. 14, 1978; Acts 1979, 66th Leg., p. 2167, ch. 829, § 2, eff. Aug. 27, 1979.]

[1] See Civil Statutes, art. 342-101A et seq.

§ 23.74. Depository Must be a Bank

A school depository under the terms and provisions of this subchapter shall be a bank located in the State of Texas.

[Amended by Acts 1979, 66th Leg., p. 2167, ch. 829, § 2, eff. Aug. 27, 1979.]

§ 23.75. Trustee as Stockholder, Etc., of Bank

In the event a member of the board of trustees of a school district is a stockholder, officer, director, or employee of a bank, said bank shall not be disqualified from bidding and becoming the school depository of said school district provided said bank is selected by a majority vote of the board of trustees of said school district or a majority vote of a quorum when only a quorum eligible to vote is present. Common law rules in conflict with the terms and provisions of this Act are hereby modified as herein provided. If a member of the board of trustees of a school district is a stockholder, officer, director, or employee of a bank that has bid to become a depository for said school district, said member of said board of trustees shall not vote on the awarding of a depository contract to said bank and said school depository contract shall be awarded by a majority vote of said trustees as above provided who are not either a stockholder, officer, director, or employee of a bank receiving a school district depository contract.

[Amended by Acts 1979, 66th Leg., p. 2167, ch. 829, § 2, eff. Aug. 27, 1979.]

§ 23.76. Term; Bond or Pledge of Securities

The depository bank when selected shall serve for a term of two years and until its successor shall have been duly selected and qualified, and shall give bond or pledge approved securities as hereinafter provided. Said term shall commence and terminate on the fiscal year of odd-numbered years. No premium on any depository bond shall be paid out of funds of the school district.

[Amended by Acts 1979, 66th Leg., p. 2167, ch. 829, § 2, eff. Aug. 27, 1979.]

Section 4 of the 1979 amendatory act provided:

"A school district that on the effective date of this Act has a contract with a depository bank that terminates in an even-numbered year may select a depository bank to serve a term ending at the end of the fiscal year of the next odd-numbered year even though the term of the service as a depository is for less than two years. Thereafter, the term of service as a depository bank shall be in accordance with Section 23.76, Texas Education Code, as amended."

§ 23.77. Bid Notices; Bid Form

(a) The board of trustees of each school district shall, at least 30 days prior to the termination of the then current depository contract, mail to each bank located in said district and, if desired, to other banks, a notice stating the time and place in which bid applications will be received for selecting a school depository or depositories. Attached to said notice shall be a uniform bid blank which shall be substantially in the following form:

Board of Trustees, _____ Independent School District

Members of the Board:

The undersigned, a state or national banking corporation the deposits of which are insured by the Federal Deposit Insurance Corporation, hereinafter called bidder, for the privilege of acting as Depository of the _____ Independent School District of _____ County, Texas, hereinafter called District, for a term of two years, beginning ____, 19__, and ending ____, 19__, and for the further privilege of receiving all funds or only certain funds to be designated by the District if more than one depository is selected, at the District's option to place on demand deposit or interest bearing time deposits as provided in the School Depository Act, and with the full understanding that the District reserves the right to invest its funds from time to time as permitted by law, bidder will pay and charge District as follows:

1. (A) ____% interest per annum compounded ____ on time deposits not exceeding $____ and having a maturity date ____ days after the date of deposit or payable upon written notice of a like number of days;

(B) ____% interest per annum compounded ____ on time deposits exceeding $____ and having a maturity date ____ days after the date of deposit or payable upon written notice of a like number of days;

(C) ____% interest per annum compounded ____ on time deposits not exceeding $____ and having a maturity date ____ months after the date of deposit or payable upon written notice of a like number of months;

(D) ____% interest per annum compounded ____ on time deposits exceeding $____ and having a maturity date ____ months after the date of deposit or payable upon written notice of a like number of months.

2. ____% interest per annum compounded ____ on time deposits having a maturity date less than 90 days after the date of deposit or payable upon written notice of less than 90 days.

3. ____% interest per annum to be paid by District to Bidder on overdrafts or their equivalent. (Overdraft as used in this paragraph shall mean that District does not have a compensating balance in other District funds or accounts in Bidder's bank equaling or exceeding overdrafts in a District fund or account. The amount of an overdraft shall be determined by adding all of the District's noninterest bearing funds or noninterest bearing accounts in the Bidder's bank at the close of business each day.)

4. Bidder will charge District $____ for keeping District's deposit records and accounts for the period covered by this bid. Included in and required as a part of this duty are the following:

(A) Preparation of monthly statements showing debits, credits and balance of each separate fund.

(B) Keeping a full and separate itemized account of each different class of school funds coming into its hands and making its records available for audit by the District, its independent auditors, and the Central Education Agency.

(C) Preparation of such other reports, accounts and records which may, from time to time, be required by District in order that it may properly fulfill its fiscal duties.

(D) Furnishing of the quantity, quality and type of checks necessary for District's use during the period for which this bid is submitted.

5. District reserves the right to invest any and all of its funds as permitted by Sections 20.42 and 23.80 of this code. Bidder will and shall aid and assist District in any permitted investment without charge.

6. Bidder shall furnish to District a bond in the amount and conditioned as provided in The School Depository Act, or in lieu thereof shall pledge approved securities in an amount sufficient as provided in this subchapter, delivering to the District either the securities pledged or safekeeping receipts for them, properly marked to show the pledge, and shall deliver to the Central Education Agency photocopies of the safekeeping receipts. District reserves the right to approve or reject the securities so pledged. Bidder shall have the right and privilege of substituting approved securities upon obtaining the approval of District, provided the total amount of approved securities deposited is adequate as herein provided.

7. This bid was requested by District and is made by Bidder with the expressed agreement and understanding that District reserves the right to reject any and all bids and the further right that if any portion or provision of this bid and/or any contract between Bidder and District entered into by virtue thereof is invalid, the remainder of this bid and/or resulting contract at the option of the District shall remain in full force and effect, and not be affected by said invalid portion or provision.

8. Attached hereto is a Cashier's Check in the sum of $____ payable to the _____ Independent School District. If this bid to be Depository of all District funds or to be Depository of only a designated amount of said funds is accepted, said check is to secure the performance of said bid, and if Bidder fails to enter into a contract with District as provided in this bid, then said check shall be cashed by District as liquidated damages for said failure. If the Bidder enters into a contract with the District, the District shall return the check to the Bidder. In the event this bid is not accepted, the check is to be returned to the Bidder immediately after the contract award is made.

DATED this the ____ day of _____, 19__.

BIDDER _____

BY _____

TITLE _____

(b) The school district may add other terms and conditions to the uniform bid blank, provided that the other terms and conditions do not unfairly restrict competition between banks in or near the territory of the school district.

(c) Interest rates may be stated in the bid either as a fixed rate, as a percentage of a stated base rate, in relation to a stated prevailing rate varying from time to time, or in any other manner, but in every case a uniform manner, which will permit comparison with other bids received.

[Amended by Acts 1979, 66th Leg., p. 2167, ch. 829, § 2, eff. Aug. 27, 1979.]

§ 23.78. Award of Contract

(a) If tie bids are received for said school depository contract and each of said tie bidders has bid to pay the school district the maximum interest rates allowed by law by the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation, and said tie bids are otherwise equal in the judgment and discretion of the board of trustees of said school district and two or more of said tie bidders in the judgment and discretion of said school district have the facilities and ability to render the necessary services of school depository for said school district, said board of trustees may award said depository contract in accordance with any one of the following methods:

(1) Award said contract, at the discretion of the board of trustees, to any one of said tie bidders;

(2) Determine by lot which of said tie bidders shall receive said depository contract; or

(3) Award a depository contract to each of said tie bidders or to as many of said tie bidders as the board of trustees may select.

(b) Said board of trustees shall have the discretion from time to time during the period of said contract to determine the amount of funds to be deposited in each of said depository banks and to determine the account services offered in the bid form which are to be rendered by each of said banks in its capacity as school depository. Provided, however, that all funds received by the district from or through the Central Education Agency shall be deposited and retained in one depository bank to be designated by the district as its depository for said funds.

(c) The board of trustees of the school district shall at a regular meeting or special meeting consider all bids received in accordance with the terms and provisions of the above-mentioned procedure; and in determining the highest and best bid, or in case of tie bids as above provided the highest and best tie bids, said board of trustees shall consider the interest rate bid on time deposits, charge for keeping district accounts, records, and reports and furnishing checks, and the ability of the bidder to render the necessary services and perform the duties as school depository, together with all other matters which in the judgment of said board of trustees would be to the best interest of said school district. The board of trustees of said school district shall have the right to reject any and all bids.

[Amended by Acts 1979, 66th Leg., p. 2167, ch. 829, § 2, eff. Aug. 27, 1979.]

§ 23.79. Depository Contract; Bond

(a) The bank or banks selected as school depository or depositories in accordance with the terms and provisions of this Act, and the school district shall make and enter into a depository contract or contracts, bond or bonds, or such other necessary instruments setting forth the duties, responsibilities, and agreements pertaining to said depository, in a form and with the content prescribed by the Central Education Agency, attaching to the contract and incorporating in the contract by reference the bid of the depository, and said depository bank shall attach to said contract and file with the school district a bond in an initial amount equal to the estimated highest daily balance to be determined by the board of trustees of the district of all deposits which the school district will have in said depository during the term of the depository contract, less any applicable Federal Deposit Insurance Corporation insurance. Said bond shall be payable to the school district and shall be signed by said depository bank and by some surety company authorized to do business in the state. The depository bank shall increase the amount of the bond if the board of trustees determines it to be necessary to adequately protect the funds of the school district deposited with the depository bank.

(b) Said bond shall be conditioned for the faithful performance of all duties and obligations devolving by law upon said depository, and for the payment upon presentation of all checks or drafts upon order of the board of trustees of said school district, in accordance with its orders duly entered by said board of trustees according to the laws of the State of Texas; for the payment upon demand of any demand deposit in said depository; for the payment after the expiration of the period of notice required, of any time deposit in said depository; and that said school funds shall be faithfully kept by said depository and accounted for according to law and shall faithfully pay over to the successor depository all balances remaining in said accounts. Said bond and the surety thereon shall be approved by the board of trustees of said school district and a copy of said depository contract and bond shall be filed with the State Department of Education.

(c) In lieu of the above-mentioned bond, the depository bank shall have the option of depositing or pledging with the school district, or with a trustee designated by the school district, approved securities in an amount sufficient to adequately protect the funds of school district deposited with depository bank. The school district shall designate from time to time the amount of approved securities to adequately protect district. The district may not designate an amount less than the balance of school district funds on deposit with the depository bank from day to day, less any applicable Federal Deposit Insurance Corporation insurance. The depository bank shall have the right and privilege of substituting approved securities upon obtaining the approval of the school district. For the purposes of this

subsection, the approved securities shall be valued at their market value.

[Amended by Acts 1979, 66th Leg., p. 2167, ch. 829, § 2, eff. Aug. 27, 1979.]

§ 23.80. Investment of District Funds

The school district shall have the right to provide in its bid blank for the right to place on time deposits with savings and loan institutions located within the State of Texas only funds that are fully insured by the Federal Savings and Loan Insurance Corporation, but no district may place on deposit with any savings and loan institution any bond or certificate of indebtedness proceeds as provided by Section 20.42 of this code. The school district is entitled to invest any and all of its funds in direct debt securities of the United States of America or other types of bonds, securities, warrants, etc., which the district is authorized by law to invest in. No depository bank selected under this subchapter may be compelled without its consent to accept on time deposit any bond proceeds under Section 20.42 of this code, but a depository shall be permitted to offer a bid of interest equaling the highest bid of interest for the time deposit of the bond proceeds tendered by another bank. If the depository bank equals the bid, it is entitled to receive the bond proceeds on time deposit.

[Amended by Acts 1979, 66th Leg., p. 2167, ch. 829, § 2, eff. Aug. 27, 1979.]

§§ 23.81, 23.82. Deleted by Acts 1979, 66th Leg., p. 2167, ch. 829, § 2, eff. Aug. 27, 1979

SUBCHAPTER F. ASSESSMENT AND COLLECTION OF TAXES

§ 23.91. Assessor and Collector: Powers and Duties

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 23.93. Assessor-Collector Appointed by Board

Repeal

Subsections (b), (c) and (d) of this section are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 23.94 Designation of County Tax Assessor-Collector

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 23.95. Appointment of Assessor Only

[See Compact Edition, Volume 1 for text of (a)]

Text of subsection effective January 1, 1982

(b) The assessor of taxes shall assess the taxable property within the limits of the independent school district and shall prepare the tax rolls of the district and sign and certify them to the county or city officer designated to collect the taxes.

For text of subsection effective until January 1, 1982, see Compact Edition, Volume 1

[See Compact Edition, Volume 1 for text of (c) to (f)]

[Amended by Acts 1979, 66th Leg., p. 2320, ch. 841, §§ 4(n), 6(a)(2), eff. Jan. 1, 1982.]

Repeal

Subsection (e) of this section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 23.96. Assessment and Collection by City

Text of section effective January 1, 1982

(a) Any independent school district located entirely or partly within the boundaries of an incorporated city or town may authorize, by ordinance or resolution, the tax assessor and tax collector of the municipality in which it is located, entirely or partly, to act as tax assessor and tax collector, respectively, for the district.

(b) When the ordinance or resolution is passed making available their services, said assessor shall assess the taxes for and perform the duties of tax assessor for the independent school district; and the collector shall collect the taxes and assessments for and shall perform the duties of tax collector of the independent school district.

(c) In all matters pertaining to such assessments and collections the tax assessor and tax collector shall be authorized to act as and shall perform respectively the duties of tax assessor and tax collector of the independent school district.

(d) When the tax assessor and tax collector of any municipality have been authorized by ordinance or resolution to act as and perform the duties, respec-

tively, of tax assessor and tax collector of an independent school district located entirely or partly within its boundaries, such included district shall pay the municipality for said services and for such other incidental expenses as are necessarily incurred in connection with the rendering of such services, such an amount as may be agreed upon by the governing bodies of the municipality and the independent school district.

[Amended by Acts 1979, 66th Leg., p. 2317, ch. 841, § 4(h), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 23.97. Cooperation Between Districts

Repeal

Subsection (c) of this section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 23.98 Enforced Collection

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the the Tax Code.

SUBCHAPTER G. INCENTIVE AID PAYMENTS

§ 23.994. Use Restricted

The incentive aid payments shall be used exclusively to retire the existing bonded indebtedness of the school districts which have been consolidated, shall be applied to the cost of constructing new buildings required by the reorganized district, or shall be used for renovation or improvement of existing buildings in the reorganized district.

[Amended by Acts 1977, 65th Leg., 1st C.S., p. 46, ch. 1, § 31, eff. Sept. 1, 1977.]

CHAPTER 24. MUNICIPAL SCHOOL DISTRICTS

§ 24.07. Levy and Collection of Taxes

[See Compact Edition, Volume 1 for text of (a) to (c)]

Text of subsection effective January 1, 1982

(d) The board of trustees of a municipal school district may contract with the county assessor-collector of taxes to assess and collect the taxes for the municipal school district on property located in the county.

For text of subsection effective until January 1, 1982, see Compact Edition, Volume 1

[Amended by Acts 1979, 66th Leg., p. 2320, ch. 841, §§ 4(o), 6(a)(2), eff. Jan. 1, 1982.]

Repeal

Subsection (a) of this section is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER 25. RURAL HIGH SCHOOL DISTRICTS

§ 25.07. Assessment and Collection of Taxes

Text of section effective until January 1, 1982

[See Compact Edition, Volume 1 for text of (a)]

(b) The board of trustees of a rural high school district may appoint an assessor of taxes who shall assess the taxable property within the limits of the district and the assessment shall be equalized by a board of equalization composed of three members, legally qualified voters residing in the district, appointed by the board of trustees, in which event:

(1) The tax assessor so appointed shall make a complete list of all assessments made by him and when the list is approved, shall submit it to the county tax collector not later than September 1 of each year, and the tax assessor shall receive compensation for his services as the trustees of the district may allow;

(2) The board of equalization shall have the same powers and be subject to the same restrictions as apply to such boards in independent school districts; and

(3) The county tax assessor-collector shall collect the taxes and shall deposit the funds so collected in the county depository to the credit of the rural high school district, and he shall be compensated at the rate of one-half of one percent for his services for collecting the taxes.

(c) If a rural high school district has an assessed valuation in excess of $4,000,000 or an average daily attendance of more than 550 students during the preceding year, the board of trustees of the rural high school district may, by majority vote, appoint a collector of taxes for the district who shall perform the duties ordinarily required of a county tax collector who collects taxes for a common school district. He shall receive compensation for his services as the trustees of the district may allow. He shall give bond to be executed by a surety company authorized to do business in the State of Texas, in an amount sufficient adequately to protect the funds of the school district in the hands of the collector. In no

event shall the bond be less than twice the largest amount collected at any one time in the preceding fiscal or calendar year, or $50,000, whichever is smaller, to be determined by the governing body in such school district. The bond shall be payable to and approved by the president of the board of trustees and conditioned that he will faithfully discharge his duties and will pay over to the depository for the rural high school district all funds coming into his hands by virtue of his office. Any premium on the bond shall be payable out of funds of the district.

(d) If a rural high school district is situated in more than one county or subject to the jurisdiction of a county having a population of 350,000 or more, according to the last preceding federal census, the board of trustees of the rural high school district may, by majority vote, choose to have the taxes for the district assessed and collected by an assessor-collector appointed by the board and to have the taxes equalized by the board of equalization of the district. In the event the board so chooses, the following regulations shall apply:

(1) The assessor-collector appointed by the board shall assess the taxable property within the limits of the district in the time and manner provided by the general law applicable to taxation within the district, insofar as the law is applicable, and collect the taxes;

(2) The assessor-collector shall receive such compensation for his services as the board of trustees may allow;

(3) The assessor-collector shall give bond, fulfilling the qualifications that the bond shall be:

(A) executed by a surety company authorized to do business in the State of Texas;

(B) in an amount determined by the board of trustees to be sufficient adequately to protect the funds of the rural high school district;

(C) payable to the president of the board of trustees of the rural high school district and approved by the board of trustees; and

(D) conditioned that the assessor-collector will faithfully discharge his duties and will deposit in the county depository to the credit of the rural high school district all funds coming into his hands by virtue of his office; and

(4) The board of trustees may also appoint one or more deputy tax assessor-collectors for the district who shall receive for their services such compensation as the board may allow.

[See Compact Edition, Volume 1 for text of (e)]

[Amended by Acts 1975, 64th Leg., p. 946, ch. 354, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1309, ch. 492, § 1, eff. Sept. 1, 1975.]

For text of section effective January 1, 1982, see § 25.07, post

§ 25.07. Assessment and Collection of Taxes

Text of section effective January 1, 1982

(a) Except as provided in this chapter, the taxes for a rural high school district shall be assessed and collected by the county tax assessor-collector, but no tax shall be levied and no bonds assumed or issued by the board of trustees of the rural high school district until after election in accordance with the law governing such elections in independent school districts.

(b) The board of trustees of a rural high school district may appoint an assessor of taxes who shall assess the taxable property within the limits of the district in which event:

(1) The tax assessor so appointed shall receive compensation for his services as the trustees of the district may allow; and

(2) The county tax assessor-collector shall collect the taxes.

(c) If a rural high school district has an assessed valuation in excess of $4,000,000 or an average daily attendance of more than 550 students during the preceding year, the board of trustees of the rural high school district may, by majority vote, appoint a collector of taxes for the district. He shall receive compensation for his services as the trustees of the district may allow.

(d) If a rural high school district is situated in more than one county or subject to the jurisdiction of a county having a population of 350,000 or more, according to the last preceding federal census, the board of trustees of the rural high school district may, by majority vote, choose to have the taxes for the district assessed and collected by an assessor-collector appointed by the board. In the event the board so chooses, the following regulations shall apply:

(1) The assessor-collector appointed by the board shall assess the taxable property within the limits of the district in the time and manner provided by the general law applicable to taxation and collect the taxes;

(2) The assessor-collector shall receive such compensation for his services as the board of trustees may allow; and

(3) The board of trustees may also appoint one or more deputy tax assessor-collectors for the district who shall receive for their services such compensation as the board may allow.

(e) Local taxes previously authorized by a district or districts included in a rural high school district shall be continued in force until such time as a tax election in the rural high school district may authorize a uniform tax for the benefit of the rural high school district.

[Amended by Acts 1975, 64th Leg., p. 946, ch. 354, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1309, ch. 492, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 2317, ch. 841, § 4(o), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1 and § 25.07, ante

CHAPTER 26. REHABILITATION DISTRICTS FOR HANDICAPPED PERSONS

SUBCHAPTER A. GENERAL PROVISIONS

§ 26.01. Definitions

As used in this chapter:

(1) "Handicapped person" or "handicapped scholastic" means an individual who has been defined as such by presently existing federal or state legislation. The definition of a handicapped person or handicapped scholastic is inclusive of all generic handicapping conditions such as orthopedically handicapped, health impaired, blind or visually impaired, deaf or auditorially impaired, socially maladjusted or emotionally disturbed, mentally retarded, and language or learning disabled. The specific operational definition, if not defined by state or federal legislation, shall be applicable to any current operational definition as set forth by the federal government or state agencies.

(2) "Special services" required for the instruction of, or program for exceptional children means special teaching in the public school curriculum within or without the regular classroom; corrective teaching such as lipreading, speech correction, sight conservation; corrective health habits; transportation; special seats, books, instructional media, and supplies; professional counseling with students and parents; supervision of professional services and pupil evaluation services; and established teaching techniques for children with language or learning disabilities.

(3) "Nonhandicapped scholastic" means a scholastic who is eligible for public school education under state law and who is not officially labeled as being handicapped.

[See Compact Edition, Volume 1 for text of (4) to (7)]

(8) The term "alternative school" refers to a school setting for scholastics who cannot adequately be trained or educated in existing public school programs and who generally would not continue their education in the traditional academic school situation. The curriculum and the alternative school setting stress training for the world of work and coping behavior in order to successfully survive in our complex society.

[Amended by Acts 1975, 64th Leg., p. 1351, ch. 509, §§ 1, 2, eff. Sept. 1, 1975.]

SUBCHAPTER B. CREATION OF DISTRICT

§ 26.11. Purpose

Rehabilitation districts may be created to provide education, training, special services, and guidance to handicapped persons or handicapped scholastics peculiar to their condition and needs, to develop their full capacity for usefulness to themselves and society, and to prevent them from becoming or remaining, in whole or in part, dependent on public or private welfare or charity.

[Amended by Acts 1975, 64th Leg., p. 1351, ch. 509, § 3, eff. Sept. 1, 1975.]

SUBCHAPTER D. POWERS AND DUTIES

§ 26.65. Administrative and Instructional Personnel

(a) To provide for the continuance of additional programs of instruction and training for handicapped persons between the ages of 6 and 21, inclusive, the District shall be eligible for and allotted administrative units, special service personnel, exceptional child teacher units, vocational education units, and other special education personnel, to the extent herein provided for independent school districts, directly through the Foundation Program of the Central Education Agency. The district shall be eligible to receive state funds for the purpose of educating any handicapped or nonhandicapped scholastic between the ages of 14 and 21, inclusive, who is in need of an alternative school setting. The district is eligible for state funding of educational programs for the handicapped and nonhandicapped scholastics in the form of personnel or resources as provided by current state legislation concerning the distribution of state funds to public schools.

(b) The basis for establishing, operating, and the formula to be used for determining allocation of said administrative units, instructional units, exceptional child teacher units, vocational education units, and other special education personnel, shall be as required by the Central Education Agency of independent school districts. The district's allocation of principal units, special service units, and supervisor and counselor units shall be computed on eligible exceptional children teacher units in the same manner as other independent school districts' allocation of these units are computed on eligible classroom teacher units, except that the district's allocation shall be limited, computed upon, and restricted to include only children between the ages of 14 and 21, both inclusive. However, no local fund assignment shall be charged to a rehabilitation district.

(c) The cost of approved professional units authorized including the per unit operational cost provided by law shall be considered by the Foundation Program Committee in estimating the funds needed for Foundation Program purposes.

(d) Nothing in this Act is intended to permit double funding of any rehabilitation district by the Central Education Agency, and if and to the extent that any section is so construed, to that extent said section shall be inoperative.

[Amended by Acts 1975, 64th Leg., p. 1351, ch. 509, § 3, eff. Sept. 1, 1975.]

§ 26.69. Taxes

[See Compact Edition, Volume 1 for text of (a)]

Text of subsection effective January 1, 1982

(b) The tax assessors and collectors of each county in a rehabilitation district must assess and collect taxes on taxable property in the county on levies made and rates fixed by the board of directors of that district, not exceeding the rate of five cents on each $100 of valuation.

For text of subsection effective until January 1, 1982, see Compact Edition, Volume 1

[Amended by Acts 1979, 66th Leg., p. 2320, ch. 841, § 4(p), eff. Jan. 1, 1982.]

§ 26.71. Employment of Trainees

Rehabilitation districts shall cooperate with the Texas Rehabilitation Commission and the Texas Employment Commission and all other state agencies in training, education, and finding employment for their employable trainees.

[Amended by Acts 1975, 64th Leg., p. 1351, ch. 509, § 3, eff. Sept. 1, 1975.]

CHAPTER 28. COUNTYWIDE VOCATIONAL SCHOOL DISTRICT AND TAX

§ 28.05. Annual Levy and Collection of Tax; Deposit of Funds

Text of subsection effective January 1, 1982

(a) It shall be the duty of the commissioners court, after such tax shall have been voted, at the time other taxes are levied in the county, annually to levy a tax under this law of not to exceed 20 cents on the $100 valuation. Such taxes shall be assessed and collected by the county tax assessor and collector.

For text of subsection effective until January 1, 1982, see Compact Edition, Volume 1

[See Compact Edition, Volume 1 for text of (b)]

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(q), eff. Jan. 1, 1982.]

§ 28.06. Duties of Commissioners Court

Text of section effective January 1, 1982

As soon as the commissioners court of said county receives notice of the total of assessed value of taxable property, it shall

(1) determine the estimated total receipts from the levying and collecting of said tax of not exceeding 20 cents on the property in such countywide district according to such valuation;

(2) determine the estimated amount of money apportionable for the ensuing school year to school district or districts under the jurisdiction of the county, which operate designated area vocational school(s), on the formula basis hereinafter prescribed; and

(3) transmit a copy of the order fixing the estimated proportioned amount available, to the president of the board of trustees of each such designated school district or districts eligible therefor.

[Amended by Acts 1979, 66th Leg., p. 2317, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

CHAPTER 30. REHABILITATION OF HANDICAPPED AND DISABLED

SUBCHAPTER B. TEXAS REHABILITATION COMMISSION —CREATION; ADMINISTRATIVE PROVISIONS

Section
30.111. Repealed.

SUBCHAPTER E. RESIDENTIAL CARE FACILITIES

30.81. Purpose.
30.82. Definitions.
30.83. Allocation.

SUBCHAPTER A. GENERAL PROVISIONS

§§ 30.01, 30.02. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(2), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing these sections, enacts the Human Resources Code.

For disposition of the subject matter of the repealed sections, see Disposition Table following the Human Resources Code.

SUBCHAPTER B. TEXAS REHABILITATION COMMISSION—CREATION; ADMINISTRATIVE PROVISIONS

§§ 30.11 to 30.23. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(2), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing these sections, enacts the Human Resources Code.

For disposition of the subject matter of the repealed sections, see Disposition Table following the Human Resources Code.

Former § 30.111, relating to application of the Sunset Act, was derived from Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.116.

SUBCHAPTER C. POWERS AND DUTIES

§§ 30.41 to 30.49. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(2), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing these sections, enacts the Human Resources Code.

For disposition of the subject matter of the repealed sections, see Disposition Table following the Human Resources Code.

Prior to repeal, § 30.42 was amended by Acts 1979, 66th Leg., p. 1669, ch. 697, § 1.

SUBCHAPTER D. EXTENDED REHABILITATED SERVICES

§§ 30.71 to 30.77. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(2), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing these sections, enacts the Human Resources Code.

For disposition of the subject matter of the repealed sections, see Disposition Table following the Human Resources Code.

SUBCHAPTER E. RESIDENTIAL CARE FACILITIES

§ 30.81. Purpose

The purpose of this subchapter is to provide the necessary means to extend the per capita allocation from the state available fund to wards of the Texas Youth Council residing in state residential facilities for delinquent or dependent and neglected children and to those handicapped persons residing in state residential facilities under the control and direction of the Texas Department of Mental Health and Mental Retardation, and for the purpose of providing such state available funds for educational purposes, the educational programs in state residential care facilities for delinquent, dependent or neglected children, and the handicapped shall be deemed to be educational services provided by public free schools.

[Added by Acts 1977, 65th Leg., p. 1962, ch. 782, § 2, eff. June 16, 1977. Amended by Acts 1979, 66th Leg., p. 1324, ch. 602, § 26, eff. Aug. 27, 1979.]

§ 30.82. Definitions

In this subchapter "mentally retarded" means that condition in which a person is described as having significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior.

[Added by Acts 1977, 65th Leg., p. 1962, ch. 782, § 2, eff. June 16, 1977.]

§ 30.83. Allocation

(a) Each residential care facility for delinquent or dependent and neglected children under the control and direction of the Texas Youth Council or residential care facility for the mentally retarded under the control and direction of the Texas Department of Mental Health and Mental Retardation shall be entitled to receive the state available per capita allocation based on the facility's average daily attendance in educational programs, of students ages three through 21.

(b) Personnel authorized under the Foundation School Program employed in the state facilities pursuant to this section shall receive as a minimum salary the monthly salary rate specified in Chapter 16 of the Texas Education Code, as amended; provided, however, such personnel may be paid, from funds appropriated to the respective state facilities for delinquent or dependent and neglected children or the mentally retarded, salary rates in excess of the minimum amounts specified in Chapter 16 of the Texas Education Code, as amended, but such salary rates shall never exceed the rates of pay for like positions in the public schools of the adjacent school district or districts.

[Added by Acts 1977, 65th Leg., p. 1963, ch. 782, § 2, eff. June 16, 1977.]

CHAPTER 31. TECHNICAL-VOCATIONAL EDUCATION ACT OF 1969

SUBCHAPTER B. ADVISORY COUNCIL—CREATION; ADMINISTRATIVE PROVISIONS

Section
31.20. Application of Sunset Act.

SUBCHAPTER A. GENERAL PROVISIONS

§ 31.02. Purpose

The purpose of this chapter is to provide the necessary legal basis to establish a state educational system which will develop trained personnel in the area of technical and vocational skills, and to accommodate the social and economic needs of the people of the State of Texas. Further, it is the purpose of this chapter to comply in all respects with the Vocational Education Act of 1963, as amended,[1] and related state and federal acts, including those advisory functions therein specified. It is further the purpose of this chapter to establish as a part of the total educational system of the State of Texas, one council responsible for the development of a program to train manpower, through education, to further industrial and economic development in the State of Texas.

[Amended by Acts 1975, 64th Leg., p. 2160, ch. 694, § 1, eff. Sept. 1, 1975.]

[1] See 20 U.S.C.A. § 1241 et seq.

§ 31.03. Definitions

In this chapter:

[See Compact Edition, Volume 1 for text of (1) to (7)]

(8) "Planning" as pertaining to the role of the advisory council means putting forth alternative actions for policy makers and administrators.

(9) "Manpower training" means training for all existing and future jobs.

[Amended by Acts 1975, 64th Leg., p. 2160, ch. 694, § 2, eff. Sept. 1, 1975.]

SUBCHAPTER B. ADVISORY COUNCIL—CREATION; ADMINISTRATIVE PROVISIONS

§ 31.12. Membership

(a) The council consists of 24 members appointed by the State Board of Education after recommendation by the governor and subject to confirmation by the Senate.

(b) The membership will be constituted as follows:

(1) one member familiar with vocational needs and the problems of management in the state;

(2) one member familiar with vocational needs and the problems of labor in the state;

(3) one member representing state industrial and economic development agencies;

(4) one member representing community or junior colleges;

(5) one member actively engaged in technical training institutes;

(6) one member representing and familiar with public programs of vocational education in comprehensive secondary schools;

(7) one member having special knowledge, experience, or qualifications with respect to vocational education but who is not involved in the administration of state or local vocational-education programs;

(8) one member who is currently serving as superintendent or other administrator of a local educational agency;

(9) one member who is currently serving on a local school board;

(10) one member who is familiar with the programs of teachers' training for technical-vocational teachers in the post secondary institutions;

(11) one member who is familiar with post secondary baccalaureate technological degree programs;

(12) one member representing the State Manpower Services Council established pursuant to Section 107 of the Comprehensive Employment and Training Act of 1973; [1]

(13) one member representing school systems with large concentrations of persons who have special academic, social, economic, and cultural needs and of persons who have limited English-speaking ability;

(14) one member having special knowledge, experience, or qualifications with respect to the special educational needs of physically or mentally handicapped persons;

(15) one member representative of and knowledgeable about the poor and disadvantaged;

(16) one member representing and familiar with the vocational needs and problems of agriculture in the state;

(17) one member representing the general public;

(18) one member representing proprietary vocational-technical schools of the state;

(19) one member who is a present or recent vocational education student who is not otherwise qualified for membership;

(20) one member representing and familiar with vocational guidance and counseling services;

(21) one member representing and familiar with nonprofit private schools;

(22) one member representing state correctional institutions;

(23) one member who is a vocational education teacher presently teaching in a local educational agency; and

(24) one member who is a woman with a background and experience in employment and training programs, and who is knowledgeable with respect to the special experiences and problems of sex discrimination in job training and employment, of sex stereotyping in vocational education, and of discrimination in job training and employment against women who are members of minority groups.

[Amended by Acts 1975, 64th Leg., p. 2160, ch. 694, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 336, ch. 165, § 1, eff. Aug. 29, 1977.]

[1] 29 U.S.C.A. § 817.

Sections 6 and 7 of the 1975 amendatory act provided:

"Sec. 6. All members of the Advisory Council for Technical-Vocational Education holding office on the effective date of this Act shall serve for the remainder of their respective terms of office. The governor shall recommend and the State Board of Education shall appoint three new members with the qualifications specified in Subdivisions (18), (19), and (20), of Subsection (b), Section 31.12, Texas Education Code, as amended. The board shall designate one of the new members for a term expiring August 31, 1977, one for a term expiring on August 31, 1979, and one for a term expiring on August 31, 1981."

"Sec. 7. This Act takes effect September 1, 1975."

§ 31.13. Terms

Except for the initial appointees, members of the council hold office for staggered terms of three years. Initial appointment of the council shall be made on or immediately following September 1, 1977. Eight appointments will be made for the term which shall expire August 31, 1978; eight appointments will be made for the term which will expire August 31, 1979; and eight appointments will be made for the term which shall expire August 31, 1980, or at the time their successors are appointed and qualified.

[Amended by Acts 1977, 65th Leg., p. 337, ch. 165, § 2, eff. Aug. 29, 1977.]

§ 31.20. Application of Sunset Act

The council is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the council is abolished effective September 1, 1983. [Added by Acts 1979, 66th Leg., p. 1877, ch. 759, § 1, eff. June 13, 1979.]

SUBCHAPTER C. POWERS AND DUTIES

§ 31.33. Duties

The council shall be the advisory council to the State Board for Vocational Education and shall:

(1) recommend and evaluate the role and scope of secondary institutions, public junior colleges, community colleges, technical training institutes, and public senior colleges and universities in a comprehensive plan for developing manpower education and training in the State of Texas;

(2) recommend the appropriate subjects to be taught at each level of training and in each of the above types of institutions;

(3) recommend a state plan designating the method and the criteria to be utilized in establishing area technical schools which will be consistent with the Vocational Educational Act of 1963, as amended,[1] the Manpower Development and Training Act of 1962, as amended,[2] and other federal statutes;

(4) recommend and evaluate a list of courses offered by these types of institutions eligible to be funded by the legislature or through the allocation of federal funds. These courses shall be freely transferable among the public institutions in the State of Texas, with credit for such courses to be given on the same basis as if they had been taken at the receiving institutions;

(5) recommend to the governor and the legislature methods of funding existing programs and propose methods for funding new programs;

(6) suggest and evaluate pilot projects and present recommendations to the governor and the legislature for implementing cooperative programs among the several types of institutions named hereinabove, which will provide a more effective and efficient method of supplying business and industry with trained manpower;

(7) recommend the establishment of the responsibility of public schools, public junior colleges, community colleges, technical training institutes, and public senior colleges and universities in adult basic education, adult technical education, and adult vocational education;

(8) recommend, encourage, and evaluate cooperative programs between educational institutions and industry, and, with the assistance of industry, assist in the development of new curricula and instructional materials as may be required for new and emerging occupational categories as may be prescribed by industry;

(9) provide up-to-date information on employment opportunities in the Texas economy to persons trained in these institutions through cooperation with the Texas Employment Commission and other appropriate research agencies at both the state and national levels;

(10) identify, after consultation with the State Manpower Services Council, the vocational education and employment and training needs of the state and assess the extent to which vocational education, employment training, vocational rehabilitation, and other programs represent a consistent, integrated, and coordinated approach to meeting such needs;

(11) comment, at least once annually, on the reports of the State Manpower Services Council, which comments shall be included in the annual report submitted by the state advisory council;

(12) recommend research projects as may be necessary to implement and improve a statewide system of technical, vocational, and manpower training from funds provided by appropriations from the United States Congress or private gifts, grants, or awards;

(13) recommend and evaluate a program of teacher certification for instructors of occupational training courses;

(14) recommend and evaluate a statewide plan for the development of a comprehensive program of apprenticeship training;

(15) support actions and activities to encourage and strengthen local and regional vocational advisory councils in carrying out their responsibilities;

(16) recommend methods through which increased numbers of physically and mentally handicapped individuals may effectively benefit from programs of vocational education offered at secondary institutions, the Texas School for the Blind and the Texas School for the Deaf, public junior colleges, community colleges, technical training institutes, and public senior colleges and universities; and

(17) recommend and evaluate innovative programs to assure that physically or mentally handicapped individuals who cannot readily participate in programs of vocational education offered at secondary institutions, the Texas School for the Blind and the Texas School for the Deaf, public junior colleges, community colleges, tech-

nical training institutes, and public senior colleges and universities derive vocational education benefits from sums appropriated for vocational education by the legislature, by extending vocational education programs through nonprofit facilities operated other than on campus settings.

[Amended by Acts 1975, 64th Leg., p. 2161, ch. 694, § 4, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2379, ch. 734, § 4, eff. June 21, 1975; Acts 1977, 65th Leg., p. 338, ch. 165, § 3, eff. Aug. 29, 1977.]

[1] See 20 U.S.C.A. § 1241 et seq.
[2] 42 U.S.C.A. § 2571 et seq. (repealed; see, now, 29 U.S.C.A. § 801 et seq.)

§ 31.34. Studies; Reports

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) The council shall make a report to the governor annually and to the legislature not later than December 1 prior to the regular session of the legislature, setting forth the numbers of physically and mentally handicapped individuals deriving benefits from vocational education programs within the State of Texas during the period covered by the report, indicating the severity of the handicaps of the individuals involved, reflecting the types of vocational education being received, specifying the amounts of state and federal vocational education funds expended, evaluating the impact of such vocational education services on the lives of the handicapped individuals involved, and describing the cooperation received from other state boards and agencies pursuant to Section 31.36 of this code.

[Amended by Acts 1975, 64th Leg., p. 2380, ch. 734, § 5, eff. June 21, 1975.]

§ 31.39. Status of Recommendations

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) Each state board, commission, council, or agency which develops policy or administers programs of vocational, technical, or adult education or manpower training shall receive the reports and recommendations of the advisory council and shall respond in accordance with procedures outlined in this section.

[Amended by Acts 1975, 64th Leg., p. 2162, ch. 694, § 5, eff. Sept. 1, 1975.]

§ 31.40. Allocation of State and Federal Funds

(a) The State Board for Vocational Education shall have the authority to allocate, as provided herein, funds appropriated by the legislature and funds of the United States government received by the State of Texas under the Vocational Education Act of 1963, as amended,[1] and the Manpower Development and Training Act of 1962, as amended,[2] or other such federal statutes, as may come under its jurisdiction. Only institutions and programs approved by the State Board of Education or the Coordinating Board, Texas College and University System, will be eligible for the distribution of such funds; such program approvals shall include all those previously approved including industrial arts.

(b) Of the state funds appropriated for the support of vocational education programs within the State of Texas, there is hereby allocated for specific and identifiable use in behalf of individuals with handicapping conditions of such severity as to render such individuals eligible for vocational rehabilitation services, a percentage of the appropriation of state funds which corresponds to the percentage of the federal appropriation for vocational education required by federal law to be expended in behalf of handicapped individuals.

[Amended by Acts 1975, 64th Leg., p. 2380, ch. 734, § 6, eff. June 21, 1975.]

[1] See 20 U.S.C.A. § 1241 et seq.
[2] 42 U.S.C.A. § 2571 et seq. (repealed; see, now, 29 U.S.C.A. § 801 et seq.)

CHAPTER 32. TEXAS PROPRIETARY SCHOOL ACT

SUBCHAPTER B. GENERAL PROVISIONS

§ 32.12. Exemptions

(a) The following schools or educational institutions are specifically exempt from the provisions of this chapter and are not within the definition of "proprietary school."

[See Compact Edition, Volume 1 for text of (a)(1) to (a)(8)]

(9) a school which offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations, or medical college admissions tests.

[See Compact Edition, Volume 1 for text of (b)]

[Amended by Acts 1977, 65th Leg., p. 1075, ch. 392, § 1, eff. Aug. 29, 1977.]

CHAPTER 33. APPRENTICESHIP SYSTEM OF ADULT VOCATIONAL EDUCATION

Section
33.01. Definitions.
33.02. General Provisions Relating to Apprenticeship Training Programs.
33.03. Duties of Apprenticeship Committee.
33.04. Notice of Available Funds.
33.05. Apprenticeship and Training Advisory Committee.
33.06. Duties of Apprenticeship and Training Advisory Committee.
33.07. Audit Procedures.
33.08. Appropriation and Distribution of Funds.
33.09. Rules.
33.10. Status of Recommendations.
33.11. Applicability.

§ 33.01. Definitions

In this chapter:

(1) "Apprenticeship training program" means a training program that provides on-the-job training, preparatory instruction, supplementary instruction, or related instruction in a trade that has been certified as an apprenticible occupation by the Bureau of Apprenticeship Training of the United States Department of Labor.

(2) "Preparatory instruction" means a course of instruction lasting six months or less that teaches the basic skills required for an individual to comply with the terms of his or her apprenticeship agreement as required by Section 33.02(d) of this code.

(3) "Supplementary instruction" means a course of instruction for persons employed as journeymen craftsmen in apprenticible trades that is designed to provide new skills or upgrade current skills.

(4) "Related instruction" means organized, off-the-job instruction in theoretical or technical subjects required for the completion of an apprenticeship program for a particular apprenticible trade.

(5) "Advisory committee" means the Apprenticeship and Training Advisory Committee to the State Board of Vocational Education.

(6) "BAT" means the Bureau of Apprenticeship Training of the United States Department of Labor.

(7) "CEA" means the Central Education Agency.

[Added by Acts 1977, 65th Leg., p. 621, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.02. General Provisions Relating to Apprenticeship Training Programs

(a) Pursuant to the provisions of this chapter, the commissioner of education may allocate state funds for the support of apprenticeship training programs that meet the criteria set forth in this chapter.

(b) A program must be sponsored by a public school district or a state postsecondary institution pursuant to a contract between the district or institution and an apprenticeship committee.

(c) A program must be under the direction of an apprenticeship committee whose members are appointed by one or more employers of apprentices, one or more bargaining agents representing members of an apprenticible trade, or a combination of the above, and the committee shall perform the duties set forth in Section 33.03 of this code. If an apprenticeship committee is composed of representatives of one or more employers and one or more bargaining agents, the number of committee members designated by the employer or employers shall be equal to the number of committee members designated by the bargaining agent or agents.

(d) Each apprentice participating in a program must be given a written apprenticeship agreement by the apprenticeship committee stating the standards and conditions of his employment and training. The standards must conform substantially with the standards of apprenticeship for the particular trade which have been adopted by BAT.

(e) An apprentice may not be charged tuition or fees by a public school district or state postsecondary institution other than an administrative fee to cover the costs of processing his records which shall not exceed $5 for each course in which the apprentice is enrolled.

(f) Funding for a program, in addition to any other money available, shall be provided by the apprenticeship committee pursuant to the terms of the contract referred to in Subsection (b) of this section.

(g) Pursuant to the terms of the contract referred to in Subsection (b) of this section, adequate facilities, personnel, and resources to effectively administer the apprenticeship training program in a manner consistent with the public's need for skilled craftsmen and the apprentices' need for marketable skills in apprenticible occupations must be provided.

(h) A program must be registered with the BAT and approved by the State Board of Vocational Education or the Coordinating Board, Texas College and University System.

[Added by Acts 1977, 65th Leg., p. 622, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.03. Duties of Apprenticeship Committee

The apprenticeship committee for each apprenticeship training program shall:

(1) establish standards and goals for preparatory instruction, supplementary instruction, and related instruction for apprentices in the program;

(2) establish rules governing the on-the-job training and other instruction for apprentices in the program;

(3) plan and organize instructional materials designed to provide technical and theoretical knowledge and basic skills required by apprentices in the program;

(4) recommend qualified instructions for the program;

(5) monitor and evaluate the performance and progress of each apprentice in the program and the program as a whole;

(6) interview applicants and select those most qualified for entrance into the program;

(7) provide for the keeping of records of the on-the-job training and progress of each apprentice;

(8) encourage instructors to maintain recommended qualifications; and

(9) perform any other duties which, in the opinion of the apprenticeship committee, promote the goals of individual apprentices and of the program as a whole.

[Added by Acts 1977, 65th Leg., p. 622, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.04. Notice of Available Funds

In order to insure that all citizens of Texas have an equal opportunity to benefit from apprenticeship training programs, the State Board of Vocational Education shall provide for statewide publication in a manner recommended by the advisory committee and intended to give actual notice to all potential program sponsors of the amount of funds that will be available to support apprenticeship training programs during the current and following fiscal years, the qualifications required of program sponsors and apprenticeship committees, and the procedures to be followed in applying for state funds. The notice may also include other information recommended by the advisory committee and approved by the State Board of Vocational Education. Notwithstanding the foregoing, the State Board of Vocational Education shall publish any information concerning available funds given to a particular program sponsor in a manner recommended by the advisory committee and intended to give actual notice to all potential program sponsors statewide.

[Added by Acts 1977, 65th Leg., p. 623, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.05. Apprenticeship and Training Advisory Committee

(a) The State Board of Vocational Education shall appoint an Apprenticeship and Training Advisory Committee composed of members with the following qualifications:

(1) five persons representing employers of members of apprenticible trades;

(2) five persons representing bargaining agents for members of apprenticible trades;

(3) five persons employed as training directors of program administrators by apprenticeship committees;

(4) five persons employed by public schools or state postsecondary institutions who teach or immediately supervise preparatory instruction, supplementary instruction, or related instruction courses.

(b) Members of the advisory committee shall serve terms of four years, except that the state board shall designate two members from each of the groups referred to in Subdivisions (1), (2), (3), and (4) of Subsection (a) of this section to serve an initial term of two years. Thereafter all members shall serve four-year terms.

(c) Vacancies shall be filled for the unexpired portion of a term vacated.

(d) Nonvoting members of the advisory committee shall include the following:

(1) one person designated by and representing the State Board of Vocational Education;

(2) one person designated by and representing the Advisory Council for Technical Vocational Education;

(3) one person designated by and representing the Coordinating Board, Texas College and University System;

(4) one person designated by and representing BAT;

(5) one person designated by and representing the Teachers Training Division of the Texas A&M University Engineering Extension Service; and

(6) one person representing the general public who is familiar with the goals and needs of technical vocational education in Texas, and who is not otherwise eligible for service on the advisory committee.

(e) The member representing the general public shall be appointed by the State Board of Vocational Education for a term of four years. All other nonvoting members of the advisory committee shall serve at the pleasure of the agency or institution each respective member represents.

[Added by Acts 1977, 65th Leg., p. 623, ch. 230, § 1, eff. May 24, 1977.]

§ 33.06. Duties of Apprenticeship and Training Advisory Committee

(a) The advisory committee shall recommend and evaluate a statewide plan for the development of a comprehensive program of apprenticeship training which shall include but not be limited to the following:

(1) formulas and administrative procedures to be used in requesting appropriations of state funds for apprenticeship training;

(2) forms, formulas, and administrative procedures to be used in distributing available funds to apprenticeship training programs, with the formulas based on data contained in the biennial update to the Apprenticeship Related Instruction Cost Study required by Section 33.08 of this code, and the formulas shall be uniform in application to all program sponsors; and

(3) the content and method of the public notice required by this chapter.

(b) The CEA shall furnish the advisory committee with the current data necessary to determine these formulas. All state boards and agencies shall cooperate with the advisory committee and shall furnish information and material on request.

[Added by Acts 1977, 65th Leg., p. 624, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.07. Audit Procedures

(a) The CEA shall maintain a clear audit trail of all funds appropriated for the apprenticeship system of adult vocational education. For each course that is funded, the audit trail in the CEA shall include the following records:

(1) the name of the sponsoring public school district or state postsecondary institution;

(2) the name of the instructor;

(3) the number of students enrolled;

(4) the place and schedule of class meetings; and

(5) certification by the BAT for preparatory and related instruction courses that the students enrolled were registered apprentices.

(b) Public school districts or state postsecondary institutions receiving funds shall maintain a clear audit trail which shall include records of receipts for all expenditures relating solely to each particular course. Where an expense is shared by two or more courses, the allocation to that expense from the funds for a particular course shall be supported by a formula based on the comparative benefit derived by each course from the expense. No charges for the depreciation of facilities or the retirement of indebtedness shall be allocated to an apprenticeship course.

(c) Funds appropriated for the apprenticeship system of adult vocational education shall not be commingled with funds appropriated for other purposes.

(d) The State Comptroller of Public Accounts shall perform an annual audit of all state funds appropriated or received pursuant to this chapter.

(e) All records, receipts, working papers, and other components of the audit trail shall be public records.

[Added by Acts 1977, 65th Leg., p. 624, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.08. Appropriation and Distribution of Funds

(a) On recommendation of the advisory committee the State Board of Vocational Education shall adopt formulas and administrative procedures to be used in requesting appropriations of state funds as a budgetary line item for the Apprenticeship System of Adult Vocational Education.

(b) The CEA shall prepare an update to the Apprenticeship Related Instruction Cost Study adopted by the State Board of Education on February 10, 1973, prior to each biennial session of the legislature.

(c) On recommendation of the advisory committee the State Board of Vocational Education shall adopt forms, formulas, and administrative procedures for the distribution of available funds to apprenticeship training programs. Distribution formulas must be uniform in application to all local program sponsors.

(d) On recommendation of the advisory committee the State Board of Vocational Education shall reserve until December 1 of each year a percentage of the funds appropriated under the line item described in this section to be used solely for apprenticeship-related instruction programs. This percentage shall be established by the formulas required by this section. Reserved funds that are not obligated on December 1 may be used for preparatory and supplementary instruction programs as well as related instruction programs.

(e) No funds shall be distributed to a public school district or state postsecondary institution until the district or institution has filed all reports required by this chapter and by the State Board of Vocational Education.

[Added by Acts 1977, 65th Leg., p. 625, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.09. Rules

The State Board of Vocational Education shall promulgate rules necessary to implement the provisions of this chapter.

[Added by Acts 1977, 65th Leg., p. 625, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.10. Status of Recommendations

(a) Recommendations of the advisory committee submitted to the State Board of Vocational Education must be acted on, and either accepted or rejected.

(b) A recommendation which is rejected must be returned immediately to the advisory committee, accompanied by written notice of the reasons for rejecting the recommendation.

[Added by Acts 1977, 65th Leg., p. 625, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.11. Applicability

The provisions of this chapter apply only to those apprenticeship training programs which receive state funds pursuant to the provisions of Section 33.02 of this chapter.

[Added by Acts 1977, 65th Leg., p. 625, ch. 230, § 1, eff. Aug. 29, 1977.]

TITLE 3. HIGHER EDUCATION

SUBTITLE A. HIGHER EDUCATION IN GENERAL

CHAPTER 51. PROVISIONS GENERALLY APPLICABLE TO HIGHER EDUCATION

SUBCHAPTER E. PROTECTION OF BUILDINGS AND GROUNDS

Section
51.213. Abandoned Personal Property.

SUBCHAPTER H. GUIDELINES FOR ACADEMIC WORKLOADS

51.401. Purpose.
51.402. Report of Institutional and Academic Duties.

Section
51.403. Reports of Student Enrollment.
51.404. Submission of Reports.
51.405. Reporting of Noncompliance.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS
51.906. Sequential Education Planning for Nursing Education.
51.907. Competitive Bidding on Contracts.
51.908. [Blank].
51.909. Expulsion of Certain Foreign Students.

SUBCHAPTER A. CONTROL OF FUNDS BY CERTAIN INSTITUTIONS

§ 51.001. Institutions to which Applicable

Subject to Section 51.008 of this code, the provisions of this subchapter apply to:

(1) each institution and branch of The University of Texas System;

(2) each institution, agency, and service of The Texas A & M University System;

(3) Texas A & I University;

(4) Texas Tech University;

(5) East Texas State University;

(6) North Texas State University;

(7) Sam Houston State University;

(8) Stephen F. Austin State University;

(9) Southwest Texas State University;

(10) Sul Ross State University;

(11) West Texas State University;

(12) Texas Eastern University; and

(13) each public junior college to the extent possible.

[Amended by Acts 1975, 64th Leg., p. 813, ch. 317, § 2, eff. Sept. 1, 1975.]

§ 51.005. Reports

(a) True and full accounts shall be kept by the governing board and by the employees of the institution of all funds collected from all sources and of all sums paid out and the persons to whom and the purposes for which the sums are paid. The governing board shall annually, between September 1 and January 1, print a complete report of all the sums collected, all expenditures, and all sums remaining on hand. The report shall show the true condition of all funds as of the August 31 preceding as well as the collections and expenditures for the preceding year.

(b) The governing board shall furnish one copy of the report each to the governor, comptroller of public accounts, state auditor, Coordinating Board, Texas College and University System, Legislative Budget Board, House Appropriations Committee, and Legislative Reference Library. The governing board shall retain five copies of the report for distribution to legislators or other state officials on request.

[Amended by Acts 1975, 64th Leg., p. 568, ch. 227, § 1, eff. May 20, 1975; Acts 1977, 65th Leg., p. 1187, ch. 455, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1053, ch. 484, § 1, eff. Aug. 27, 1979.]

SUBCHAPTER B. GENERAL PROPERTY DEPOSITS: INVESTMENTS AND USES

§ 51.052. Student Deposit Fund; Composition and Uses

[See Compact Edition, Volume 1 for text of (a)]

(b) The student deposit fund shall be used, at the discretion of the board, for any of the following purposes: making scholarship awards to needy and deserving students, the support of a general student union program, or for the establishment of an institutional loan program for students. Loans made under this subsection shall bear a nominal interest rate, be secured by a promissory note from the student to the loan fund, require no collateral, and be of a duration not more than 12 months. A student obtaining a loan under this subsection may have no more than two such loans outstanding at any time. The board shall administer the scholarship awards for the institution, including the selection of recipients and the amounts and conditions of the awards. The recipients of the scholarships must be residents of the state as defined for tuition purposes. Any use of the funds for the support of student union programs shall be approved as to amount and purpose by the board. The student deposit funds for The University of Texas at Austin, Texas A&M University, and Texas Tech University shall be available for scholarship purposes only. Direct expenses for the administration of the funds shall be paid from the funds.

[Amended by Acts 1977, 65th Leg., p. 1691, ch. 670, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER D. INFORMATION NETWORK ASSOCIATIONS

§ 51.153. Western Information Network Association

[See Compact Edition, Volume 1 for text of (a) to (d)]

(e) The Western Information Network Association is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the association is abolished effective September 1, 1989.

[Amended by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.157, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

§ 51.168. Creation of Additional Associations

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) An information network association created under this section is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the association is abolished effective September 1, 1989.

[Amended by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.158, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

SUBCHAPTER E. PROTECTION OF BUILDINGS AND GROUNDS

§ 51.213. Abandoned Personal Property

The governing board of each state institution of higher education, including public junior colleges, is authorized to promulgate rules and regulations providing for the disposition of abandoned and unclaimed personal property coming into the possession of the campus security personnel where the personal property is not being held as evidence to be used in any pending criminal case.

[Added by Acts 1977, 65th Leg., p. 1712, ch. 680, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER F. REQUIRED AND ELECTIVE COURSES

§ 51.303. Elective Courses in Dactyology

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) American Sign Language is recognized as a language, and any state institute of higher education may offer an elective course in American Sign Language. A student is entitled to count credit received for a course in American Sign Language toward satisfaction of a foreign language requirement of the institution of higher education where it is offered.

[Amended by Acts 1979, 66th Leg., p. 735, ch. 327, § 2, eff. Aug. 27, 1979.]

SUBCHAPTER G. OPTIONAL RETIREMENT SYSTEM

§ 51.355. Options

(a) A faculty member who becomes eligible to participate in the optional retirement program and who is a member of the retirement system is hereby extended the option of continuing his membership in the retirement system or participating in the optional retirement program as hereinafter set forth.

(b) A faculty member who is eligible to participate in the optional retirement program on the date the optional retirement program becomes available at the institution of higher education at which he is employed, no later than the 1st day of August of the calendar year following the date on which the optional retirement program becomes available at the institution of higher education at which he is employed, shall elect to participate or not to participate in the optional retirement program. A faculty member who becomes eligible to participate in the optional retirement program subsequent to the date on which the optional retirement program becomes available at the institution of higher education at which he is employed shall make such election within 90 days following the date on which he becomes eligible to participate in the optional retirement program.

(c) Except as provided by Subsection (e) of this section, a faculty member exercising the option to participate in the optional retirement program shall not thereafter be eligible for membership in the retirement system unless he ceases to be employed as a faculty member by an institution of higher education and becomes employed by the Texas Public School System other than in a position eligible for participation in the optional retirement program. A person who, after participating in the optional retirement program for at least one year, becomes employed in an institution of higher education in a nonfaculty member position normally covered by the retirement system shall continue participation in the optional retirement program if the person has no intervening employment in the Texas public schools other than in an institution of higher education.

(d) A faculty member not exercising the option to participate in the optional retirement program shall be deemed to have chosen to continue membership in the retirement system in lieu of exercising the option to participate in the optional retirement program.

(e) Under rules prescribed by the State Board of Trustees, a former member of the retirement system participating in the optional retirement program on September 1, 1979, may file an election with the retirement system on or before September 1, 1980, to resume membership in the retirement system and cease participation in the optional retirement program. A person who files an election under this subsection retains any benefits or other rights accrued under the optional retirement program during the person's participation and may not establish credit in the retirement system for service performed while a participant in the program. A person who files an election under this subsection may reinstate service credit in the retirement system that was relinquished by withdrawal of contributions from the retirement system under Section 51.356 of this code. The credit may be reestablished by depositing the amount withdrawn plus a reinstatement fee of 10 percent per annum compounded annually from the date of withdrawal to the date of redeposit. The reinstatement fee shall be deposited in the state contribution account of the retirement system. The retirement system shall promptly notify the applicable institutions of higher education of elections made under this subsection.

[Amended by Acts 1979, 66th Leg., p. 1035, ch. 465, § 1, eff. Sept. 1, 1979.]

SUBCHAPTER H. GUIDELINES FOR ACADEMIC WORKLOADS

§ 51.401. Purpose

It is the intent of the legislature that all public higher education institutions of this state shall man-

age their institutions and institutional resources to achieve maximum effectiveness and to provide the greatest attainable educational benefit from the expenditure of public funds.

[Added by Acts 1977, 65th Leg., p. 1478, ch. 601, § 1, eff. Aug. 29, 1977.]

§ 51.402. Report of Institutional and Academic Duties

(a) The Coordinating Board, Texas College and University System, in cooperation with governing boards, institutional officials, and faculty representatives of general academic institutions of higher education, shall develop and recommend general policies and standard reports for academic faculty workloads and services.

(b) The governing board of each institution of higher education in the state shall adopt rules and regulations concerning faculty academic workloads. The established rules and regulations of each institution shall be reported to the coordinating board and included in the operating budgets of each institution.

(c) Within 30 days of the end of each academic year, the institution shall file with its governing board a report, by department, of the academic duties and services performed by each member of the faculty during the nine-month academic year, showing evidence of compliance with requirements established by the governing board. The report of academic duties and services performed by each member of the faculty shall indicate all appointments held by the faculty member in the employing institution, the salary paid to each appointment, the percent of time of each appointment, and the source of funds from which salary payments were made. Teaching responsibilities in each workload standard shall be in proportion to the portion of salary paid from funds appropriated for instructional purposes.

(d) The institutional head of each higher education institution shall designate the officer of his staff who will monitor workloads, prepare and review appropriate workload reports, and submit the reports to the institutional head for his certification or approval and comments as may be appropriate.

[Added by Acts 1977, 65th Leg., p. 1478, ch. 601, § 1, eff. Aug. 29, 1977.]

§ 51.403. Reports of Student Enrollment

(a) All higher education institutions of this state shall offer only such courses and teach such classes as are economically justified in the considered judgment of the appropriate governing board.

(b) The chief executive officer of each institution shall provide its governing board a report for each fall and spring semester indicating for each instructor the number of students enrolled in each class, the number of semester-credit hours accrued to each course, the course number and title, the department in which the course is offered, and the identity and academic rank of the instructor.

(c) At the close of each fall and spring semester, the chief executive officer of each institution shall provide the appropriate governing board with a semester report comparing student enrollments in each class on the last day with enrollments as set out in Section 51.403(b) of this code.

(d) Each institution shall file with its governing board and the coordinating board a small class report, excluding individual instruction courses, indicating department, course number, title of course, and the name of the instructor. "Small classes," for the purpose of this report, are undergraduate-level courses with less than 10 registrations, and graduate-level courses with less than 5 registrations. No small classes shall be offered in any institution except as authorized by the appropriate governing board, within the guidelines established by the Coordinating Board.

[Added by Acts 1977, 65th Leg., p. 1479, ch. 601, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1100, ch. 516, § 1, eff. Aug. 27, 1979.]

§ 51.404. Submission of Reports

Each institution shall submit all reports required by this subchapter to the coordinating board. The coordinating board shall furnish such summaries of these reports as the governor's budget office and legislative budget board may request, including an analysis of compliance by each institution of higher education with its adopted rules and regulations as filed with the coordinating board in compliance with Section 51.402(b) of this code. All such reports shall be public information.

[Added by Acts 1977, 65th Leg., p. 1479, ch. 601, § 1, eff. Aug. 29, 1977.]

§ 51.405. Reporting of Noncompliance

Should any institution of higher education fail to comply with its adopted rules and regulations as determined by the coordinating board in Section 51.404 of this code, the coordinating board shall inform the governor's budget office, the legislative budget board, and the chairmen of the house and senate appropriations committees.

[Added by Acts 1977, 65th Leg., p. 1479, ch. 601, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

§ 51.905. State-Owned Museum Buildings

[See Compact Edition, Volume 1 for text of (a)]

(b) Repealed by Acts 1975, 64th Leg., p. 1251, ch. 474, § 1, eff. Sept. 1, 1975.

[See Compact Edition, Volume 1 for text of (c) and (d)]

[Amended by Acts 1975, 64th Leg., p. 1251, ch. 474, § 1, eff. Sept. 1, 1975.]

§ 51.906. Sequential Education Planning for Nursing Education

The governing board of each state-supported institution of higher education which provides a nursing education program shall plan and incorporate into the program standards and sequential procedures which will recognize and grant credit for actual educational and clinical experiences in the nursing field which are equivalent to regular course content. The board may require students to pass examinations demonstrating competence based on educational and clinical experiences before granting academic credit.

[Added by Acts 1975, 64th Leg., p. 1912, ch. 615, § 1, eff. Sept. 1, 1975.]

§ 51.907. Competitive Bidding on Contracts

All contracts for the construction or erection of permanent improvements at an institution of higher education as defined in Section 61.003 of this code are void unless made after advertising for bids thereon in a manner prescribed by its governing board, receiving sealed competitive bids, and awarding of the contract to the lowest responsible bidder by the governing body. If a contract is to be recommended for award to other than the lowest bidder, any bidder making a lower bid than the recommended bid shall be notified of the recommendation for award and shall be allowed an opportunity prior to the award to present evidence to the board or its designated representative as to the responsibility of that bidder.

[Added by Acts 1977, 65th Leg., p. 562, ch. 197, § 1, eff. May 20, 1977.]

§ 51.908. [Blank]

§ 51.909. Expulsion of Certain Foreign Students

(a) The governing board of a public institution of higher education may expel from that institution any student who is a citizen of a country other than the United States attending the institution under a nonimmigrant visa issued by the Immigration and Naturalization Service and who is finally convicted of an offense under Section 28.03, 28.04, 42.02, 42.03, 42.05, or 42.09, Penal Code, as amended, or under Section 4.30 of this code.

(b) In this section, a person is finally convicted if the conviction has not been reversed on appeal and all appeals, if any, have been exhausted.

[Added by Acts 1979, 66th Leg., p. 1258, ch. 595, § 1, eff. June 13, 1979.]

CHAPTER 52. STUDENT LOAN PROGRAM

SUBCHAPTER C. STUDENT LOANS

Section

52.40. Cancellation of Certain Loan Repayments.

SUBCHAPTER C. STUDENT LOANS

§ 52.36. Loan Interest

The board shall from time to time fix the interest to be charged for any student loan at a rate sufficient to pay the interest on outstanding bonds plus any expenses incident to their issuance, sale, and retirement. Interest shall be postponed by the board as long as a student is enrolled at a participating institution and may be postponed at the board's discretion as long as a student is enrolled at any other higher educational institution, provided that the total interest paid is to be equal to that fixed at the time the note evidencing the loan is executed.

[Amended by Acts 1979, 66th Leg., p. 785, ch. 347, § 1, eff. June 6, 1979.]

§ 52.40. Cancellation of Certain Loan Repayments

(a) The board may cancel the repayment of a loan received by a student who earns a professional doctor of medicine degree or a doctorate of psychology degree and who is employed by the Texas Youth Council, State Department of Public Welfare, Texas Department of Corrections, or Department of Mental Health and Mental Retardation prior to the date on which repayment of the loan is to commence.

(b) A person who wishes to apply for a loan cancellation shall enter into a contract with the board which contains the following provisions:

(1) No payment is due from the person as long as he is employed by one of the designated state agencies.

(2) Half of the total amount of the loan plus interest due is to be cancelled after two years of service with a designated state agency, and the remainder is to be cancelled after two additional years of service.

(3) Repayment of the loan and interest is to commence immediately if the person leaves the designated state agency before the expiration of two years; repayment of one-half of the loan and interest is to commence immediately if the person leaves the designated state agency after completing two years service; upon completion of four years service, the loan, principal and interest, shall be fully cancelled.

(4) Interest continues to accrue until the loan is cancelled or repaid.

(c) The legislature shall appropriate to the Texas Opportunity Plan Fund an amount equal to the loans and interest cancelled pursuant to the provisions of this section.

(d) The board shall publicize the availability of the loan cancellation procedures provided in this section at all institutions of higher education which offer graduate programs in medicine or psychology.

[Added by Acts 1975, 64th Leg., p. 1344, ch. 503, § 1, eff. Sept. 1, 1975.]

[Sections 52.41 to 52.50 reserved for expansion]

CHAPTER 53. HIGHER EDUCATION AUTHORITIES

SUBCHAPTER C. POWERS AND DUTIES

Section
53.47. Bonds for the Purchase of Student Loan Notes.

SUBCHAPTER C. POWERS AND DUTIES

§ 53.47. Bonds for the Purchase of Student Loan Notes

(a) An authority heretofore created may, upon approval of the city or cities which created the same, issue revenue bonds to obtain funds to purchase student loan notes which are guaranteed under the provisions of the Higher Education Act of 1965 (Public Law 89–329).[1] Revenue bonds issued for such purpose shall be issued in accordance with and with the effect provided in this chapter, except Section 53.36 shall not apply, as said chapter has been modified by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k–2, Vernon's Texas Civil Statutes), and by Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k–3, Vernon's Texas Civil Statutes). Such bonds shall be payable from and secured by a pledge of revenues derived from or by reason of the ownership of student loan notes and investment income after deduction of such expenses or operating the loan program as may be specified by the bond resolution or trust indenture.

(b) The authority, acting through a bank with trust powers, may cause bond proceeds to be expended to purchase for its account student loan notes executed by students who (1) are residents of this state or (2) who have been admitted to attend an accredited institution within this state. An accredited institution shall mean an institution which has been recognized by a recognized accrediting agency, as defined by Section 61.003(12) of the Texas Education Code, and is a public or private institution of higher learning which is not organized for profit.

(c) The authority shall contract with a nonprofit corporation, organized under the laws of this state, whereby such corporation will provide the reports and other information required for continued participation in the federally guaranteed loan program provided by the Higher Education Act of 1965 (Public Law 89–329). The custody of student loan notes, purchased by the bank on behalf of the authority, shall be held by a bank with trust powers located within this state.

(d) The authority, as a municipal corporation of the state, is charged with a portion of the responsibility of the state to provide educational opportunities in keeping with all applicable state and federal laws. Nothing in this section shall be construed as a prohibition against establishing policies to limit the purchase of notes to notes executed by students attending school in a certain geographical area or by students who are residents of the area.

(e) In lieu of establishing an authority under the provisions of this chapter, the governing body of a home-rule city or cities may request a nonprofit corporation heretofore organized to exercise the powers enumerated and provided in this section for and on its behalf. If the corporation agrees to exercise such powers, the directors of such corporation shall thereafter be appointed by and be subject to removal by the governing body of the home-rule city or cities, and except as herein provided, Sections 53.14, 53.15, 53.31, 53.32, 53.38, and 53.41 through 53.43 of the Texas Education Code shall apply to and govern such corporation, its procedures, and bonds. [Added by Acts 1975, 64th Leg., p. 963, ch. 365, § 1, eff. June 19, 1975.]

[1] 20 U.S.C.A. § 1001 et seq.

CHAPTER 54. TUITION AND FEES

SUBCHAPTER A. GENERAL PROVISIONS

Section
54.006. Refund of Tuition and Fees.

SUBCHAPTER B. TUITION RATES

54.062. Tuition Limit in Cases of Concurrent Enrollment.

SUBCHAPTER D. EXEMPTIONS FROM TUITION

54.210. Senior Citizens.

SUBCHAPTER E. OTHER FEES AND DEPOSITS

54.504. Repealed.
54.505. Mandatory Student Services Fees in Cases of Concurrent Enrollment in More Than One Institution Within Public Systems of Higher Education.

SUBCHAPTER A. GENERAL PROVISIONS

§ 54.006. Refund of Tuition and Fees

(a) A general academic teaching institution or medical and dental unit shall refund applicable tuition and fees collected for courses from which students drop within the first 12 days of a fall or spring semester or within the first four days of a summer term, provided the student remains enrolled at the institution for that semester or term. Refunds for courses dropped by a student who later in the semester or term withdraws from the institution are calculated according to the percentage schedules in Subsections (b) or (c) of this Act.

(b) A general academic teaching institution or medical and dental unit shall refund a percentage of collected tuition and mandatory fees to students withdrawing from the institution during a fall or spring semester or comparable trimester if such are in effect according to the following withdrawal schedule and subject to the provisions of Subsection (d) below:

(1) prior to the first class day	100 percent
(2) during the first five class days	80 percent
(3) during the second five class days	70 percent
(4) during the third five class days	50 percent
(5) during the fourth five class days	25 percent
(6) after the fourth five class days	None

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Separate withdrawal refund schedules may be established for optional fees such as intercollegiate athletics, cultural entertainment, parking, and yearbooks.

(c) A general academic teaching institution or medical and dental unit shall refund a percentage of collected tuition and mandatory fees to students withdrawing from the institution during a summer term according to the following withdrawal schedule and subject to the provisions of Subsection (d) below:

(1) prior to the first class day	100 percent
(2) during the first, second, or third class day	80 percent
(3) during the fourth, fifth, or sixth class day	50 percent
(4) seventh day of class and thereafter	None

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Separate withdrawal refund schedules may be established for optional fees such as intercollegiate athletics, cultural entertainment, parking, and yearbooks.

(d) A general academic teaching institution or medical and dental unit may assess up to $15 as a matriculation fee if the student withdraws from the institution before the first day of classes.

(e) A general academic teaching institution or medical and dental unit shall refund tuition and fees paid by a sponsor, donor, or scholarship to the source rather than directly to the student who has withdrawn if the funds were made available through the institution.

(f) A general academic teaching institution or medical and dental unit shall terminate student services and privileges, such as health services, library privileges, facilities usage, and athletic and cultural entertainment tickets, when a student withdraws from the institution.

[Added by Acts 1977, 65th Leg., p. 220, ch. 106, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER B. TUITION RATES

§ 54.051. Tuition Rates

(a) The governing board of each institution of higher education shall cause to be collected from students registering at the institution tuition or registration fees at the rates prescribed in this section.

(b) Tuition for resident students, except as otherwise hereinafter provided, is $4 per semester credit hour, but the total of such charge shall be not less than $50 per semester or 12-week summer session, and not less than $25 per 6-week summer term.

(c) Tuition for nonresident students, except as otherwise hereinafter provided, is $40 per semester credit hour.

(d) Resident or nonresident students registered for thesis or dissertation credit only, in those instances where such credit is the final credit hour requirement for the degree in progress, shall pay a sum proportionately less than herein prescribed but not more than $50.

(e) Tuition for resident students registered in a medical or dental branch, school or college is $400 per academic year of 12 months.

(f) Tuition for nonresident students registered in a medical or dental branch, school or college is $1,200 per academic year of 12 months.

(g) Resident or nonresident students registered for a course or courses in art, architecture, drama, speech, or music, where individual coaching or instruction is the usual method of instruction, shall pay a fee in addition to the regular tuition, said fee to be designated by the governing board of such institution; but in no event shall such fees be more per course per semester of four and one-half months or per summer session than $75.

(h) Tuition for students who are citizens of any country other than the United States of America is the same as tuition required of other nonresident students.

(i) Tuition for students who are citizens of any country other than the United States of America registered in a medical or dental branch, school or college is the same as tuition required of other nonresident students.

(j) Tuition for nonresident students registered in a public junior college is as provided in Subsection (b), Section 130.003 of the Texas Education Code.

(k) Tuition for students registered in a school of nursing as a nursing student is $50 per semester and per 12-week summer session.

(*l*) Tuition for students registered in a school of nursing as a nursing student for less than 12 semester credit hours of work or for less than a full semester credit hour or term hour load during a summer session shall pay an amount proportionately less than the amount provided in Subsection (k) of this section, but not less than $20.

(m) Repealed by Acts 1975, 64th Leg., p. 2326, ch. 720, § 2, eff. Sept. 1, 1975.

(n) Notwithstanding the preceding provisions of this section, any nonresident student who is enrolled for the spring semester of 1971 in an institution covered by this section may continue to enroll at the

same institution at the same tuition rate that was effective at the time of his original enrollment until one of the following conditions first occurs:

(1) he receives the degree at the degree level (i. e., the baccalaureate, master's, or doctoral degree) toward which he is working during the spring semester of 1971; or

(2) he voluntarily withdraws from the institution or the institution involuntarily withdraws the student for disciplinary reasons or for failing to meet the academic standards of the institution; or

(3) the termination of the spring semester of 1975.

(*o*) A teaching assistant, research assistant, or other student employee of any institution covered by this section is entitled to register himself, his spouse, and their children in a state institution of higher education by paying the tuition fees and other fees or charges required for Texas residents, without regard to the length of time he has resided in Texas; provided that said student employee is employed at least one-half time in a position which relates to his degree program under rules and regulations established by the employer institution. This exemption shall continue for students employed two consecutive semesters through the summer session following such employment if the institution is unable to provide employment and, as determined under standards established by the institution, if the employee has satisfactorily completed his employment.

(p) A student who holds a competitive scholarship of at least $200 for the academic year or summer for which he is enrolled and who is either a nonresident or a citizen of a country other than the United States of America is entitled to pay the fees and charges required of Texas residents without regard to the length of time he has resided in Texas, provided that he must compete with other students, including Texas residents, for the scholarship and that the scholarship must be awarded by a scholarship committee officially recognized by the administration of the institution of higher education.

[Amended by Acts 1975, 64th Leg., p. 1358, ch. 515, §§ 1, 2, eff. June 19, 1975; Acts 1975, 64th Leg., p. 2326, ch. 720, § 2, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1382, ch. 617, § 1, eff. Aug. 27, 1979.]

Section 4 of ch. 515 provided:

"The provisions of this Act apply only to foreign students who enter state colleges and universities for the first time after the effective date of this Act."

§ 54.060. Resident of Bordering State: Tuition

The nonresident tuition fee prescribed in this chapter does not apply to a nonresident student who is a resident of a state situated adjacent to Texas and who registers in any Texas public junior college situated in a county immediately adjacent to the state in which the nonresident student resides. The nonresident junior college student described in this section shall pay an amount equivalent to the amount charged a Texas student registered at a similar school in the state in which the nonresident student resides. The nonresident student described in this section shall pay equivalent fees and charges to those charged Texas students registered at a similar institution in the state in which the nonresident student resides, when such student registers at a Texas public senior upper level (those institutions offering only junior, senior, and graduate level programs) institution of higher education located within the Texas public junior college district from which the nonresident student has graduated or completed 45 semester credit hours.

[Amended by Acts 1975, 64th Leg., p. 280, ch. 122, § 1, eff. May 5, 1975.]

§ 54.052. Residents; Nonresidents; General Rules

(a) In this subchapter:

(1) "Residence" means "domicile."

(2) "Resided in" means "domiciled in."

(3) "Dependent" means an individual who is claimed as a dependent for federal income tax purposes by the individual's parent or guardian at the time of registration and for the tax year preceding the year in which the individual registers.

(b) For the purposes of this subchapter, the status of a student as a resident or nonresident student is determined as prescribed by this section, subject to the other applicable provisions of this subchapter.

(c) An individual who is under 18 years of age or is a dependent and who is living away from his family and whose family resides in another state or has not resided in Texas for the 12-month period immediately preceding the date of registration shall be classified as a nonresident student.

(d) An individual who is 18 years of age or under or is a dependent and whose family has not resided in Texas for the 12-month period immediately preceding the date of registration shall be classified as a nonresident student, regardless of whether he has become the legal ward of residents of Texas or has been adopted by residents of Texas while he is attending an educational institution in Texas, or within a 12-month period before his attendance, or under circumstances indicating that the guardianship or adoption was for the purpose of obtaining status as a resident student.

(e) An individual who is 18 years of age or over who has come from outside Texas and who is gainfully employed in Texas for a 12-month period immediately preceding registration in an educational institution shall be classified as a resident student as long as he continues to maintain a legal residence in Texas.

(f) An individual who is 18 years of age or over who resides out of the state or who has come from outside Texas and who registers in an educational institution before having resided in Texas for a 12-month period shall be classified as a nonresident student.

[Amended by Acts 1979, 66th Leg., p. 1065, ch. 496, § 1, eff. Aug. 27, 1979.]

Section 3 of the 1979 amendatory act provided:

"Individuals shall be classified for tuition purposes in accordance with this Act beginning with the spring semester of 1980."

§ 54.055. Parents, Change of Residence to Another State

An individual who is 18 years of age or under or is a dependent and whose parents were formerly residents of Texas is entitled to pay the resident tuition fee following the parents' change of legal residence to another state, as long as the individual remains continuously enrolled in a regular session in a state-supported institution of higher education.

[Amended by Acts 1979, 66th Leg., p. 1066, ch. 496, § 2, eff. Aug. 27, 1979.]

§ 54.062. Tuition Limit in Cases of Concurrent Enrollment

When a student registers at more than one public institution of higher education at the same time, his tuition charges shall be determined in the following manner:

(1) The student shall pay the full tuition charge to the first institution at which he is registered; and in any event he shall pay an amount at least equal to the minimum tuition specified in this code.

(2) If the minimum tuition specified in this code for the first institution at which the student is registered is equal to or greater than the minimum tuition specified in this code for the second institution at which the student is registered concurrently, the student shall not be required to pay the specified minimum tuition charge to the second institution in addition to the tuition charge paid to the first institution, but shall pay only the hourly rates, as provided in this code, to the second institution.

(3) If the minimum tuition specified in this code for the first institution at which the student is registered is less than the specified minimum tuition charge at the second institution (that is, if the second institution has a higher minimum tuition charge specified in this code), then the student shall first register at the institution having the lower minimum tuition and shall pay to the second institution only the amount equal to the difference between his total tuition charge at the second institution and his total tuition charge at the first institution, but in no case shall the student pay to the second institution less than the hourly rates as provided in this code.

(4) If a student is considered to be a Texas resident and therefore qualified to pay Texas resident tuition rates by one institution at which he is registered, that student shall be considered a Texas resident at each of the institutions at which he is concurrently registered for the purposes of determining the proper tuition charges. Nothing in this subsection shall be so construed as to allow a nonresident to pay resident tuition except at institutions covered by Section 54.060 of this code.

[Added by Acts 1977, 65th Leg., p. 21, ch. 7, § 1, eff. March 3, 1977.]

Section 2 of the 1977 Act provided:

"Should any provision of this Act conflict with, limit, or impair any pledge, covenant, or option made or reserved by any governing board with respect to any bonds outstanding as of the effective date of this Act, this Act is hereby repealed to the extent of the conflict, limitation, or impairment."

SUBCHAPTER C. TUITION SCHOLARSHIPS [REPEALED]

§§ 54.101, 54.102. Repealed by Acts 1975, 64th Leg., p. 2326, ch. 720, § 2, eff. Sept. 1, 1975

SUBCHAPTER D. EXEMPTIONS FROM TUITION

§ 54.202. Repealed by Acts 1975, 64th Leg., p. 2326, ch. 720, § 2, eff. Sept. 1, 1975

§ 54.204. Children of Disabled Firemen and Peace Officers

[See Compact Edition, Volume 1 for text of (a)]

(b) The governing board of each institution of higher education shall exempt from the payment of all dues, fees, and charges any person whose parent is an eligible employee who has suffered an injury, resulting in death or disability, sustained in the line of duty according to the regulations and criteria then in effect governing the department or agency in which he was employed. The exemption does not apply to general property deposits or to fees or charges for lodging, board, or clothing.

[See Compact Edition, Volume 1 for text of (c) to (h)]

[Amended by Acts 1975, 64th Leg., p. 1386, ch. 534, § 1, eff. Sept. 1, 1975.]

§ 54.206. Repealed by Acts 1975, 64th Leg., p. 2326, ch. 720, § 2, eff. Sept. 1, 1975

§ 54.210. Senior Citizens

(a) In this section, "senior citizen" means a person 65 years of age or older.

(b) The governing board of a state-supported institution of higher education may allow a senior citizen to audit any course offered by the institution without the payment of a fee if space is available.

[Added by Acts 1975, 64th Leg., p. 265, ch. 111, § 1, eff. Sept. 1, 1975.]

[Sections 54.211 to 54.500 reserved for expansion]

SUBCHAPTER E. OTHER FEES AND DEPOSITS

§ 54.503. Student Service Fees

(a) For the purposes of this section, "student services" means activities which are separate and apart from the regularly scheduled academic functions of the institution and directly involve or benefit students, including textbook rentals, recreational activities, health and hospital services, medical services, automobile parking privileges, intramural and intercollegiate athletics, artists and lecture series, cultural entertainment series, debating and oratorical activities, student publications, student goverment, and any other student activities and services specifically authorized and approved by the governing board of the institution of higher education. The term does not include services for which a fee is charged under another section of this code.

(b) The governing board of an institution of higher education may charge and collect from students registered at the institution fees to cover the cost of student services. The fee or fees may be either voluntary or compulsory as determined by the governing board. The total of all compulsory student services fees collected from a student for any one semester or summer session shall not exceed $60. All compulsory student services fees charged and collected under this section by the governing board of an institution of higher education, other than a public junior college, shall be assessed in proportion to the number of semester credit hours for which a student registers. No fee for parking services or facilities may be levied on a student unless the student desires to use the parking facilities provided.

[See Compact Edition, Volume 1 for text of (c) to (f)]

(g) Prior to recommending student fee raises to the governing board, the president of each institution may duly consider the recommendations of a student fee advisory committee. A majority of the committee's members shall be students enrolled in the institution and appointed by the student governing body of the institution or elected by a majority of students enrolled in the institution voting in an election held for that purpose. Other committee members from the staff and faculty may be included and selected as the president sees fit. The regents may duly consider the matter of raising student fees in open meeting. Along with his own recommendations, the president may make known to the Board of Regents the student fee committee's recommendations. If the decision of the board differs from that of the student fee committee, the president may deliver to the student fee committee a written explanation of the board's decision within 30 days of that decision.

[Amended by Acts 1979, 66th Leg., p. 1872, ch. 756, §§ 1, 2, eff. Sept. 1, 1979.]

§ 54.504. Repealed by Acts 1979, 66th Leg., p. 1873, ch. 756, § 3, eff. Sept. 1, 1979.

The repealed section, added by Acts 1975, 64th Leg., p. 323, ch. 135, § 1, related to medical service fees.

§ 54.505. Mandatory Student Services Fees in Cases of Concurrent Enrollment in More Than One Institution Within Public Systems of Higher Education

(a) For the purposes of this section "mandatory student services fees" means health and hospital services, intramural and intercollegiate athletics, student union, shuttle bus service, and any other student activities and services specifically authorized, approved, and mandated by the appropriate governing body, and "concurrent enrollment" means enrollment in joint or cooperative programs involving two or more institutions within a college or university system.

(b) When a student registers at more than one public institution of higher education within a college or university system under concurrent enrollment provisions of joint or cooperative programs between said institutions, the student shall pay all mandatory student services fees to the institution designated as the "home institution" under the joint or cooperative program and the governing board may waive the payment of all mandatory student services fees at the other institution(s).

[Added by Acts 1979, 66th Leg., p. 146, ch. 78, § 1, eff. April 26, 1979.]

Section 2 of the 1979 Act provided:

"Should any provision of this Act conflict with, limit, or impair any pledge, covenant, or option made or reserved by any governing board with respect to any bonds outstanding as of the effective date of this Act, this Act is hereby repealed to the extent of the conflict, limitation, or impairment."

CHAPTER 55. FINANCING PERMANENT IMPROVEMENTS

SUBCHAPTER B. REVENUE BONDS AND FACILITIES

§ 55.16. Rentals, Rates, Charges, and Fees

Each board shall be authorized to fix and collect rentals, rates, charges, and/or fees from students and others for the occupancy, services, use, and/or availability of all or any of its property, buildings, structures, activities, operations, or other facilities, in such amounts and in such manner as may be determined by the board; provided, however, that all student use fees shall be fixed and collected in proportion to the number of semester credit hours for which a student registers, and shall not exceed $6 per semester hour, except that those schools charging more than $6 per semester hour as of May

1, 1975, shall not exceed the amount being charged as of that date, and except that the legislature may specifically authorize individual boards to levy fees in excess of the $6 limit set herein. The board may waive all or any part of any such student use fees in the case of any student for whom the payment of such student use fee would cause an undue economic hardship, except that the number of such students for whom such waivers are granted shall not exceed 5% of the total enrollment; and further provided that nothing in this section shall affect, limit, or impair any pledge, covenant, or option made or reserved by the board with respect to any revenue bonds outstanding as of the 1975 amendment to this section, issued by the board pursuant to this chapter; and provided that hereafter if bonds are issued pursuant to Section 55.17 of this code, to be secured by a pledge of a limited or unlimited use fee, and if, at the time of authorizing the issuance of the bonds, (1) the estimated maximum amount per semester hour of such pledged use fee (based on then current enrollment and conditions) during any future semester necessary to provide for the payment of the principal of and interest on the bonds when due, together with (2) the aggregate amount of all use fees which were levied on a semester hour basis for the then current semester to pay the principal of and interest on all previously issued bonds, do not exceed $6 per semester hour, then such limited or unlimited use fee shall be levied and collected when and to the extent required by the resolution authorizing the issuance of the bonds in any amount required to provide for the payment of the principal of and interest on the bonds, regardless of any other provision of this section or the limitations contained herein.

[Amended by Acts 1975, 64th Leg., p. 1245, ch. 469, § 1, eff. June 19, 1975.]

CHAPTER 56. STUDENT FINANCIAL ASSISTANCE GRANTS

SUBCHAPTER A. GENERAL PROVISIONS

Section
56.001. Short Title.
56.002. Declaration of Policy.
56.003. Definitions.

SUBCHAPTER B. TEXAS ASSISTANCE GRANTS

56.010. Short Title.
56.011. Purpose.
56.012. Administrative Authority for the Program.
56.013. Rules Governing Eligibility of Postsecondary Institutions.
56.014. Rules Governing Eligibility of Students.
56.015. Awarding of Grants and Their Limitations.
56.016. Adoption of Regulations Governing the Program.

SUBCHAPTER C. TEXAS PUBLIC EDUCATIONAL GRANTS

56.031. Short Title.
56.032. Purpose.
56.033. Source of Program Funding.
56.034. Guidelines for Determining Eligibility and Awarding Grants.
56.035. Type of Grants to be Awarded and Restrictions.
56.036. Transfer of Grant Funds for Use as Matching Funds.
56.037. Priorities in Awarding Matching Funds.
56.038. Restrictions and Return of Transferred Funds.

SUBCHAPTER A. GENERAL PROVISIONS

§ 56.001. Short Title

This Chapter may be cited as the Student Financial Assistance Act of 1975.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.002. Declaration of Policy

The legislature, giving due consideration to the historical and continuing interest of the people of the State of Texas in encouraging deserving and qualified persons to realize their aspirations for education beyond high school finds and declares that postsecondary education for those who desire such an education and are properly qualified therefor is important to the welfare and security of this state and the nation and, consequently, is an important public purpose. The legislature finds and declares that the state can achieve its full economic and social potential only if every individual has the opportunity to contribute to the full extent of his capabilities and only when financial barriers to his economic, social, and educational goals are removed. It is, therefore, the policy of the legislature and the purpose of this Chapter to establish financial assistance programs to enable qualified students to receive a postsecondary education.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.003. Definitions

In this Chapter:

(1) "Institution of higher education" has the same meaning as is assigned to it by Section 61.003 of this code.

(2) "Governing board" has the same meaning as is assigned to it by section 61.003 of this code.

(3) "Postsecondary educational institution" means any institution, public or private, which provides courses of instruction beyond that offered in secondary schools.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

[Sections 56.004 to 56.009 reserved for expansion]

SUBCHAPTER B. TEXAS ASSISTANCE GRANTS

§ 56.010. Short Title

The grant program authorized by this subchapter shall be cited as the Texas Assistance Grants Program, and individual grants awarded pursuant to this program shall be cited as Texas Assistance Grants.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.011. Purpose

The purpose of this subchapter is to provide a program to supply grants of money enabling students to attend postsecondary educational institutions, public or private, of their choice in Texas.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.012. Administrative Authority for the Program

The Coordinating Board, Texas College and University System, is authorized to provide Texas Assistance Grants to students enrolled in any approved postsecondary educational institution, based on student financial need but not to exceed a grant amount of more than that specified in the appropriation by the legislature.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.013. Rules Governing Eligibility of Postsecondary Institutions

(a) The coordinating board shall approve for participation in the Texas Assistance Grants Program only such colleges, universities, associations, agencies, institutions, and facilities as are located within the state, which meet program standards and accreditation as determined by the board.

(b) The coordinating board shall make such regulations as may be necessary to insure compliance with the Civil Rights Act of 1964, Title VI (Public Law 88–352), as amended, [1] and in regard to nondiscrimination in admissions or employment.

(c) Any public postsecondary educational institution receiving any benefit under the provisions of this subchapter, either directly or indirectly, shall be subject to all present or future laws enacted by the legislature.

(d)(1) Postsecondary institutions which request approval for eligibility under this section and are denied such approval shall be provided written reasons for such denial by the coordinating board.

(2) The coordinating board shall adopt reasonable regulations allowing an institution to appeal denial of eligibility.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

[1] 42 U.S.C.A. § 2000d et seq.

§ 56.014. Rules Governing Eligibility of Students

To be eligible for a grant under this subchapter, a person must

(a) be a resident of Texas as defined by the coordinating board, provided, however, the person must meet, at a minimum, the resident requirements as defined by law for Texas resident tuition in fully state-supported institutions of higher education; or be a permanent resident of the United States who is otherwise qualified for an educational grant under this subchapter; no more than 10 percent of the funds awarded to eligible students enrolled at any approved institutions may be allocated to out-of-state students;

(b) be enrolled in an approved postsecondary educational institution in other than a theology or religious degree program;

(c) not be the recipient of an athletic scholarship during the period for which the grant is to be awarded;

(d) establish financial need in accordance with procedures and regulations of the coordinating board; and

(e) have complied with other requirements adopted by the coordinating board under this subchapter.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.015. Awarding of Grants and Their Limitations

(a) On receipt of a student application, enrollment report, and certification of the amount of financial need from an approved institution, the coordinating board shall certify the amount of the Texas Assistance Grant based on financial need but not to exceed a grant amount of more than that specified in the appropriation by the legislature nor

(1) the student's demonstrated financial need as determined by the coordinating board; or

(2) $1,000 during any one fiscal year.

(b) The proper amount of the Texas Assistance Grant shall be paid to the student through the postsecondary educational institution in which the student is enrolled.

(c)(1) If a student's grant application is denied, the coordinating board shall provide the student with written notification of the reasons for such denial.

(2) The coordinating board shall adopt reasonable regulations allowing a student to appeal denial of the grant.

(d) Financial need shall be the only consideration in establishing guidelines to determine a student's eligibility for a grant except that returning students who are on scholastic probation or all students on

disciplinary probation who have been placed on such probation by their respective institutions may be deemed ineligible by the coordinating board.
[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.016. Adoption of Regulations Governing the Program

(a) The coordinating board may make reasonable regulations consistent with the purposes and policies of this subchapter to enforce the requirements, conditions, and limitations expressed in this Act.

(b) The coordinating board shall make such regulations as may be necessary to comply with the provisions of Article I, Section 7; Article III, Section 51, and other parts of the Texas Constitution.

(c) The coordinating board shall provide copies of regulations proposed for its adoption to all eligible institutions one month prior to the meeting at which the proposals shall be acted upon.

(d) The coordinating board shall distribute copies of all regulations adopted pursuant to this Act to each eligible institution.
[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

[Sections 56.017 to 56.030 reserved for expansion]

SUBCHAPTER C. TEXAS PUBLIC EDUCATIONAL GRANTS

§ 56.031. Short Title

The grant program authorized by this subsection shall be cited as the Texas Public Educational Grants Program and individual grants awarded pursuant to this program shall be cited as Texas Public Educational Grants.
[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.032. Purpose

The purpose of this subchapter is to provide a program to supply grants of money to students attending institutions of higher education in Texas whose educational costs are not met in whole or in part from other sources and to provide institutions of higher education with funds to supplement and add flexibility to existing financial aid programs.
[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.033. Source of Program Funding

The governing boards of institutions of higher education shall cause to be set aside for use as Texas Public Educational Grants twenty-five cents out of each hourly charge in Subsection (b), $1.50 out of each hourly charge in Subsection (c) of Section 54.051 of this code, as amended, and six percent of hourly tuition charges for vocational-technical courses at public community and junior colleges.
[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.034. Guidelines for Determining Eligibility and Awarding Grants

(a) The governing boards of institutions of higher education shall establish guidelines to determine eligibility for awarding Texas Public Educational Grants subject to the limitations of this section.

(b) Financial need shall be the only consideration in establishing guidelines to determine a student's eligibility for a grant except that returning students who are on scholastic probation or all students on disciplinary probation may be deemed ineligible at the governing board's discretion.

(c) Guidelines adopted shall be submitted to the coordinating board, which is authorized to review and reject guidelines it determines to be contrary to the purposes of this section.

(1) In reviewing guidelines, the coordinating board shall give consideration to differing needs of each institution and desirability of this program being used to aid students who may have demonstrable financial need but be ineligible for other aid programs.

(2) If the coordinating board rejects guidelines adopted by a governing board, it shall provide a written explanation of such rejection and promulgate regulations allowing governing boards to appeal such rejection.
[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.035. Type of Grants to be Awarded and Restrictions

(a) Texas Public Educational Grants shall not be awarded for any specific purpose other than meeting all or part of a student's demonstrated financial need.

(b) No more than 10 percent of total grant funds awarded by institutions of higher education in a fiscal year under this subchapter may be allocated to out-of-state students.

(c) No funds may be awarded to alien students nor any money set aside from tuition revenues of alien students for use in this program.
[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.036. Transfer of Grant Funds for Use as Matching Funds

Each institution of higher education is authorized to transfer any or all of the funds set aside for the Texas Public Educational Grant Program to the coordinating board to be used for matching federal or other grant funds for awarding to students at-

tending that institution. Said scholarship fund transferred to the coordinating board and all matching funds may be expended by the coordinating board for awarding scholarships as provided herein and in the general appropriation acts of the legislature.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.037. Priorities in Awarding Matching Funds

In awarding matching funds to be used in conjunction with Texas Public Educational Grants, the coordinating board shall give first priority to those institutions and students showing the highest amount of financial need.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.038. Restrictions and Return of Transferred Funds

The coordinating board may not use funds transferred to it pursuant to this subchapter from one institution to award grants to students of a different institution. Should matching funds be unavailable for an institution, all funds transferred from that institution to the coordinating board shall be returned to that institution.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

CHAPTER 57. GUARANTEED STUDENT LOANS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 57.01. Declaration of Policy

The legislature, giving due consideration to the historical and continuing interest of the people of the State of Texas in encouraging deserving and qualified persons to realize their aspirations for education beyond high school, finds and declares that postsecondary education for those who desire such an education and are properly qualified therefor is important to the welfare and security of this state and the nation and, consequently, is an important public purpose. The legislature finds and declares that the state can achieve its full economic and social potential only if every individual has the opportunity to contribute to the full extent of his or her capabilities and only when financial barriers to his or her economic, social, and educational goals are removed. It is, therefore, the purpose of this chapter to establish a guaranteed student loan program to enable qualified students to receive a postsecondary education.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.02. Definitions

In this chapter:

(1) "Board" means the board of directors of the corporation.

(2) "Corporation" means the Texas Guaranteed Student Loan Corporation.

(3) "Postsecondary educational institution" means any institution, public or private, that provides courses of instruction beyond that offered in secondary schools.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

[Sections 57.03 to 57.10 reserved for expansion]

SUBCHAPTER B. ADMINISTRATION

§ 57.11. Texas Guaranteed Student Loan Corporation

(a) The Texas Guaranteed Student Loan Corporation is created to administer the program authorized

by this chapter. The corporation is a public nonprofit corporation and, except as otherwise provided in this chapter, has all the powers and duties incident to a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396–1.01 et seq., Vernon's Texas Civil Statutes).

(b) Except as otherwise provided by law, all expenses of the corporation shall be paid from income of the corporation.

(c) Corporate headquarters shall be in Austin.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

Section 2 of the 1979 Act provided:

"The sum of $1.5 million is transferred from the federal lender's allowance funds of the Coordinating Board, Texas College and University System, to the corporation. The corporation shall use the funds to meet initial operating expenses, to establish the initial reserve necessary for loan guarantees, and to match federal funds available under the Higher Education Act of 1965, as amended."

§ 57.12. Application of Sunset Act

(a) The Texas Guaranteed Student Loan Corporation is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes) and unless continued in existence as provided by that Act the corporation is abolished, and this chapter expires effective September 1, 1991.

(b) If the corporation is abolished, the comptroller of public accounts shall serve as trustee to administer the assets of the corporation and satisfy all outstanding obligations.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.13. Composition of Board of Directors

(a) The corporation is governed by a board of 11 directors appointed in accordance with this section.

(b) The governor, with the advice and consent of the senate, shall appoint eight members to the board. Three members must be persons working in commercial finance, three must be members of the faculty or administration of an eligible postsecondary educational institution, as defined by Section 57.46 of this code, and two must be members of the general public who do not derive a majority of their income from higher education or commercial finance.

(c) The chairman of the Coordinating Board, Texas College and University System, shall appoint a member of the coordinating board to the corporation board of directors.

(d) The commissioner of higher education shall appoint a student enrolled in a public or private postsecondary educational institution to the board. Before making the appointment, the commissioner of higher education shall consult with higher education student organizations from all regions of the state.

(e) The comptroller of public accounts shall serve as a member of the board.

(f) Each member of the board must be a Texas resident.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

Section 3 of the 1979 Act provided:

"In making the initial appointments to the board of directors of the Texas Guaranteed Student Loan Corporation, the governor shall designate two members to serve for terms expiring in 1981, three members to serve for terms expiring in 1983, and three members to serve for terms expiring in 1985. The initial student member shall serve for a term expiring in 1981."

§ 57.14. Directors' Terms of Office

Members of the board appointed by the governor or the commissioner of higher education serve for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.15. Vacancies

(a) A member of the board vacates the office if the member ceases to be a member of the field from which he or she was appointed.

(b) A vacancy on the board shall be filled by the original appointing authority for the remainder of the unexpired term.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 29, 1979.]

§ 57.16. Expenses

Members of the board serve without compensation but are entitled to reimbursement for actual and necessary expenses in attending meetings of the board or performing other official duties authorized by the chairman.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.17. Officers

The board shall elect from among its members a chairman, vice-chairman, and other officers that the board considers necessary. The chairman and vice-chairman serve for a term of one year and may be reelected.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.18. Meetings

The board may meet as often as necessary, but shall meet at least twice a year.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.

§ 57.19. Executive Director

The board shall appoint an executive director to serve as chief executive officer in administering the program and carrying out the policies of the board. The executive director serves at the will of the board.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.20. Employees

The board may appoint employees and may fix their compensation and prescribe their duties.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.21. Delegation of Power

The board may delegate any of its powers to the executive director and corporation employees.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.22. Application of the Texas Non-Profit Corporation Act

The corporation is subject to the Texas Non-Profit Corporation Act (Article 1396–1.01 et seq., Vernon's Texas Civil Statutes), except that:

(1) the corporation may not make donations for the public welfare or for charitable, scientific, or educational purposes or in aid of war activities;

(2) the corporation is not required to file articles of incorporation;

(3) the corporation may not merge or consolidate with another corporation;

(4) the corporation is not subject to voluntary or involuntary dissolution;

(5) the corporation may not be placed in receivership; and

(6) the corporation is not required to make reports to the secretary of state under Article 9.01 of that Act.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.23. Liabilities of the Corporation

Liabilities created by the corporation are not debts of the state and the corporation may not secure any liability with funds or assets of the state except as otherwise provided by law.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

[Sections 57.24 to 57.40 reserved for expansion]

SUBCHAPTER C. STUDENT LOANS

§ 57.41. Guaranteed Student Loans

(a) The corporation shall guarantee loans made to eligible students by eligible lenders as provided by the federal guaranteed student loan program under the Higher Education Act of 1965, 20 U.S.C. Sec. 1001 et seq., as amended.

(b) The corporation may prescribe the terms and conditions on which the loans are to be guaranteed. In prescribing those terms and conditions, the board shall take into consideration the need to encourage lenders to make loans while at the same time maintaining the fiscal integrity of the program.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.42. Reinsurance

The corporation may enter into an agreement with the United States Office of Education for reinsurance against loss under the loan program due to death, disability, or default of the borrower.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.43. Premiums

The corporation may impose and collect insurance premiums from student borrowers in an amount not to exceed the maximum allowable under the Higher Education Act of 1965, as amended.[1]

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

[1] 20 U.S.C.A. § 1001 et seq.

§ 57.44. Eligible Students

In order to be eligible for a loan to be guaranteed under this chapter, a person must:

(1) be accepted for enrollment or be in good standing, as determined by the institution, at an eligible postsecondary educational institution;

(2) be registered for or enrolled in at least one-half the normal full-time course load, as determined by the institution; and

(3) have executed a promissory note for a loan that is eligible for reinsurance by the United States Office of Education.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1974.]

§ 57.45. Eligible Lenders

(a) In order to qualify as an eligible lender under this subchapter, the lender must:

(1) be an eligible lender for purposes of the Higher Education Act of 1965, as amended;

(2) have its principal place of business in Texas; and

(3) enter into an agreement with the corporation for participation in the program.

(b) In contracting with the corporation, the eligible lender shall agree to adhere to the lending requirements of the corporation and to periodic review of guaranteed student loan accounts as considered necessary by the corporation.

(c) Each eligible lender shall submit to the corporation at the end of each fiscal year a report on the student loan accounts of that lender.

(d) In accordance with federal and state law, the corporation may provide, and charge a fee for, services to eligible lenders necessary to encourage lender

participation in the loan program. Services for which the corporation charges a fee shall be provided at the option of the lender.

(e) In order to be guaranteed by the corporation, a loan made by an eligible lender must comply with all provisions of the Higher Education Act of 1965, as amended, including provisions relating to:

(1) limits on annual loan amounts;

(2) cumulative loan amount limits;

(3) maximum interest rates;

(4) grace periods;

(5) repayment terms; and

(6) deferment conditions.

(f) The corporation may suspend or revoke the eligibility of a lender that the corporation determines is not in compliance with this chapter.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.46. Eligible Institutions

(a) In order to qualify as an eligible institution under this subchapter, a postsecondary educational institution must:

(1) be an eligible institution for purposes of the Higher Education Act of 1965, as amended; [1] and

(2) be eligible for reinsurance of guaranteed loans by the United States Office of Education.

(b) An otherwise eligible postsecondary educational institution may be located anywhere.

(c) The corporation may suspend or revoke the eligibility of an institution that the corporation determines is not in compliance with this chapter.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 29, 1979.]

[1] 20 U.S.C.A. § 1001 et seq.

§ 57.47. Suits on Default

(a) If a student borrower defaults on a loan and the corporation is required to honor the guarantee, the corporation shall bring suit against the defaulting party as soon as practicable.

(b) A suit against a defaulting party under this section may be brought in the county in which the defaulting person resides, in which the lender is located, or in Travis County.

(c) It is not a defense to a suit under this section that the defaulting party was a minor at the time the promissory note was executed or that the statute of limitations has expired.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.48. Warrants Not to be Issued to Defaulting Parties

(a) The corporation shall report to the comptroller of public accounts the name of any person who is in default on a loan guaranteed under this chapter.

(b) The comptroller of public accounts may not issue a warrant to any person who has been reported by the corporation to be in default on a loan guaranteed under this chapter.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.49. Cooperation of State Agencies and Subdivisions

To the extent allowed by law, each agency and political subdivision of the state shall cooperate with the corporation in attempts to collect on defaulted loans.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.50. Nondiscrimination

Neither the corporation nor an eligible lender may discriminate against an eligible student in making a loan or loan guarantee on the basis of race, age, religion, income, or sex.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.51. Transition Provision

(a) For the purpose of this section, "authorities" means educational authorities or corporations created or established pursuant to Section 53.47 of the Texas Education Code which participate in the student loan program under the Higher Education Act of 1965, as amended.[1]

(b) It is recognized that there are authorities which may have issued bonds prior to May 15, 1979, for the purpose of acquiring federally insured student loans and which authorities may have unexpended bond proceeds, from issues sold prior to May 15, 1979, at the time the corporation begins guaranteeing student loans. To maximize the availability of funds for student loans and to protect the fiscal integrity of the authorities, the authorities shall be allowed to continue to acquire federally insured loans to the extent of the unexpended bond proceeds of the authorities from issues sold prior to May 15, 1979, until the date that the corporation begins guaranteeing loans. However, the authorities shall not issue bonds for the sole purpose of purchasing federally insured loans after May 15, 1979.

(c) This section expires on the day that the corporation becomes liable for the guarantee of a loan under this chapter.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

[1] 20 U.S.C.A. § 1001 et seq.

[Sections 57.52 to 57.70 reserved for expansion]

SUBCHAPTER D. FISCAL PROVISIONS

§ 57.71. Reserve Fund

The corporation shall establish a reserve fund into which all money received by the corporation shall be deposited. The corporation shall establish accounts in that fund in accordance with this section.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.72. Guarantee Account

(a) The corporation shall establish a guarantee account in the reserve fund to be used only for meeting the claims of eligible lenders on defaulted loans.

(b) Federal money advanced to the corporation for the purpose of helping to establish or strengthen the reserve fund shall be deposited in the guarantee account. The guarantee account must identify federal funds as a separate item.

(c) Excess corporate earnings, contributions, gifts, grants, federal reinsurance receipts, and investment earnings of the guarantee account earned after September 1, 1983, shall be deposited in the guarantee account.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.73. Operating Account

(a) The corporation shall establish an operating account in the reserve fund to meet administrative and operating expenses.

(b) Insurance premium receipts, administrative cost allowance receipts, collections on defaulted loans held by the corporation, and earnings from the reserve fund (except investment earnings of the guarantee account earned after September 1, 1983) shall be deposited in the operating account, as permissible by law.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.74. Other Corporate Accounts

The corporation may establish other accounts in the reserve fund as required or permitted by law.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.75. Tax Exemption

All income, property, and other assets of the corporation are exempt from taxation by the state and political subdivisions of the state.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.76. Annual Audit

At least once each year the corporation shall have a fiscal and compliance audit performed by a certified public accountant.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.77. Annual Report

(a) The corporation annually shall prepare a written report on the financial and program operations of the corporation. The report shall include the audited financial statement for the year, the number and dollar value of loans guaranteed during the year, and the total dollar value of outstanding guaranteed loans.

(b) The corporation shall submit the annual report to the governor, lieutenant governor, speaker of the house of representatives, comptroller of public accounts, state treasurer, and commissioner of higher education.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

§ 57.78. Investments, Depositories

All money of the corporation may be invested in direct obligations of the United States of America; obligations which in the opinion of the Attorney General of the United States are general obligations of the United States and backed by its full faith and credit; obligations guaranteed by the United States of America; evidences of indebtedness of the Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Federal Home Loan Banks, Federal National Mortgage Association, Federal Financing Bank Participation Certificates in the Federal Assets Financing Trust, New Housing Authority Bonds and Project Notes fully secured by contracts with the United States or any other agency or instrumentality of the United States of America; and deposits or certificates of deposits of any bank or trust company which are fully secured (to the extent not insured by a corporation instrumentality or agency of the United States of America) by obligations in which the corporation may invest under the provisions hereof.

[Added by Acts 1979, 66th Leg., p. 1711, ch. 706, § 1, eff. Aug. 27, 1979.]

SUBTITLE B. STATE COORDINATION OF HIGHER EDUCATION

CHAPTER 61. COORDINATING BOARD, TEXAS COLLEGE AND UNIVERSITY SYSTEM

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SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 61.0211. Application of Sunset Act

The Coordinating Board, Texas College and University System, is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished, and this chapter expires effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.151, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

§ 61.051. Coordination of Institutions of Public Higher Education

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) The board shall classify and prescribe the role and scope for each public institution of higher education in Texas, shall make such changes in classification or role and scope of each institution as it deems necessary, and shall hear applications from the institutions for changes in classification or role and scope. The board shall make recommendation to the legislature with respect to maximum enrollment limits for each public institution of higher education in the State of Texas and may recommend to the legislature maximum enrollment limits for any department, school, degree program, or certificate program at any such institution.

(e) The board shall review periodically all degree and certificate programs offered by the institutions of higher education to assure that they meet the present and future needs of the state. The board shall also order the initiation, consolidation, or elimination of degree or certificate programs where that action is in the best interest of the institutions themselves or the general requirements of the State of Texas, or when that action offers hope of achieving excellence by a concentration of available resources. No new department, school, degree program, or certificate program may be added at any institution of higher education except with specific prior approval of the board. Once approved, no department, school, degree program, or certificate program at any institution of higher education may be expanded to include subject matter courses that are outside of approved degree and certificate programs except with specific prior approval of the board.

(f) The board shall encourage and develop in cooperation with the State Board of Vocational Education new certificate programs in technical and vocational education in institutions of higher education as the needs of technology and industry may demand and shall recommend the elimination of certificate programs for which a need no longer exists. The board may contract with the State Board of Education (State Board of Vocational Education) so that the coordinating board may assume the leadership role and administrative responsibilities of the State Board for Vocational Education for state level administration of technical-vocational education programs in Texas public community colleges, public technical institutes, and other eligible public postsecondary institutions.

[See Compact Edition, Volume 1 for text of (g) to (i)]

(j) No off-campus courses for credit may be offered by any public college or university without specific prior approval of the board. The board shall establish regulations for the coordination of credit and noncredit activities of adult and continuing education by public colleges and universities.

[Amended by Acts 1975, 64th Leg., p. 2055, ch. 676, §§ 1, 2, eff. June 20, 1975.]

Section 5 of the 1975 Act provided:

"The coordinating board shall have all the previously listed powers in this Act in connection with The University of Texas System and The Texas A & M University System."

§ 61.058. Construction Funds and Development of Physical Plants

To assure efficient use of construction funds and the orderly development of physical plants to accommodate projected college student enrollments, the board shall:

(1) determine formulas for space utilization in all educational and general buildings and facilities at institutions of higher education;

(2) devise and promulgate methods to assure maximum daily and year-round use of educational and general buildings and facilities, including but not limited to maximum scheduling of day and night classes and maximum summer school enrollment;

(3) consider plans for selective standards of admission when institutions of higher education approach capacity enrollment;

(4) require, and assist the public senior colleges and universities, medical and dental units, and other agencies of higher education in developing, long-range plans for campus development;

(5) endorse, or delay until the next succeeding session of the legislature has the opportunity to approve or disapprove, the proposed purchase of any real property by an institution of higher education, except a public junior college;

(6) develop and publish standards, rules, and regulations to guide the institutions and agencies of higher education in making application for the approval of new construction and major repair and rehabilitation of all buildings and facilities regardless of proposed use;

(7) ascertain that the standards and specifications for new construction, repair, and rehabilitation of all buildings and facilities are in accordance with Chapter 324, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 678(g) Vernon's Texas Civil Statutes); and

(8) approve or disapprove all new construction and repair and rehabilitation of all buildings and facilities at institutions of higher education financed from any source other than ad valorem tax receipts of the public junior colleges, provided that:

(A) the board's consideration and determination shall be limited to the purpose for which the new or remodeled buildings are to be used to assure conformity with approved space utilization standards and the institution's approved programs and role and scope if the cost of the project is not more than $500,000, but the board may consider cost factors and the financial implications of the project to the state if the total cost is in excess of $500,000;

(B) the requirement of approval for new construction financed from other than appropriated funds applies only to projects the total cost of which is in excess of $100,000;

(C) the requirement of approval for major repair and rehabilitation of buildings and facilities applies only to projects the total cost of which is in excess of $100,000; and

(D) the requirement of approval or disapproval by the board does not apply to any new construction or major repair and rehabilitation project that is specifically approved by the legislature.

[Amended by Acts 1975, 64th Leg., p. 2056, ch. 676, § 3, eff. June 20, 1975; Acts 1977, 65th Leg., p. 1133, ch. 425, § 1, eff. Aug. 29, 1977.]

§ 61.066. Studies and Recommendations; Reports

(a) The board shall make studies and recommendations directed toward the achievement of excellence or toward improved effectiveness and efficiency in any phase of higher education in Texas and shall report on their studies and recommendations to the governor and the legislature. The officials of the institutions of higher education shall comply with requests for reports or information made by the board or the commissioner. To assure that the institutions of higher education timely file various reports with the appropriate agencies, the board shall receive and distribute the reports required by statute to be filed with the governor, the Legislative Budget Board, the state auditor, the state library, and any other state agency.

(b) The board shall prepare biennial reports with reference to new programs in higher education as well as restructuring existing programs to meet the changing needs of the populace of the state. This will include but will not be limited to projected student enrollments at the various institutions, the areas of study which they will enter, and the projected demand for the various professional activities. In addition, the board shall make specific recommendations regarding the physical needs at each campus with the physical, mental, and educational needs of the student population in mind. In order to insure adequate time available for study of the reports, they shall be distributed to the appropriate offices as required by statute no later than the end of the fiscal year prior to the convening of the legislature.

[Amended by Acts 1975, 64th Leg., p. 252, ch. 101, § 1, eff. Sept. 1, 1975.]

§ 61.072. Regulation of Foreign Student Tuition

The board shall adopt rules and policies to be followed by the governing boards of institutions of higher education in fixing foreign student tuition fees pursuant to Subsections (h) and (i), Section 54.051, of this code.

[Added by Acts 1975, 64th Leg., p. 1359, ch. 51 , § 3, eff. June 19, 1975.]

§ 61.073. Allocation of Funds for Tuition and Fee Exemptions

(a) Funds shall be appropriated to the Coordinating Board, Texas College and University System, for allocation to each junior and community college in an amount equal to the total of all tuition and laboratory fees foregone each semester as a result of the tuition and laboratory fee exemptions required by law in Sections 54.201 through 54.209, Texas Education Code.

(b) The governing board of each junior or community college shall report to the coordinating board the number of students enrolled on the 12th class day of each semester who were exempt from the payment of tuition and laboratory fees which would have been collected from the students if they had not been exempt from the payment thereof. The coordinating board shall remit to each junior and community college an amount equal to the tuition and laboratory fees foregone from the funds appropriated for that purpose.

[Added by Acts 1977, 65th Leg., p. 83, ch. 40, § 1, eff. Aug. 29, 1977.]

§ 61.074. Official Grade Point Average

The board shall by rule establish a mandatory uniform method of calculating the official grade point average of a student enrolled in, or seeking admission to a graduate or professional school of, an institution of higher education.

[Added by Acts 1977, 65th Leg., p. 1610, ch. 628, § 1, eff. Aug. 29, 1977.]

[Sections 61.075 to 61.090 reserved for expansion]

SUBCHAPTER D. CONTRACTS WITH BAYLOR COLLEGE OF MEDICINE AND BAYLOR UNIVERSITY COLLEGE OF DENTISTRY

§ 61.096. Restrictions: Medical School Admission Policies

As a restriction of the authority granted to the Coordinating Board by Sections 61.092 and 61.093 of this Code, no contract shall be entered into with the Baylor College of Medicine until the Baylor College of Medicine promulgates appropriate rules and regulations pertaining to the admission of students to medical schools under its jurisdiction which will provide for admission of those students to its entering class each year who are equally or as well qualified as all other students, and who have entered a contract with or received a commitment for a stipend, grant, loan or scholarship from the State Rural Medical Education Board. The State Rural Medical Education Board may contract with medical students providing for such students to engage in a general or family practice of medicine for not less than four years after licensing and a period of medical residency, as determined by the rules and regulations established by the State Rural Medical Education Board, in cities of Texas which have a population of less than 5,000 or in rural areas, as that term may be defined by the State Rural Medical Education Board, and said Board is hereby given the authority to define and from time to time redefine the term rural area, at the time the medical practice is commenced. This contract shall provide for a monthly stipend of at least $100 to be granted by the State Rural Medical Education Board to each person under contract with the State while enrolled as a medical school student.

[Added by Acts 1975, 64th Leg., p. 2407, ch. 740, § 1, eff. Sept. 1, 1975.]

Section 5 of the 1975 Act provided:

"If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the applications thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid, and the Legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision. All of the terms and provisions of this Act are to be liberally construed to effectuate the purposes, powers, rights, functions, and authorities herein set forth."

[Sections 61.097 to 61.200 reserved for expansion]

SUBCHAPTER F. TUITION EQUALIZATION GRANT

§ 61.225. Qualifications For Grant

To be eligible for a tuition equalization grant, a person must:

(1) be a Texas resident as defined by the coordinating board and meet, at a minimum, the resident requirements defined by law for Texas resident tuition in fully state-supported institutions of higher education;

(2) be enrolled for at least one-half of a full course load conforming to an individual degree plan in an approved college or university;

(3) be required to pay more tuition than is required at a public college or university and be charged no less than the regular tuition required of all students enrolled at the institution;

(4) establish financial need in accordance with procedures and regulations of the coordinating board;

(5) not be a recipient of any form of athletic scholarship; and

(6) have complied with other requirements adopted by the coordinating board under this subchapter.

[Amended by Acts 1979, 66th Leg., p. 93, ch. 56, § 1, eff. Aug. 27, 1979.]

§ 61.227. Payment of Grant; Amount

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) In no event shall a tuition equalization grant paid pursuant to this subchapter in behalf of any student during any one fiscal year exceed an amount

equal to 50 percent of the average state appropriation in the biennium preceding the biennium in which the grant is made for a full-time student or the equivalent at public senior colleges and universities, as determined by the board. A grant to a part-time student shall be made on a pro-rata basis of a full-time equivalent.

[Amended by Acts 1979, 66th Leg., p. 93, ch. 56, § 2, eff. Aug. 27, 1979.]

SUBCHAPTER G. REGULATION OF PRIVATE DEGREE-GRANTING INSTITUTIONS OF HIGHER EDUCATION

§ 61.301. Purpose

It is the policy and purpose of the State of Texas to prevent deception of the public resulting from the conferring and use of fraudulent or substandard college and university degrees; it is also the purpose of this subchapter to regulate the use of academic terminology in naming or otherwise designating educational institutions, the advertising, solicitation or representation by educational institutions or their agents, and the maintenance and preservation of essential academic records. Because degrees and equivalent indicators of educational attainment are used by employers in judging the training of prospective employees, by public and private professional groups in determining qualifications for admission to and continuance of practice, and by the general public in assessing the competence of persons engaged in a wide range of activities necessary to the general welfare, regulation by law of the evidences of college and university educational attainment is in the public interest. To the same end the protection of legitimate institutions and of those holding degrees from them is also in the public interest.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.302. Definitions

In this subchapter:

(1) "Degree" means any title or designation, mark, abbreviation, appellation, or series of letters or words, including associate, bachelor's, master's, doctor's, and their equivalents, which signifies, purports to, or is generally taken to signify satisfactory completion of the requirements of all or part of a program of study leading to an associate, bachelor's, master's, or doctor's degree or its equivalent.

(2) "Private institution of higher education" or "institution" means an educational institution which:

(A) is not an institution of higher education as defined by Section 61.003(7) of this code;

(B) is incorporated under the laws of this state, or maintains a place of business in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person or by correspondence leading to a degree or providing credits alleged to be applicable to a degree.

(3) "Agent" means a person employed by or representing a private institution of higher education who solicits students for enrollment in the institution.

(4) "Commissioner" means the Commissioner of Higher Education.

(5) "Board" means the Coordinating Board, Texas College and University System.

(6) "Person" means any individual, firm, partnership, association, corporation, or other private entity or combination thereof.

(7) "Program of study" means any course or grouping of courses which are alleged to entitle a student to a degree or to credits alleged to be applicable to a degree.

(8) "Recognized accrediting agency" means an agency as defined by Sec. 61.003(12) of this code.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.303. Exemptions

(a) The provisions of this subchapter do not in any way apply to:

(1) an institution which:

(A) is fully accredited by a recognized accrediting agency, or

(B) is a candidate for accreditation by a recognized accrediting agency on the effective date of this Act, so long as the institution maintains candidacy status or subsequently is fully accredited.

(2) an institution whose graduates are subject to licensure by an agency of the State of Texas prior to their engaging in professions directly related to their course of study.

(b) The exemptions provided by Subsection (a)(1) apply only to the extent that an institution is accredited, and if an institution offers to award a degree for which it is not accredited, the exemption does not apply.

(c) An exempt institution or person may be issued a certificate of authorization to grant degrees.

(d) An exempt institution or person would continue in that status only so long as it maintained accreditation standards acceptable to the board.

(e) The board shall provide for due process and procedures for revoking the exemption status of an institution or person.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.304. Requisite Authority to Grant Degrees and Offer Courses

After the effective date of this subchapter, no person may grant or award a degree on behalf of a private institution of higher education or enroll students for courses unless the institution has been issued a certificate of authority to grant the degree by the board in accordance with the provisions of this subchapter. No person may represent that credits earned or granted by that person or institution are applicable for credit toward a degree to be granted by some other person or institution except under conditions and in a manner specified and approved by the board. The board is empowered to specify and regulate the manner, condition, and language used by an institution or person or agents thereof in making known that the person or institution holds a certificate of authority and the interpretation of the significance of such certificate.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.305. Application for Certificate of Authority

(a) A private institution of higher education may apply to the board for a certificate of authority to grant a degree in a specified program of study on application forms provided by the board.

(b) The application form shall contain the name and address of the institution; purpose of the institution; names of the sponsors or owners of the institution; regulations, rules, constitutions, bylaws, or other regulations established for the government and operation of the institution; the names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board; the names of members of the faculty who will, in fact, teach in the program of study, with the highest degree held by each; a full description of the degree or degrees to be awarded and the course or courses of study prerequisite thereto; a description of the facilities and equipment utilized by the institution; and any additional information which the board may request.

(c) The application must be accompanied by an initial fee of $250.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.306. Issuance of Certificate

(a) The board may issue a certificate of authority to grant a degree or degrees and to enroll students for courses which may be applicable toward a degree if it finds that the applicant meets the standards established by the board for certification.

(b) A certificate of authority to grant a degree or degrees is valid for a period of two years from the date of issuance.

(c) An institution in operation on the effective date of this subchapter which has submitted a complete application for a certificate which has not been evaluated or acted on by the board shall be issued a provisional certificate which shall be valid for purposes of compliance with this subchapter until the board has completed its evaluation and has issued or denied a regular certificate.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.307. Amendments to Applications

(a) The chief administrative officers of each institution which has been issued a certificate of authority shall immediately notify the board of any change in administrative personnel, faculty, or facilities at the institution or any other changes of a nature specified by the board.

(b) An institution which wishes to amend an existing program of study to award a new or different degree during the period of time covered by current certificate may file an application for amendment of the certificate with the board. The application shall be accompanied by a fee of $75 to cover the cost of program evaluation. If the board finds that the new program of study meets the required standards, the board may amend the institution's certificate accordingly.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.308. Renewal of Certificate

(a) A private institution of higher education which desires to renew its certificate of authority shall apply to the board at least 60 days prior to the expiration of the current certificate.

(b) The application for renewal shall be made on forms provided by the board and shall be accompanied by a renewal fee of $150.

(c) The board shall renew the certificate if it finds that the institution has maintained all requisite standards and has complied with all rules and regulations promulgated by the board.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.309. Revocation of Certificate of Authority

The board may revoke a certificate of authority to grant degrees at any time if it finds that:

(1) any statement contained in an application for a certificate is untrue;

(2) the institution has failed to maintain the faculty, facilities, equipment, and programs of study on the basis of which the certificate was issued;

(3) advertising utilized on behalf of the institution is deceptive or misleading; or

(4) the institution has violated any rule or regulation promulgated by the board under the authority of this subchapter.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.310. Appeal

An institution whose application for an original, amended, or renewal certificate of authority to grant degrees is denied or whose certificate is revoked by the board is entitled to written notice of the reasons assigned by the board for the denial or revocation and may request a hearing before the board. The hearing shall be held within 120 days after written request is made to the board. If after the hearing the board upholds its previous denial or revocation, the institution may challenge the board's action in a suit filed within 30 days in the district court of Travis County. The trial shall be de novo as that term is used in appeals from a justice of the peace court to a county court.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.311. Rules and Regulations

(a) The board shall promulgate standards, rules, and regulations governing the issuance of certificates of authority.

(b) The board may delegate to the commissioner such authority and responsibility conferred on the board by this subchapter as the board deems appropriate for the effective administration of this subchapter.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.312. Honorary Degrees

No person may award an honorary degree on behalf of a private institution of higher education subject to the provisions of this subchapter unless the institution has been issued a certificate of authority to award such a degree. The honorary degree shall plainly state on its face that it is honorary.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.313. Use of the Term "College" or "University"

No person may use the term "college" or "university" in the official name or title of a private institution of higher education established after the effective date of this subchapter and subject to its provisions unless the institution has been issued a certificate of authority to grant a degree or degrees.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.314. Advisory Council on Private Degree-Granting Institutions of Higher Education

(a) The board shall appoint an advisory council on private degree-granting institutions of higher education consisting of six members with experience in the field of higher education and representative of private institutions of higher education in the State of Texas which are exempt from the provisions of this subchapter. Council members serve for terms of two years from the date of their appointment and are entitled to reimbursement for actual expenses incurred in carrying out the work of the council.

(b) The council shall advise the board on standards and procedures to be used in carrying out the provisions of this subchapter.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.315. Agents and Records

The authorized or certified institutions may be required to furnish a list of their agents to the board, and to maintain records of students enrolled, credits awarded, and degrees awarded in a manner specified by the board.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.316. Duty of Prosecuting Attorney

The board shall report any information concerning possible violation of this subchapter to the appropriate prosecuting attorney of the county in which the activity is occurring or has occurred, and he shall make necessary investigations. The appropriate prosecuting attorney shall immediately prosecute or bring suit to enjoin any violation of this subchapter which he discovers.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.317. Penalties

(a) Any person who confers or offers to confer a degree on behalf of a private institution of higher education subject to the provisions of this subchapter which has not been issued a certificate of authority to grant degrees is guilty of a misdemeanor and upon conviction is subject to a fine of not less than $1,000 nor more than $5,000. Each degree conferred without authority constitutes a separate offense.

(b) Any person who establishes a private institution of higher education after the effective date of this subchapter and uses the term "college" or "university" in the official name of the institution without first having been issued a certificate of authority to grant degrees for the institution is guilty of a misdemeanor and upon conviction is subject to a fine of not less than $1,000 nor more than $3,000.

(c) Any agent who solicits students for enrollment in a private institution of higher education subject to the provisions of this subchapter without a certificate of registration is guilty of a misdemeanor and on conviction is subject to a fine of not less than $500 nor more than $1,000.

(d) Any operations which are found after due process to be in fraudulent violation of this Act shall be terminated.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

SUBCHAPTER H. REGULATION OF PUBLIC INSTITUTIONS OF HIGHER EDUCATION ESTABLISHED OUTSIDE THE BOUNDARIES OF THE STATE OF TEXAS

§ 61.401. Definitions

In this subchapter:

(1) "Public institution of higher education" includes any senior college, university, community college, technical institute, or junior college or the equivalent which is controlled by a public body organized outside the boundaries of the State of Texas.

(2) "Coordinating Board" means the Coordinating Board, Texas College and University System.

[Added by Acts 1975, 64th Leg., p. 1843, ch. 573, § 1, eff. June 19, 1975.]

§ 61.402. Requisite Approval

Public institutions of higher education established outside the boundaries of the State of Texas must have the approval of the coordinating board before offering a course or a grouping of courses within the State of Texas.

[Added by Acts 1975, 64th Leg., p. 1843, ch. 573, § 1, eff. June 19, 1975.]

§ 61.403. Rules and Regulations

The coordinating board shall prepare rules and regulations which, when properly followed, may qualify a public institution of higher education established outside the boundaries of the State of Texas to offer a course or a grouping of courses within the State of Texas.

[Added by Acts 1975, 64th Leg., p. 1843, ch. 573, § 1, eff. June 19, 1975.]

§ 61.404. Procedures in Case of Violation

If the coordinating board obtains evidence that a public institution of higher education established outside the boundaries of the State of Texas is in apparent violation of this subchapter or of rules and regulations adopted pursuant to this subchapter, the coordinating board shall take appropriate action to terminate its operation within the boundaries of the State of Texas.

[Added by Acts 1975, 64th Leg., p. 1843, ch. 573, § 1, eff. June 19, 1975.]

§ 61.405. Advisory Committees

The coordinating board may appoint such advisory committees as deemed useful for the effective administration of this subchapter.

[Added by Acts 1975, 64th Leg., p. 1843, ch. 573, § 1, eff. June 19, 1975.]

SUBCHAPTER I. CONTRACTS FOR MEDICAL RESIDENCY PROGRAMS

§ 61.501. Definitions

As used in this subchapter:

(1) "Medical school" means the medical school at The University of Texas Health Science Center at Houston, the medical school at The University of Texas Health Science Center at Dallas, the medical school at The University of Texas Health Science Center at San Antonio, The University of Texas Medical Branch at Galveston, the Texas Tech University School of Medicine, the Baylor College of Medicine, the Texas College of Osteopathic Medicine, or the Texas A & M University Medical Program.

(2) "Approved family practice residency training program" means a graduate medical education program operated by a medical school, licensed hospitals, or nonprofit corporations which has been approved for training physicians in family practice and for the receipt of state funds for that purpose by the board after receiving the recommendation of the Family Practice Residency Advisory Committee.

[Added by Acts 1977, 65th Leg., p. 109, ch. 53, § 2, eff. Aug. 29, 1977.]

Purpose. Section 1 of the 1977 Act enacting this Subchapter provided: "It is the intent of the legislature that family practice residency training programs created, maintained, or funded according to the provisions of this Act shall further the purpose of distributing family physicians and improving medical care in underserved urban and rural areas of the state and, insofar as possible and prudent, encourage the permanent location in underserved areas of family physicians trained in these programs in order to better serve the medical needs of the citizens of Texas."

§ 61.502. Contracts

The board may contract with a medical school, licensed hospitals, or nonprofit corporations for the purpose of establishing and operating an approved Family Practice Residency Training Program and may compensate the medical school, licensed hospitals, or nonprofit corporations on a formula approved by the board based upon the number of resident physicians in the training program.

[Added by Acts 1977, 65th Leg., p. 109, ch. 53, § 2, eff. Aug. 29, 1977.]

§ 61.503. Rules and Regulations

The board shall adopt rules and regulations to implement this subchapter, including rules providing for:

(1) prior consultation on the annual budget with the board;

(2) a postaudit in a manner acceptable to the state auditor of expenditures related to the residency training program of a medical school, licensed hospitals, or nonprofit corporations with which the board has contracted; and

(3) distribution of family physicians and improvement of medical care in underserved urban and rural areas of the state and, insofar as possible and prudent, encouraging the permanent location in underserved areas of family physicians trained in these programs.

[Added by Acts 1977, 65th Leg., p. 109, ch. 53, § 2, eff. Aug. 29, 1977.]

§ 61.504. Disbursements

(a) Pursuant to a contract, the board may disburse through the designated project director to a medical school, licensed hospitals, or nonprofit corporations funds for the purpose of the graduate training of physicians in an approved family practice residency training program. The project director shall be the chairman of the Department of Family Practice in a medical school or the program director of an approved family practice residency training program operated by licensed hospitals or nonprofit corporations. The project director shall, in accordance with such rules as the board may adopt, make timely reports directly to the board concerning the development and progress of the family practice training program.

(b) The board may establish by contract the method or manner of the disbursement to the project director.

[Added by Acts 1977, 65th Leg., p. 109, ch. 53, § 2, eff. Aug. 29, 1977.]

§ 61.505. Advisory Committee

(a) The Family Practice Residency Advisory Committee is created and shall consist of 12 members. One member shall be a licensed physician appointed by the Texas Osteopathic Medical Association; two members shall be licensed physicians appointed by the Association of Directors of Family Practice Training Programs; two members shall be administrators of hospitals in which an approved family practice residency training program operates and shall be appointed by the Texas Hospital Association; one member shall be a licensed physician appointed by the Texas Medical Association; two members shall be licensed physicians appointed by the Texas Academy of Family Physicians; three members of the public shall be appointed to the committee by the governor; and by virtue of his office, the president of the Texas Academy of Family Physicians shall be a member of the committee.

(b) The terms of office of each member, excluding the term of office of the president of the Texas Academy of Family Physicians, shall be for three years, except for the initial term, which shall be designated in a manner approved by the board in such a way, insofar as is possible, that one-third of the members shall serve for one year, one-third for two years, and one-third for three years, and thereafter each member shall serve for a term of three years. Each member shall serve until his replacement has been appointed to the committee.

(c) The members of the committee shall not be compensated for their service, but shall be reimbursed by the board for actual expenses incurred in the performance of duties as members of the committee.

(d) The committee shall meet at least annually and so often as requested by the board or called into meeting by the chairman.

(e) The chairman shall be elected by the members of the committee for one year.

(f) The committee shall review for the board applications for approval and funding of family practice residency training programs, make recommendations to the board relating to the standards and criteria for approval of residency training programs, and perform such other duties as may be directed by the board.

[Added by Acts 1977, 65th Leg., p. 109, ch. 53, § 2, eff. Aug. 29, 1977.]

SUBTITLE C. THE UNIVERSITY OF TEXAS SYSTEM

CHAPTER 65. ADMINISTRATION OF THE UNIVERSITY OF TEXAS SYSTEM

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

Section
65.41. Medical School Admission Policies.
65.42. Defense of Certain Persons.

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

§ 65.34. Contracts

[See Compact Edition, Volume 1 for text of (a)]

(b) Repealed by Acts 1977, 65th Leg., p. 562, ch. 197, § 2, eff. May 20, 1977.

[Amended by Acts 1977, 65th Leg., p. 562, ch. 197, § 2, eff. May 20, 1977.]

§ 65.41. Medical School Admission Policies

The Board of Regents shall promulgate appropriate rules and regulations pertaining to the admission of students to medical schools which will provide for admission of those students to its entering class each year who are equally or as well qualified as all other students and who have entered a contract with or received a commitment for a stipend, grant, loan or scholarship from the State Rural Medical Education

Board. The State Rural Medical Education Board may contract with medical students providing for such students to engage in a general or family practice of medicine for not less than four years after licensing and a period of medical residency, as determined by the rules and regulations established by the State Rural Medical Education Board, in cities of Texas which have a population of less than 5,000 or in rural areas, as that term may be defined by the State Rural Medical Education Board, and said Board is hereby given the authority to define and from time to time redefine the term rural area, at the time the medical practice is commenced. This contract shall provide for a monthly stipend of at least $100 to be granted by the State Rural Medical Education Board to each person under contract with the state while enrolled as a medical school student.
[Added by Acts 1975, 64th Leg., p. 2408, ch. 740, § 3, eff. Sept. 1, 1975.]

§ 65.42. Defense of Certain Persons

Any person serving on the governing board of any foundation, corporation, or association at the request of and on behalf of The University of Texas System is an officer or employee as those terms are used in Chapter 309, Acts of the 64th Legislature, 1975, as amended (Article 6252–26, Vernon's Texas Civil Statutes).
[Added by Acts 1979, 66th Leg., p. 1165, ch. 564, § 1, eff. Aug. 27, 1979.]

CHAPTER 66. PERMANENT UNIVERSITY FUND

SUBCHAPTER D. BOARD FOR LEASE OF UNIVERSITY LANDS

§ 66.62. Board for Lease

[See Compact Edition, Volume 1 for text of (a) to (d)]

(e) The Board for Lease of University Lands is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished effective September 1, 1985.
[Amended by Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.096, eff. Aug. 29, 1977.]
[1] Civil Statutes, art. 5429k.

§ 66.64. Placing Oil and Gas on Market; Public Auction; Advertisement

[See Compact Edition, Volume 1 for text of (a)]

(b) The sale of the oil and gas shall be made at public auction held in Austin, or any other location designated by the board, at any hour between 10 a. m. and 5 p. m.

[See Compact Edition, Volume 1 for text of (c)]
[Amended by Acts 1975, 64th Leg., p. 234, ch. 88, § 1, eff. April 30, 1975.]

§ 66.65. Royalty; Bonus; Annual Rental; Special Fee

(a) The oil and gas in each tract shall be offered for sale for a bonus in addition to the stipulated royalty. Each tract shall be offered separately.

(b) Each bid is subject to the royalty specified in the official advertisement preceding the sale, but in no event less than one-eighth of the gross production of oil and gas in the land; and shall further be subject to the payment of an annual rental after the first year of not less than 10 cents per acre, payable each year in advance, unless the royalties received from the land during the preceding year equal or exceed the amount of the annual rental payment.

(c) Each bid is also subject to the payment of a special fee equal to one percent of the total sum bid, which special payment shall constitute a special fund from which the Board of Regents of The University of Texas System shall defray the expenses of the sale, including the payment for the services of the auctioneer crying the sale and the payment of the general operating expenses in geologizing, oil field supervision, and auditing oil and gas production of university lands, including salaries and traveling expenses of persons employed by the board of regents for those purposes, and for the purpose of acquiring, constructing, and equipping a building in the city of Midland or adjacent area to house the administrative staff of the offices of University Lands, Geology and Land Agent, and such other related agencies necessary for the management and development of university lands in West Texas.

(d) The Board of Regents of The University of Texas System may also direct the comptroller of The University of Texas System to transmit to the state treasurer for deposit to the credit of the permanent university fund any unexpended balances remaining in the special fund after reserving a sufficient amount in it for the payment of current expenses as set out in Subsection (c) of this section.

(e) The highest successful bidder shall pay to the Board of Regents of The University of Texas System on the day the bid is accepted the full amount of bonus bid and the special fee.
[Amended by Acts 1979, 66th Leg., p. 1377, ch. 616, § 1, eff. Sept. 1, 1979.]

§ 66.68. Provisions of Lease

[See Compact Edition, Volume 1 for text of (a) to (d)]

(e) Each lease shall provide that if at the expiration of the primary term or at any time thereafter there is located on the leased premises a well or wells capable of producing gas in paying quantities and such gas is not produced for lack of a suitable market and such lease is not being otherwise maintained in force and effect, the lessee may pay as royalty $1,200 per annum for each well on the lease

capable of producing gas in paying quantities, such payment to be made to the Board of Regents of The University of Texas System at Austin, Texas, prior to the expiration of the primary term of the lease, or if the primary term has expired, within 60 days after lessee ceases to produce gas from such well or wells; and if such payment is made, the lease shall be considered to be a producing lease and such shut-in gas well royalty payment shall extend the term of the lease for a period of one year from the end of the primary term or from the first day of the month next succeeding the month in which production ceased; and thereafter if no suitable market for such gas exists, the lessee may extend the lease for two additional and successive periods of one year each by the payment of a like sum of money each year on or before the expiration of the extended term. Provided, however, that if, while such lease is being maintained in force and effect by payment of such shut-in gas well royalty, gas should be sold and delivered in paying quantities from a well situated within 1,000 feet of the leased premises and completed in the same producing reservoir or in any case where drainage is occurring, the right to further extend the lease by such shut-in gas well royalty payments shall cease, but such lease shall remain in force and effect for the remainder of the current one year period for which the shut-in gas well royalty has been paid, and for an additional period not to exceed a combined total of three years from the expiration of the primary term or from the first day of the month next succeeding the month in which production ceased by the payment by the lessee of compensatory royalty, at the royalty rate provided for in such university lease as would be due on an equivalent amount of like quality gas produced and delivered from the well completed in the same producing reservoir from which gas is being sold and delivered and which is situated within 1,000 feet of, or draining, the leased premises on which shut-in gas well is situated, such compensatory royalty to be paid monthly to the Board of Regents of The University of Texas System at Austin, Texas, beginning on or before the last day of the month next succeeding the month in which such gas is sold and delivered from the well situated within 1,000 feet of, or draining, the leased premises and completed in the same producing reservoir; provided further, that in the event such compensatory royalties paid in any 12-month period are in a sum less than the annual shut-in gas well royalties provided for in this section, the lessee shall pay an additional sum equal to the difference within 30 days from the end of such 12-month period; provided further, that nothing herein shall relieve the lessee of the obligation of reasonable development, nor of the obligation to drill offset wells required by Section 66.75 of this code.

(f) Each lease shall provide that if, at the expiration of the primary term, production of oil and/or gas has not been obtained in paying quantities on the leased premises but drilling operations are being conducted thereon in good faith and in good and workmanlike manner, the lessee may, on or before the expiration of the primary term, file with the Board of Regents of The University of Texas System a written application for a 30-day extension of such lease, such application to be accompanied by a payment to the Board of Regents of The University of Texas System of $7.50 per acre for each acre in the lease, and the Chairman of the Board of Regents of The University of Texas System or a designee appointed by the Chairman shall, in writing, extend such lease for a 30-day period from and after the expiration of the primary term and so long thereafter as oil or gas is produced in paying quantities from the premises; provided further, that the lessee may, so long as such drilling operations are being conducted in good faith, make like application and payment during any 30-day extended period for an additional extension of 30 days not to exceed a combined total of 180 days; provided, however, lessee may, so long as such drilling operations are being conducted in good faith, make written application to the Board of Regents of The University of Texas System on or before the expiration of the initial extended period of 180 days for an additional extension of 180 days, such application to be accompanied by a payment to the Board of Regents of The University of Texas System of $50 per acre for each acre in the lease, and the Chairman of the Board of Regents of The University of Texas System or a designee appointed by the Chairman shall, in writing, extend such lease for an additional 180-day period from and after the expiration of the initial extended period of 180 days, and so long thereafter as oil or gas is produced in paying quantities from the premises; provided, that no lease shall be extended under the provisions of this section for more than a total of 360 days from and after the expiration of the primary term unless production in paying quantities has been obtained.

[See Compact Edition, Volume 1 for text of (g)]

[Amended by Acts 1979, 66th Leg., pp. 1377, 1378, ch. 616, §§ 2, 3, eff. Sept. 1, 1979.]

§ 66.70. Compensatory Royalties in Lieu of Offset Wells

[See Compact Edition, Volume 1 for text of (a) to (d)]

(e) Beginning on the date fixed in the agreement, the lessee shall pay the compensatory royalty monthly to the Board of Regents of The University of Texas System in Austin, Texas.

[See Compact Edition, Volume 1 for text of (f) and (g)]

[Amended by Acts 1979, 66th Leg., p. 1379, ch. 616, § 4, eff. Sept. 1, 1979.]

§ 66.73. Assignment; Relinquishment

(a) Any rights acquired may be assigned; provided, however, in order for an assignment to be valid and effective, the assignment must be filed in the county or counties in which the area is situated, and an original certified copy of the assignment must be filed with the Board of Regents of The University of Texas System, accompanied by 10 cents an acre for each acre assigned and a filing fee of $5 for each lease involved in the assignment.

(b) Any rights to any lease and to any assigned portion thereof may be relinquished to the state at any time by having an instrument of relinquishment recorded in the county or counties in which the area relinquished is situated and an original certified copy filed with the Board of Regents of The University of Texas System, accompanied by $1 for each area relinquished and a filing fee of $5 for each lease involved in the relinquishment.

(c) Such an assignment or relinquishment shall not relieve the lease owner of any past due obligation theretofore accrued thereon.

[Amended by Acts 1979, 66th Leg., p. 1379, ch. 616, § 5, eff. Sept. 1, 1979.]

§ 66.74. Royalty Payments; Inspection of Records

(a) Royalty as stipulated in the sale shall be paid to the Board of Regents of The University of Texas System at Austin, Texas, for the benefit of the university permanent fund as provided in this section.

(1) Royalty on oil is due and payable on or before the fifth day of the second month succeeding the month of production, and royalty on gas is due and payable on or before the 15th day of the second month succeeding the month of production.

(2) Royalty payments shall be accompanied by:

(a) an affidavit of the owner, manager, or other authorized agent completed in the form and manner required by the Board of Regents of The University of Texas System and showing the gross amount and disposition of all oil and gas produced and the market value of the oil and gas;

(b) a copy of all documents, records, or reports confirming the gross production, disposition, and market value, including gas meter readings, pipeline receipts, gas line receipts, and other checks or memoranda of amount produced and put into pipelines, tanks, pools, and gas lines or gas storage;

(c) a check stub, schedule, summary, or other remittance advice showing by the assigned general land office lease number the amount of royalty being paid on each lease; and

(d) other reports or records that the Board of Regents of The University of Texas System may require to verify the gross production, disposition, and market value.

(3) The lessee has the responsibility for paying royalties or having royalties paid by the date provided for payment in this section.

(4) Any royalty not paid or affidavits and supporting documents not filed when due shall become delinquent, and a delinquency penalty of one percent for each 30-day period of delinquency or fractional part of that period shall be added to the amount owed; however, no penalty may be less than $5 per month per lease. Payment of this penalty in no way operates to prohibit the state's right of forfeiture as provided by law and does not postpone the date on which royalties were originally due. The penalty does not apply in cases of title dispute as to the state's portion of the royalty or to that portion of the royalty in dispute as to fair market value. Except as provided in Subsection (g), Section 66.68 of this code, royalty payments shall be made in cash by bank draft drawn on a state or national bank in Texas, by a post-office or express money order, or in any other form that the law may provide for making payments to the State Treasury and are payable to the Board of Regents of The University of Texas System.

(5) Copies of contracts for the sale or processing of gas and subsequent agreements and amendments to those contracts shall be filed with the Board of Regents of The University of Texas System within 30 days after the contracts, agreements, or amendments are made. These contracts and agreements received by the Board of Regents of The University of Texas System shall be held in confidence by the Board of Regents of The University of Texas System unless otherwise authorized by the lessee.

[See Compact Edition, Volume 1 for text of (b)]

[Amended by Acts 1979, 66th Leg., p. 1379, ch. 616, § 6, eff. Sept. 1, 1979.]

§ 66.77. Filing of Records

All surveys, files, records, copies of lease contracts, and all other records pertaining to the leases hereby authorized, shall be filed in the general land office and constitute archives thereof and copies of any such documents shall also be filed with the Board of Regents of The University of Texas System. All existing documents now on file in the general land office shall be transferred by copies to the Board of Regents of The University of Texas System.

[Amended by Acts 1979, 66th Leg., p. 1381, ch. 616, § 7, eff. Sept. 1, 1979.]

§ 66.78. Payments; Disposition

Payments under this subchapter shall be made to the Board of Regents of The University of Texas System at Austin, Texas, who shall:

(1) transmit to the state treasurer for deposit to the credit of the permanent university fund all bonus, rental, and royalty payments;

(2) transmit to the state treasurer for deposit to the credit of the available university fund all filing, assignment, and relinquishment fees, and all other payments except those described in Subdivision (3) of this section; and

(3) retain the one percent fee payment prescribed by Section 66.65(c) of this code, for disbursement by the comptroller of The University of Texas System for the purposes authorized by Section 66.65(c) of this code.

[Amended by Acts 1979, 66th Leg., p. 1381, ch. 616, § 8, eff. Sept. 1, 1979.]

CHAPTER 67. THE UNIVERSITY OF TEXAS AT AUSTIN

SUBCHAPTER C. THE UNIVERSITY OF TEXAS McDONALD OBSERVATORY AT MOUNT LOCKE

Section
67.53. Visitor Center.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

§ 67.21. Special Fees

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) The board may levy and collect from each student a compulsory fee for operating, maintaining, improving, equipping, and/or constructing additions to the existing Texas Union building near Guadalupe Street, of not to exceed $10 for each regular semester and $5 for each term of each summer session, with such fees to be deposited to an account known as the Texas Union Fee Account; this fee may be raised to an amount not to exceed $14 for each regular semester and $7 for each term of each summer session if that increase in the fee is approved by a majority vote of those students participating in a general election called for that purpose. The activities of said Texas Union building financed in whole or in part by this fee shall be limited to those activities in which the entire student body is eligible to participate, and in no event shall any of the activities so financed be held outside of the territorial limits of the campus of The University of Texas at Austin.

[See Compact Edition, Volume 1 for text of (d) and (e)]

[Amended by Acts 1979, 66th Leg., p. 2074, ch. 811, § 1, eff. June 13, 1979.]

SUBCHAPTER C. THE UNIVERSITY OF TEXAS McDONALD OBSERVATORY AT MOUNT LOCKE

§ 67.53. Visitor Center

The board may negotiate and contract with the Texas Highway Department and any other agency, department, or political subdivision of the state or any individual for the construction, maintenance, and operation of a visitor center and related facilities at McDonald Observatory at Mount Locke.

[Added by Acts 1975, 64th Leg., p. 370, ch. 161, § 1, eff. May 8, 1975.]

CHAPTER 68. THE UNIVERSITY OF TEXAS AT ARLINGTON

SUBCHAPTER A. GENERAL PROVISIONS

Section
68.04. Student Union Fee.
68.05. Shuttle Bus Fee.

SUBCHAPTER A. GENERAL PROVISIONS

§ 68.04. Student Union Fee

(a) The board may levy a student union fee not to exceed $15 per student for each regular semester and not to exceed $7.50 per student for each term of the summer session, for the sole purpose of financing, constructing, operating, maintaining, and improving the Student Union Building. The fees herein authorized to be levied are in addition to any use or service fee now or hereafter authorized to be levied.

(b) Such fees shall be deposited to an account known as "The University of Texas at Arlington Student Union Fee Account" and shall be placed under the control of and subject to the order of the Student Union Advisory Committee. The committee shall annually submit to the board of regents a complete and itemized budget to be accompanied by a full and complete report of all activities conducted during the past year and all expenditures made incident thereto. The board of regents shall make such changes in the budget as it deems necessary before approving the budget, and shall then levy the fees, within the limits herein fixed, in such amounts as will be sufficient to meet the budgetary needs of the student union building.

[Added by Acts 1977, 65th Leg., p. 832, ch. 309, § 1, eff. Aug. 29, 1977.]

§ 68.05. Shuttle Bus Fee

(a) The board may levy a shuttle bus fee not to exceed $10 per student for each regular semester and not to exceed $5 per student for each term of the summer session, for the sole purpose of financing shuttle bus service for students attending the insti-

tution. The fees herein authorized to be levied are in addition to any use fee or service fee now or hereafter authorized to be levied. However, no fee may be levied unless the fee is approved by a majority vote of those students participating in a general election called for that purpose.

(b) Such fees shall be deposited to an account known as "The University of Texas at Arlington Shuttle Bus Fee Account" and shall be expended in accordance with a budget submitted to and approved by the board of regents. The board of regents shall make such changes in the budget as it deems necessary before approving the budget, and shall then levy the fees, within the limits herein fixed, in such amounts as will be sufficient to meet the budget as approved.

[Added by Acts 1977, 65th Leg., p. 833, ch. 309, § 2, eff. Aug. 29, 1977.]

CHAPTER 70. THE UNIVERSITY OF TEXAS AT DALLAS

Section
70.08. Student Union Building Fees.

§ 70.08. Student Union Building Fees

(a) The board may levy a student union fee, not to exceed $15 per student for each regular semester and not to exceed $7.50 per student for each term of the summer session, for the sole purpose of financing, constructing, operating, maintaining, and improving a student union building. The fees herein authorized to be levied are in addition to any use or service fee now or hereafter authorized to be levied.

(b) Such fees shall be deposited to an account known as "The University of Texas at Dallas Student Union Fee Account" and shall be placed under the control of and subject to the order of the Student Union Advisory Committee. The committee shall annually submit to the board of regents a complete and itemized budget to be accompanied by a full and complete report of all activities conducted during the past year and all expenditures made incident thereto. The board of regents shall make such changes in the budget as it deems necessary before approving the budget, and shall then levy the fees, within the limits herein fixed, in such amounts as will be sufficient to meet the budgetary needs of the student union building.

[Added by Acts 1977, 65th Leg., p. 1041, ch. 385, § 1, eff. Aug. 29, 1977.]

CHAPTER 71. THE UNIVERSITY OF TEXAS AT SAN ANTONIO

Section
71.07. Student Union Building Fees.

§ 71.07. Student Union Building Fees

(a) The board may levy a student union fee, not to exceed $15 per student for each regular semester and not to exceed $7.50 per student for each term of the summer session, for the sole purpose of financing, constructing, operating, maintaining, and improving a student union building. This fee may be levied in addition to any other use or service fee. Furthermore, fee may be levied only upon an affirmative vote of a majority of the student body voting of The University of Texas at San Antonio.

(b) The fees collected under Subsection (a) of this section shall be deposited to an account known as The University of Texas at San Antonio Student Union Fee Account and shall be placed under the control of and subject to the order of the student union advisory committee. The committee shall annually submit to the board of regents a complete and itemized budget to be accompanied by a full and complete report of all activities conducted during the past year and all expenditures made incident to those activities. The board of regents shall make such changes in the budget as it deems necessary before approving the budget, but only after a student referendum has been called on the issue of increase in the fee, and the issue has been approved by a majority of the students voting in the election. The board shall then levy the fees, within the limits fixed in this section, in such amounts as will be sufficient to meet the budgetary needs of the student union building.

[Added by Acts 1979, 66th Leg., p. 62, ch. 38, § 1, eff. May 11, 1979.]

CHAPTER 74. OTHER MEDICAL, DENTAL, AND NURSING UNITS OF THE UNIVERSITY OF TEXAS SYSTEM

§ 74.002. Jennie Sealy Hospital; R. Waverly Smith Pavilion

(a) The Jennie Sealy Hospital and the R. Waverly Smith Pavilion shall be operated by the medical branch as integral parts of its hospital operations.

(b) Title to those facilities shall remain in the name of the Sealy-Smith Foundation; and the property may be leased to, but shall not be sold to, the medical branch or to The University of Texas System. The Board of Regents of The University of Texas System has the sole authority to execute such lease or leases with the Sealy-Smith Foundation relating to the Jennie Sealy Hospital and the R. Waverly Smith Pavilion under such terms and conditions as the board considers to be in the best interests of the medical branch.

[See Compact Edition, Volume 1 for text of (c)]

(d) By agreement between the board of regents of The University of Texas System and the trustees

of the Sealy-Smith Foundation, the purpose or use of these facilities may be changed to any other purpose or use consistent with the purposes of the foundation and with the operation of a medical school.
[Amended by Acts 1979, 66th Leg., p. 665, ch. 293, §§ 1 to 3, eff. Sept. 1, 1979.]

CHAPTER 76. THE UNIVERSITY OF TEXAS AT TYLER

Section
76.01. Establishment.
76.02. Role and Scope.
76.03. President.
76.04. Suits; Venue; Citation.
76.05. Gifts and Grants.
76.06. Management of Property.

§ 76.01. Establishment

The University of Texas at Tyler is a coeducational institution of higher education within The University of Texas System. It is under the control and management of the Board of Regents of The University of Texas System.
[Added by Acts 1979, 66th Leg., p. 699, ch. 303, § 4, eff. Sept. 1, 1979.]

§ 76.02. Role and Scope

The institution shall offer junior and senior undergraduate programs and graduate programs, both of which are subject to the authority of the Coordinating Board, Texas College and University System.
[Added by Acts 1979, 66th Leg., p. 699, ch. 303, § 4, eff. Sept. 1, 1979.]

§ 76.03. President

The board may appoint and remove the president, any faculty member, or other officer or employee of the institution. The president is the executive officer of the institution and is responsible for its general management. The president shall recommend a plan of organization and orderly course development for the institution.
[Added by Acts 1979, 66th Leg., p. 699, ch. 303, § 4, eff. Sept. 1, 1979.]

§ 76.04. Suits; Venue; Citation

The board may sue and be sued in the name of the institution. Venue is in Smith or Travis County. The institution may be impleaded by service of citation on its president, and legislative consent to suits against the institution is granted.
[Added by Acts 1979, 66th Leg., p. 699, ch. 303, § 4, eff. Sept. 1, 1979.]

§ 76.05. Gifts and Grants

The board may accept donations, gifts, and endowments for the institution. They are to be held in trust and administered by the board according to the purposes, directions, limitations, and provisions declared in writing in the donation, gift, or endowment. The provisions of the donation, gift, or endowment shall be followed to the extent that they are not inconsistent with the laws of this state or with the objective and proper management of the institution.
[Added by Acts 1979, 66th Leg., p. 699, ch. 303, § 4, eff. Sept. 1, 1979.]

§ 76.06. Management of Property

The board is vested with the exclusive management of all property owned by the institution. The board may make any agreements necessary to the effective management of the institution's property. All money received shall be deposited in the State Treasury to the credit of a special fund that may be invested and the principal and income of the fund may be expended on appropriation by the legislature for the administration of the institution.
[Added by Acts 1979, 66th Leg., p. 699, ch. 303, § 4, eff. Sept. 1, 1979.]

SUBTITLE D. THE TEXAS A & M UNIVERSITY SYSTEM

CHAPTER 85. ADMINISTRATION OF THE TEXAS A & M UNIVERSITY SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

§ 85.01. Definitions

In this chapter:

(1) "System" or "university system" means The Texas A & M University System.

(2) "Board" means the board of regents of The Texas A & M University System.

[Amended by Acts 1975, 64th Leg., p. 598, ch. 247, § 1, eff. Sept. 1, 1975.]

Section 6 of the 1973 amendatory act provided: "Wherever the phrase 'board of directors' appears in other statutes, the phrase 'board of regents' shall not affect any previous authorization and obligation thereunder and, such new name for the governing board shall be substituted."

[Sections 85.02 to 85.10 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 85.11. Board of Regents

The government of the university system is vested in a board of nine regents appointed by the governor with the advice and consent of the senate.
[Amended by Acts 1975, 64th Leg., p. 598, ch. 247, § 2, eff. Sept. 1, 1975.]

§ 85.13. Certificate of Appointment

The secretary of state shall forward a certificate to each regent within 10 days after his appointment, notifying him of the fact of his appointment. If any

person so appointed and notified fails for 10 days to give notice to the governor of his acceptance, his appointment shall be deemed void and his place shall be filled as in the case of a vacancy.
[Amended by Acts 1975, 64th Leg., p. 598, ch. 247, § 3, eff. Sept. 1, 1975.]

§ 85.14. Chairman of Board

The board shall elect from its members a chairman of the board, who shall call the board together for the transaction of business whenever he deems it expedient.
[Amended by Acts 1975, 64th Leg., p. 599, ch. 247, § 4, eff. Sept. 1, 1975.]

§ 85.15. Expenses of Regents

The regents shall serve without compensation but are entitled to reimbursement for actual expenses incurred in attending board meetings and in transacting the official business of the board.
[Amended by Acts 1975, 64th Leg., p. 599, ch. 247, § 5, eff. Sept. 1, 1975.]

CHAPTER 86. TEXAS A & M UNIVERSITY

SUBCHAPTER C. REAL ESTATE RESEARCH CENTER

Section
86.511. Application of Sunset Act.

SUBCHAPTER C. REAL ESTATE RESEARCH CENTER

§ 86.511. Application of Sunset Act

The Real Estate Research Center is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the center is abolished, and this subchapter expires effective September 1, 1981.
[Added by Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.035, eff. Aug. 29, 1977.]
[1] Civil Statutes, art. 5429k.

CHAPTER 87. OTHER ACADEMIC INSTITUTIONS IN THE TEXAS A & M UNIVERSITY SYSTEM

SUBCHAPTER A. TARLETON STATE UNIVERSITY

Section
87.004. Student Center Complex Fees.

SUBCHAPTER B. PRAIRIE VIEW A & M UNIVERSITY

87.103. Certain Land in Waller County Under Control of Board.

SUBCHAPTER A. TARLETON STATE UNIVERSITY

§ 87.004. Student Center Complex Fees

(a) To the extent approved by the students under Subsection (b) of this section, the Board of Regents of The Texas A & M University System may levy a regular, fixed student fee not to exceed $10 per student for each semester for the long session and not to exceed $5 per student for each term of the summer session or any fractional part thereof against each student enrolled in Tarleton State University for the purpose of operating, maintaining, improving, and equipping the Tarleton State University Student Center and acquiring or constructing additions to said center. The activities of the student center financed in whole or part by the student center fee shall be limited to those activities in which the entire student body is eligible to participate and in no event shall any of the activities so financed be held outside the territorial limits of Tarleton State University.

(b) The decision to levy such a fee, the amount of the initial fee, and any increase in the fee must be approved by a majority vote of those students participating in a general election called for that purpose.

(c) The business manager of Tarleton State University shall collect the fees provided for in Subsection (a) of this section and shall credit the money received from the fees to an account known as the Student Center Fee Account.

(d) The money thus collected and placed in the said Student Center Fee Account shall be used for the purposes of operating, maintaining, improving, and equipping the Tarleton State University Student Center. A complete and itemized budget shall be submitted annually to be accompanied by a full and complete report of all activities conducted during the past year and all expenditures made incident thereto. The Board of Regents shall make such changes in the budget as it deems necessary before approving the same and shall then levy the student fees under the provisions of Subsections (a) and (b) of this section in such amounts as will be sufficient to meet the budgetary needs of the center within the statutory limits herein fixed.
[Added by Acts 1979, 66th Leg., p. 758, ch. 331, § 1, eff. June 6, 1979.]

SUBCHAPTER B. PRAIRIE VIEW A & M UNIVERSITY

§ 87.103. Certain Land in Waller County Under Control of Board

(a) The 110 acres, more or less, of land in Waller County near Prairie View A & M University, but not adjoining its campus, conveyed as a gift to the Governor of the State of Texas when the site for then Prairie View Normal and Industrial College was purchased, is placed under the control and supervision of the Board of Directors of The Texas A & M University System for the use and benefit of Prairie View A & M University.

(b) The land is described in the deed of record in Record Book 3, pages 496, 497, and 498 of the records of the County Clerk of Waller County as being 110 acres of land off a 320-acre survey patented to the heirs of Solomon Smith No. 276, Vol. 11, the said 110 acres lying on the south side of said 320-acre survey and adjoining the Law Survey and is described by metes and bounds in Decree of Partition in District Court of Austin County in Matters Probate between Helen M. Kirby and the estate of Jared E. Kirby, deceased.

(c) The board of directors is authorized to lease the land for oil, gas, sulphur, and other mineral development under existing law applicable to other lands under its control and supervision and to apply the proceeds from such lease to the use and benefit of Prairie View A & M University.

[Added by Acts 1975, 64th Leg., p. 570, ch. 229, § 1, eff. May 20, 1975.]

[Sections 87.104 to 87.200 reserved for expansion]

CHAPTER 88. AGENCIES AND SERVICES OF THE TEXAS A & M UNIVERSITY SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Section
88.002. Application of Sunset Act to Agricultural Extension Service.
88.003. Application of Sunset Act to Engineering Extension Service.
88.004. Application of Sunset Act to Engineering Experiment Station.

SUBCHAPTER B. THE TEXAS FOREST SERVICE
88.1011. Application of Sunset Act.
88.1101. Expired.
88.1131. Application of Sunset Act.

SUBCHAPTER C. THE TEXAS AGRICULTURAL EXPERIMENT STATION
88.2031. Application of Sunset Act.

SUBCHAPTER A. GENERAL PROVISIONS

§ 88.002. Application of Sunset Act to Agricultural Extension Service

The Texas Agricultural Extension Service is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the service is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.122, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

§ 88.003. Application of Sunset Act to Engineering Extension Service

The Texas Engineering Extension Service is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the service is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.125, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

88.004. Application of Sunset Act to Engineering Experiment Station

The Texas Engineering Experiment Station is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the station is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.124, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

SUBCHAPTER B. THE TEXAS FOREST SERVICE

§ 88.1011. Application of Sunset Act

The office of State Forester is subject to the Texas Sunset Act,[1] and unless continued in existence as provided by that Act the office is abolished effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.088, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

§ 88.103. Enforcement; Appointment of Peace Officers

The state forester may appoint not to exceed 12 employees of the Texas Forest Service who are certified by the Commission on Law Enforcement Officer Standards and Education as qualified to be peace officers to serve as peace officers under his direction in executing the enforcement duties of that agency. The appointments must be approved by the board which shall commission the appointees as peace officers. Any officer commissioned under this section is vested with all the powers, privileges, and immunities of peace officers in the performance of his duties. The officer shall take the oath required of peace officers and shall execute a good and sufficient bond in the sum of $5,000, payable to the governor and his successors in office, with two or more good and sufficient personal sureties or with one corporate surety authorized to do business in Texas, conditioned that he will fairly, impartially, and faithfully perform all the duties that may be required of him by law. The bond may be sued on in the name of any person injured until the whole amount of the bond is recovered.

[Amended by Acts 1975, 64th Leg., p. 1840, ch. 570, § 1, eff. June 19, 1975.]

§ 88.1101. Expired

Former § 88.1101, added by Acts 1977, 65th Leg., p. 904, ch. 338, § 1, and relating to acquisition by eminent domain and development of land for the Texas Forest Service for use as a forest tree seedling nursery, expired by the terms of § 2 of the 1977 Act on December 31, 1979.

§ 88.1131. Application of Sunset Act

The office of South Central Interstate Forest Fire Protection Compact Administrator for Texas is sub-

ject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished effective September 1, 1985.
[Added by Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.100, eff. Aug. 29, 1977.]
[1] Civil Statutes, art. 5429k.

SUBCHAPTER C. THE TEXAS AGRICULTURAL EXPERIMENT STATION

§ 88.2031. Application of Sunset Act

The Texas Agricultural Experiment Station is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the station is abolished, and this subchapter expires effective September 1, 1987.
[Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.121, eff. Aug. 29, 1977.]
[1] Civil Statutes, art. 5429k.

SUBTITLE E. THE TEXAS STATE UNIVERSITY SYSTEM

CHAPTER 95. ADMINISTRATION OF THE TEXAS STATE UNIVERSITY SYSTEM

SUBCHAPTER B. POWERS AND DUTIES OF BOARD.

Section
95.33. Management of Property.
95.34. Donations, Gifts, Grants, and Endowments.

SUBCHAPTER A. ADMINISTRATION PROVISIONS

§ 95.01. Board of Regents

The organization, control, and management of the state university system is vested in the Board of Regents, Texas State University System.
[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.03. Board Meetings

The board shall meet each year at Austin, on the first Monday in May, or as soon thereafter as practicable, for the transaction of business pertaining to the affairs of the state university system. The board shall also meet at other times and places deemed necessary for the welfare of the colleges by a majority of the members.
[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.04. Per Diem; Expenses

Each member of the board shall receive $10 per day for the time spent attending the meetings of the board, in addition to reimbursement for traveling expenses. Payment shall be made out of the appropriation for the support and maintenance of the state university system as the board may direct.
[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

§ 95.21. General Responsibilities of Board

The board is responsible for the general control and management of the universities in the system and may erect, equip, and repair buildings; purchase libraries, furniture, apparatus, fuel, and other necessary supplies; employ and discharge presidents or principals, teachers, treasurers, and other employees; and fix the salaries of the persons employed. The president of each member institution shall nominate annually to the board the professors, teachers, officials, and assistants who, in his opinion, will promote the best interests of the institution.
[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.22. Inspection of Universities

The board shall visit each university under its control and management at least once during each scholastic year, inspect its work, and gather information which will enable the board to perform its duties intelligently and effectively.
[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.24. Admission; Diplomas and Certificates

The board may determine the conditions on which students may be admitted to the universities, the grades of certificates issued, the conditions for the award of certificates and diplomas, and the authority by which certificates and diplomas are signed.
[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.25. Teaching Certificates

Diplomas and teachers certificates of each of the system universities authorize the holders to teach in the public schools.
[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.26. Incidental Fees

The board may fix the rate of incidental fees to be paid by students attending the universities and may make rules for the collection of the fees and for the disbursement of the funds collected.
[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.27. Annual Report to Governor

The board shall make an annual report to the governor showing the general condition of the affairs of each university in the system and making recommendations for its future management and welfare.
[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.28. Disbursement of Funds

All appropriations made by the legislature for the support and maintenance of the system universities, for the purchase of land or buildings for the universities, for the erection or repair of buildings, for the purchase of apparatus, libraries, or equipment of any kind, or for any other improvement of any kind shall be disbursed under the direction and authority of the board. The board may formulate rules for the general control and management of the universities, for the auditing and approving of accounts, and for the issuance of vouchers and warrants which are necessary for the efficient administration of the universities.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.29. Financial Statements and Recommendations

The board shall file in each house of the legislature at each of its regular biennial sessions a statement of the receipts and expenditures of each of the system universities, showing the amount of salaries paid to the various teachers, contingent expenses, expenditures for improvements, and other items of expense. The board shall also file its recommendations for appropriations for the universities.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.30. Eminent Domain

The board has the power of eminent domain to acquire for the use of the system universities the lands necessary and proper for carrying out their purposes, in the manner prescribed in Title 52, Revised Civil Statutes of Texas, 1925, as amended.[1] The taking of the land is for the use of the state. The board shall not be required to deposit a bond or the amount equal to the award of damages by the commissioners as provided in Paragraph 2, Article 3268, Revised Civil Statutes of Texas, 1925, as amended.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

[1] Civil Statutes, Art. 3264 et seq.

§ 95.31. Acquisition of Land; Procedures

(a) The board may acquire land needed for the proper operation of a system university in the county in which the university is located. The acquisition may be by purchase or by condemnation.

[See Compact Edition, Volume 1 for text of (b)]

(c) When the value of the land has been ascertained and the court is satisfied with the valuation, the court shall enter a decree vesting the title of the land in the state for the use and benefit of the university for whose benefit the land is needed. No decree shall be entered until the value of the land as ascertained, together with all reasonable cost and expense of the owner in attending the proceeding, is paid to him or into court for his benefit and subject to his order. The costs and expenses, including reasonable attorneys' fees, shall be ascertained by the court in which the proceeding is held.

[Amended by Acts 1975, 64th Leg., p. 1161, ch. 434, § 4, eff. June 19, 1975.]

§ 95.32. Dormitories

(a) The board may enter into contracts with persons, firms, or corporations for the erection of dormitories at a university, and may purchase or lease lands and other appurtenances for the construction of the dormitories, provided that the state incurs no liability for the buildings or the sites.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1975, 64th Leg., p. 1162, ch. 434, § 5, eff. June 19, 1975.]

§ 95.33. Management of Property

The board shall have the sole and exclusive management and control of land set aside and appropriated to or acquired by universities under its authority. The board may sell, lease, and otherwise manage, control, and use the land in any manner and at prices and under the terms and conditions the board deems best for the interest of the university that has acquired the land. Land shall not be sold at a price less per acre than that at which the same class of other public land may be sold under the statutes.

[Added by Acts 1979, 66th Leg., p. 1447, ch. 636, § 1, eff. June 13, 1979.]

§ 95.34. Donations, Gifts, Grants, and Endowments

The board may accept donations, gifts, grants, and endowments for the universities under its control to be held in trust and administered by the board for the purposes and under the direction, limitations, and provisions declared in writing in the donation, gift, grant, or endowment, not inconsistent with the laws of the state or with the objectives and proper management of the universities.

[Added by Acts 1979, 66th Leg., p. 1447, ch. 636, § 1, eff. June 13, 1979.]

CHAPTER 96. INSTITUTIONS OF THE TEXAS STATE UNIVERSITY SYSTEM

SUBCHAPTER C. SOUTHWEST TEXAS STATE UNIVERSITY

Section
96.42. Student Fees for Bus Service.
96.43. Student Center Fee.

SUBCHAPTER A. SUL ROSS STATE UNIVERSITY

§ 96.01. Sul Ross State University

Sul Ross State University is a coeducational institution of higher education located in the city of Alpine. It is under the management and control of the Board of Regents, Texas State University System.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

SUBCHAPTER B. ANGELO STATE UNIVERSITY

§ 96.21. Angelo State University

Angelo State University is a coeducational institution of higher education located in the city of San Angelo. It is under the management and control of the Board of Regents, Texas State University System.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

SUBCHAPTER C. SOUTHWEST TEXAS STATE UNIVERSITY

§ 96.41. Southwest Texas State University

Southwest Texas State University is a coeducational institution of higher education located in the city of San Marcos. It is under the management and control of the Board of Regents, Texas State University System.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 96.42. Student Fees for Bus Service

(a) The board of regents may charge each student enrolled at the institution a fee not exceeding $10 per semester or $5 per six-week summer term to be used to finance bus service for students attending the institution. However, no fee may be levied unless the fee is approved by a majority vote of those students participating in a general election called for that purpose.

(b) The board may increase the fee authorized in Subsection (a) of this section by an amount not to exceed $1 per student during any one academic year. The board may not increase this fee to exceed $10 per semester or $5 per six-week summer term.

(c) The fee for student bus service shall not be counted in determining the maximum student service fees which may be charged pursuant to the provisions of Section 54.503 of this code.

[Added by Acts 1975, 64th Leg., p. 1233, ch. 458, § 1, eff. Sept. 1, 1975.]

§ 96.43. Student Center Fee

(a) To the extent approved by the students under Subsection (b) of this section, the board may charge each student enrolled in the university a student center fee not to exceed $15 per semester or $7.50 per six-week summer term to be used to construct, operate, maintain, improve, and program the student center at Southwest Texas State University.

(b) The decision to levy a student center fee, the amount of the initial fee, and an increase in the fee must be approved by a majority vote of those students participating in a general election called for that purpose.

(c) The president of the university shall annually submit to the board an itemized budget proposal for the student center for the forthcoming year. The board may make any changes in the proposed budget that it considers necessary and, within the limits of Subsections (a) and (b) of this section, shall base the amount of the student center fee charged in a particular year on the proposed budgetary needs of the center.

(d) The chief fiscal officer of the university shall collect the student center fee and shall deposit the money received into an account known as the student center account. No state funds may be used to construct, operate, maintain, improve, or program the student center.

[Added by Acts 1979, 66th Leg., p. 855, ch. 381, § 1, eff. Aug. 27, 1979.]

[Sections 96.44 to 96.60 reserved for expansion]

SUBCHAPTER D. SAM HOUSTON STATE UNIVERSITY

§ 96.61. Sam Houston State University

Sam Houston State University is a coeducational institution of higher education located in the city of Huntsville. It is under the management and control of the Board of Regents, Texas State University System.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

SUBTITLE F. OTHER COLLEGES AND UNIVERSITIES

CHAPTER 100. EAST TEXAS STATE UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

Section
100.37. Student Union Fees.

SUBCHAPTER A. GENERAL PROVISIONS

§ 100.01. East Texas State University

East Texas State University is a coeducational institution of higher education with its main campus located in the city of Commerce.

[Amended by Acts 1977, 65th Leg., p. 617, ch. 226, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act provided:
"No provision of this Act shall be construed to authorize any new or additional college, university, other institution of higher education, branch, or center thereof."

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 100.11. Board of Regents

The organization, control, and management of the university is vested in a board of nine regents appointed by the governor with the advice and consent of the senate, but no regent may be a resident of the county in which the main campus is located, nor shall the Texarkana campus be organized to offer freshman or sophomore programs, and the metroplex commuter program may offer only those programs approved by the Coordinating Board, Texas College and University System and which are nonduplicative of programs offered in the Dallas educational area. The board of regents may establish different rules for the operation of the facilities and programs in each location. The members hold office for staggered terms of six years, with the terms of three regents expiring on February 15 of each odd-numbered year. The board shall elect a chairman and any other officers from its members to serve at the will of the board. The board has the powers and duties incident to its position and to the same extent as is conferred on the Board of Regents of Texas Woman's University.

[Amended by Acts 1977, 65th Leg., p. 617, ch. 226, § 1, eff. Aug. 29, 1977.]

§ 100.12. Repealed by Acts 1977, 65th Leg., p. 617, ch. 226, § 3, eff. Aug. 29, 1977

See, now, § 100.11.

§§ 100.15, 100.16. Repealed by Acts 1977, 65th Leg., p. 617, ch. 226, § 3, eff. Aug. 29, 1977

See, now, § 100.11.

SUBCHAPTER C. POWERS AND DUTIES

§ 100.31. Repealed by Acts 1977, 65th Leg., p. 617, ch. 226, § 3, eff. Aug. 29, 1977

See, now, § 100.11.

§ 100.37. Student Union Fees

(a) The board may levy a regular fixed student fee not to exceed $15 per student for each semester of the long session and not to exceed $7.50 per student for each term of the summer school, or any fractional part thereof, as may in their discretion be just and necessary for the sole purpose of financing, constructing, operating, maintaining, and improving the Union Center Building. The amount of the fee may be changed at any time within the limits specified in order that sufficient funds to support the Union Center Building may be raised, but any increase in the fee must be approved by a majority vote of those students participating in a general election called for that purpose. The fees herein authorized to be levied should be in addition to any use fee and service fee now or hereafter levied in accordance with law. No state funds may be expended for use of the Union Center Building.

(b) The business manager of East Texas State University shall collect the fees provided for in this section and shall credit the money received from the fees to an account known as the Union Center Building Account.

(c) The money collected and placed in the Union Center Building Account shall be used for the purpose of financing, constructing, operating, maintaining, and improving the Union Center Building and shall be placed under the control of and subject to the order of the board of directors of the Union Center Building, which board of directors shall annually submit a complete itemized budget to be accompanied by a full and complete report of all activities conducted during the year and all expenditures made incident thereto. The board of regents shall make such changes in the budget as it deems necessary before approving it, and shall then levy the student fees under the provisions of this section in such amount as will be sufficient to meet the budgetary needs of the Union Center Building, within the statutory limits herein fixed.

[Added by Acts 1975, 64th Leg., p. 1916, ch. 619, § 1, eff. Sept. 1, 1975.]

CHAPTER 101. STEPHEN F. AUSTIN STATE UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

Section
101.42. University Center Student Fee.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 101.18. Repealed by Acts 1977, 65th Leg., p. 67, ch. 34, § 1, eff. March 29, 1977

SUBCHAPTER C. POWERS AND DUTIES

§ 101.42. University Center Student Fee

(a) To the extent approved by the students under Subsection (b) of this section, the board may charge each student enrolled in one or more courses conducted on the main campus of the university a regular, fixed fee, not to exceed $15 per student for each semester of the long session and not to exceed $7.50 per student for all or part of each six-week term of the summer session, for the purpose of operating, maintaining, improving, equipping, and financing the university center and acquiring or constructing additions to the center. The amount of

the fee may be changed at any time within the limits specified in order to provide sufficient funds to support the university center. The fees authorized in this section supplement any other use or service fee authorized by law.

(b) The decision to levy such a fee, the amount of the initial fee, and any increase in the fee must be approved by a majority vote of those students participating in a general election called for that purpose.

(c) The chief fiscal officer of the university shall collect the fees provided for in this section and shall credit the money received from the fees to an account known as the university center administration and program fund.

[Added by Acts 1979, 66th Leg., p. 734, ch. 326, § 1, eff. June 6, 1979.]

CHAPTER 102. WEST TEXAS STATE UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

Section
102.34. University Center Student Fee.

SUBCHAPTER C. POWERS AND DUTIES

§ 102.34. University Center Student Fee

(a) To the extent approved by the students under Subsection (b) of this section, the board may charge each student enrolled in one or more courses conducted on the main campus of the university a regular, fixed fee not to exceed $15 per student for each semester of the long session and not to exceed $7.50 per student for all or part of each six-week term of the summer session for the purpose of operating, maintaining, improving, equipping, and financing the university center and acquiring or constructing additions to the center. The amount of the fee may be changed at any time within the limits specified in order to provide sufficient funds to support the university center. The fees authorized in this section supplement any other use or service fee authorized by law.

(b) The decision to levy such a fee, the amount of the initial fee, and any increase in the fee must be approved by a majority vote of those students participating in a general election called for that purpose.

(c) The chief fiscal officer of the university shall collect the fees provided for in this section and shall credit the money received from the fees to an account known as the University Center Administration and Program Fund.

[Added by Acts 1979, 66th Leg., p. 734, ch. 326, § 2, eff. June 6, 1979.]

CHAPTER 103. MIDWESTERN STATE UNIVERSITY

Section
103.11. University Center Fee.

§ 103.01. Midwestern State University

Midwestern State University is a coeducational institution of higher learning located in the city of Wichita Falls.

[Amended by Acts 1975, 64th Leg., p. 1841, ch. 571, §§ 2, 3, eff. Sept. 1, 1975.]

Section 1 of the 1975 Act provided:

"The name of Midwestern University is hereby changed to Midwestern State University. All references to Midwestern University in any law shall hereafter refer to Midwestern State University."

"Section 2 thereof changed the title of Chapter 103 from "Midwestern University" and § 3 provided: "This Act shall take effect September 1, 1975."

§ 103.11. University Center Fee

(a) To the extent approved by the students under Subsection (b) of this section, the Board of Regents of Midwestern State University is hereby authorized to levy a regular, fixed student fee not to exceed $15 per student for each semester of the long session and not to exceed $7.50 per student for all or part of each term of the summer session for the purpose of operating, maintaining, improving, equipping, and financing the university center and acquiring or constructing additions to the center. The amount of the fee may be changed at any time within the limits specified in order to provide sufficient funds to support the university center. The fees authorized in this section supplement any other use or service fee authorized by law.

(b) The decision to levy such a fee, the amount of the initial fee, and any increase in the fee must be approved by a majority vote of those students participating in a general election called for that purpose.

(c) The chief fiscal officer of the university shall collect the fees provided for in this section and shall credit the money received from the fees to an account known as the University Center Administration and Program Fund.

[Added by Acts 1979, 66th Leg., p. 793, ch. 354, § 1, eff. June 6, 1979.]

CHAPTER 104. THE UNIVERSITY SYSTEM OF SOUTH TEXAS

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Section
104.15. General Powers and Duties.

SUBCHAPTER A. GENERAL PROVISIONS

§ 104.01. The University System of South Texas

The University System of South Texas is established and is composed of:

(1) Texas A & I University;

(2) Laredo State University;

(3) Corpus Christi State University; and

(4) other institutions and entities assigned to the system from time to time by specific legislative act.

[Amended by Acts 1977, 65th Leg., p. 759, ch. 288, § 4, eff. Sept. 1, 1977.]

Sections 1, 2, 5, and 17 of the 1977 amendatory act provided:

"Sec. 1. The purpose of this Act creating the University System of South Texas is to provide an administrative structure which will implement and supervise the policies and long-range plans of the governing board and which will determine the higher education needs of the system, marshal existing resources for appropriate response to those needs, assure the delivery of educational services in an economical and efficient manner, and establish a high level of quality in the conduct of the total educational enterprise."

"Sec. 2. The name of Texas A & I University at Laredo is changed to Laredo State University, and the name of Texas A & I University at Corpus Christi is changed to Corpus Christi State University."

"Sec. 5. The name of the Board of Directors of Texas A & I University is changed to the Board of Directors of the University System of South Texas. Members of the board on the effective date of this Act continue to serve on the board for the terms to which they were appointed."

"Sec. 17. This Act takes effect September 1, 1977."

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 104.11. Board of Directors

The university system is under the management and control of a board of nine directors appointed by the governor with the advice and consent of the senate.

[Amended by Acts 1977, 65th Leg., p. 759, ch. 288, § 6, eff. Sept. 1, 1977.]

§ 104.14. Executive Officer of University System

The board shall appoint an executive officer of the university system, fix his term of office, set his salary, and define his duties. He shall recommend a plan for the organization of the university system and the appointment of presidents for the system's component institutions. He is responsible to the board for the general management and success of the university system; and he shall have the cooperation of the board.

[Amended by Acts 1977, 65th Leg., p. 759, ch. 288, § 7, eff. Sept. 1, 1977.]

§ 104.15. General Powers and Duties

With respect to the management and control of the university system, the board has the same powers and duties that are conferred on the Board of Regents, Texas State University System, with respect to institutions in that system, except as otherwise provided by this chapter.

[Added by Acts 1977, 65th Leg., p. 759, ch. 288, § 8, eff. Sept. 1, 1977.]

SUBCHAPTER C. TEXAS A & I UNIVERSITY

§ 104.21. Texas A & I University

Texas A & I University is a coeducational institution of higher education located in the city of Kingsville.

[Amended by Acts 1977, 65th Leg., p. 760, ch. 288, § 10, eff. Sept. 1, 1977.]

SUBCHAPTER D. LAREDO STATE UNIVERSITY

§ 104.41. Establishment; Scope; Discontinuation

The board may establish an upper-level educational center in the city of Laredo, to be known as Laredo State University, to accept junior, senior, and master's level students only. This upper-level educational center may be discontinued by the Coordinating Board, Texas College and University System, at its discretion and shall never be converted to a free-standing, fully state-supported coeducational institution of higher learning until it has complied with all requirements imposed by the coordinating board and until the site for such institution, consisting of at least 200 acres of land, shall have been provided at no cost to the state.

[Amended by Acts 1977, 65th Leg., p. 760, ch. 288, § 12, eff. Sept. 1, 1977.]

SUBCHAPTER E. PURCHASE OF FARMLAND, EQUIPMENT, CROPS, ETC.

§ 104.51. Authorization

The board for the benefit of Texas A & I University may purchase, use, lease as lessor, and operate farmland, may purchase crops and other horticultural and agricultural products growing on or produced or to be produced and harvested from the land, and may purchase any farming machinery, apparatus, and equipment used or useful in connection with it, from any person, firm, or corporation and for the price or prices the board considers reasonable and proper.

[Amended by Acts 1977, 65th Leg., p. 760, ch. 288, § 13, eff. Sept. 1, 1977.]

SUBCHAPTER G. CORPUS CHRISTI STATE UNIVERSITY

§ 104.91. Establishment; Scope

(a) The board is authorized and directed to establish and maintain a fully state-supported coeducational institution of higher learning to be known as Corpus Christi State University. The site for the institution shall consist of at least 200 acres of land and shall be provided for the institution at no cost to the state.

[See Compact Edition, Volume 1 for text of (b)]

[Amended by Acts 1977, 65th Leg., p. 760, ch. 288, § 15, eff. Sept. 1, 1977]

§ 104.93. Gifts and Grants

(a) The board may accept and administer upon terms and conditions satisfactory to it grants or gifts of property, including real estate and/or money that may be tendered to it in aid of the planning, establishment, conduct, and operation of Corpus Christi State University, and in aid of research and teaching at the university.

[See Compact Edition, Volume 1 for text of (b)]

[Amended by Acts 1977, 65th Leg., p. 761, ch. 288, § 16, eff. Sept. 1, 1977.]

CHAPTER 105. NORTH TEXAS STATE UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

Section
105.44. Eminent Domain: Restriction.

SUBCHAPTER E. TEXAS COLLEGE OF OSTEOPATHIC MEDICINE

105.71. Establishment of College of Osteopathic Medicine.
105.72. Location.
105.73. Rules and Regulations; Courses.
105.74. Chief Executive Officer.
105.75. Teaching Hospital; Facilities.
105.76. Joint Appointments.
105.77. Agreements with Other Entities.
105.78. Gifts and Grants.
105.79. Supervision by Coordinating Board.
105.80. Medical School Admission Policies.
105.81. Acquisition and Disposition of Land.

SUBCHAPTER C. POWERS AND DUTIES

§ 105.44. Eminent Domain: Restriction

The board may not use the power of eminent domain to acquire land that is dedicated to a public use by another governmental entity.

[Added by Acts 1977, 65th Leg., p. 42, ch. 26, § 1, eff. March 24, 1977.]

SUBCHAPTER E. TEXAS COLLEGE OF OSTEOPATHIC MEDICINE

§ 105.71. Establishment of College of Osteopathic Medicine

(a) There is hereby created a college of osteopathic medicine in the city of Fort Worth to be known as the Texas College of Osteopathic Medicine, a separate institution and not a department, school, or branch of North Texas State University, but under the direction, management, and control of the Board of Regents of North Texas State University.

(b) The board shall have the same powers of direction, management, and control over the college of osteopathic medicine that it exercises over the North Texas State University, but the board shall act separately and independently on all matters affecting the college of osteopathic medicine as a separate institution.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.72. Location

The board shall select a site for the college in Tarrant County.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975. Amended by Acts 1977, 65th Leg., p. 2071, ch. 822, § 2, eff. Aug. 29, 1977.]

§ 105.73. Rules and Regulations; Courses

(a) The board may make rules and regulations for the direction, control, and management of the medical school which are necessary for it to be a medical school of the highest quality.

(b) The board, with the approval of the Coordinating Board, Texas College and University System, may prescribe courses leading to the customary degrees and certificates granted by osteopathic medical schools.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.74. Chief Executive Officer

The chief executive officer of the university shall serve as chief executive officer of the college of osteopathic medicine.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.75. Teaching Hospital; Facilities

(a) A complete teaching hospital for the medical school shall be furnished at no cost or expense to the state.

(b) The board shall make provision for adequate physical facilities for use by the medical school in its teaching and research programs.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.76. Joint Appointments

The board of regents is specifically authorized to make joint appointments in the university and the Texas College of Osteopathic Medicine under its governance; the salary of any such person who receives such joint appointment to be apportioned to the appointing institution on the basis of services rendered.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.77. Agreements with Other Entities

After approval of the Coordinating Board, Texas College and University System, the board of regents may execute and carry out affiliation or coordinating agreements with any other entity, school, or

institution in Texas to provide clinical, postgraduate, including internship and residency, or other levels of medical educational work for the medical school.
[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.78. Gifts and Grants

The board may accept and administer grants and gifts from the federal government, and from any foundation, trust fund, corporation, or any individual or organization for the use and benefit of the medical school.
[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.79. Supervision by Coordinating Board

The medical school is subject to the continuing supervision of and to the rules and regulations of the Coordinating Board, Texas College and University System, in accordance with the provisions of Chapter 61 of this code.[1]
[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]
[1] Section 61.001 et seq.

§ 105.80. Medical School Admission Policies

The Board of Regents shall promulgate appropriate rules and regulations pertaining to the admission of students to the medical school which will provide for admission of those students to its entering class each year who are equally or as well qualified as all other students and who have entered a contract with or received a commitment for a stipend, grant, loan or scholarship from the State Rural Medical Education Board. The State Rural Medical Education Board may contract with medical students providing for such students to engage in a general or family practice of medicine for not less than four years after licensing and a period of medical residency, as determined by the rules and regulations established by the State Rural Medical Education Board, in cities of Texas which have a population of less than 5,000 or in rural areas, as that term may be defined by the State Rural Medical Education Board, and said Board is hereby given the authority to define and from time to time redefine the term rural area, at the time the medical practice is commenced. This contract shall provide for a monthly stipend of at least $100 to be granted by the State Rural Medical Education Board to each person under contract with the state while enrolled as a medical school student.
[Added by Acts 1975, 64th Leg., p. 2408, ch. 740, § 2, eff. Sept. 1, 1975.]

§ 105.81. Acquisition and Disposition of Land

The board may acquire by purchase, donation, or otherwise for the use of the school any land or other real property necessary or convenient for carrying out its purposes as a state-supported institution of higher education, and may sell, exchange, lease, or otherwise dispose of any land or other real property owned by or acquired for the school. The power of acquisition and disposition is restricted to area within Tarrant County. The proceeds from any sale of land or other real property shall be added to the capital funds of the school.
[Added by Acts 1977, 65th Leg., p. 2071, ch. 822, § 1, eff. Aug. 29, 1977.]

CHAPTER 106. TEXAS SOUTHERN UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

Section
106.37. Student Center Fees.

SUBCHAPTER C. POWERS AND DUTIES

§ 106.35. Acquisition and Disposition of Land

(a) The board on behalf of the university may acquire by purchase, exchange, or otherwise any tract or parcel of land in Harris County that is contiguous or adjacent to the campus of the university when the board deems the land necessary for campus expansion, and may sell, exchange, or lease one or more of the following tracts of land:

(1) Tract No. 1

All that certain lot, tract or parcel of land lying, situated and being in the City of Houston, Harris County, Texas;

Parts of Lots Six (6) and Seven (7) in Block Sixty-three (63), Riverside Terrace, Seventeenth Section, an addition to the City of Houston, Harris County, Texas, according to plat thereof recorded in Volume 16, page 26 of the Map Records of Harris County, Texas, said property being more particularly described as follows, to-wit:

BEGINNING at a stake in the south line of Roseneath Drive, the same being the front line of Lot Six (6) in Block Sixty-three (63), Riverside Terrace, Seventeenth Section, located in a westerly direction a distance of sixty-four (64) feet measured along the front line of said Lot Six (6) from the northeast corner of Lot 6;

THENCE, in an easterly direction along the front lines of Lots six (6) and Seven (7) in Block 63 with a curve the radius of which is 424.97 feet, a distance of 87 feet to stake for corner in the front line of said Lot Seven (7) located in an easterly direction a distance of Twenty-three (23) feet from the northwest corner of said Lot Seven (7);

THENCE in a southerly direction a distance of 211.82 feet to a stake in the rear line of Lot Seven (7) located in an easterly direction measured along the rear line of said Lot 7, a distance of 41.37 feet from the southwest corner of said lot;

THENCE in a southwesterly direction along the rear lines of Lots six (6) and seven (7) with a curve, the radius of which is 513.5 feet, a distance of 120.43 feet, to stake for corner in the rear line of said Lot six (6), located in an easterly direction measured along the rear line of said Lot six (6), a distance of 69.88 feet from the southwest corner of said Lot 6;

THENCE in a northerly direction, a distance of 224.08 feet to the Place of Beginning, and being the same property conveyed to Oscar M. Pearce by McGregor Drive Development Company by deed dated January 28, 1946 recorded in Volume 1427, page 417 of the Deed Records of Harris County, Texas, to which reference is hereby made for all purposes.

(2) Tract No. 2

Two tracts composed of all of Lot 8 in Block 78 of Riverside Terrace, 17th Section, as per map or plat recorded in Volume 16, Page 26 Harris County Map Records, described as follows:

Tract 1: A strip 20 feet wide in front and 5 ft. wide in the rear, off of the east side of said Lot 8, as described in Deed filed in Harris County Clerk's File # 535740; and,

Tract 2: The westerly part of Lot 8 in Block 78 of Riverside Terrace, 17th Section and being a tract 80 ft. wide in front and 60 ft. wide in rear, described in Deed under Harris County Clerk's File No. 535740; and,

Tract 3: 16,019 sq. ft. known as Lot 9 in Block 78 of Riverside Terrace 17th Section, lying partly in 24.073 acre tract deeded to McGregor Drive Development Company in Vol. 667, Page 362 Deed Records and partly in 17 ac. tr. deeded to D. L. Anderson in Vol. 1045, Page 716 Deed Records, all out of Lots 9 and 16 of the west ½ of the Luke Moore Survey; tract hereby conveyed being described as follows: BEGINNING at iron stake on west property line of St. Bernard Street, in southerly direction a distance of 212.95 ft. from the southeast corner of Lot 12 in Block 64 of Riverside Terrace 12th Section and said distance being measured along arc of curve whose radius is 532.07 ft.; THENCE continuing in southerly direction along the west line of St. Bernard Street, with curve to right whose radius is 532.07 ft., a distance of 160.35 feet to the end of said curve; THENCE south 19 deg. 54′ west, continuing along the west line of St. Bernard Street, 25.96 ft. to iron stake for corner; THENCE south 70 deg. 52′ west, a distance of 60 feet to iron stake for corner; THENCE east with curve to right whose radius is 2,017.05 feet a distance of 95.24 feet to the end of said curve; THENCE north 74 deg. 36′ E a distance of 24.76 feet to the beginning. Recorded in Map Records Volume 16, page 26 of Harris County, Texas, and in Deed Records of Harris County, Volume 1125, Page 11, and subject to restrictions, reservations and easements of records in Harris County Deed Records.

(3) Tract No. 3

Tract and parcel of real property located and situated in Hearne, Robertson County, Texas, and being described as follows:

Being Lots Numbered Six (6), Seven (7) and Eight (8) in Block Numbered Four Hundred Twenty One (421) in the City of Hearne, Texas, according to the Map of the said City as the same appears on record in Vol. 1, page 5 of the Map Records of Robertson County, Texas, together with all improvements located and situated thereon, the same being a tract of land 75 feet in width fronting on Second Street and 115 feet in depth, reference being made to the said Map for all purposes.

(b) The proceeds from any sale or lease of land or other real property shall be added to the general funds of the university.

(c) The board has the power of eminent domain for land acquisitions permitted by Subsection (a) of this section.

[Amended by Acts 1977, 65th Leg., p. 2204, ch. 869, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1059, ch. 489, § 1, eff. Aug. 27, 1979.]

§ 106.37. Student Center Fees

(a) The board may levy and collect a student fee not to exceed $15 per student for each semester of the long session and not to exceed $7.50 per student for each term of the summer session, as may in its discretion be necessary and desirable for the purpose of operating, maintaining, and improving the student center and acquiring or constructing additions to the student center. Provided, however, that a student center fee shall be levied only after a student referenda has been called on the issue of an increase in the fee, within the prescribed limits of this section, and that the issue of an increase has been approved by a majority of the students voting in the election. Provided, further, that in its levy

and assessment of such fee, the board shall adopt a proportionate fee schedule which takes into consideration the number of semester credit hours for which a student registers.

(b) All fees collected pursuant to Subsection (a) hereof shall be reserved and accounted for in an account or accounts kept separate and apart from educational and general funds of the university. The fees collected shall be placed in a depository bank or banks designated by the board and shall be secured by law.

(c) Expenditures from the accounts provided for in Subsection (b) of this section shall be limited to those purposes specified in Subsection (a) of this section and pursuant to a budget approved by the board.

(d) The fee authorized to be collected pursuant to Subsection (a) of this section shall be in addition to any other fees or charges heretofore authorized by law.

[Added by Acts 1977, 65th Leg., p. 2206, ch. 869, § 2, eff. Aug. 29, 1977.]

CHAPTER 107. TEXAS WOMAN'S UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

Section
107.45. Eminent Domain: Restriction.

SUBCHAPTER D. DORMATORIES AND IMPROVEMENTS

107.69. State Historical Collection.

SUBCHAPTER C. POWERS AND DUTIES

§ 107.45. Eminent Domain: Restriction

The board may not use the power of eminent domain to acquire land that is dedicated to a public use by another governmental entity.

[Added by Acts 1977, 65th Leg., p. 42, ch. 26, § 2, eff. March 24, 1977.]

SUBCHAPTER D. DORMATORIES AND IMPROVEMENTS

§ 107.69. State Historical Collection

(a) The board may establish an historical collection of items illustrating the history of women in Texas. The historical collection is to be housed in a building belonging to the university and is to be known as "The History of Texas Women." When established, the historical collection may be designated a state historical collection and shall be for the use and enjoyment of all citizens of Texas.

(b) The board may accept donations, gifts, and collections of historical value for the use of the historical collection and shall adopt rules for the receipt, care, custody, and control of items in the collection.

[Added by Acts 1979, 66th Leg., p. 1145, ch. 551, § 1, eff. June 11, 1979.]

CHAPTER 108. LAMAR UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

§ 108.36. Educational Centers

(a) The Board may establish educational centers of Lamar University in the counties of Jefferson and Orange, to be known as Lamar University at Port Arthur and Lamar University at Orange, to accept freshman and sophomore level students only. These educational centers may be discontinued by the Coordinating Board, Texas College and University System, at its discretion.

(b) The board may make provision for adequate physical facilities to be provided at no cost to the State of Texas for use by the Lamar University at Port Arthur and Lamar University at Orange and may accept and administer, on terms and conditions satisfactory to the board, grants or gifts of money or property which are tendered by any reason for the use and benefit of the school; provided, however, that any expenditure of funds, other than local funds or any such grants or gifts, for teaching classes not held on the Beaumont Campus, shall be only as specifically authorized in the General Appropriations Act.

(c) The board with approval of the Coordinating Board, Texas College and University System, may prescribe courses leading to customary degrees, and make other rules and regulations for the operation, control, and management of the Lamar University at Port Arthur and Lamar University at Orange as necessary for the school to be a first-class institution for freshman and sophomore students.

(d) Nothing in this section shall be construed to limit the powers of the board of regents of Lamar University as conferred by law.

[Amended by Acts 1977, 65th Leg., p. 199, ch. 99, § 1, eff. May 3, 1977.]

§ 108.37. Student Center Fees

The board of regents may levy a regular fixed student fee not to exceed $20 per student for each semester of the long session and not to exceed $10 per student for each term of the summer session, against each student enrolled in the institution, as in their discretion may be just and necessary for the purpose of operating, maintaining, improving, and equipping the student center and acquiring or constructing additions to the student center.

[Amended by Acts 1977, 65th Leg., p. 2140, ch. 855, § 1, eff. Aug. 29, 1977.]

CHAPTER 109. TEXAS TECH UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

Section
109.48. Utilities Easements.
109.48. Management of Lands.
109.49. Sale of Crops.
109.50. Student Fees for University Center.
109.51. Student Recreation Fee.

SUBCHAPTER C. POWERS AND DUTIES

§ 109.48. Utilities Easements

Text as added by Acts 1975, 64th Leg., p. 362, ch. 155, § 1

On terms, conditions, stipulations, and compensation as determined by the board, the board may convey, dedicate, or use any other appropriate method of conveyance to grant, convey, or dedicate rights, title, rights-of-way, or easements involving or in connection with the furnishing or providing of electricity, water, sewage disposal, natural gas, telephone, telegraph, or other utility service on, over, or through the campus of Texas Tech University in Lubbock County. The chairman of the board may execute and deliver conveyances or dedications on behalf of Texas Tech University.

[Added by Acts 1975, 64th Leg., p. 362, ch. 155, § 1, eff. May 8, 1975.]

For text as added by Acts 1975, 64th Leg., p. 1248, ch. 471, § 1, see Section 109.48, post.

§ 109.48. Management of Lands

Text as added by Acts 1975, 64th Leg., p. 1248, ch. 471, § 1

The board has the sole and exclusive management and control of lands set aside and appropriated to or acquired by the institutions under its governance. The board may lease and otherwise manage, control, and use the lands in any manner and at prices and under terms and conditions the board deems best for the interest of the institutions. No grazing lease shall be made for a period of more than five years.

[Added by Acts 1975, 64th Leg., p. 1248, ch. 471, § 1, eff. Sept. 1, 1975.]

For text as added by Acts 1975, 64th Leg., p. 362, ch. 155, § 1, see Section 109.48, ante.

§ 109.49. Sale of Crops

Proceeds from the sale, barter, or exchange of crops resulting from any agricultural activities at the institution shall be applied to defray the expenses of conducting the agricultural activities.

[Added by Acts 1975, 64th Leg., p. 362, ch. 154, § 1, eff. May 8, 1975.]

§ 109.50. Student Fees for University Center

(a) The board may levy a regular fixed student fee not to exceed $10 per student for each semester of the long session and not to exceed $5 per student for each term of the summer session, or any fractional part thereof, as may in their discretion be just and necessary for the sole purpose of operating, maintaining, and improving the University Center. The amount of the fee may be changed at any time within the limits specified in order to provide sufficient funds to support the center, but any increase in the initial fee must be approved by a majority vote of those students participating in a general election called for that purpose.

(b) The director of accounting and finance of the university shall collect the fees provided for in Subsection (a) of this section and shall credit the money received from the fees to an account known as the University Center account.

(c) The funds in the University Center account shall be used for the purpose of operating, maintaining, and improving the center and shall be placed under the control of and subject to the order of the board of directors of the University Center. The board of directors shall annually submit a complete and itemized budget accompanied by a full and complete report of all activities conducted during the year and all expenditures made incident thereto. The board of regents shall make such changes in the budget as it deems necessary before approving it, and shall then levy the student fees in an amount sufficient to meet the budgetary needs of the center within the limits set in Subsection (a) of this section.

[Added by Acts 1975, 64th Leg., p. 461, ch. 196, § 1, eff. May 13, 1975.]

§ 109.51. Student Recreation Fee

(a) If approved by student vote, the board may charge each student enrolled in the university a recreation fee not to exceed $25 per semester or $12.50 per six-week summer term to be used to purchase equipment for and to operate and maintain the student recreation facilities and programs at the university.

(b) The recreation fee may not be levied unless the levy of the fee is approved and the amount of the fee is set by a majority vote of those students participating in a general student election called for that purpose.

(c) The fee may be changed within the limits specified at any time by a majority of students voting on the issue in a general student election.

(d) The university shall collect the student recreation fee and shall deposit the money collected in an account known as the Student Recreation Account.

(e) The student recreation fee is not counted in determining the maximum student services fee

which may be charged under Section 54.503 of this code, as amended.
[Added by Acts 1979, 66th Leg., p. 235, ch. 122, § 1, eff. Aug. 27, 1979.]

[Sections 109.52 to 109.60 reserved for expansion]

CHAPTER 110. TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER

Section
110.11. Management of Lands.
110.11. Medical School Admission Policies.
110.12. Utilities Easements.

Acts 1979, 66th Leg., p. 724, ch. 319, § 1, provided:

"The name of Texas Tech University School of Medicine is changed to Texas Tech University Health Sciences Center. All references to and appropriations for Texas Tech University School of Medicine apply to Texas Tech University Health Sciences Center."

Section 4 of said Act changed the chapter heading.

§ 110.01. Separate Institution

Texas Tech University Health Sciences Center is a separate institution and not a department, school, or branch of Texas Tech University but is under the direction, management, and control of the Texas Tech University Board of Regents. The center is composed of a medical school and other components assigned by law or by the coordinating board.
[Amended by Acts 1979, 66th Leg., p. 724, ch. 319, § 2, eff. June 6, 1979.]

§ 110.02. Concurrent and Separate Powers

The board of regents has the same powers of direction, management, and control over the Health Sciences Center as they exercise over Texas Tech University. However, the board shall act separately and independently on all matters affecting the Health Sciences Center as a separate institution.
[Amended by Acts 1979, 66th Leg., p. 724, ch. 319, § 2, eff. June 6, 1979.]

§ 110.03. General Powers

The board may make rules and regulations for the direction, control, and management of Texas Tech University Health Sciences Center as necessary for it to be an institution of the first class.
[Amended by Acts 1979, 66th Leg., p. 724, ch. 319, § 2, eff. June 6, 1979.]

§ 110.04. Chief Executive Officer

The chief executive officer of Texas Tech University is also the chief executive officer of the Health Sciences Center under the authority of Section 109.23 of this code.
[Amended by Acts 1979, 66th Leg., p. 724, ch. 319, § 2, eff. June 6, 1979.]

§ 110.06. Agreements with Other Schools

The board may, when in the best interests of medical education at the Health Sciences Center, execute and carry out affiliation or coordinating agreements with any other entity or institution in the Lubbock area, Amarillo area, El Paso area, and the Odessa-Midland area to provide clinical, postgraduate, including internship and residency, or other levels of medical educational work for the Health Sciences Center. Additionally, the board may execute and carry out affiliation or coordinating agreements with any other entity or institution necessary to conduct and operate the Health Sciences Center as a first-class institution. The board may utilize the facilities and staffs of other state biomedical units.
[Amended by Acts 1979, 66th Leg., p. 724, ch. 319, § 2, eff. June 6, 1979.]

§ 110.07. Physical Facilities

The board shall make provision for adequate physical facilities for the Health Sciences Center, including library, auditorium, and animal facilities, for use by the Health Sciences Center in its teaching and research programs.
[Amended by Acts 1979, 66th Leg., p. 724, ch. 319, § 2, eff. June 6, 1979.]

§ 110.08. Grants; Gifts

The board, in its discretion, may accept and administer grants and gifts from the federal government, any foundation, trust fund, corporation, or individual for the use and benefit of the Health Sciences Center.
[Amended by Acts 1979, 66th Leg., p. 724, ch. 319, § 2, eff. June 6, 1979.]

§ 110.09. Teaching Hospital

A complete teaching hospital for the Health Sciences Center shall be furnished at no cost or expense to the state. The state may never contribute any funds for the construction, maintenance, or operation of a teaching hospital for the Health Sciences Center.
[Amended by Acts 1979, 66th Leg., p. 724, ch. 319, § 2, eff. June 6, 1979.]

§ 110.10. Supervision by Coordinating Board

The Health Sciences Center is subject to the continuing supervision of and to the rules and regulations of the Coordinating Board, Texas College and University System, as provided by Chapter 61 of this code.
[Amended by Acts 1979, 66th Leg., p. 724, ch. 319, § 2, eff. June 6, 1979.]

§ 110.11. Management of Lands

Text as added by Acts 1975, 64th Leg., p. 1249, ch. 471, § 2

The board has the sole and exclusive management and control of lands set aside and appropriated to or acquired by the institutions under its governance. The board may lease and otherwise manage, control, and use the lands in any manner and at prices and under terms and conditions the board deems best for the interest of the institutions. No grazing lease shall be made for a period of more than five years.
[Added by Acts 1975, 64th Leg., p. 1249, ch. 471, § 2, eff. Sept. 1, 1975.]

For text as added by Acts 1975, 64th Leg., p. 363, ch. 155, § 2 and Acts 1975, 64th Leg., p. 2409, ch. 740, § 4, see Sections 110.11, ante and post.

§ 110.11. Medical School Admission Policies

Text as added by Acts 1975, 64th Leg., p. 1249, ch. 740, § 4

The Board of Regents shall promulgate appropriate rules and regulations pertaining to the admission of students to the medical school which will provide for admission of those students to its entering class each year who are equally or as well qualified as all other students and who have entered a contract with or received a commitment for a stipend, grant, loan or scholarship from the State Rural Medical Education Board. The State Rural Medical Education Board may contract with medical students providing for such students to engage in a general or family practice of medicine for not less than four years after licensing and a period of medical residency, as determined by the rules and regulations established by the State Rural Medical Education Board, in cities of Texas which have a population of less than 5,000 or in rural areas, as that term may be defined by the State Rural Medical Education Board, and said Board is hereby given the authority to define and from time to time redefine the term rural area, at the time the medical practice is commenced. This contract shall provide for a monthly stipend of at least $100 to be granted by the State Rural Medical Education Board to each person under contract with the State while enrolled as a medical school student.
[Added by Acts 1975, 64th Leg., p. 2409, ch. 740, § 4, eff. Sept. 1, 1975.]

For text as added by Acts 1975, 64th Leg., p. 363, ch. 155, § 2 and Acts 1975, 64th Leg., p. 1249, ch. 471, § 2, see Sections 110.11, ante.

§ 110.11. Utilities Easements

On terms, conditions, or stipulations, and compensation as determined by the board, the board may convey, dedicate, or use any other appropriate method of conveyance to grant, convey, or dedicate rights, title, rights-of-way, or easements involving or in connection with the furnishing or providing of electricity, water, sewage disposal, natural gas, telephone, telegraph, or other utility service on, over, or through the campus or properties of Texas Tech University Health Sciences Center. The chairman of the board may execute and deliver conveyances or dedications on behalf of Texas Tech University Health Sciences Center.
[Added by Acts 1975, 64th Leg., p. 363, ch. 155, § 2, eff. May 8, 1975. Renumbered and amended by Acts 1979, 66th Leg., p. 725, ch. 319, § 3, eff. June 6, 1979.]

CHAPTER 111. THE UNIVERSITY OF HOUSTON

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Section
111.20. University of Houston System.

SUBCHAPTER C. POWERS AND DUTIES

111.42. Student Fees for University Centers.

SUBCHAPTER D-1. INSTITUTE OF LABOR AND INDUSTRIAL RELATIONS

111.71. Establishment of Institute.
111.72. Purpose.
111.73. Activities.

SUBCHAPTER F. THE UNIVERSITY OF HOUSTON-DOWNTOWN COLLEGE

111.90. Establishment; Location.
111.91. Organization and Control.
111.92. Role and Scope.
111.93. Authority of Coordinating Board.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 111.20. University of Houston System

(a) The University of Houston System hereby created is composed of all those institutions and entities presently under the governance, control, jurisdiction, and management of the Board of Regents of the University of Houston.

(b) The University of Houston System shall also be composed of such other institutions and entities as from time to time may be assigned by specific legislative act to the governance, control, jurisdiction, and management of the University of Houston System.

(c) The governance, control, jurisdiction, organization, and management of the University of Houston System is hereby vested in the present Board of Regents of the University of Houston, which will hereinafter be known and designated as the Board of Regents of the University of Houston System.
[Added by Acts 1977, 65th Leg., p. 263, ch. 124, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER C. POWERS AND DUTIES

§ 111.42. Student Fees for University Centers

(a) The board may levy a student union fee, not to exceed $15 per student for each regular semester and not to exceed $7.50 per student for each term of the summer session, for the sole purpose of financing, constructing, operating, maintaining, and improving a Student Union Building. The fees herein authorized to be levied are in addition to any use or service fee now or hereafter authorized to be levied.

(b) Such fees shall be deposited to an account known as "The University of Houston Center Fee Account" and shall be placed under the control of and subject to the order of the Student Service Fee Planning and Allocations Committee. The committee shall annually submit to the board of regents a complete and itemized budget to be accompanied by a full and complete report of all activities conducted during the past year and all expenditures made incident thereto. The board of regents shall make such changes in the budget as it deems necessary before approving the budget but may only levy a student union fee or increase an existing student union fee after a student referendum has been called on the levying or increase in such a fee, and the majority of the students voting in the referendum approve. The board shall then levy the fees, within the limits herein fixed, in such amounts as will be sufficient to meet the budgetary needs of the University Center Building. Expenditures from "The University of Houston Center Fee Account" shall be made solely for the purposes set forth in this section, and in compliance with the budget approved by the board of regents.

[Added by Acts 1977, 65th Leg., p. 1473, ch. 597, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER D–1. INSTITUTE OF LABOR AND INDUSTRIAL RELATIONS

§ 111.71. Establishment of Institute

The board of regents shall establish an Institute of Labor and Industrial Relations.

[Added by Acts 1977, 65th Leg., p. 879, ch. 330, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act provided:

"The name of the Center for Human Resources at the University of Houston is changed to the Institute of Labor and Industrial Relations, and the functions of the center as renamed shall be continued and expanded in accordance with the provisions of this Act. The budget of the center shall be the budget of the institute."

§ 111.72. Purpose

The purpose of the institute is to contribute to a more meaningful relationship between education and training and the requirements of the Texas labor force and to a positive labor and industrial relations climate.

[Added by Acts 1977, 65th Leg., p. 879, ch. 330, § 1, eff. Aug. 29, 1977.]

§ 111.73. Activities

The institute may sponsor the following activities:

(1) adult education, technical assistance, and informational services for labor, management, and public practitioners concerned with the problems of labor, the labor force, and industrial relations;

(2) research and training related to labor, the labor force, and industrial relations;

(3) special informational services to assist labor, business and industry, government, and educational institutions in relating education and training to labor market requirements;

(4) research, technical assistance, and information related to the impact of special problems on the Texas labor force, such as the energy problem, on employment, unemployment, and labor relations in the state;

(5) degree or certificate programs appropriate to the field, subject to the approval of the board of regents and the Coordinating Board, Texas College and University System; and

(6) a formal program of training, technical assistance, and informational services to the junior and community colleges in the state for the purpose of assisting in the development of labor study programs.

[Added by Acts 1977, 65th Leg., p. 879, ch. 330, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER F. THE UNIVERSITY OF HOUSTON–DOWNTOWN COLLEGE

§ 111.90. Establishment; Location

There is established in the City of Houston a coeducational institution of higher education to be known as the University of Houston-Downtown College. This institution shall be located on land currently owned by the University of Houston System.

[Added by Acts 1979, 66th Leg., p. 319, ch. 148, § 1, eff. Aug. 27, 1979.]

§ 111.91. Organization and Control

The organization and control of the institution are vested in the board of regents of the University of Houston System. With respect to this institution the board of regents has all the rights, powers, and duties that it has with respect to the organization and control of the University of Houston and the University of Houston at Clear Lake City except as otherwise provided by this subchapter. However, the University of Houston-Downtown College shall be maintained as a separate and distinct institution of higher education.

[Added by Acts 1979, 66th Leg., p. 319, ch. 148, § 1, eff. Aug. 27, 1979.]

§ 111.92. Role and Scope

The institution shall be organized to offer four-year undergraduate programs subject to the authority of the board of regents of the University of Houston System and the Coordinating Board, Texas College and University System.

[Added by Acts 1979, 66th Leg., p. 319, ch. 148, § 1, eff. Aug. 27, 1979.]

§ 111.93. Authority of Coordinating Board

The institution is a general academic teaching institution, and as such it is subject to the authority of the Coordinating Board, Texas College and University System.

[Added by Acts 1979, 66th Leg., p. 319, ch. 148, § 1, eff. Aug. 27, 1979.]

CHAPTER 112. PAN AMERICAN UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

Section
112.38. Acquisition and Disposition of Land.

SUBCHAPTER D. PAN AMERICAN UNIVERSITY AT BROWNSVILLE

112.51. Establishment; Scope.
112.52. Facilities; Gifts and Grants.
112.53. Courses and Degrees; Rules and Regulations.
112.54. Effect of Subchapter.

SUBCHAPTER C. POWERS AND DUTIES

§ 112.38. Acquisition and Disposition of Land

(a) The board on behalf of the university may acquire by purchase, exchange, or otherwise any tract or parcel of land in Hidalgo County that is contiguous or adjacent to the main campus of Pan American University in Edinburg, Texas, if the land is necessary for campus expansion. The board may sell, exchange, or lease the land owned by the university in Hidalgo County that is not adjacent or contiguous to the main campus, and is adjacent to Edinburg Consolidated School District property.

(b) The board may acquire land under Subsection (a) of this section only upon approval by the Coordinating Board, Texas College and University System.

(c) The board may convey land under Subsection (a) of this section to the highest bidder by sealed bids if the consideration for the terms and conditions of the conveyance are agreeable to the board and the transaction receives the approval of the Coordinating Board, Texas College and University System.

(d) The proceeds from any sale or lease of real property shall be deposited as other local funds of the university.

[Added by Acts 1979, 66th Leg., p. 605, ch. 282, § 1, eff. Aug. 27, 1979.]

SUBCHAPTER D. PAN AMERICAN UNIVERSITY AT BROWNSVILLE

§ 112.51. Establishment; Scope

The Board of Regents of Pan American University may establish an upper-level educational center of Pan American University in the city of Brownsville, to be known as Pan American University at Brownsville, to accept junior, senior, and master's level students only. This upper-level educational center may be discontinued by the Coordinating Board, Texas College and University System, at its discretion and shall never be converted to a freestanding, fully state-supported coeducational institution of higher learning until it has complied with all requirements imposed by the Coordinating Board and until the site for such institution, consisting of at least 200 acres of land, shall have been provided at no cost to the state.

[Added by Acts 1977, 65th Leg., p. 726, ch. 271, § 1, eff. Aug. 29, 1977.]

§ 112.52. Facilities; Gifts and Grants

The board of regents shall make provisions for adequate physical facilities for use by Pan American University at Brownsville and may accept and administer, on terms and conditions satisfactory to the board, grants or gifts of money or property which are tendered by any person for the use and benefit of the school.

[Added by Acts 1977, 65th Leg., p. 726, ch. 271, § 1, eff. Aug. 29, 1977.]

§ 112.53. Courses and Degrees; Rules and Regulations

The board of regents, with the approval of the Coordinating Board, Texas College and University System, may prescribe courses leading to customary degrees and make other rules and regulations for the operation, control, and management of the university at Brownsville as necessary for the school to be a first-class upper division institution of higher learning. It is the intent of the legislature that degrees be offered only by and in the name of Pan American University and that they include only bachelor's and master's degrees and their equivalents.

[Added by Acts 1977, 65th Leg., p. 726, ch. 271, § 1, eff. Aug. 29, 1977.]

§ 112.54. Effect of Subchapter

Nothing in this subchapter shall be construed to limit the powers of the Board of Regents of Pan American University as conferred by law.

[Added by Acts 1977, 65th Leg., p. 726, ch. 271, § 1, eff. Aug. 29, 1977.]

CHAPTER 113. TEXAS EASTERN UNIVERSITY [REPEALED]

Acts 1975, 64th Leg., p. 813, ch. 317, § 3, provided:

"The title of Chapter 113 of the Texas Education Code is changed from TYLER STATE COLLEGE to TEXAS EASTERN UNIVERSITY."

Acts 1979, 66th Leg., p. 699, ch. 303, §§ 1 to 3, provided:

"Sec. 1. The governance, operation, management, and control of Texas Eastern University and all land, buildings, facilities, improvements, equipment, supplies, and property comprising said university are transferred from the Board of Regents of Texas Eastern University to the Board of Regents of The University of Texas System. Said university, land, buildings, facilities, improvements, equipment, supplies, and property shall be governed, operated, managed, and controlled pursuant to such powers, duties, and responsibilities as are or may hereafter be conferred by law upon the Board of Regents of The University of Texas System for the governance, management, and control of the component institutions comprising said system.

"Sec. 2. All appropriations made by the legislature for the use and benefit of Texas Eastern University under the governance of the Board of Regents of Texas Eastern University are transferred to the Board of Regents of The University of Texas System for the use and benefit of said university, and all other funds held for the use and benefit of Texas Eastern University shall be similarly transferred.

"Sec. 3. All contracts and written obligations of every kind and character, including bonds, entered into by the Board of Regents of Texas Eastern University for and on behalf of said university are ratified, confirmed, and validated, and in all such contracts and written obligations, including bonds, the Board of Regents of The University of Texas System is substituted in lieu and shall stand and act in the place and stead of the Board of Regents of Texas Eastern University."

SUBCHAPTER A. GENERAL PROVISIONS

§§ 113.01 to 113.36. Repealed by Acts 1979, 66th Leg., p. 700, ch. 303, § 5, eff. Sept. 1, 1979

Prior to repeal, §§ 113.01 and 113.03 were amended by Acts 1975, 64th Leg., p. 813, ch. 317, § 2.

See, now, §§ 76.01 to 76.06.

SUBTITLE G. NON-BACCALAUREATE SYSTEM

CHAPTER 130. JUNIOR COLLEGE DISTRICTS

SUBCHAPTER E. BOARDS OF TRUSTEES OF JUNIOR COLLEGE DISTRICTS

Section

130.0821. Governing Board of Certain Countywide Community College Districts.

SUBCHAPTER A. GENERAL PROVISIONS

§ 130.003. State Appropriation for Public Junior Colleges

[See Compact Edition, Volume 1 for text of (a)]

(b) To be eligible for and to receive a proportionate share of the appropriation, a public junior college must:

[See Compact Edition, Volume 1 for text of (b)(1) to (3)]

(4) collect, from each full-time and part-time student enrolled, matriculation and other session fees in the amounts required and provided by law for other state-supported institutions of higher education, except, however, the governing board of a public junior college district may waive the difference in the rate of tuition for nonresident and resident students for a person, and his dependents, who owns property which is subject to ad valorem taxation by the junior college district, that the amount charged nonresidents who have not received a waiver of nonresident tuition need not be greater than the amount so required by law on January 1, 1971, and that notwithstanding the provisions of Subsection (b) of Section 54.051 of this code, the minimum tuition charge for resident students shall be $25;

[See Compact Edition, Volume 1 for text of (b)(5) to (e)]

[Amended by Acts 1977, 65th Leg., p. 1379, ch. 550, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER E. BOARDS OF TRUSTEES OF JUNIOR COLLEGE DISTRICTS

§ 130.082. Governing Board of Junior College of Other than Independent School District

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) The number of members or trustees of the governing board shall be either seven or nine, in accordance with the laws applicable to the junior college district on the effective date of this code or on the date of the creation of a new district or a new board. Any seven-member board may be increased

to nine, and the two additional members shall be appointed by resolution or order of the board for terms of office as prescribed in Subsection (e) of this section. Any vacancy occurring on the board through death, resignation, or otherwise, shall be filled by appointment by resolution or order of the board. If the vacancy occurs on a board whose members are elected in at-large elections, the person appointed to fill the unexpired term shall serve until the next regular election of members to the board, at which time the position shall be filled by election for a term appropriately shortened to conform with what regularly would have been the length of the term for that position. If the vacancy occurs on a board whose members are elected from single-member districts, the person appointed to fill the unexpired term shall serve until the next regular election for that particular district. Each member of the board shall be a resident, qualified voter of the district and shall take the proper oath of office before taking up the duties thereof. Members of a board shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties, to the extent authorized and permitted by the board. The board shall elect one of its members as president of the board, and the president shall preside at meetings of said board and perform such other duties and functions as are prescribed by the board. The president of the board shall have a vote the same as the other members. The board shall elect a secretary of the board who may or may not be a member of the board, and who shall be the official custodian of the minutes, books, records, and seal of said board, and who shall perform such other duties and functions as are prescribed by the board. The board shall be authorized to elect any other officers as deemed necessary or advisable. Officers of the board shall be elected at the first regular meeting of the board following the regular election of members of the board in even-numbered years, or at any time thereafter in order to fill a vacancy. Said board shall be authorized to appoint or employ such agents, employees, and officials as deemed necessary or advisable to carry out any power, duty, or function of said board; and to employ a president, dean, or other administrative officer, and upon the president's recommendation to employ faculty and other employees of the junior college. Said board shall act and proceed by and through resolutions or orders adopted or passed by the board and the affirmative vote of a majority of all members of the board shall be required to adopt or pass a resolution or order, and the board shall adopt such rules, regulations, and bylaws as it deems advisable, not inconsistent with this section.

[See Compact Edition, Volume 1 for text of (e) to (h)]

(i) The governing board of a countywide junior or community college district that contains a city with a population of more than 800,000 residents may set the date for an election held under the provisions of this section on any day in April by a resolution adopted not less than 90 days before the date selected; provided, however, that such election may not be held on the same date as the election of the governing board of any independent school district in such county unless the election date of all independent school districts in such county is on such date. The elections in each trustee district may be conducted jointly with the elections held in April in a city or school district in the trustee district. When a runoff election is necessary, the board may order the election for a date to coincide with the date of the runoff election for city officials, if the city is holding a runoff election; otherwise, the board shall set the date of the runoff election for not later than three weeks following the regular election. When members of the board and municipal officers are to be elected on the same day, the governing bodies of the district and the city shall enter into an agreement governing the conduct of the joint election in accordance with the provisions of Article 978b, Revised Civil Statutes of Texas, 1925, as amended. [Amended by Acts 1975, 64th Leg., p. 2035, ch. 673, § 1, eff. June 20, 1975; Acts 1977, 65th Leg., p. 1386, ch. 554, § 1, eff. June 15, 1977.]

§ 130.0821. Governing Board of Certain Countywide Community College Districts

(a) The members of the governing board of a countywide community college district that contains a city with a population of more than 800,000 residents shall be elected from single-member trustee districts at all elections held after January 1, 1978.

(b) Before January 1, 1978, the board of trustees shall divide the district into seven compact trustee districts which contain as nearly as practicable an equal number of inhabitants according to the last preceding federal census. Residents of each trustee district shall be entitled to elect one member of the board, and each candidate seeking to represent a trustee district must reside in the trustee district he seeks to represent. Trustees shall, during their term of office, reside within the trustee district from which they were elected.

(c) Members of the board of trustees of the district shall serve for staggered terms of six years with the terms of two or three members expiring in even-numbered years.

(d) The trustees elected in 1978 shall draw lots for appropriate terms so that the terms of two trustees shall expire in 1980, two in 1982, and three in 1984.

(e) Within 90 days following the publication of census tract data compiled during each subsequent decennial federal census, the board of trustees shall

redivide the district into seven trustee districts if such census data indicates that the population of the most populous trustee district exceeds the population of the least populous district by more than 10 percent. At the next district election following the redivision of the district, each trustee district shall elect a member of the board, and the members elected shall draw lots for two two-year terms, two four-year terms, and three six-year terms.

(f) Any election held pursuant to the terms of this section shall be conducted in accordance with the provisions of Subsection (i), Section 130.082 of this code.

(g) Trustees elected under the provisions of this section take office on the first Tuesday in May.
[Added by Acts 1977, 65th Leg., p. 1868, ch. 743, § 1, eff. Aug. 29, 1977.]

§ 130.086. Branch Campuses

(a) The board of trustees of a junior college district may establish and operate branch campuses, centers, or extension facilities, without regard to the geographical bounds of the junior college district, provided that each branch campus, center, or extension facility and each course or program offered in such locations is subject to the prior and continuing approval of the Coordinating Board, Texas College and University System.

(b) Such branch campuses, centers, or extension facilities shall be within the role and scope of the junior college as determined by the Coordinating Board, Texas College and University System.

[See Compact Edition, Volume 1 for text of (c)]

(d) Before any course may be offered by a junior college within the district of another operating public junior college, it must be established that the second public junior college is not capable of or is unable to offer the course. If the course is to be offered in a county which has a population of more than 97,500 persons, according to the last preceding federal census, and which has no state-supported senior college or university within its boundaries, it must also be established that any other college or university in the county is not able and willing to offer the course. After the need is established and the course is not locally available, then the first junior college may offer the course when approval is granted by the Coordinating Board, Texas College and University System, under the provisions of Subsection (a).

[See Compact Edition, Volume 1 for text of (e)]

(f) Out-of-district branch campuses, centers, or extension facilities of junior colleges existing prior to September 1, 1971, shall be reviewed by the Coordinating Board, Texas College and University System, to determine their feasibility and desirability with respect to the junior college and the population of the geographical area served by the branch campus, center, or extension facility.
[Amended by Acts 1975, 64th Leg., p. 2035, ch. 673, § 2, eff. June 20, 1975; Acts 1975, 64th Leg., p. 2109, ch. 689, §§ 1 to 4, June 20, 1975.]

SUBCHAPTER F. REGIONAL COLLEGE DISTRICTS

§ 130.102. Taxes

Text of section effective January 1, 1982

The tax assessors and collectors of the county or respective counties containing territory embraced within the boundaries of such regional college district shall assess and collect the taxes of said college district on the taxable property in the territory of said district located in said county or respective counties on levies made and rates fixed by the board of regents of said district.
[Amended by Acts 1979, 66th Leg., p. 2317, ch. 841, § 4(k), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

SUBCHAPTER G. FISCAL PROVISIONS

§ 130.121. Tax Assessment, Equalization, and Collection

Text of section effective until January 1, 1982

[See Compact Edition, Volume 1 for text of (a) to (f)]

(g) The governing board of a joint county junior college district shall be authorized to have the taxable property in its district assessed, its values equalized, or its taxes collected, in whole or in part, by the tax assessors, boards of equalization, or tax collectors, respectively, of any county, city, taxing district, or other governmental subdivision in which all or any part of the joint county junior college district is located. The tax assessors or tax collectors of a governmental subdivision, on the request of the governing board of a joint county junior college district, shall assess and collect the taxes of the joint county junior college district on the taxable property in the territory of the district located within the governmental subdivision. The taxes assessed and collected shall be based on levies made and rates fixed by the governing board of the joint county junior college district. Unless otherwise determined by the governing board of the joint county junior college district, the assessed valuations of the property for state and county taxes shall be used as the valuation for the joint county junior college district taxes. The tax assessors or tax collectors shall collect the joint county junior college district taxes at the same time they assess or collect the taxes levied by their own governmental subdivisions. All taxes collected

for the joint county junior college district shall be accounted for and paid over to the treasurer of the joint county junior college district by the tax collectors no later than the 10th of the month following the month of collection. Tax assessors and tax collectors shall receive compensation in an amount agreed on between the appropriate parties, but not to exceed two percent of the ad valorem taxes assessed. The functions assumed by the officials of a governmental subdivision under the subsection are additional duties pertaining to their offices.

[Amended by Acts 1977, 65th Leg., p. 563, ch. 198, § 1, eff. May 20, 1977.]

For text of section effective January 1, 1982, see § 130.121, post

§ 130.121. Tax Assessment and Collection

Text of section effective January 1, 1982

(a) The governing board of each junior college district, and each regional college district, for and on behalf of its junior college division, annually shall cause the taxable property in its district to be assessed for ad valorem taxation and the ad valorem taxes in the district to be collected, in accordance with any one of the methods set forth in this section, and any method adopted shall remain in effect until changed by the board.

(b) Each governing board shall be authorized to have the taxable property in its district assessed and/or its taxes collected, in whole or in part, by the tax assessors and/or tax collectors, respectively, of any county, city, taxing district, or other governmental subdivision in which all or any part of the junior college district is located.

(c) The governing board of a joint county junior college district shall be authorized to have the taxable property in its district assessed or its taxes collected, in whole or in part, by the tax assessors or tax collectors, respectively, of any county, city, taxing district, or other governmental subdivision in which all or any part of the joint county junior college district is located. The tax assessors or tax collectors of a governmental subdivision, on the request of the governing board of a joint county junior college district, shall assess and collect the taxes of the joint county junior college district in the manner prescribed in the Property Tax Code. Tax assessors and tax collectors shall receive compensation in an amount agreed on between the appropriate parties, but not to exceed two percent of the ad valorem taxes assessed.

[Amended by Acts 1977, 65th Leg., p. 563, ch. 198, § 1, eff. May 20, 1977; Acts 1979, 66th Leg., p. 2317, ch. 841, § 4(k), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1 and § 130.121, ante

CHAPTER 135. TEXAS STATE TECHNICAL INSTITUTE

SUBCHAPTER A. GENERAL PROVISIONS

Section
135.05. Interpreters for the Deaf.

§ 135.05. Interpreters for the Deaf

(a) The institute shall provide qualified interpreters for deaf students in attendance at each campus. In order to be qualified, an interpreter must:

(1) be capable of giving verbatim translation of the spoken word through finger spelling, the language of signs, and speaking without voice;

(2) be capable of reverse interpretation from the language of signs to the spoken word;

(3) be a member of the Texas Society of Interpreters for the Deaf; and

(4) hold a Comprehensive Skills Certificate from the National Registry of Interpreters for the Deaf.

(b) The institute shall also provide equipment, materials, and services, including tutoring, counseling, and other support services, necessary for the deaf student to take full advantage of existing educational programs.

[Added by Acts 1977, 65th Leg., p. 1034, ch. 379, § 1, eff. Aug. 29, 1977.]

TITLE 4. COMPACTS

CHAPTER 160. REGIONAL EDUCATION COMPACT

Section
160.041. Application of Sunset Act.
160.07. Academic Common Market.

§ 160.041. Application of Sunset Act

The office of Southern Regional Education Compact Commissioner for Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.155, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

§ 160.07. Academic Common Market

(a) The Coordinating Board, Texas College and University System, is hereby authorized to participate on behalf of the State of Texas in the interstate agreement known as the "Academic Common Market," which provides reciprocal higher educational opportunities to the citizens of states declared as parties to the Southern Regional Education Compact.

(b) The governing board of any public institution of higher education may propose programs and curricula for approval by the Coordinating Board, Texas College and University System, which are to be offered to citizens of participating states on a resident tuition or registration fee basis.

(c) Notwithstanding any other provisions of this code, the governing board of any public institution of higher education shall charge nonresident students from participating states enrolled in programs designated pursuant to this section the same amount charged resident students in such programs.

[Added by Acts 1977, 65th Leg., p. 105, ch. 50, § 1, eff. Aug. 29, 1977.]

CHAPTER 161. COMPACT FOR EDUCATION

Section
161.021. Application of Sunset Act.

§ 161.021. Application of Sunset Act

The office of Compact for Education Commissioner for Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.150, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

TABLE OF

SPECIAL LAWS PERTAINING TO EDUCATION

Certain special laws relating to education, many of which were classified to Title 49, Education–Public, of the Civil Statutes, have not been repealed and are not carried into the Education Code. They have been dropped from the Civil Statutes as special laws.

The tabulation below lists these special laws from the 64th through Regular Session of the 66th Legislatures, numerically by article number classification to Vernon's Texas Civil Statutes (where so classified), followed by the subject matter and the original and amendatory citations to the General and Special Laws of Texas

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Civ.St.Art.	Laws Citation	Subject Matter
		COUNTY SCHOOL BOARD OR TRUSTEES
		Abolition of office and transfer of duties
—	1977, ch. 544	—Fayette County
		COUNTY SUPERINTENDENT
		Abolition of office and transfer of duties
2688i–2	1967, ch. 493 1975, ch. 652	—Counties of 95,000 to 97,500
—	1975, ch. 107	—Medina County
—	1975, ch. 267	—Crosby County
—	1975, ch. 706	—La Salle County
—	1975, ch. 710	—Gonzales and Travis Counties
—	1975, ch. 728	—Jack County
—	1975, ch. 741	—Cameron, Nueces, Tyler, Marion and Cass Counties
		INDEPENDENT SCHOOL DISTRICTS
2774b	1951, ch. 339 1965, ch. 312 1975, ch. 717	—City of 900,000 or more and 200,000 scholastics
2783d	1947, ch. 171 1949, ch. 391 1953, ch. 28 1961, ch. 2 1967, ch. 445 1971, ch. 70 1973, ch. 211 1979, ch. 798	—City of 290,000 or more
		TAXES AND TAXATION
		Common school districts
—	1975, ch. 541	—Collin County

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AGRICULTURAL PRODUCTS
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FAMILY CODE

TITLE 2. PARENT AND CHILD

SUBTITLE A. THE PARENT–CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT–CHILD RELATIONSHIP

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TITLE 1. HUSBAND AND WIFE

SUBTITLE A. THE MARRIAGE RELATIONSHIP

CHAPTER 1. ENTERING THE MARRIAGE RELATIONSHIP

SUBCHAPTER D. CEREMONY AND RETURN OF LICENSE

Section
1.86. Duplicate License.

SUBCHAPTER A. APPLICATION FOR MARRIAGE LICENSE

§ 1.05. Absent Applicant

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) The affidavit of an absent applicant must include:

(1) the absent applicant's full name (including the maiden surname, if applicable), address, date of birth, place of birth (including city, county, and state), citizenship, and social security number, if any;

(2) a declaration that the absent applicant has not been divorced within the last 30 days;

(3) a declaration that the absent applicant is not presently married (unless to the other applicant and they wish to marry again);

(4) a declaration that the other applicant is not related to the absent applicant as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption; or

(C) a parent's brother or sister of the whole or half blood;

(5) a declaration that the absent applicant desires to marry, and the name, age, and address of the person to whom the absent applicant desires to be married;

(6) the approximate date on which the marriage is to occur;

(7) the reason the absent applicant is unable to appear personally before the county clerk for the issuance of the license; and

(8) if the absent applicant will be unable to attend the ceremony, the appointment of any adult, except the other applicant, to act as proxy for the purpose of participating in the ceremony.

[Amended by Acts 1975, 64th Leg., p. 619, ch. 254, § 1, Sept. 1, 1975.]

Section 13 of the 1975 Act read: "This Act takes effect September 1, 1975."

§ 1.07. Issuance of License

(a) The county clerk may not issue a license to the applicants if:

(1) either applicant fails to provide information as required by Sections 1.02 and 1.05 of the code;

(2) either applicant fails to submit proof of age and identity;

(3) either applicant is under 14 years of age and has not received a court order under Section 1.53 of this code;

(4) either applicant is 14 years of age or older but under 18 years of age and has received neither parental consent nor a court order under Section 1.53 of this code;

(5) either applicant fails to comply with the requirements of Subchapter B of this chapter;

(6) either applicant checks "false" in response to a statement in the application, except as provided in Subsection (b) of this section, or fails to make a required declaration in an affidavit required of an absent applicant; or

(7) either applicant indicates that he or she has been divorced by a decree of a court of this state within the last 30 days.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1975, 64th Leg., p. 620, ch. 254, § 2, eff. Sept. 1, 1975.]

SUBCHAPTER B. MEDICAL EXAMINATION

§ 1.26. Duties of Laboratory

The laboratory shall:

(1) conduct a standard serologic test prescribed by the Texas Department of Health Resources;

(2) complete the laboratory statement and the detailed laboratory report on the prescribed forms and have them signed by the person authorized to enter the results of the test;

(3) transmit the laboratory statement and one copy of the detailed laboratory report to the designated physician; and

(4) transmit a copy of the detailed reactive laboratory report to the Texas Department of Health Resources weekly except that positive darkfields (syphilis) shall be reported within 24 hours.

[Amended by Acts 1977, 65th Leg., p. 595, ch. 211, § 1, eff. May 20, 1977.]

SUBCHAPTER C. UNDERAGE APPLICANTS

§ 1.51. Age Requirements: General Rules

Except with parental consent as prescribed by Section 1.52 of this code or with a court order as prescribed by Section 1.53 of this code, the county clerk shall not issue a marriage license if either applicant is under 18 years of age.

[Amended by Acts 1975, 64th Leg., p. 620, ch. 254, § 3, eff. Sept. 1, 1975.]

§ 1.52. Underage Applicant: Parental Consent

(a) If the applicant is 14 years of age or older but under 18 years of age, the county clerk shall issue the license if parental consent is given as prescribed by this section.

[See Compact Edition, Volume 1 for text of (b) to (e)]

[Amended by Acts 1975, 64th Leg., p. 620, ch. 254, § 4, eff. Sept. 1, 1975.]

§ 1.53. Underage Applicant: Court Order

(a) A person who is under 18 years of age may petition in his own name in a district court for an order granting permission to marry. In all suits filed under this section, the trial judge may advance the cause if he determines that the best interest of the applicant would be served by an early hearing.

(b) The petition must be filed in the county where a parent resides if a managing conservator or a guardian of the person has not been appointed. If a managing conservator or a guardian of the person has been appointed, the petition must be filed in the county where the managing conservator or the guardian of the person resides. If no person authorized to consent to marriage for the child resides in this state, the petition must be filed in the county where the child lives.

(c) The petition shall include a statement of the reasons the child desires to marry, whether each parent is living or dead, the name and residence address of each living parent, and whether or not a managing conservator or a guardian of the person has been appointed for the child.

(d) Process shall be served as in other civil cases on each living parent of the child, or if a managing conservator or a guardian of the person has been appointed, on the managing conservator or guardian of the person. Citation may be given by publication as in other civil cases, except that notice shall be published one time only.

(e) The court shall appoint a guardian ad litem to represent the child in the proceeding and to speak for or against the petition in the manner he believes to be in the best interest of the child. The court shall prescribe a fee to be paid by the child for the services of the guardian ad litem; and the fee shall be collected as are other costs of the proceeding.

(f) If, after a hearing, the court, sitting without a jury, believes marriage to be in the best interest of the child, it shall make an order granting the child permission to marry.

[Amended by Acts 1975, 64th Leg., p. 620, ch. 254, § 5, eff. Sept. 1, 1975.]

SUBCHAPTER D. CEREMONY AND RETURN OF LICENSE

§ 1.83. Persons Authorized to Conduct Ceremony

(a) The following persons are authorized to conduct marriage ceremonies:

(1) licensed or ordained Christian ministers and priests;

(2) Jewish rabbis;

(3) persons who are officers of religious organizations and who are duly authorized by the organization to conduct marriage ceremonies; and

(4) justices of the supreme court, judges of the court of criminal appeals, justices of the courts of civil appeals, judges of the district, county, and probate courts, judges of the county courts at law, courts of domestic relations and juvenile courts, retired justices and judges of such courts, justices of the peace, retired justices of the peace, and judges of the federal courts of this state.

(b) For the purposes of this section, a retired judge of a county court, probate court, county court at law, court of domestic relations, or juvenile court or a retired justice of the peace is a person who is 65 years of age, who has an aggregate of at least 15

years of service as judge of any court or courts or as justice of the peace, and who has ceased to serve in that capacity. The person is considered as retired in the capacity of last service.

[Amended by Acts 1977, 65th Leg., p. 135, ch. 64, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 388, ch. 179, § 1, eff. Aug. 27, 1979.]

§ 1.86. Duplicate License

(a) On the application and proof of identity of a person whose marriage is recorded in the records of the county clerk, the county clerk shall issue a duplicate marriage license completed with information as contained in the records.

(b) On the application and proof of identity of both persons to whom a marriage license was issued but not recorded as required by Section 1.85 of this code, the county clerk shall issue a duplicate license if each person applying submits to the clerk an affidavit stating:

(1) that the persons to whom the original license was issued were married to each other by a person authorized to conduct marriage ceremonies before the expiration date of the original license;

(2) the name of the person who conducted the ceremony; and

(3) the date on which the marriage ceremony occurred.

[Added by Acts 1975, 64th Leg., p. 621, ch. 254, § 6, eff. Sept. 1, 1975.]

[Sections 1.87 to 1.90 reserved for expansion]

CHAPTER 2. VALIDITY OF MARRIAGE

SUBCHAPTER B. VOID MARRIAGES

§ 2.21. Consanguinity

(a) A person may not marry:

(1) an ancestor or descendant, by blood or adoption;

(2) a brother or sister, of the whole or half blood or by adoption;

(3) a parent's brother or sister, of the whole or half blood; or

(4) a son or daughter of a brother or sister of the whole or half blood or by adoption.

(b) A marriage entered into in violation of this section is void.

[Amended by Acts 1975, 64th Leg., p. 1184, ch. 442, § 1, eff. June 19, 1975.]

SUBCHAPTER C. VOIDABLE MARRIAGES

§ 2.41. Underage

(a) The licensed or informal marriage of a person under 14 years of age, unless a court order has been obtained as provided in Section 1.53 of this code, is voidable and subject to annulment on the petition of a next friend for the benefit of the underage party or on the petition of the parent or the judicially designated managing conservator or guardian (whether an individual, authorized agency, or court) of the person of the underage party. A suit filed under this subsection by a next friend must be brought within 90 days after the 14th birthday of the underage party, or it is barred. A suit by a parent, managing conservator, or guardian of the person may be brought at any time before the party is 14 years of age, but thereafter must be brought within 90 days after the petitioner knew or should have known of the marriage, or it is barred. However, in no case may a suit by a parent, managing conservator, or guardian of the person be brought under this subsection after the underage person has reached 18 years of age.

(b) The licensed or informal marriage of a person 14 years of age or older but under 18 years of age, without parental consent as provided in Section 1.52 or 1.92 of this code or without a court order as provided by Section 1.53 of this code, is voidable and subject to annulment on the petition of a next friend for the benefit of the underage party, or on the petition of the parent or the judicially designated managing conservator or guardian (whether an individual, authorized agency or court) of the person of the underage party. A suit filed under this subsection by a next friend must be brought within 90 days after the date of the marriage, or it is barred. A suit by a parent, managing conservator, or guardian of the person must be brought within 90 days after the date the petitioner knew or should have known of the marriage, or it is barred. However, in no case may a suit by a parent, managing conservator, or guardian of the person be brought under this subsection after the underage person has reached 18 years of age.

[See Compact Edition, Volume 1 for text of (c)]

[Amended by Acts 1975, 64th Leg., p. 621, ch. 254, § 7, eff. Sept. 1, 1975.]

CHAPTER 3. DISSOLUTION OF MARRIAGE

SUBCHAPTER B. JURISDICTION AND VENUE; RESIDENCE QUALIFICATIONS

Section
3.26. Acquiring Jurisdiction over Nonresident Respondent.

SUBCHAPTER C. SUIT

3.521. Citation by Publication.

SUBCHAPTER B. JURISDICTION AND VENUE; RESIDENCE QUALIFICATIONS

§ 3.26. Acquiring Jurisdiction over Nonresident Respondent

(a) If the petitioner is a resident or a domiciliary of this state at the commencement of a suit for divorce, annulment, or to declare a marriage void, the court may exercise personal jurisdiction over the respondent, or the respondent's personal representative, although the respondent is not a resident or a domiciliary of this state if:

(1) this state is the last state in which marital cohabitation between petitioner and the respondent occurred and the suit is commenced within two years after the date on which cohabitation ended; or

(2) notwithstanding Subdivision (1) above, there is any basis consistent with the constitution of this state or the United States for the exercise of the personal jurisdiction.

(b) A court acquiring jurisdiction under this section also acquires jurisdiction in a suit affecting the parent-child relation if Section 11.051 of this code is applicable.

[Added by Acts 1975, 64th Leg., p. 622, ch. 254, § 8, eff. Sept. 1, 1975.]

[Sections 3.27 to 3.50 reserved for expansion]

SUBCHAPTER C. SUIT

§ 3.521. Citation by Publication

(a) Citation in a suit for divorce or annulment or to declare a marriage void may be given by publication as in other civil cases, except that notice shall be published one time only.

(b) The notice shall be sufficient if given in substantially the following form:

"STATE OF TEXAS

To (name of person to be served with citation), and to all whom it may concern (if the name of any person to be served with citation is unknown), Respondent(s),

GREETINGS:

"YOU ARE HEREBY COMMANDED to appear and answer before the Honorable District Court ____ Judicial District, _____ County, Texas, at the Courthouse of said county in _____, Texas, at or before 10 o'clock a. m. of the Monday next after the expiration of 20 days from the date of service of this citation, then and there to answer the petition of _____, Petitioner, filed in said Court on the ____ day of _____, against _____, Respondent(s), and the said suit being number ____ on the docket of said Court, and entitled 'In the Matter of Marriage of _____ and _____,' the nature of which suit is a request to _____ (statement of relief sought).

"The Court has authority in this suit to enter any judgment or decree dissolving the marriage and providing for the division of property which will be binding on you.

"Issued and given under my hand and seal of said Court at _____, Texas, this the ____ day of _____, _____.

_____

Clerk of the District Court of
_____ County, Texas
By _____, Deputy."

(c) The form authorized in this section and the form authorized by Section 11.09 of this code may be combined in appropriate situations.

(d) Where no parent-child relationship exists, service by publication may be completed by posting the citation at the courthouse door for a period of seven days in the county where the suit is filed.

(e) Where the petitioner or his or her attorney of record shall make oath that no children presently under 18 years of age were born or adopted by the parties and that no appreciable amount of property was accumulated by the parties during the marriage, the court may dispense with the appointment of an attorney ad litem; but, in every such case a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the cause as a part of the record thereof.

[Added by Acts 1975, 64th Leg., p. 622, ch. 254, § 9, eff. Sept. 1, 1975.]

§ 3.54. Counseling

(a) After a petition for divorce is filed, the court may, in its discretion, direct the parties to counsel with a person or persons named by the court, who shall submit a written report to the court before the hearing on the petition.

(b) In his report, the counselor shall give only his opinion as to whether there exists a reasonable expectation of reconciliation of the parties, and if so, whether further counseling would be beneficial. The sole purpose of the report is to aid the court in determining whether the suit for divorce should be continued pending further counseling, and the report shall not be admitted as evidence in the suit. Copies of the report shall be furnished to the parties.

(c) If the court is of the opinion that there exists a reasonable expectation of the parties' reconciliation, the court may by written order continue the proceedings and direct the parties to any person or persons named by the court for further counseling for a period of time fixed by the court not to exceed 60 days, subject to any terms, conditions, and limitations the court deems desirable. The court shall

consider the circumstances of the parties, including the needs of the parties' family, and the availability of counseling services, in making its order. At the expiration of the period of time specified by the court, the counselor to whom the parties were directed shall report to the court whether the parties have complied with the court's order. Thereafter, the court shall proceed as in divorce suits generally.

(d) No person who has counseled parties to a suit for divorce under this section is competent to testify in any action involving the parties or their children. The files, records, and other work-products of the counselor are privileged and confidential for all purposes and may not be admitted as evidence in any action involving the parties or their children.

(e) The expenses of counseling may be taxed as costs against either or both parties.

[Amended by Acts 1975, 64th Leg., p. 623, ch. 254, § 10, eff. Sept. 1, 1975.]

§ 3.57. Transfers and Debts Pending Decree

After a petition for divorce or annulment is filed and until a final decree is entered, if a spouse transfers real or personal community property or incurs a debt that would subject community property to liability, the transfer or debt is void with respect to the other spouse if the transfer was made or the debt incurred with the intent to injure the rights of the other spouse. A transfer or debt is not void if the person dealing with the transferor or debtor spouse did not have notice of the intent to injure the rights of the other spouse. In an action to void any transfer or debt the spouse seeking to void said transfer or debt shall have the burden of proving that the person dealing with the transferor or debtor spouse had notice of the intent to injure the rights of the other spouse.

[Amended by Acts 1979, 66th Leg., p. 421, ch. 193, § 1, eff. Aug. 27, 1979.]

§ 3.59. Temporary Support

After a petition for divorce or annulment is filed, the judge, after due notice may order payments for the support of the wife, or for the support of the husband until a final decree is entered.

[Amended by Acts 1979, 66th Leg., p. 421, ch. 193, § 2, eff. Aug. 27, 1979.]

§ 3.61. Jury

In a suit for divorce or annulment or to declare a marriage void, either party, except as provided in Section 2.41 of this code, may demand a jury trial.

[Amended by Acts 1975, 64th Leg., p. 624, ch. 254, § 11, eff. Sept. 1, 1975.]

CHAPTER 4. RIGHTS, DUTIES, POWERS, AND LIABILITIES OF SPOUSES

Section
4.05. Criminal Conversation not Authorized.

§ 4.02. Duty to Support

Each spouse has the duty to support the other spouse, and each parent has the duty to support his or her minor child. A spouse or parent who fails to discharge the duty of support is liable to any person who provides necessaries to those to whom support is owed.

[Amended by Acts 1979, 66th Leg., p. 421, ch. 193, § 3, eff. Aug. 27, 1979.]

§ 4.05. Criminal Conversation not Authorized

A right of action by one spouse against a third party for criminal conversation is not authorized in this state.

[Added by Acts 1975, 64th Leg., p. 1942, ch. 637, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 422, ch. 193, § 4, eff. Aug. 27, 1979.]

Section 2 of the 1975 Act provided: "This Act does not apply to litigation pending before the effective date of this Act."

SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES

CHAPTER 5. MARITAL PROPERTY

SUBCHAPTER B. MANAGEMENT, CONTROL, AND DISPOSITION OF MARITAL PROPERTY

Section
5.23. Earnings of Unemancipated Child.

§ 5.23. Earnings of Unemancipated Child

During the marriage of the parents of an unemancipated minor child when a managing conservator of the child has not been appointed, the earnings of the child are subject to the joint management, control, and disposition of the parents of the child, unless otherwise provided by agreement of the parents or by judicial order.

[Added by Acts 1979, 66th Leg., p. 422, ch. 193, § 5, eff. Aug. 27, 1979.]

Former § 5.23 was repealed by Acts 1975, 64th Leg., p. 624, ch. 254, § 12, eff. Sept. 1, 1975.

TITLE 2. PARENT AND CHILD

SUBTITLE A. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

CHAPTER 11. GENERAL PROVISIONS

Section
11.045. Original Jurisdiction.
11.051. Acquiring Jurisdiction Over Nonresident.

Section
11.052. Exceptions to Continuing Jurisdiction.
11.053. Recognition of Out-of-State Decrees Affecting a Child.
11.071. Identification of Court of Continuing Jurisdiction.
11.20. Representation of Department.

§ 11.01. Definitions

As used in this subtitle and Subtitle C of this title,[1] unless the context requires a different definition:

[See Compact Edition, Volume 1 for text of (1)]

(2) "Court" means the district court, court of domestic relations, juvenile court having the jurisdiction of a district court, or other court expressly given jurisdiction of a suit under this subtitle.

[See Compact Edition, Volume 1 for text of (3) to (7)]

(8) "Illegitimate child" means a child who is not and has never been the legitimate child of a man and whose parent-child relationship with its natural mother has not been terminated by a court decree.

(9) "Governmental entity" means the state, a political subdivision of the state, or an agency of the state.

[Amended by Acts 1975, 64th Leg., p. 1253, ch. 476, §§ 1, 2, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1471, ch. 643, § 1, eff. Sept. 1, 1979.]

[1] Section 31.01 et seq.

Section 58 of the 1975 amendatory act provided: "This Act takes effect September 1, 1975."

§ 11.04. Venue

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) A child resides in the county where his parents (or parent if only one parent is living) reside, except that:

(1) if a managing conservator has been appointed by court order or designated in an affidavit of relinquishment, or if a custodian for the child has been appointed by order of a court before January 1, 1974, the child resides in the county where the managing conservator or custodian resides;

(2) if a guardian of the person has been appointed by order of a county or probate court and a managing conservator has not been appointed, the child resides in the county where the guardian of the person resides;

(3) if the parents of the child do not reside in the same county and neither a managing conservator nor a guardian of the person has been appointed, the child resides in the county where the parent having care and control of the child resides;

(4) if the child is under the care and control of an adult other than a parent and (A) neither a managing conservator nor a guardian of the person has been appointed or (B) the whereabouts of the managing conservator or the guardian of the person is unknown or (C) the person whose residence determines the residence of the child under this section has left the child under the care and control of the adult, the child resides where the adult having care and control of the child resides;

(5) if a guardian or custodian of the child has been appointed by order of a court of another state or nation, the child resides in the county where the guardian or custodian resides; or

(6) if it appears that the child is not under the care and control of an adult, the child resides where he is found.

[Amended by Acts 1975, 64th Leg., p. 1253, ch. 476, § 3, eff. Sept. 1, 1975.]

§ 11.045. Original Jurisdiction

(a) A court has original jurisdiction of a suit affecting the parent-child relationship, whether or not the child is physically present in the state, only if one of the following conditions is met:

(1) this state:

(A) is the principal residence of the child at the time the proceeding is commenced; or

(B) was the principal residence of the child at any time during the six-month period before the proceeding was commenced, and a parent or person acting as a parent resides in this state at the time the proceeding is commenced; or

(2) it is in the best interest of the child that a court of this state assume jurisdiction because:

(A) the child and the child's parents or the child and at least one contestant have a significant connection with this state and there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(B) the child is physically present in this state and there is a serious immediate question concerning the welfare of the child; or

(C) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with this section, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine issues concerning the child.

(b) The physical presence in this state of the child or of the child and one of the contestants is alone insufficient to confer jurisdiction to the court to make a determination under this subtitle.

[Added by Acts 1979, 66th Leg., p. 1202, ch. 584, § 2, eff. June 13, 1979.]

§ 11.05. Continuing Jurisdiction

Text of subsection as amended by Acts 1979, 66th Leg., p. 1201, ch. 584, § 1, and Acts 1979, 66th Leg., p. 1888, ch. 763, § 1

(a) Except as provided in Subsections (b), (c), (d), and (e) of this section and in Section 11.052 of this code, when a court acquires jurisdiction of a suit affecting the parent-child relationship, that court retains continuing jurisdiction of all parties and matters provided for under this subtitle in connection with the child. No other court of this state has jurisdiction of a suit affecting the parent-child relationship with regard to that child except on transfer as provided in Section 11.06 of this code.

Text of subsection as amended by Acts 1979, 66th Leg., p. 1471, ch. 643, § 2, and Acts 1979, 66th Leg., p. 1888, ch. 763, § 1

(a) Except as provided in Subsections (b), (c), (d), and (e) of this section and Section 17.05 of this code, when a court acquires jurisdiction of a suit affecting the parent-child relationship, that court retains continuing jurisdiction of all matters provided for under this subtitle in connection with the child, and no other court has jurisdiction of a suit affecting the parent-child relationship with regard to that child except on transfer as provided in Section 11.06 or 17.06 of this code.

(b) A final decree of adoption ends a court's continuing jurisdiction over the child, and any subsequent suit affecting the child shall be commenced as though the child had not been the subject of a suit for adoption or any other suit affecting the parent-child relationship prior to the adoption.

(c) A court shall have jurisdiction over a suit affecting the parent-child relationship if it has been, correctly or incorrectly, informed by the Texas Department of Human Resources that the child has not been the subject of a suit affecting the parent-child relationship and the petition states that no other court has continuing jurisdiction over the child.

(d)(1) In a suit in which a determination of paternity is sought, except as provided in paragraph (2), the jurisdiction of the court terminates when an order dismissing with prejudice a suit under Chapter 13 [1] becomes final, or when an order under Subsection (b), Section 13.08, declaring that the alleged father is not the father of the child becomes final, or when an order denying voluntary legitimation under Section 13.21 becomes final.

(2) The jurisdiction of the court does not terminate if the child was subject to the jurisdiction of the court or some other court in a suit affecting the parent-child relationship prior to the commencement of the suit to determine paternity.

Text of subsection as added by Acts 1979, 66th Leg., p. 1201, ch. 584, § 1

(e) A court does not acquire continuing, exclusive jurisdiction over the matters provided for under this subtitle in connection with the child before the entry of a final decree. A voluntary or involuntary dismissal of a suit affecting the parent-child relationship or the entry of a decree by another court having dominant jurisdiction of the suit terminates all jurisdiction of the court. Unless a final decree has been entered by a court of continuing, exclusive jurisdiction, a subsequent suit shall be commenced as an original proceeding.

Text of subsection as added by Acts 1979, 66th Leg., p. 1888, ch. 763, § 2

(e) A court acquires jurisdiction of a suit affecting the parent-child relationship without a transfer under Section 11.06 of this code, even though another court has continuing jurisdiction over the child, if the parents of the child have remarried after the dissolution of a previous marriage between the parents and file in the court acquiring jurisdiction a suit for the dissolution of their subsequent marriage combined with a suit affecting the parent-child relationship concerning the child.

[Amended by Acts 1975, 64th Leg., p. 1254, ch. 476, §§ 4 to 6, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1201, ch. 584, § 1, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1471, ch. 643, § 2, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1888, ch. 763, §§ 1, 2, eff. Aug. 27, 1979.]

[1] Section 13.01 et seq.

§ 11.051. Acquiring Jurisdiction Over Nonresident

In a suit affecting the parent-child relationship, the court may exercise personal jurisdiction over a person on whom service of citation is required or over the person's personal representative, although the person is not a resident or domiciliary of this state, if:

(1) the child was conceived in this state and the person on whom service is required is a parent or an alleged or probable father of the child;

(2) the child resides in this state, as defined by Section 11.04 of this code, as a result of the acts or directives or with the approval of the person on whom service is required;

(3) the person on whom service is required has resided with the child in this state; or

(4) notwithstanding Subdivisions (1), (2), or (3) above, there is any basis consistent with the constitutions of this state or the United States for the exercise of the personal jurisdiction.

[Added by Acts 1975, 64th Leg., p. 1255, ch. 476, § 7, eff. Sept. 1, 1975.]

§ 11.052. Exceptions to Continuing Jurisdiction

(a) Except on the written agreement of all the parties, a court may not exercise its continuing jurisdiction to modify:

(1) the appointment of a managing conservator if the managing conservator and the child

have established and continued to maintain their principal residence in another state for more than six months unless the action was filed and pending before the six-month period; or

(2) any part of a decree if all of the parties and the child have established and continue to maintain their principal residence outside this state.

(b) This section does not affect the power of the court to enforce and enter a judgment on its decree.

[Added by Acts 1979, 66th Leg., p. 1202, ch. 584, § 3, eff. June 13, 1979.]

§ 11.053. Recognition of Out-of-State Decrees Affecting a Child

A court of this state shall recognize and enforce an original or modified final decree granted by a court of another state and entered in litigation that would have been a suit affecting the parent-child relationship in this state unless it is shown that the out-of-state court did not exercise jurisdiction under statutory authority substantially in accordance with the jurisdictional prerequisites of this code.

[Added by Acts 1979, 66th Leg., p. 1202, ch. 584, § 4, eff. June 13, 1979.]

§ 11.06. Transfer of Proceedings

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) If a court has continuing jurisdiction over a child but another court has acquired jurisdiction over the child in a suit affecting the parent-child relationship under Section 11.05(c) or (e) of this code, the court previously having jurisdiction over the child, on a motion of any party, on the court's motion or on the request of the other court, shall transfer the proceeding to the court which has acquired jurisdiction under Section 11.05(c) or (e) of this code.

[See Compact Edition, Volume 1 for text of (e), (f)]

(g) The court transferring a proceeding shall send to the proper court in the county to which transfer is made the complete files in all matters affecting the child, certified copies of all entries in the minutes, and a certified copy of any decree of dissolution of marriage issued in a suit joined with the suit affecting the parent-child relationship. If the transferring court retains jurisdiction of another child who was the subject of the suit, the court shall send a copy of the complete files to the court to which the transfer is made and shall keep the original files.

[Amended by Acts 1975, 64th Leg., p. 1255, ch. 476, § 8, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1888, ch. 763, § 3, eff. Aug. 27, 1979.]

§ 11.07. Commencement of Suit and Petition for Further Remedy

(a) A suit affecting the parent-child relationship shall be commenced by the filing of a petition as provided in this chapter.

(b) Except in a motion to modify as provided in Section 14.08 of this code, a request for further action concerning a child who is the subject of a suit affecting the parent-child relationship and who is under the jurisdiction of a court with continuing jurisdiction shall be initiated by the filing of a petition as provided in this chapter.

(c) On the receipt of a petition requesting further action concerning the child in the court of continuing jurisdiction, the clerk shall file the petition and all other papers relating to the request for further action in the file of the suit affecting the parent-child relationship under the same docket number as the prior proceeding.

[Amended by Acts 1975, 64th Leg., p. 1255, ch. 476, § 9, eff. Sept. 1, 1975.]

§ 11.071. Identification of Court of Continuing Jurisdiction

(a) The petitioner or the court shall request from the State Department of Public Welfare identification of the court that last had jurisdiction of the child in a suit affecting the parent-child relationship unless:

(1) the petition alleges that no court has continuing jurisdiction of the child, and the issue is not disputed by the pleadings; or

(2) the petition alleges that the court in which the suit, petition for further remedy, or motion to modify has been filed has acquired and retains continuing jurisdiction of the child as the result of a prior proceeding, and the issue is not disputed by the pleadings.

(b) The department shall, on the written request of the court, an attorney, or any party, identify the court that last had jurisdiction of the child in a suit affecting the parent-child relationship and give the docket number of the suit, or state that the child has not been the subject of a suit affecting the parent-child relationship. The child shall be identified in the request by name, birthdate, and place of birth. The department shall transmit this information within 10 days after the day the request is received.

(c) If a request for information from the department relating to the identity of the court having continuing jurisdiction of the child has been made pursuant to Subsection (a), no final order, except an order of dismissal, shall be entered until the information is filed with the court. If a final order is entered in the absence of the filing of the information from the department, the order is voidable on a showing that a court other than the court that entered the order had continuing jurisdiction.

(d) If the court in which a petition in a suit affecting the parent-child relationship is filed determines that another court has continuing jurisdiction of the child, the court in which the petition is filed shall dismiss the suit without prejudice.

[Added by Acts 1975, 64th Leg., p. 1255, ch. 476, § 10, eff. Sept. 1, 1975.]

§ 11.08. Contents of Petition

[See Compact Edition, Volume 1 for text of (a)]

(b) The petition must include:

(1) a statement that the court in which the petition is filed has continuing jurisdiction or that no court has continuing jurisdiction of the suit;

(2) the name, sex, place and date of birth, and place of residence of the child, except that if adoption of a child is sought, the name of the child may be omitted;

(3) the full name, age, and place of residence of the petitioner and his relationship to the child or the fact that no relationship exists;

(4) the names, ages, and place of residence of the parents, except in a suit in which adoption is sought;

(5) the name and place of residence of the managing conservator, if any, or the child's custodian, if any, appointed by an order of the court before January 1, 1974, or by order of a court of another state or nation;

(6) the names and places of residence of the guardians of the person and estate of the child, if any;

(7) the names and places of residence of possessory conservators or other persons, if any, having access to the child under an order of the court;

(8) in a suit in which termination of the parent-child relationship between an illegitimate child and its mother is sought, the name and place of residence of the alleged father or probable father of the child or a statement that the identity of the father of the child is unknown;

(9) a full description and statement of value of all property owned or possessed by the child;

(10) a statement describing what action the court is requested to make concerning the child and the statutory grounds on which the request is made; and

(11) any other information required by other provisions of this subtitle.

(c) The petition and other matters in a suit in which a determination of paternity is sought, if the petitioner is a person other than the alleged father of the child, are confidential, and the district clerk and employees of the clerk may not disclose to any person other than the court, the department, or a party to the suit any matter concerning the suit. This subsection does not apply if and when the suit is set for trial under Subsection (b) of Section 13.05 of this code.

[Amended by Acts 1975, 64th Leg., p. 1256, ch. 476, §§ 11, 12, Sept. 1, 1975.]

§ 11.09. Citation and Notice

(a) Except as provided in Subsection (b) of this section, the following persons are entitled to service of citation on the filing of a petition in a suit affecting the parent-child relationship:

(1) the managing conservator, if any;

(2) possessory conservators, if any;

(3) persons, if any, having access to the child under an order of the court;

(4) persons, if any, required by law or by order of a court to provide for the support of a child;

(5) the guardian of the person of the child, if any;

(6) the guardian of the estate of the child, if any;

(7) each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Section 15.03(c)(2) of this code;

(8) in a suit in which termination of the parent-child relationship between an illegitimate child and its mother is sought, the alleged father or probable father, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father or probable father as provided in Section 15.041 of this code or unless the petition states that the identity of the father is unknown; and

(9) in a suit to determine the paternity of a child, the alleged father, unless the alleged father is a petitioner.

(b) Service of citation may be given to any other person who has or who may assert an interest in the child and may be given to the unknown father of an illegitimate child.

(c)(i) Except in a suit in which termination of the parent-child relationship is sought, citation on the filing of a petition in a suit affecting the parent-child relationship or notice of a hearing shall be issued and served as in other civil cases except that citation or notice may be given by registered or certified mail, return receipt requested. In such cases, the clerk shall mail the citation and a copy of the petition to the person so notified marked for delivery to the addressee only. The filing of the returned receipt indicating delivery by registered or certified mail to the proper person shall be sufficient proof of the fact of service.

(ii) In a suit in which termination of the parent-child relationship is sought, citation on the filing of a petition or notice of a hearing shall be issued and served as in other civil cases.

(d) Citation may be given by publication as in other civil cases to persons entitled to service of citation who cannot be notified by personal service or registered or certified mail and to persons whose names are unknown. The notice shall be published one time. If the name of a person entitled to service of citation is unknown, the notice to be published shall be addressed to "All Whom It May Concern." One or more causes to be heard on a certain day may be included in one notice and hearings may be continued from time to time without further notice.

(e) Notice by publication shall be sufficient if given in substantially the following form:

"STATE OF TEXAS

To (names of persons to be served with citation), and to all whom it may concern (if the name of any person to be served with citation is unknown), Respondent(s),

GREETINGS:

"YOU ARE HEREBY COMMANDED to appear and answer before the Honorable District Court, _____ Judicial District, _____ County, Texas, at the Courthouse of said county in _____, Texas, at or before 10 o'clock a. m. of the Monday next after the expiration of 20 days from the date of service of this citation, then and there to answer the petition of _____, Petitioner, filed in said Court on the _____ day of _____, 19__, against _____, Respondent(s), and said suit being number _____ on the docket of said Court, and entitled 'In the interest of _____, a child,' the nature of which suit is a request to (statement of relief sought, e. g., 'terminate the parent-child relationship'). Said child was born the _____ day of _____, 19__, in (place of birth).

"The court has authority in this suit to enter any judgment or decree in the child's interest which will be binding upon you, including the termination of the parent-child relationship, the determination of paternity, and the appointment of a conservator with authority to consent to the child's adoption.

"Issued and given under my hand and seal of said Court at _____, Texas, this the _____ day of _____, 19__.

"_____,
Clerk of the District Court of
_____ County, Texas.

By _____, Deputy."

[Amended by Acts 1975, 64th Leg., p. 1257, ch. 476, § 13, eff. Sept. 1, 1975.]

§ 11.10. Guardian Ad Litem

(a) In any suit in which termination of the parent-child relationship is sought, the court shall appoint a guardian ad litem to represent the interests of the child, unless the child is a petitioner or unless an attorney ad litem has been appointed for the child or unless the court finds that the interests of the child will be represented adequately by a party to the suit and are not adverse to that party. In any other suit under this subtitle, the court may appoint a guardian ad litem. The managing conservator may be appointed guardian ad litem if he is not a parent of the child or a person petitioning for adoption of the child and if he has no personal interest in the suit.

(b) A guardian ad litem shall be appointed to represent any other person entitled to service of citation under the provisions of Section 11.09 of this code if the person is incompetent or a child, unless the person has executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in child containing a waiver of service of citation.

(c) The court may appoint an attorney for any party in a case in which it deems representation necessary to protect the interests of the child who is the subject matter of the suit.

(d) In any suit brought by a governmental entity seeking termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem to represent the interests of the child as soon as practicable to insure adequate representation of the child's interest.

(e) An attorney appointed to represent a child as authorized by this section is entitled to a reasonable fee in the amount set by the court which is to be paid by the parents of the child unless the parents are indigent.

[Amended by Acts 1975, 64th Leg., p. 1258, ch. 476, § 14, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1471, ch. 643, § 3, eff. Sept. 1, 1979.]

§ 11.11. Temporary Orders

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) In a suit under this subtitle the court may dispense with the necessity of a bond in connection with temporary orders in behalf of the child.

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 15, eff. Sept. 1, 1975.]

§ 11.12. Social Study

[See Compact Edition, Volume 1 for text of (a)]

(b) The social study may be made by any state agency, including the State Department of Public Welfare, or any private agency, or any person appointed by the court. If an authorized agency is the managing conservator, the social study shall be made by the authorized agency. The social study

shall be made according to criteria established by the court.

(c) The agency or person making the social study shall file its findings and conclusions with the court on a date set by the court. The report shall be made a part of the record of the suit; however, the disclosure of its contents to the jury is subject to the rules of evidence.

[See Compact Edition, Volume 1 for text of (d)]

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 16, eff. Sept. 1, 1975.]

§ 11.13. Jury

[See Compact Edition, Volume 1 for text of (a)]

(b) The court may not enter a decree that contravenes the verdict of the jury, except with respect to the issues of the specific terms and conditions of access to the child, support of the child, and the rights, privileges, duties, and powers of conservators, on which issues the verdict, if any, is advisory only.

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 17, eff. Sept. 1, 1975.]

§ 11.14. Hearing

[See Compact Edition, Volume 1 for text of (a) to (g)]

(h) Repealed by Acts 1975, 64th Leg., p. 1259, ch. 476, § 18, eff. Sept. 1, 1975.

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 18, eff. Sept. 1, 1975.]

§ 11.16. Copies of Decree

Copies of a decree of termination or adoption issued under Section 15.05 or Section 16.08 of this code are not required to be mailed to parties as provided in Rules 119a and 239a, Texas Rules of Civil Procedure.

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 19, eff. Sept. 1, 1975.]

§ 11.17. Central Record File

[See Compact Edition, Volume 1 for text of (a)]

(b) On entry of a decree of adoption or on the termination of jurisdiction of a court as provided in Section 11.05(d) of this code, the clerk of the court at petitioner's request shall transmit to the department a complete file in the case, including all pleadings, papers, studies, and records in the suit other than the minutes of the court. The clerk of the court, on entry of a decree of adoption, shall send to the department a certified copy of the petition and decree of adoption. The clerk may not transmit to the department pleadings, papers, studies, and records relating to a suit for divorce or annulment or to declare a marriage void. When the department receives the complete file or petition and decree of adoption, it shall close the records concerning that child; and except for statistical purposes, it shall not disclose any information concerning the prior proceedings affecting the child. Except as provided in Subsection (d) of this section, any subsequent inquiries concerning the child shall be handled as though the child had not been previously the subject of a suit affecting the parent-child relationship. On the receipt of additional records concerning a child who has been the subject of a suit affecting the parent-child relationship in which the records have been closed as required in this section, a new file shall be made and maintained as other records required by this section.

(c) The department may charge a reasonable fee to cover the cost of determining and sending information concerning the identity of courts with continuing jurisdiction. The receipts shall be deposited in any financial institution as determined by the commissioner of welfare and withdrawn as necessary for the sole purpose of operating and maintaining the central record file.

(d) The records concerning a child maintained by the district clerk after entry of a decree of adoption, and all the records required to be maintained by the department are confidential, and no person is entitled to access to or information from these records except as provided by this subtitle or on an order of the court which issued the decree or of a district court of Travis County for good cause.

[See Compact Edition, Volume 1 for text of (e)]

(f) The court, on the motion of a party or on the court's own motion, may order the sealing of the file, the minutes of the court, or both, in a proceeding in which adoption or termination was sought. This subsection does not relieve the clerk from the duty to transmit files or petitions and decrees of adoption to the department as required by Subsection (b) of this section.

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, §§ 20, 21, eff. Sept. 1, 1975.]

§ 11.20. Representation of Department

In any suit brought under Subtitle A or C of this title in which the State Department of Public Welfare is a party, the department shall be represented in the trial court by the prosecuting attorney who represents the state in criminal cases in the district or county court of the county where the suit is filed or transferred or by the attorney general.

[Added by Acts 1977, 65th Leg., p. 1262, ch. 486, § 1, eff. Aug. 29, 1977.]

CHAPTER 12. THE PARENT-CHILD RELATIONSHIP

Section

12.05. Rights of a Living Child after an Abortion or Premature Birth.

§ 12.02. Relation of Child to Father

(a) A child is the legitimate child of his father if the child is born or conceived before or during the marriage of his father and mother.

(b) A child is the legitimate child of his father if at any time his mother and father have attempted to marry in apparent compliance with the laws of this state or another state or nation, although the attempted marriage is or might be declared void, and the child is born or conceived before or during the attempted marriage.

[See Compact Edition, Volume 1 for text of (c)]

[Amended by Acts 1975, 64th Leg., p. 1260, ch. 476, § 22, eff. Sept. 1, 1975.]

§ 12.04. Rights, Privileges, Duties, and Powers of Parent

Except as otherwise provided by judicial order or by an affidavit of relinquishment of parental rights executed under Section 15.03 of this code, the parent of a child has the following rights, privileges, duties, and powers:

(1) the right to have physical possession of the child and to establish its legal domicile;

(2) the duty of care, control, protection, moral and religious training, and reasonable discipline of the child;

(3) the duty to support the child, including providing the child with clothing, food, shelter, medical care, and education;

(4) the duty to manage the estate of the child, except when a guardian of the estate has been appointed;

(5) the right to the services and earnings of the child;

(6) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;

(7) the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(8) the power to receive and give receipt for payments for the support of the child and to hold or disburse any funds for the benefit of the child;

(9) the right to inherit from and through the child; and

(10) any other right, privilege, duty, or power existing between a parent and child by virtue of law.

[Amended by Acts 1975, 64th Leg., p. 1260, ch. 476, § 23, eff. Sept. 1, 1975.]

§ 12.05. Rights of a Living Child After an Abortion or Premature Birth

(a) A living human child born alive after an abortion or premature birth is entitled to the same rights, powers, and privileges as are granted by the laws of this state to any other child born alive after the normal gestation period.

(b) In this code, "born alive" means the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy, which, after such separation, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached; each product of such a birth is considered born alive.

[Added by Acts 1979, 66th Leg., p. 1192, ch. 580, § 1, eff. June 13, 1979.]

Acts 1979, 66th Leg., ch. 580, § 4, provided:

"This Act does not affect the standard of care required of a physician in the performance of medical practice."

CHAPTER 13. DETERMINATION OF PATERNITY

Former Chapter 13, Voluntary Legitimation, consisting of Sections 13.01 to 13.06, was revised and amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, to read, Determination of Paternity, Sections 13.01 to 13.43. The provisions of former Chapter 13 are now found in Subchapters B and C herein, Sections 13.21 to 13.24, 13.42 and 13.43.

SUBCHAPTER A. PATERNITY SUIT

Section
13.01. Time Limitation of Suit.
13.02. Pretrial Proceedings: Blood Tests.
13.03. Pretrial Proceedings: Appointment of Experts.
13.04. Pretrial Proceedings: Conference.
13.05. Pretrial Proceedings: Effect of Blood Tests.
13.06. Evidence at Trial.
13.07. Settlement.
13.08. Decree.
13.09. Effect of Decree Establishing Paternity.

SUBCHAPTER B. VOLUNTARY LEGITIMATION

13.21. Voluntary Legitimation.
13.22. Statement of Paternity.
13.23. Effect of Statement of Paternity.
13.24. Validation of Prior Statements.

SUBCHAPTER C. GENERAL PROVISIONS

13.41. Venue.
13.42. Conservatorship, Support, Fees, and Payments.
13.43. Birth Certificate.

SUBCHAPTER A. PATERNITY SUIT

§ 13.01. Time Limitation of Suit

A suit to establish the parent-child relationship between a child who is not the legitimate child of a man and the child's natural father by proof of paternity must be brought before the child is one year old, or the suit is barred.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.02. Pretrial Proceedings: Blood Tests

(a) When the respondent appears in a paternity suit, the court shall order the mother, alleged father, and child to submit to the taking of blood for the purpose of one or more blood tests. If the appearance is before the birth of the child, the court shall order the taking of blood to be made as soon as medically practical after the birth.

(b) An order issued under this section is enforceable by contempt, except that if the petitioner is the mother or the alleged father and refuses to submit to the blood test, the court shall dismiss the suit. If the respondent is the mother or the alleged father and refuses to submit to the blood test, the fact of refusal may be introduced as evidence as provided in Section 13.06(d) of this code.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1023, ch. 455, § 1, eff. Aug. 27, 1979.]

§ 13.03. Pretrial Proceedings: Appointment of Experts

(a) The court may appoint one or more experts qualified as examiners of blood types to make the blood tests. The court may determine the number and qualifications of the experts and shall prescribe the arrangements for conducting the tests.

(b) The court may fix a reasonable fee for each court-appointed examiner and may require the fee to be paid by any or all of the parties or by the Texas Department of Human Resources, if the department is a party of the suit, in the amounts and in the manner directed, or the court may tax all or part or none of the fee as costs in the suit.

(c) A party may employ other qualified examiners of blood tests. The court may order blood samples made available to these examiners if requested.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1023, ch. 455, § 2, eff. Aug. 27, 1979.]

§ 13.04. Pretrial Proceedings: Conference

(a) After completion of the blood tests, the court shall order all parties to appear, either in person or by counsel, at a pretrial conference. The court shall call its appointed examiners to testify in person or by deposition about their tests and findings. A party may call other qualified examiners of blood tests to testify.

(b) Witnesses called by the court are the court's witnesses, and witnesses called by a party are that party's witnesses. The court and the parties may examine and cross-examine all witnesses.

(c) All evidence presented at the pretrial conference is a part of the record of the case.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.05. Pretrial Proceedings: Effect of Blood Tests

(a) At the conclusion of the pretrial conference, if the court finds that the tests show by clear and convincing evidence that the alleged father is not the father of the child, the court shall dismiss the suit with prejudice.

(b) If the court finds that the blood tests fail to show by clear and convincing evidence the alleged father is not the father of the child, the court shall set the suit for trial.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.06. Evidence at Trial

(a) Unless otherwise permitted by the court on a showing of good cause, a party may call to testify on the results of the blood tests only those experts who testified at the pretrial conference.

(b) A witness called by a party at the trial is that party's witness.

(c) If the blood tests show the possibility of the alleged father's paternity, the court may admit this evidence if offered at the trial.

(d) Evidence of a refusal by the respondent to submit to a blood test is admissible to show only that the alleged father is not precluded from being the father of the child.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.07. Settlement

The child must be a party to a settlement agreement with the alleged father. The child shall be represented in the settlement agreement by a guardian ad litem appointed by the court. The court must approve any settlement agreement, dismissal, or nonsuit.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.08. Decree

(a) On a verdict of the jury, or on a finding of the court if there is no jury, that the alleged father is the father of the child, the court shall issue an order designating the alleged father as the father of the child.

(b) On a verdict of the jury, or on a finding of the court if there is no jury, that the alleged father is not the father of the child, the court shall issue an order declaring this finding.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.09. Effect of Decree Establishing Paternity

The effect of a decree designating the alleged father as the father of the child is to create the parent-child relationship between the father and the child as if the child were born to the father and mother during marriage.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

[Sections 13.10 to 13.20 reserved for expansion]

SUBCHAPTER B. VOLUNTARY LEGITIMATION

§ 13.21. Voluntary Legitimation

(a) If a statement of paternity has been executed by the father of an illegitimate child, the father or mother of the child or the State Department of Public Welfare may file a petition for a decree designating the father as a parent of the child. The statement of paternity must be attached to the petition.

(b) The court shall enter a decree designating the child as the legitimate child of its father and the father as a parent of the child if the court finds that:

(1) the parent-child relationship between the child and its original mother has not been terminated by a decree of a court;

(2) the statement of paternity was executed as provided in this chapter, and the facts stated therein are true; and

(3) the mother or the managing conservator, if any, has consented to the decree.

(c) The requirement of consent of the mother is satisfied if she is the petitioner. If the entry of the decree is in the best interest of the child, the court may consent to the legitimation of the child in lieu of the consent of the mother or managing conservator.

(d) A suit for voluntary legitimation may be joined with a suit for termination under Chapter 15 of this code.[1]

(e) A suit under this section may be instituted at any time.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

[1] Section 15.01 et seq.

§ 13.22. Statement of Paternity

The statement of paternity authorized to be used in Section 13.21 of this code must be executed by the father of the child as an affidavit and witnessed by two credible adults. The affidavit must clearly state that the father acknowledges the child as his child, that he and the mother, who is named in the affidavit, were not married to each other at the time of conception of the child or at any subsequent time, and that the child is not the legitimate child of another man. The statement must be executed before a person authorized to administer oaths under the laws of this state.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.23. Effect of Statement of Paternity

(a) A statement of paternity executed as provided in Section 13.22 of this code is prima facie evidence that the child is the child of the person executing the statement and that the person has an obligation to support the child.

(b) If the father's address is unknown or he is outside the jurisdiction of the court at the time a suit is instituted under Section 13.21 of this code, his statement of paternity, in the absence of controverting evidence, is sufficient for the court to enter a decree establishing his paternity of the child.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.24. Validation of Prior Statements

A statement acknowledging paternity or an obligation to support a child which was signed by the father before January 1, 1974, is valid and binding even though the statement is not executed as provided in Section 13.22 of this code and is not filed with the State Department of Public Welfare or with the court.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

[Sections 13.25 to 13.40 reserved for expansion]

SUBCHAPTER C. GENERAL PROVISIONS

§ 13.41. Venue

(a) If the alleged father is not the petitioner, the suit shall be brought in the county where the alleged father resides, except that if the alleged father is not a resident or domiciliary of this state and jurisdiction is to be established as provided by Section 11.051 of this code, the suit shall be brought where the mother resides.

(b) If the alleged father is the petitioner, the suit shall be brought in the county where the mother resides, except that if the mother is not a domiciliary of this state and jurisdiction is to be established as provided by Section 11.051 of this code, the suit shall be brought where the child resides.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.42. Conservatorship, Support, Fees, and Payments

(a) In a suit in which a determination of paternity is sought, the court may provide for the managing and possessory conservatorship and support of and access to the child; except that no alleged father denying paternity may be required to make any payment for the support of the child until paternity is established.

(b) In addition to the payment authorized by Section 14.05 of this code, the court may award reasonable attorney's fees incurred in the suit.

(c) A payment ordered under Subsection (b) of this section is enforceable as provided in Section 14.09 of this code.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.43. Birth Certificate

On a determination of paternity, the clerk of the court, unless directed otherwise by the court, shall transmit a copy of the decree to the State Registrar of Vital Statistics. The decree shall state the name of the child. The registrar shall substitute for the original a new birth certificate based on the decree in accordance with the provisions of the laws which permit the correction or substitution of birth certificates for adopted children or children legitimated by the subsequent marriage of their parents and in accordance with the rules and regulations promulgated by the State Department of Health.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

CHAPTER 14. CONSERVATORSHIP, POSSESSION AND SUPPORT OF CHILDREN

§ 14.02. Rights, Privileges, Duties, and Powers of Managing Conservator

(a) Except as provided in Subsection (d) of this section, a parent appointed managing conservator of the child retains all the rights, privileges, duties, and powers of a parent to the exclusion of the other parent, subject to the rights, privileges, duties, and powers of a possessory conservator as provided in Section 14.04 of this code and to any limitation imposed by court order in allowing access to the child.

[See Compact Edition, Volume 1 for text of (b) and (c)]

(d) The appointment of a managing conservator does not create, rescind, or otherwise alter a right to inherit as established by law or as modified under Chapter 15 of this code.[1]

[Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, §§ 25 and 26, eff. Sept. 1, 1975.]

[1] Section 15.01 et seq.

§ 14.03. Possession of and Access to Child

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) If the court finds that it is in the best interests of the child as provided in Section 14.07 of this code, the court may grant reasonable access rights to either the maternal or paternal grandparents of the child; and to either the natural maternal or paternal grandparents of a child whose parent-child relationship has been terminated or who has been adopted before or after the effective date of this code. Such relief shall not be granted unless one of the child's legal parents at the time the relief is requested is the child's natural parent. The court may issue any necessary orders to enforce said decree.

[Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, § 27, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 335, ch. 164, § 1, eff. Aug. 29, 1977.]

§ 14.06. Agreements Concerning Conservatorship

(a) To promote the amicable settlement of disputes between the parties to a suit under this chapter, the parties may enter into a written agreement containing provisions for conservatorship and support of the child, modifications of agreements or orders providing for conservatorship and support of the child, and appointment of joint managing conservators.

[See Compact Edition, Volume 1 for text of (b) to (d)]

[Amended by Acts 1979, 66th Leg., p. 717, ch. 313, § 1, eff. Aug. 27, 1979.]

§ 14.07. Best Interest of Child

[See Compact Edition, Volume 1 for text of (a)]

(b) In determining the best interest of the child, the court shall consider the circumstances of the parents. In the event of the death of the parents, the grandparents may be considered but such consideration shall not alter or diminish the discretionary power of the court.

(c) In a nonjury trial the court may interview the child in chambers to ascertain the child's wishes as to his conservator. Upon the application of any party and when the issue of managing conservatorship is contested, the court shall confer with a child 12 years of age or older and may confer with a child under 12 years of age, but in either event the results of such interview shall not alter or diminish the discretionary power of the court. The court may permit counsel to be present at the interview. On the motion of a party or on the court's own motion, the court shall cause a record of the interview to be made when the child is 12 years of age or older, which record of the interview shall be made part of the record in the case.

[Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, § 28, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1862, ch. 739, § 1, eff. Aug. 29, 1977.]

§ 14.08. Modification of Order

(a) A court order or the portion of a decree that provides for the support of a child or the appointment of a conservator or that sets the terms and conditions of conservatorship for support for, or access to a child may be modified only by the filing of a motion in the court having jurisdiction of the suit affecting the parent-child relationship. Any party affected by the order or the portion of the decree to be modified may file the motion.

(b) Each party whose rights, privileges, duties, or powers may be affected by the motion is entitled to at least 30 days' notice of a hearing on the motion to modify.

(c) After a hearing, the court may modify an order or portion of a decree that:

(1) designates a managing conservator if the circumstances of the child or parent have so materially and substantially changed since the entry of the order or decree to be modified that the retention of the present managing conservator would be injurious to the welfare of the child and that the appointment of the new managing conservator would be a positive improvement for the child; or

(2) provides for the support of a child, sets the terms and conditions for access to or possession of a child, or prescribes the relative rights, privileges, duties, and powers of conservators if the circumstances of the child or a person affected by the order or portion of the decree to be modified have materially and substantially changed since the entry of the order or decree; except that an order providing for the support of a child may be modified only as to obligations accruing subsequent to the motion to modify.

(d) If the motion is filed for the purpose of changing the designation of the managing conservator and is filed within one year after the date of issuance of the order or decree to be modified, there shall be attached to the motion an affidavit executed by the person making the motion. The affidavit must contain at least one of the following allegations along with the supportive facts:

(1) that the child's present environment may endanger his physical health or significantly impair his emotional development; or

(2) that the managing conservator is the person seeking the modification or consents to the modification, and the modification is in the best interest of the child.

(e) On the filing of a motion to which the provisions of Subsection (d) of this section apply, the court shall deny the motion and refuse to schedule a hearing unless the court determines, on the basis of the affidavit, that adequate facts to support an allegation listed in Subdivision (1) or (2) of Subsection (d) of this section are stated in the affidavit. If the court determines that the facts stated are adequate to support an allegation, a time and place for the hearing shall be set.

[Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, § 29, eff. Sept. 1, 1975.]

§ 14.10. Habeas Corpus

[See Compact Edition, Volume 1 for text of (a)]

(b) The court shall disregard any cross action or motion pending for modification of the decree determining managing conservatorship, possession, or support of or access to the child unless it finds that:

(1) the previous order was granted by a court that did not have jurisdiction of the parties; or

(2) the child has not been in the relator's possession and control for at least 6 months immediately preceding the filing of the petition for the writ.

[See Compact Edition, Volume 1 for text of (c) and (d)]

(e) If the right to possession of a child is not governed by a court order, the court in a habeas corpus proceeding involving the right of possession of the child shall compel return of the child to the relator if, and only if, it finds that the relator has a superior right to possession of the child by virtue of the rights, privileges, duties, and powers of a parent as set forth in Section 12.04 of this code.

(f) The court shall disregard any motion for temporary or permanent adjudication relating to the possession of the child in a habeas corpus proceeding brought under Subsection (e) of this section unless at the time of the hearing an action is pending under this subtitle, in which case the court may proceed to issue any temporary order as provided by Section 11.11 of this code.

[Amended by Acts 1975, 64th Leg., p. 1266, ch. 476, § 30, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1290, ch. 508, § 1, eff. Aug. 29, 1977.]

CHAPTER 15. TERMINATION OF THE PARENT-CHILD RELATIONSHIP

Section
15.021. Filing of Petition to Terminate Before Birth.
15.022. Termination After Abortion.
15.041. Affidavit of Waiver of Interest in Child.

§ 15.02. Involuntary Termination of Parental Rights

A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the court finds that:

(1) the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return; or

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months; or

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months; or

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child; or

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child; or

(F) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition; or

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence; or

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth; or

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Section 34.05 of this code; or

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Texas Education Code; or

(ii) the child's absence from his home without the consent of his parents or guardian for a substantial length of time or without the intent to return; or

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by Section 15.03 of this code; and in addition, the court further finds that

(2) termination is in the best interest of the child.

[Amended by Acts 1975, 64th Leg., p. 1266, ch. 476, § 31, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1793, ch. 727, § 1, eff. Aug. 27, 1979.]

§ 15.021. Filing of Petition to Terminate Before Birth

A petition in a suit affecting the parent-child relationship which requests the termination of the parent-child relationship with respect to either or both parents may be filed before the birth of the child and after the first trimester of the mother's pregnancy. If the petition is filed before the birth of the child, no hearing on the termination may be held nor may orders other than temporary orders be issued until the child is at least five days old. If the petition is filed before the birth of the child, the term "unborn child" shall be substituted for the name of the child in all records and documents required by this title that are filed before the birth of the child. After the birth of the child, the name of the child shall be entered in the record and used in subsequent proceedings other than an adoption.

[Added by Acts 1975, 64th Leg., p. 1267, ch. 476, § 32, eff. Sept. 1, 1975.]

§ 15.022. Termination After Abortion

(a) A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the child was born alive as the result of an abortion.

(b) In this code, "abortion" means an intentional expulsion of a human fetus from the body of a woman induced by any means for the purpose of causing the death of the fetus.

(c) The court or the jury may not terminate the parent-child relationship under this section with respect to a parent who:

(1) had no knowledge of the abortion; or

(2) participated in or consented to the abortion for the sole purpose of preventing the death of the mother.

[Added by Acts 1979, 66th Leg., p. 1192, ch. 580, § 2, eff. June 13, 1979.]

§ 15.03. Affidavit of Relinquishment of Parental Rights

(a) An affidavit for voluntary relinquishment of parental rights must be signed after the birth of the child by the parent, whether or not a minor, whose parental rights are to be relinquished, witnessed by two credible persons, and verified before any person authorized to take oaths.

[See Compact Edition, Volume 1 for text of (b)]

(c) The affidavit may contain:

(1) a designation of any qualified person, the State Department of Public Welfare, or any authorized agency as managing conservator of the child;

(2) a waiver of process in a suit to terminate the parent-child relationship brought under Section 15.02(1)(K) of this code, or in a suit to

terminate joined with a petition for adoption under Section 16.03(b) of this code; and

(3) a consent to the placement of the child for adoption by the State Department of Public Welfare or by an agency authorized by the State Department of Public Welfare to place children for adoption.

[Amended by Acts 1975, 64th Leg., p. 1267, ch. 476, § 33, eff. Sept. 1, 1975.]

§ 15.04. Affidavit of Status of Child

(a) If the child is not the legitimate child of the father, an affidavit shall be executed by the mother, whether or not a minor, witnessed by two credible persons, and verified before any person authorized to take oaths.

(b) The affidavit must state:

(1) that the mother is not and has not been married to the father of the child;

(2) that the mother and father have not attempted to marry under the laws of this state or another state or nation;

(3) that paternity has not been established under the laws of any state or nation; and

(4) one of the following, as applicable:

(A) the father is unknown and no probable father is known;

(B) the name of the father, but the affiant does not know the whereabouts of the father;

(C) the father has executed a statement of paternity under Section 13.22 of this code and an affidavit of relinquishment of parental rights under Section 15.03 of this code and both affidavits have been filed with the court;

(D) the name and whereabouts of the father; or

(E) the name of any probable father of the child.

(c) The affidavit of status of child may be executed at any time after the first trimester of the pregnancy of the mother.

[Amended by Acts 1975, 64th Leg., p. 1268, ch. 476, § 34, eff. Sept. 1, 1975.]

§ 15.041. Affidavit of Waiver of Interest in Child

(a) A person may execute an affidavit disclaiming any interest in a child and waiving notice or the service of citation in any suit to be filed affecting the parent-child relationship with respect to the child.

(b) The affidavit shall be signed by the person, whether or not a minor, witnessed by two credible persons, and verified before a person authorized to take oaths. The affidavit may be executed before the birth of the child.

(c) The affidavit may contain a statement that the affiant does not admit being the father of the child or having had a sexual relationship with the mother of the child.

(d) An affidavit of waiver of interest in a child may be used in any proceeding in which the affiant attempts to establish an interest in the child. The affidavit may not be used in any proceeding brought by another person to establish the affiant's paternity of the child.

[Added by Acts 1975, 64th Leg., p. 1268, ch. 476, § 35, eff. Sept. 1, 1975.]

§ 15.07. Effect of Decree

A decree terminating the parent-child relationship divests the parent and the child of all legal rights, privileges, duties, and powers, with respect to each other, except that the child retains the right to inherit from and through its divested parent unless the court otherwise provides. Nothing in this chapter shall preclude or affect the rights of a natural maternal or paternal grandparent to reasonable access under Section 14.03(d) of this code.

[Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, § 36, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 335, ch. 164, § 2, eff. Aug. 29, 1977.]

CHAPTER 16. ADOPTION

SUBCHAPTER A. ADOPTION OF CHILDREN

Section
16.031. Social Study: Time for Hearing.

SUBCHAPTER A. ADOPTION OF CHILDREN

§ 16.02. Who May Adopt

Any adult is eligible to adopt a child who may be adopted.

[Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, § 37, eff. Sept. 1, 1975.]

§ 16.03. Prerequisites to Petition

[See Compact Edition, Volume 1 for text of (a)]

(b) Except as provided in Subsection (c) of this section, no petition for adoption of a child may be considered unless there has been a decree terminating the parent-child relationship as to each living parent of the child or unless the termination proceeding is joined with the proceeding for adoption.

[See Compact Edition, Volume 1 for text of (c)]

(d) If an affidavit of relinquishment of parental rights contains a consent that the State Department of Public Welfare or an authorized agency may place the child for adoption and appoints the department or agency managing conservator of the child, no further consent by the parent is required and the adoption decree shall terminate all rights of the parent without further termination proceedings.

[Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, §§ 38 to 40, eff. Sept. 1, 1975.]

Former subsec. (d) was repealed by § 39 of the 1975 Act.

§ 16.031. Social Study: Time for Hearing

(a) In a suit affecting the parent-child relationship in which an adoption is sought, the court shall order the making of a social study as provided in Section 11.12 of this code and shall set a date for its filing.

(b) The court shall set the date for the hearing on the adoption at a time not later than 60 days, nor earlier than 40 days, after the date on which the investigator is appointed. For good cause shown, the court may set the hearing at any time that provides adequate time for filing the report of the study.

[Added by Acts 1975, 64th Leg., p. 1269, ch. 476, § 41, eff. Sept. 1, 1975.]

§ 16.08. Decree

(a) If the court is satisfied that the requirements for adoption have been met and the adoption is in the best interest of the child, the court shall make a decree granting the adoption, reciting the findings pertaining to the court's jurisdiction.

(b) If a request for termination of the parent-child relationship has been joined with the petition for adoption, the court shall also enter in its decree a termination of the parent-child relationship. The court must make separate findings that the termination is in the best interests of the child and that the adoption is in the best interests of the child.

(c) The name of the child may be changed in the decree if requested.

[Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, § 42, eff. Sept. 1, 1975.]

§ 16.09. Effect of Adoption Decree

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) Nothing in this chapter shall preclude or affect the rights of a natural maternal or paternal grandparent to reasonable access under Section 14.03(d) of this code.

[Amended by Acts 1977, 65th Leg., p. 335, ch. 163, § 3, eff. Aug. 29, 1977.]

SUBCHAPTER B. ADOPTION OF ADULTS

§ 16.55. Effect of Adoption Decree

On entry of the decree of adoption, the adopted adult is the son or daughter of the adoptive parents for all purposes, and of the natural parents for inheritance purposes only. However, the natural parents may not inherit from or through the adopted adult.

[Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, § 43, eff. Sept. 1, 1975.]

CHAPTER 17. EMERGENCY PROCEDURES IN SUIT BY GOVERNMENTAL ENTITY

Section
17.01. Governmental Entity May Bring Suit.
17.011. Living Child After Abortion.
17.02. Emergency Orders.
17.03. Taking Possession of a Child Without a Court Order.
17.04. Adversary Hearing.
17.05. Jurisdiction of Chapter 17 Proceedings.
17.06. Transfers in Chapter 17 Proceedings.
17.07. Notice of Hearings.
17.08. Civil Liability.

Former Chapter 17, Suit for Protection of Child in Emergency, consisting of Sections 17.01 to 17.09, was amended by Acts 1979, 66th Leg., p. 1471, ch. 643, § 4, to read Chapter 17, Emergency Procedures in Suit by Governmental Entity, Sections 17.01 to 17.08.

§ 17.01. Governmental Entity May Bring Suit

A suit affecting the parent-child relationship may be brought by a governmental entity with an interest in the child under Chapters 11, 13, 14, and 15 of this code. An emergency order or taking possession of a child without a court order as provided by Section 17.02 or 17.03 of this code is governed by this chapter.

[Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, § 44, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1472, ch. 643, § 4, eff. Sept. 1, 1979.]

§ 17.011. Living Child After Abortion

An authorized representative of the Texas Department of Human Resources may assume the care, control, and custody of a child born alive as the result of an abortion as defined in Subsection (b) of Section 15.022 of this code and, if so, shall file a petition under Section 17.02 of this code and comply with all the provisions of Section 11.09 of this code. A child the possession of whom is assumed under this section need not be delivered to the court except on the order of the court.

[Added by Acts 1979, 66th Leg., p. 1193, ch. 580, § 3, eff. June 13, 1979.]

This section was added by Acts 1979, 66th Leg., p. 1193, ch. 580, § 3, without reference to the amendment of this chapter by Acts 1979, 66th Leg., p. 1471, ch. 643, § 4.

§ 17.02. Emergency Orders

(a) Before any temporary restraining order or attachment of the child is issued without a full adversary hearing in a suit affecting the parent-child relationship brought by a governmental entity, the court must be satisfied from a sworn petition or affidavit that:

(1) there is an immediate danger to the physical health or safety of the child; and

(2) there is no time, consistent with the physical health or safety of the child, for an adversary hearing.

(b) The petition or affidavit required by Subsection (a) of this section shall be sworn to by a person with personal knowledge and shall state facts sufficient to satisfy a person of ordinary prudence and caution that there is an immediate danger to the physical health or safety of the child and that there is no time, consistent with the physical health or safety of the child, for an adversary hearing.

(c) A temporary restraining order or attachment of the child issued under Subsection (a) of this section may not extend for more than 10 days.
[Amended by Acts 1979, 66th Leg., p. 1472, ch. 643, § 2, eff. Sept. 1, 1979.]

§ 17.03. Taking Possession of a Child Without a Court Order

(a) An authorized representative of the Texas Department of Human Resources, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions and no others:

(1) upon discovery of a child in a situation of danger to the child's physical health or safety when the sole purpose is to deliver the child without unnecessary delay to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child;

(2) upon the voluntary delivery of the child by the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child;

(3) upon personal knowledge of facts which would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child and that there is no time to obtain a temporary restraining order or attachment under Section 17.02 of this code; or

(4) upon information furnished by another which has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child and that there is no time to obtain a temporary restraining order or attachment under Section 17.02 of this code.

(b) When a child is taken into possession under Subdivision (3) or (4) of Subsection (a) of this section, the person taking the child into possession shall, without unnecessary delay, cause to be filed a suit affecting the parent-child relationship and request the court to cause hearing to be held by no later than the first working day after the child is taken into possession.

(c) The court in which the suit affecting the parent-child relationship has been filed under Subsection (b) of this section shall hold a hearing on or before the first working day after the child is taken into possession and shall make such orders as are necessary to protect the physical health and safety of the child. If the court is unavailable for a hearing on the first working day, then, and only in that event, the hearing shall be held no later than the first working day after the court becomes available, provided that the hearing is held no later than the third working day after the child is taken into possession. The hearing may be ex parte and proof may be by sworn petition or affidavit if a full adversary hearing is not practicable. If the hearing established by this subsection is not held within the time limits required, the child shall be returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child.

(d) Unless the court at the hearing required under Subsection (c) of this section is satisfied that there is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child, the court shall order the return of the child to the person entitled to possession.

(e) A full adversary hearing shall be held within 10 days of the taking of the child into possession under Subdivision (3) or (4) of Subsection (a) of this section and such orders made as are necessary for the protection of the physical health and safety of the child.

(f) When possession of the child has been acquired under Subdivision (2) of Subsection (a) of this section, the person taking the child into possession shall cause to be filed a suit affecting the parent-child relationship within 60 days from the date of the taking of the child into possession and a hearing to be held thereon.

(g) When a child is taken into possession under this section, that child shall not be held in a jail or juvenile detention facility.
[Amended by Acts 1979, 66th Leg., p. 1471, ch. 643, § 4, eff. Sept. 1, 1979.]

§ 17.04. Adversary Hearing

(a) Unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and any temporary orders dissolved, a full adversary hearing shall be held within 10 days of:

(1) the taking of the child into possession by authority of Subdivision (3) or (4) of Subsection (a) of Section 17.03 of this code;

(2) the taking of the child into possession by authority of a temporary restraining order or attachment of a child issued under Section 17.02 of this code; or

(3) the filing of the suit provided under Subsection (f) of Section 17.03 of this code.

(b) At the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that there is a danger to the physical health or safety of the child which was caused by any act or failure to act of the person entitled to possession.

(c) If the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that there is a danger to the physical health or safety of the child, the court shall issue appropriate temporary orders under Section 11.11 of this code.

[Amended by Acts 1979, 66th Leg., p. 1471, ch. 643, § 4, eff. Sept. 1, 1979.]

§ 17.05. Jurisdiction of Chapter 17 Proceedings

(a) A suit affecting the parent-child relationship brought by a governmental entity seeking conservatorship or termination and a temporary restraining order or attachment of a child under this chapter may be filed in any court with jurisdiction to hear suits affecting the parent-child relationship in the county in which the child is found.

(b) Immediately after the issuance of such temporary orders as are necessary for the protection of the child pending a final hearing, a governmental entity shall determine the court of continuing jurisdiction and shall institute any transfers as are necessary under Section 17.06 or 11.06 of this code.

[Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, § 45, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1472, ch. 643, § 4, eff. Sept. 1, 1979.]

§ 17.06. Transfers in Chapter 17 Proceedings

(a) Immediately after entry of temporary orders necessary for the protection of the child pending a final hearing, the court on the motion of a party shall transfer to the court of continuing jurisdiction, if there is a court of continuing jurisdiction, or if there is no court of continuing jurisdiction, to the court having venue of the suit affecting the parent-child relationship under Section 11.04 of this code. Transfers shall be made under the procedures provided by Section 11.06 of this code.

(b) Temporary orders issued under this chapter are valid and enforceable until properly superseded by a court with jurisdiction to do so.

(c) Any court to which the suit has been transferred may enforce by contempt or otherwise any temporary order properly issued under this chapter.

[Amended by Acts 1979, 66th Leg., p. 1471, ch. 643, § 4, eff. Sept. 1, 1979.]

§ 17.07. Notice of Hearings

Notice shall be given in accordance with Section 11.09 of this code and the Texas Rules of Civil Procedure.

[Amended by Acts 1979, 66th Leg., p. 1471, ch. 643, § 4, eff. Sept. 1, 1979.]

§ 17.08. Civil Liability

A person who takes possession of a child under Section 17.03 of this code is immune from civil liability if, at the time possession is taken, he had reasonable cause to believe there was an immediate danger to the physical health or safety of the child.

[Amended by Acts 1979, 66th Leg., p. 1471, ch. 643, § 4, eff. Sept. 1, 1979.]

CHAPTER 18. REVIEW OF PLACEMENT OF CHILDREN UNDER THE CARE OF THE DEPARTMENT OF HUMAN RESOURCES

Section

18.01. Review of Placements by Court of Continuing Jurisdiction.
18.02. Voluntary Placements: Suit.
18.03. Persons Entitled to Notice.
18.04. When Child is at Home.
18.05. Child's Attendance at Hearing.
18.06. Disposition of Child.

§ 18.01. Review of Placements by Court of Continuing Jurisdiction

(a) In a suit affecting the parent-child relationship in which the Texas Department of Human Resources has been named by the court or in an affidavit of relinquishment of parental rights as the managing conservator of a child, the court shall hold a hearing to review the conservatorship appointment and the placement of the child by the department in foster home care, group home care, or institutional care.

(b) The hearing shall be held not earlier than five and one-half months and not later than seven months after the date of the last hearing in the suit unless, for good cause shown by any party, an earlier hearing is approved by the court.

[Added by Acts 1979, 66th Leg., p. 66, ch. 41, § 1, eff. Aug. 27, 1979.]

§ 18.02. Voluntary Placements: Suit

(a) If a parent, managing conservator, or guardian of the person of a child who is not subject to the continuing jurisdiction of a court under this title voluntarily agrees to surrender the custody, care, or control of a child to the Texas Department of Human Resources, the department, not later than 60 days after taking possession of or exercising control of the child, shall file a suit affecting the parent-child relationship under this title, establishing a court of continuing jurisdiction for the child, and

requesting a review of the placement of the child in foster home care, group home care, or institutional care.

(b) The petition shall state that the purpose of the suit is to initiate periodic review of the necessity and propriety of the placement of the child. A copy of the agreement between the department and the parent, managing conservator, or guardian of the child shall be filed with the petition.

(c) In addition to those persons listed in Section 11.09(a) of this code as entitled to service of citation in a suit affecting the parent-child relationship, a person listed in Section 18.03 of this code is entitled to service of citation.

(d) The hearing shall be held not earlier than five and one-half months and not later than seven months after the date that the department took possession of or exercised control over the child unless, for good cause shown by any party, an earlier hearing is approved by the court.

[Added by Acts 1979, 66th Leg., p. 66, ch. 41, § 1, eff. Aug. 27, 1979.]

§ 18.03. Persons Entitled to Notice

The following persons are entitled to at least 10 days' notice of a hearing to review a child placement and are entitled to present evidence and be heard at the hearing:

(1) the Texas Department of Human Resources;

(2) the foster parent or director of the group home or institution where the child is residing;

(3) each parent of the child;

(4) the managing conservator or guardian of the person of the child; and

(5) any other person or agency named by the court to have an interest in the welfare of the child.

[Added by Acts 1979, 66th Leg., p. 66, ch. 41, § 1, eff. Aug. 27, 1979.]

§ 18.04. When Child is at Home

(a) If the Texas Department of Human Resources returns a child to a parent for custody, care, or control, the department shall notify the court having continuing jurisdiction of the suit of the department's action and so long as the child remains under the custody, care, or control of the parent, no review of that placement is required under this chapter.

(b) If a child has been returned to a parent and if the department resumes the custody, care, or control of the child or designates any person other than a parent to have the custody, care, or control of the child, the department shall notify the court of its action.

(c) If the department resumes the custody, care, or control of the child or designates a person other than a parent to have the custody, care, or control of the child within three months after returning the child to a parent, the period that that child was under the custody, care, or control of his or her parent shall not be considered in determining the date for the next placement review hearing.

[Added by Acts 1979, 66th Leg., p. 66, ch. 41, § 1, eff. Aug. 27, 1979.]

§ 18.05. Child's Attendance at Hearing

The court in its discretion may dispense with the attendance of the child at a placement review hearing.

[Added by Acts 1979, 66th Leg., p. 66, ch. 41, § 1, eff. Aug. 27, 1979.]

§ 18.06. Disposition of Child

At the conclusion of a placement review hearing under this chapter, the court, in accordance with the best interest of the child, may order:

(1) that the foster care, group home care, or institutional care be continued;

(2) that the child be returned to his or her parent or guardian;

(3) if the child has been placed with the Texas Department of Human Resources under a voluntary agreement, that the department institute further proceedings to appoint the department as managing conservator or to terminate parental rights in order to provide permanent placement for the child or to make the child available for adoption;

(4) if the parental rights of the child have already been terminated or the department has custody, care, and control of the child under an affidavit of relinquishment of parental rights naming the department as managing conservator, that the department attempt to place the child for adoption; or

(5) the Texas Department of Human Resources to provide services to ensure that every effort has been made to enable the parents to provide a family for their own children.

[Added by Acts 1979, 66th Leg., p. 66, ch. 41, § 1, eff. Aug. 27, 1979.]

CHAPTER 21. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

SUBCHAPTER A. GENERAL PROVISIONS

Section

21.07. Declaration of Reciprocity: Other Nations.

SUBCHAPTER A. GENERAL PROVISIONS

§ 21.03. Definitions

In this chapter, unless the context requires a different definition:

(1) "State" includes any state, territory, or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted and includes a foreign nation or a state of a nation declared to have a similar reciprocal law as provided in Section 21.07 of this code.

[See Compact Edition, Volume 1 for text of (2) to (14)]

(15) "Prosecuting attorney" means the criminal district attorney, an attorney designated by the court, or the county attorney, or the district attorney where there is no criminal district attorney, attorney designated by the court, or county attorney.

[See Compact Edition, Volume 1 for text of (16)]

[Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, §§ 46 and 47, eff. Sept. 1, 1975.]

§ 21.07. Declaration of Reciprocity: Other Nations

(a) If the attorney general finds that reciprocal provisions are available in a foreign nation or the state of a foreign nation for the enforcement of support orders issued in this state, the attorney general may declare the foreign nation or a state of a foreign nation to be a reciprocating state for the purpose of this chapter.

(b) A declaration made under Subsection (a) of this section may be revoked by the attorney general.

(c) A declaration by the attorney general made under Subsection (a) of this section may be reviewed by the court in an action under this title.

[Added by Acts 1975, 64th Leg., p. 1270, ch. 476, § 48, eff. Sept. 1, 1975.]

[Sections 21.08 to 21.10 reserved for expansion]

SUBCHAPTER C. CIVIL ENFORCEMENT

§ 21.39. Enforcement Power of Court

In addition to the foregoing powers, the court of this state when acting as the responding state has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders, and in particular:

(1) to require the defendant to furnish a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant;

(2) to require the defendant to make payments at specified intervals to the district clerk or probation department of the court;

(3) to punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court; and

(4) to order the defendant (obligor) to pay as court costs a reasonable fee to any attorney or to the prosecuting attorney's office who represents the petitioner in any enforcement proceeding.

[Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 49, eff. Sept. 1, 1975.]

CHAPTER 31. REMOVAL OF DISABILITIES OF MINORITY

§ 31.01. Petition

(a) A minor who is a resident of this state and is at least 17 years of age, or is at least 16 years of age, living separate and apart from his parents, managing conservator, or guardian and is self-supporting and managing his own financial affairs, may petition to have his disabilities of minority removed for limited purposes or for general purposes.

(b) A minor who is not a resident of this state and is at least 17 years of age may petition to have his disabilities of minority removed for a limited purpose or for general purposes if he is an adult under the laws of the state of his residence.

(c) A minor may institute suit under this section in his own name and need not be represented by next friend.

[Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 50, eff. Sept. 1, 1975.]

§ 31.02. Requisites of Petition

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) The petition must be verified by a parent of the petitioner, except that if a managing conservator or guardian of the person has been appointed, the petition must be verified by the person so appointed. If the person who is to verify the petition is unavailable or his whereabouts are unknown, the guardian ad litem shall verify the petition after his appointment.

[Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 51, eff. Sept. 1, 1975.]

CHAPTER 34. REPORT OF CHILD ABUSE

Section
34.011. Form.
34.07. Failure to Report; Penalty.
34.08. Confidentiality.

§ 34.011. Form

The Texas Department of Human Resources shall promulgate a form and cause a sample to be distributed for the reporting of suspected occurrences of child abuse as required by Section 34.01 of this code. Copies of the form shall be distributed to all licensed hospitals in this state to be available for use without charge by hospital employees, physicians, patients, and other persons. The form shall include a statement that child abuse reports are confidential and that information contained in the reports, including the name of the person making the report, may be used only for the purposes consistent with the investigation of child abuse. The form shall give the address of the Texas Department of Human Resources. Hospital employees, physicians, patients, and other persons must complete the form and return it to the Texas Department of Human Resources.

[Added by Acts 1979, 66th Leg., p. 1027, ch. 460, § 1, eff. Aug. 27, 1979.]

§ 34.02. Contents of Report: to Whom Made

(a) Nonaccusatory reports reflecting the reporter's belief that a child has been or will be abused or neglected, or has died of abuse or neglect, has violated the compulsory school attendance laws on three or more occasions, or has, on three or more occasions, been voluntarily absent from his home without the consent of his parent or guardian for a substantial length of time or without the intent to return shall be made to:

(1) the State Department of Public Welfare;[1]

(2) the agency designated by the court to be responsible for the protection of children; or

(3) any local or state law enforcement agency.

[See Compact Edition, Volume 1 for text of (b)]

(c) All reports received by any local or state law enforcement agency shall be referred to the State Department of Public Welfare or to the agency designated by the court to be responsible for the protection of children.

[1] Name of State Department of Public Welfare changed to Texas Department of Human Resources by Acts 1977, 65th Leg., p. 1371, ch. 543, § 2.

[See Compact Edition, Volume 1 for text of (d)]

[Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 52, eff. Sept. 1, 1975.]

§ 34.05. Investigation and Report of Receiving Agency

(a) The State Department of Public Welfare or the agency designated by the court to be responsible for the protection of children shall make a thorough investigation promptly after receiving either the oral or written report. The primary purpose of the investigation shall be the protection of the child.

(b) In the investigation the department or agency shall determine:

(1) the nature, extent, and cause of the abuse or neglect;

(2) the identity of the person responsible for the abuse or neglect;

(3) the names and conditions of the other children in the home;

(4) an evaluation of the parents or persons responsible for the care of the child;

(5) the adequacy of the home environment;

(6) the relationship of the child to the parents or persons responsible for the care of the child;

(7) all other pertinent data.

(c) The investigation shall include a visit to the child's home, a physical examination of all the children in that home, and an interview with the subject child. The investigation may include a psychological or psychiatric examination of all the children in that home. If admission to the home, school, or any place where the child may be, or permission of the parents or persons responsible for the child's care for the physical examinations cannot be obtained, then the juvenile court, or the district court, upon cause shown, shall order the parents or the persons responsible for the care of the children, or the person in charge of any place where the child may be, to allow entrance for the interview, the physical examination, and the investigation. If the parents or person responsible for the child's care does not consent to a psychological or psychiatric examination of the child that is requested by the department or agency, the juvenile court or district court, upon cause shown, shall order the examination to be made at the times and places designated by the court. A parent or person responsible for the child's care is entitled to notice and a hearing when the department or agency seeks a court order to allow a psychological or psychiatric examination.

[See Compact Edition, Volume 1 for text of (d)]

(e) The agency designated by the court to be responsible for the protection of children or the department shall make a complete written report of the investigation. The report, together with its recommendations, shall be submitted to the juvenile court or the district court, the district attorney, and the appropriate law enforcement agency if sufficient grounds for the institution of a suit affecting the parent-child relationship are found.

[Amended by Acts 1975, 64th Leg., p. 1272, ch. 476, § 53, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1446, ch. 635, § 1, eff. Aug. 27 1979.]

§ 34.07. Failure to Report; Penalty

(a) A person commits an offense if the person has cause to believe that a child's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance with Section 34.02 of this code.

(b) An offense under this section is a Class B misdemeanor.

[Added by Acts 1975, 64th Leg., p. 1272, ch. 476, § 54, eff. Sept. 1, 1975.]

§ 34.08. Confidentiality

The reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

[Added by Acts 1975, 64th Leg., p. 1272, ch. 476, § 54, eff. Sept. 1, 1975.]

CHAPTER 35. CONSENT TO MEDICAL TREATMENT

Section
35.04. Examination of Abused or Neglected Children.

§ 35.04. Examination of Abused or Neglected Children

(a) Except as provided in Subsection (b) of this section, a licensed physician or dentist having reasonable grounds to believe that a child's physical or mental condition has been adversely affected by abuse or neglect may examine the child without the consent of the child, the child's parents, or other person authorized to consent for the child or his parents. The examination may include X-rays, blood tests, and penetration of tissue necessary to accomplish these tests.

(b) Unless consent is obtained as otherwise allowed by law, a physician or dentist may not examine a child:

(1) who is 16 years old or over and refuses to consent; or

(2) if consent is refused by an order of a court.

(c) A physician or dentist examining a child under the authority of this section is not liable for damages except those damages resulting from his negligence.

[Added by Acts 1975, 64th Leg., p. 1273, ch. 476, § 55, eff. Sept. 1, 1975.]

TITLE 3. DELINQUENT CHILDREN AND CHILDREN IN NEED OF SUPERVISION

CHAPTER 51. GENERAL PROVISIONS

Section
51.18. Powers and Duties of Alternate Juvenile Court.

§ 51.02. Definitions

In this title:

[See Compact Edition, Volume 1 for text of (1)]

(2) "Parent" means the mother, the father whether or not the child is legitimate, or an adoptive parent, but does not include a parent whose parental rights have been terminated.

[See Compact Edition, Volume 1 for text of (3) to (10)]

[Amended by Acts 1975, 64th Leg., p. 2152, ch. 693, § 1, eff. Sept. 1, 1975.]

Section 27 of the 1975 amendatory act provided: "This Act takes effect on September 1, 1975."

§ 51.03. Delinquent Conduct; Conduct Indicating a Need for Supervision

(a) Delinquent conduct is conduct, other than a traffic offense, that violates:

(1) a penal law of this state punishable by imprisonment or by confinement in jail; or

(2) a reasonable and lawful order of a juvenile court entered under Section 54.04 or 54.05 of this code, including an order prohibiting conduct referred to in Subsection (b)(4) of this section.

(b) Conduct indicating a need for supervision is:

(1) conduct, other than a traffic offense or other than an offense included in Subdivision (5) of this subsection, that on three or more occasions violates either of the following:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

(2) the unexcused voluntary absence of a child on 10 or more days or parts of days within a six-month period or three or more days or parts of days within a four-week period from school;

(3) the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return;

(4) conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any

other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense); or

(5) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives.

[See Compact Edition, Volume 1 for text of (c)]

(d) For the purpose of Subsection (b)(2) of this section an absence is excused when the absence results from:

(1) illness of the child;

(2) illness or death in the family of the child;

(3) quarantine of the child and family;

(4) weather or road conditions making travel dangerous;

(5) an absence approved by a teacher, principal, or superintendent of the school in which the child is enrolled; or

(6) circumstances found reasonable and proper.

[Amended by Acts 1975, 64th Leg., p. 2153, ch. 693, §§ 2 to 4, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 906, ch. 340, § 1, eff. June 6, 1977.]

§ 51.04. Jurisdiction

(a) This title covers the proceedings in all cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a child within the meaning of this title at the time he engaged in the conduct, and the juvenile court has exclusive original jurisdiction over proceedings under this title.

[See Compact Edition, Volume 1 for text of (b) and (c)]

(d) If the judge of a court designated in Subsection (b) or (c) of this section is not an attorney licensed in this state, there shall also be designated an alternate court, the judge of which is an attorney licensed in this state. The alternate juvenile court shall rule on motions and hold hearings as provided in Section 51.18 of this chapter.

[See Compact Edition, Volume 1 for text of (e) and (f)]

(g) The juvenile board, or if there is no juvenile board, the juvenile court, may appoint a referee to conduct hearings under this title and in accordance with Section 54.10 of this code. The referee shall be an attorney licensed to practice law in this state. Payment of any referee services shall be provided from county funds.

[Amended by Acts 1975, 64th Leg., p. 1357, ch. 514, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 2153, ch. 693, §§ 5 to 7, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1112, ch. 411, § 1, eff. June 15, 1977.]

§ 51.05. Court Sessions and Facilities

(a) The juvenile court shall be deemed in session at all times. Suitable quarters shall be provided by the commissioners court of each county for the hearing of cases and for the use of the judge, the probation officer, and other employees of the court.

(b) The juvenile court and the juvenile board shall report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and may make recommendations for their improvement.

[Amended by Acts 1975, 64th Leg., p. 2154, ch. 693, § 8, eff. Sept. 1, 1975.]

§ 51.09. Waiver of Rights

(a) Unless a contrary intent clearly appears elsewhere in this title, any right granted to a child by this title or by the constitution or laws of this state or the United States may be waived in proceedings under this title if:

(1) the waiver is made by the child and the attorney for the child;

(2) the child and the attorney waiving the right are informed of and understand the right and the possible consequences of waiving it;

(3) the waiver is voluntary; and

(4) the waiver is made in writing or in court proceedings that are recorded.

(b) Notwithstanding any of the provisions of Subsection (a) of this section, the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if:

(1) when the child is in a detention facility or other place of confinement or in the custody of an officer, the statement is made in writing and the statement shows that the child has at some time prior to the making thereof received from a magistrate a warning that:

(A) he may remain silent and not make any statement at all and that any statement he makes may be used in evidence against him;

(B) he has the right to have an attorney present to advise him either prior to any questioning or during the questioning;

(C) if he is unable to employ an attorney, he has the right to have an attorney to counsel with him prior to or during any interviews with peace officers or attorneys representing the state;

(D) he has the right to terminate the interview at any time;

(E) if he is 15 years of age or older at the time of the violation of a penal law of the grade of felony the juvenile court may waive its jurisdiction and he may be tried as an adult; and

(F) the statement must be signed in the presence of a magistrate by the child with no law enforcement officer or prosecuting attorney present. The magistrate must be fully convinced that the child understands the nature and contents of the statement and that the child is signing the same voluntarily. If such a statement is taken, the magistrate shall sign a written statement verifying the foregoing requisites have been met.

The child must knowingly, intelligently, and voluntarily waive these rights prior to and during the making of the statement and sign the statement in the presence of a magistrate who must certify that he has examined the child independent of any law enforcement officer or prosecuting attorney and determined that the child understands the nature and contents of the statement and has knowingly, intelligently, and voluntarily waived these rights.

(2) it be made orally and the child makes a statement of facts or circumstances that are found to be true, which conduct tends to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed.

(3) the statement was res gestae of the delinquent conduct or the conduct indicating a need for supervision or of the arrest.

[Amended by Acts 1975, 64th Leg., p. 2154, ch. 693, § 9, eff. Sept. 1, 1975.]

§ 51.12. Place and Conditions of Detention

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) In each county, the judge of the juvenile court and the members of the juvenile board, if there is one, shall personally inspect the detention facilities at least annually and shall certify in writing to the authorities responsible for operating and giving financial support to the facilities that they are suitable or unsuitable for the detention of children in accordance with:

(1) the requirements of Subsection (a) of this section;

(2) the requirements of Article 5115, Revised Civil Statutes of Texas, 1925, as amended, defining "safe and suitable jails," if the detention facility is a county jail; and

(3) recognized professional standards for the detention of children.

[See Compact Edition, Volume 1 for text of (d)]

(e) If there is no certified place of detention in the county in which the petition is filed, the designated place of detention may be in another county.

[Amended by Acts 1975, 64th Leg., p. 2155, ch. 693, §§ 10 and 11, eff. Sept. 1, 1975.]

§ 51.15. Fingerprints and Photographs

(a) No child may be fingerprinted without the consent of the juvenile court except as provided in Subsection (f) of this section. However, if a child 15 years of age or older is referred to the juvenile court for a felony, his fingerprints may be taken and filed by a law-enforcement officer investigating the case.

(b) Except as provided in Subsection (h) of this section, no child taken into custody may be photographed without the consent of the juvenile court unless the child is transferred to criminal court for prosecution under Section 54.02 of this code.

[See Compact Edition, Volume 1 for text of (c) to (f)]

(g) When destruction of fingerprints or photographs is required by Subsection (e), (f), or (h) of this section, the agency with custody of the fingerprints or photographs shall proceed with destruction without judicial order. However, if the fingerprints or photographs are not destroyed, the juvenile court, on its own motion or on application by the person fingerprinted or photographed, shall order the destruction as required by this section.

(h) If, during the investigation of a criminal offense, a law enforcement officer has reason to believe that a photograph of a child taken into custody or detained as permitted under this title will assist in the identification of the offender and if not otherwise prohibited by law, the officer may photograph the face of the child. If the child is not identified as an offender, the photograph and its negative shall be destroyed immediately. If the child is identified through the photograph and the child is referred to the juvenile court for the offense investigated, the photograph and its negative shall be delivered to the juvenile court for disposition. If the child is not referred to the juvenile court for the offense investigated, the photograph and its negative shall be destroyed immediately.

[Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 12, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1101, ch. 517, §§ 1 to 3, eff. June 11, 1979.]

§ 51.16. Sealing of Files and Records

[See Compact Edition, Volume 1 for text of (a) to (g)]

(h) A person whose files and records have been sealed under this Act is not required in any proceeding or in any application for employment, information, or licensing to state that he has been the subject of a proceeding under this Act; and any statement that he has never been found to be a delinquent child shall never be held against the person in any criminal or civil proceeding.

(i) On the motion of a person in whose name files and records are kept or on the court's own motion, the court may order the destruction of all files and

records concerning a person who has been adjudicated to be a child in need of supervision or a delinquent child if:

(1) seven years have elapsed since the child's 16th birthday; and

(2) the person has not been convicted of a felony.

[Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 13, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 708, ch. 307, § 1, eff. Aug. 27, 1979.]

§ 51.18. Powers and Duties of Alternate Juvenile Court

If a juvenile court, the judge of which is not an attorney licensed in this state, issues an order that may be appealed as provided in Subsection (c) of Section 56.01 of this code, the child shall have a right to a trial de novo before the alternate juvenile court or may appeal the order of the court as provided in Section 56.01.

[Added by Acts 1977, 65th Leg., p. 1112, ch. 411, § 2, eff. June 15, 1977.]

CHAPTER 53. PROCEEDINGS PRIOR TO JUDICIAL PROCEEDINGS

§ 53.02. Release or Delivery to Court

[See Compact Edition, Volume 1 for text of (a)]

(b) A child taken into custody may be detained prior to hearing on the petition only if:

(1) he is likely to abscond or be removed from the jurisdiction of the court;

(2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person;

(3) he has no parent, guardian, custodian, or other person able to return him to the court when required;

(4) he is accused of committing a felony offense and may be dangerous to himself or others if released; or

(5) he has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released.

[Amended by Acts 1979, 66th Leg., p. 1102, ch. 518, § 1, eff. June 11, 1979.]

CHAPTER 54. JUDICIAL PROCEEDINGS

Section
54.041. Orders Affecting Parents and Others.
54.061. Payment of Probation Fees.
54.10. Hearings Before Referee.

§ 54.01. Detention Hearing

(a) If the child is not released under Section 53.02 of this code, a detention hearing without a jury shall be held promptly, but not later than the second working day after he is taken into custody; provided, however, that when a child is detained on a Friday or Saturday, then such detention hearing shall be held on the first working day after the child is taken into custody.

[See Compact Edition, Volume 1 for text of (b) to (d)]

(e) At the conclusion of the hearing, the court shall order the child released from detention unless it finds that:

(1) he is likely to abscond or be removed from the jurisdiction of the court;

(2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person;

(3) he has no parent, guardian, custodian, or other person able to return him to the court when required;

(4) he is accused of committing a felony offense and may be dangerous to himself or others if released; or

(5) he has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released.

[See Compact Edition, Volume 1 for text of (f) to (l)]

(m) The detention hearing required in this section may be held in the county of the designated place of detention where the child is being held even though the designated place of detention is outside the county of residence of the child or the county in which the alleged delinquent conduct or conduct indicating a need for supervision occurred.

[Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, §§ 14 and 15, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1102, ch. 518, § 2, eff. June 11, 1979.]

§ 54.02. Waiver of Jurisdiction and Discretionary Transfer to Criminal Court

[See Compact Edition, Volume 1 for text of (a) to (i)]

(j) The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if:

(1) the person is 18 years of age or older;

(2) the person was 15 years of age or older and under 17 years of age at the time he is alleged to have committed a felony;

(3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted; and

(4) the juvenile court finds from a preponderance of the evidence that after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:

(A) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person; or

(B) the person could not be found.

(k) The petition and notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering waiver of jurisdiction under Subsection (j) of this section.

(*l*) The juvenile court shall conduct a hearing without a jury to consider waiver of jurisdiction under Subsection (j) of this section.

[Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 16, eff. Sept. 1, 1975.]

§ 54.03. Adjudication Hearing

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) Trial shall be by jury unless jury is waived in accordance with Section 51.09 of this code. Jury verdicts under this title must be unanimous.

[See Compact Edition, Volume 1 for text of (d)]

(e) A child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision need not be a witness against nor otherwise incriminate himself. An extrajudicial statement which was obtained without fulfilling the requirements of this title or of the constitution of this state or the United States, may not be used in an adjudication hearing. A statement made by the child out of court is insufficient to support a finding of delinquent conduct or conduct indicating a need for supervision unless it is corroborated in whole or in part by other evidence. An adjudication of delinquent conduct or conduct indicating a need for supervision cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the child with the alleged delinquent conduct or conduct indicating a need for supervision; and the corroboration is not sufficient if it merely shows the commission of the alleged conduct. Evidence illegally seized or obtained is inadmissible in an adjudication hearing.

[See Compact Edition, Volume 1 for text of (f) to (h)]

[Amended by Acts 1975, 64th Leg., p. 2157, ch. 693, § 17, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1098, ch. 514, § 1, eff. Aug. 27, 1979.]

§ 54.04. Disposition Hearing

[See Compact Edition, Volume 1 for text of (a) to (f)]

(g) Repealed by Acts 1975, 64th Leg., p. 2158, ch. 693, § 23, eff. Sept. 1, 1975.

[See Compact Edition, Volume 1 for text of (h)]

[Amended by Acts 1975, 64th Leg., p. 2158, ch. 693, § 23, eff. Sept. 1, 1975.]

§ 54.041. Orders Affecting Parents and Others

(a) When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision and the juvenile court has made a finding that the child is in need of rehabilitation or that the protection of the public or the child requires that disposition be made, the juvenile court, on notice to all persons affected, may:

(1) order any person found by the juvenile court to have, by a wilful act or omission, contributed to, caused, or encouraged the child's delinquent conduct or conduct indicating a need for supervision to do any act that the juvenile court determines to be reasonable and necessary for the welfare of the child or to refrain from doing any act that the juvenile court determines to be injurious to the welfare of the child; or

(2) enjoin all contact between the child and a person who is found to be a contributing cause of the child's delinquent conduct or conduct indicating a need for supervision.

(b) If a child is found to have engaged in delinquent conduct arising from the commission of an offense in which property damage occurred, the juvenile court, on notice to all persons affected and on hearing, may order the child or a parent to make full or partial restitution to the victim of the offense. An order under this subsection may provide for periodic payments by the child or a parent of the child for the period specified in the order not to exceed five years after the 18th birthday of the child. If the child or parent is unable to make full or partial restitution or if a restitution order is not appropriate under the circumstances, the court may order the child to render personal services to a charitable or educational institution in the manner prescribed in the court order in lieu of restitution. Restitution under this section is cumulative of any other remedy allowed by law and may be used in addition to other remedies; except that a victim of an offense is not entitled to receive more than actual damages under a juvenile court order.

(c) A person subject to an order proposed under Subsection (a) of this section is entitled to a hearing on the order before the order is entered by the court.

(d) An order made under this section may be enforced as provided by Section 54.07 of this code.

[Added by Acts 1975, 64th Leg., p. 2157, ch. 693, § 18, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 338, ch. 154, § 2, eff. Sept. 1, 1979.]

§ 54.05. Hearing to Modify Disposition

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) A hearing to modify disposition shall be held on the petition of the child and his parent, guardian, guardian ad litem, or attorney, or on the petition of the state, a probation officer, or the court itself. Reasonable notice of a hearing to modify disposition shall be given to all parties. When the petition to modify is filed under Section 51.03(a)(2) of this code, the court must hold an adjudication hearing and make an affirmative finding prior to considering any written reports under Subsection (e) of this section.

(e) After the hearing on the merits or facts, the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of other witnesses. Prior to the hearing to modify disposition, the court shall provide the attorney for the child with access to all written matter to be considered by the court in deciding whether to modify disposition. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

[See Compact Edition, Volume 1 for text of (f) to (i)]

[Amended by Acts 1979, 66th Leg., p. 1829, ch. 743, § 1, eff. Aug. 27, 1979.]

§ 54.061. Payment of Probation Fees

(a) If a child is placed on probation under Section 54.04(d)(1) of this code, the juvenile court, after giving the child, parent, or other person responsible for the child's support a reasonable opportunity to be heard, may order the child, parent, or other person, if financially able to do so, to pay to the court a fee of not more than $15 a month during the period that the child continues on probation.

(b) Orders for the payment of fees under this section may be enforced as provided by Section 54.07 of this code.

[Added by Acts 1979, 66th Leg., p. 338, ch. 154, § 1, eff. Sept. 1, 1979.]

§ 54.07. Enforcement of Order

[See Compact Edition, Volume 1 for text of (a)]

(b) The juvenile court may enforce its order for support or for the payment of restitution or probation fees by civil contempt proceedings after 10 days' notice to the defaulting person of his failure or refusal to carry out the terms of the order.

(c) On the motion of the juvenile court or any person or agency entitled to receive restitution or probation payments or payments for the benefit of a child, the juvenile court may render judgment against a defaulting person for any amount unpaid and owing after 10 days' notice to the defaulting person of his failure or refusal to carry out the terms of the order. The judgment may be enforced by any means available for the enforcement of judgments for other debts.

[Amended by Acts 1979, 66th Leg., p. 339, ch. 154, § 3, eff. Sept. 1, 1979.]

§ 54.10. Hearings Before Referee

(a) The hearing provided in Sections 54.01, 54.03, and 54.04 of Title 3 of this code and the hearing provided in Article IV, Article V, and Article VI of the Uniform Interstate Compact on Juveniles (Chapter 25 of this code) may be held by a referee appointed in accordance with Section 51.04(g) of this code provided:

(1) the parties have been informed by the referee that they are entitled to have the hearing before the juvenile court judge or in the case of a detention hearing provided for in Section 54.01 of this code, a substitute judge as authorized by Section 51.04(f) of this code; or

(2) the child and the attorney for the child have in accordance with the requirements of Section 51.09 of this code waived the right to have the hearing before the juvenile court judge or substitute judge.

(b) At the conclusion of the hearing, the referee shall transmit written findings and recommendations to the juvenile court judge. The juvenile court judge shall adopt, modify, or reject the referee's recommendations within 24 hours. In the same case of a detention hearing as authorized by Section 54.01 of this code, the failure of the juvenile court to act within 24 hours results in release of the child by operation of law and a recommendation that the child be released operates to secure his immediate release subject to the power of the juvenile court judge to modify or reject that recommendation.

[Added by Acts 1975, 64th Leg., p. 2157, ch. 693, § 19, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1830, ch. 743, § 2, eff. Aug. 27, 1979.]

CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS, RETARDATION, DISEASE, OR DEFECT

§ 55.01. Physical or Mental Examination

(a) At any stage of the proceedings under this title, the juvenile court may cause the child to be examined by a physician, psychiatrist, or psychologist.

(b) If an examination ordered under Subsection (a) of this section is to determine whether the child

is mentally retarded, the examination must consist of a comprehensive diagnosis and evaluation as defined in the Mentally Retarded Persons Act [1] and shall be conducted at a facility approved by the Texas Department of Mental Health and Mental Retardation.

[Amended by Acts 1977, 65th Leg., p. 1453, ch. 591, § 1, eff. Jan. 1, 1978.]

[1] See Civil Statutes, art. 5547–300.
Section 3 of the 1977 amendatory act provided:
"This Act takes effect January 1, 1978."

§ 55.02. Mentally Ill Child

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) If the juvenile court enters an order of temporary hospitalization of the child, the child shall be cared for, treated, and released in conformity to the Texas Mental Health Code except:

(1) a juvenile court order of temporary hospitalization of a child automatically expires when the child becomes 18 years of age;

(2) the head of a mental hospital shall notify the juvenile court that ordered temporary hospitalization at least 10 days prior to discharge of the child; and

(3) appeal from juvenile court proceedings under this section shall be to the court of civil appeals as in other proceedings under this title.

[See Compact Edition, Volume 1 for text of (d)]

(e) If the child is discharged from the mental hospital before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of temporary hospitalization had been made.

[Amended by Acts 1975, 64th Leg., p. 2157, ch. 693, §§ 20 and 21, eff. Sept. 1, 1975.]

§ 55.03. Mentally Retarded Child

(a) If it appears to the juvenile court, on the suggestion of a party or on the court's own notice, that a child alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision may be mentally retarded, the court shall order a comprehensive diagnosis and evaluation of the child to be performed at a facility approved by the Texas Department of Mental Health and Mental Retardation. If the court finds that the results of such comprehensive diagnosis and evaluation indicate a significantly subaverage general intellectual function of 2.5 or more standard deviations below the age-group mean for the tests used existing concurrently with deficits in adaptive behavior of Levels I–IV, the court shall initiate proceedings to order commitment of the child to a facility for the care and treatment of mentally retarded persons.

(b) The Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes) [1] governs proceedings for commitment of a child meeting the criteria set forth in Subsection (a) of this section except that:

(1) the juvenile court shall conduct the proceedings whether or not the juvenile court is also a county court; and

(2) on receipt of the court's order entering the findings set forth in Subsection (a) of this section, together with those findings set forth in the Mentally Retarded Persons Act as prerequisites for court commitments, the Texas Department of Mental Health and Mental Retardation or the appropriate community center shall thereupon admit the child to a residential care facility for the mentally retarded.

[See Compact Edition, Volume 1 for text of (c) and (d)]

(e) If the child is discharged from the facility for the care and treatment of mentally retarded persons before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of commitment had been made.

[Amended by Acts 1975, 64th Leg., p. 2158, ch. 693, § 22, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1453, ch. 591, § 2, eff. Jan. 1, 1978.]

[1] Repealed; see, now, Civil Statutes, art. 5547–300.

TITLE 4. PROTECTION OF THE FAMILY

CHAPTER 71. PROTECTIVE ORDERS

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§ 71.01. Definitions

(a) Except as provided by Subsection (b) of this section, the definitions in Section 11.01 of this code apply to terms used in this chapter.

(b) In this chapter:

(1) "Court" means a court having jurisdiction of suits affecting the parent-child relationship under Subtitle A of Title 2 of this code or a county court.

(2) "Family violence" means the intentional use or threat of physical force by a member of a family or household against another member of the family or household, but does not include the reasonable discipline of a child by a person having that duty.

(3) "Family" includes individuals related by consanguinity or affinity, individuals who are former spouses of each other, and a foster child and foster parent, whether or not those individuals reside together.

(4) "Household" means a unit composed of persons living together in the same dwelling, whether or not they are related to each other.

(5) "Member of a household" includes a former member of a household who has filed an application or for whom protection is sought as provided by Subsection (c) of Section 71.04 of this code.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.02. Commencement of Proceeding

A proceeding under this chapter is commenced by the filing of an application for a protective order with the clerk of the court.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.03. Venue

An application may be filed:

(1) in the county where the applicant resides; or

(2) in the county where an individual alleged to have committed family violence resides.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.04. Application for Protective Order

(a) An application under this chapter is entitled "An application for a protective order."

(b) An application may be filed by:

(1) an adult member of a family or household for the protection of the applicant or for any other member of the family or household; or

(2) any adult for the protection of a child member of a family or household.

(c) A person who was a member of a household at the time the alleged family violence was committed is not barred from filing an application or from protection under this chapter even if the person no longer resides in the same household with the person who is alleged to have committed the family violence.

(d) The fee for filing an application is $16 and is to be paid to the clerk of the court in which the application is filed.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.05. Contents of Application

(a) An application must state:

(1) the name, address, and county of residence of each applicant and of each individual alleged to have committed family violence;

(2) the facts and circumstances concerning the alleged family violence;

(3) the relationships between the applicants and the individuals alleged to have committed family violence; and

(4) a request for one or more protective orders.

(b) If an application requests a protective order for a spouse and alleges that the other spouse has committed family violence, the application must

state that no suit for the dissolution of the marriage of the spouses is pending.

(c) If an applicant is a former spouse of an individual alleged to have committed family violence:

(1) a copy of the decree dissolving the marriage must be attached to the application; or

(2) the application must state that the decree is unavailable to the applicant and that a copy of the decree will be filed with the court before the hearing on the application.

(d) If an application requests a protective order for a child who is subject to the continuing jurisdiction of a court under Subtitle A, Title 2, of this code[1] or alleges that a child who is subject to the continuing jurisdiction of a court under Subtitle A, Title 2, of this code has committed family violence:

(1) a copy of the court orders affecting the conservatorship, possession, and support of or the access to the child must be filed with the application; or

(2) the application must state that the orders affecting the child are unavailable to the applicant and that a copy of the orders will be filed with the court before the hearing on the application.

(e) If the application requests the issuance of a temporary ex parte order under Section 71.15 of this code, the application must:

(1) contain a detailed description of the facts and circumstances concerning the alleged family violence and the need for immediate protective orders; and

(2) be signed by each applicant under an oath that the facts and circumstances contained in the application are true to the best knowledge and belief of each applicant.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

[1]Section 11.01 et seq.

§ 71.06. Dismissal of Application

If a suit for the dissolution of marriage is pending, no application or portion of an application involving the relationship between the spouses or their respective rights, duties, or powers may be considered, and the application or portion of the application relating to those parties shall be dismissed.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.07. Citation

(a) Each individual, other than an applicant, who is alleged to have committed family violence is entitled to service of citation on the filing of an application.

(b) Service of citation is not required before the issuance of a temporary ex parte order under Section 71.15 of this code.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.08. Answer

An individual served with citation may but is not required to file a written answer to the application. The answer may be filed at any time before the hearing.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.09. Hearing

(a) Unless a later date is requested by the applicant, the court, on the filing of an application, shall set a date and time for the hearing on the application. The date must be not later than 20 days after the date the application is filed.

(b) If a person entitled to service of citation is not served at least 48 hours before the time set for the hearing, the hearing must be rescheduled unless the person entitled to service is present at the hearing and waives notice of the hearing.

(c) If a hearing set under Subsection (a) of this section is not held because of the failure of a party to receive service of citation, the applicant may request the court to reschedule the hearing. The date for a rescheduled hearing under this subsection must be not later than 20 days after the date on which the request is made.

(d) Except as provided by Subsections (a), (b), and (c) of this section, the court may schedule hearings under this chapter as in other civil cases generally.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.10. Findings

(a) At the close of a hearing on an application, the court shall find whether or not family violence has occurred and whether or not family violence is likely to occur in the foreseeable future.

(b) If the court finds that family violence has occurred and that family violence is likely to occur in the foreseeable future, the court may make any protective order authorized by this chapter that is in the best interest of the family or household or a member of the family or household.

(c) A protective order may apply only to an individual, including an applicant, who is a party to the proceeding and who:

(1) is found to have committed family violence; or

(2) has agreed to the order under Section 71.12 of this code.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.11. Protective Order

(a) In a protective order the court may:

(1) prohibit a party from:

(A) committing family violence;

(B) directly or indirectly communicating with a member of the family or household;

(C) going to or near the residence or place of employment or business of a member of the family or household or any other place a member of the family or household may be;

(D) removing a child member of the family or household from the possession of a person named in the court order or from the jurisdiction of the court; or

(E) transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business;

(2) grant exclusive possession of a residence to a party and, if appropriate, direct one or more other parties to vacate the residence if:

(A) the residence is jointly owned or leased by the party receiving exclusive possession and by some other party denied possession;

(B) the residence is owned or leased by the party retaining possession; or

(C) the residence is owned or leased by the party denied possession but only if that party has an obligation to support the party granted possession of the residence or a child of the party granted possession;

(3) provide for possession of and access to a child of a party;

(4) require the payment of support for a party or for a child of a party if the person required to make the payment has an obligation to support the other party or the child;

(5) require one or more parties to counsel with a social worker, family service agency, physician, psychologist, or any other person qualified to provide psychological or social guidance;

(6) award to a party use and possession of specified property that is community property or jointly owned or leased; or

(7) prohibit a party from doing specified acts or require a party to do specified acts necessary or appropriate to prevent or reduce the likelihood of family violence.

(b) A protective order or an agreement approved by the court under this chapter does not affect the title to real property.

(c) A protective order made under this section that conflicts with any other court order made under Subtitle A, Title 2, of this code[1] is to the extent of the conflict invalid and unenforceable.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

[1]Section 11.01 et seq.

§ 71.12. Agreed Orders

(a) To facilitate the settlement of a proceeding under this chapter, two or more parties to the proceeding may agree in writing, subject to the approval of the court, to do or refrain from doing any act that the court could order under Section 71.11 of this code. If all or part of an agreement is approved by the court, the part of the agreement approved shall be attached to the protective order and become a part of the order of the court.

(b) An agreement that is made a part of the court's order is enforceable as a court order and is not enforceable as a contract. The agreement expires when the court order expires.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.13. Duration of Protective Orders

(a) An order made under Section 71.11 of this code is effective for the period specified in the order, not to exceed one year.

(b) An order of a court having jurisdiction of a suit for divorce or annulment prevails over a conflicting portion of an order made under this title and relating to the parties to the suit for divorce or annulment.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.14. Modification of Orders

(a) On the motion of any party, the court, after notice to the other parties and a hearing, may modify a prior order to exclude any item included in the prior order or to include any item that could have been included in the prior order.

(b) An order may not be modified to extend the period of its validity beyond one year after the date the original order was made.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.15. Temporary Orders

(a) If the court finds from the information contained in an application that there is a clear and present danger of family violence, the court, without further notice to any other member of the family or household and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the family or household. The court may direct any member of the family or household who is alleged to have committed family violence to do or refrain from doing specified acts.

(b) A temporary ex parte order is valid for the period specified in the order, not to exceed 20 days.

(c) On the request of an applicant or on the court's own initiative, a temporary ex parte order may be extended for an additional 20 days and may be extended thereafter for additional 20-day periods.

(d) The court in its discretion may dispense with the necessity of a bond in connection with a temporary ex parte order.

(e) Any member of the family or household may at any time file a motion to vacate a temporary ex parte order, and on the filing of the motion the court shall set a date for a hearing on the motion as soon as possible.

(f) During the period of its validity, a temporary ex parte order prevails over any other court order made under Subtitle A, Title 2, of this code,[1] except that on a motion to vacate the temporary ex parte order, the court shall vacate those portions of the temporary order shown to be in conflict with any other court order made under Subtitle A, Title 2, of this code.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

[1]Section 11.01 et seq.

§ 71.16. Warning on Protective Order

(a) Each protective order issued under this chapter, including a temporary ex parte order, shall have the following statement printed in bold-faced type or in capital letters:

A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS $500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH.

(b) Each protective order issued under this chapter, except a temporary ex parte order, shall have the following statement printed in bold-faced type or in capital letters:

A VIOLATION OF THIS ORDER BY COMMISSION OF FAMILY VIOLENCE MAY BE A CRIMINAL OFFENSE PUNISHABLE BY A FINE OF AS MUCH AS $2,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.17. Copies of Orders

(a) A protective order made under this chapter shall be served on the person to whom the order applies in open court at the close of the hearing or in the same manner as a writ of injunction.

(b) The clerk of the court issuing a protective order under this chapter shall send a copy of the order to the chief of police of the city where the member of the family or household protected by the order resides, if the person resides in a city, or to the sheriff of the county where the person resides, if the person does not reside in a city.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.18. Duties of Law Enforcement Agencies

In order to insure that officers responding to calls are aware of the existence and terms of protective orders issued under this chapter, each municipal police department and sheriff shall establish procedures within the department or office to provide adequate information or access to information for law enforcement officers of the names of persons protected by order issued under this chapter and of persons to whom protective orders are directed.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

§ 71.19. Relief Cumulative

Except as provided by this chapter, the relief and remedies provided by this chapter are cumulative of other relief and remedies provided by law.

[Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.]

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TITLE 1. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Section
1.001. Purpose of Code.
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§ 1.001. Purpose of Code

(a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, Regular Session, 1963 (Article 5429b–1, Ver-

non's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent human resources law more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

[Acts 1979, 66th Leg., p. 2334, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 1.002. Construction of Code

The Code Construction Act (Article 5429b–2, Vernon's Texas Civil Statutes) applies to the construction of each provision of this code, except as otherwise expressly provided by this code.

[Acts 1979, 66th Leg., p. 2335, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

TITLE 2. DEPARTMENT OF HUMAN RESOURCES

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 11. GENERAL PROVISIONS

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11.001. Definitions.
11.002. Purpose of Title; Construction.
11.003. Responsibility of Counties and Municipalities Not Affected.
11.004. Powers and Functions Not Affected.

§ 11.001. Definitions

In this title:

(1) "Board" means the Texas Board of Human Resources.

(2) "Department" means the Texas Department of Human Resources.

(3) "Commissioner" means the Commissioner of Human Resources.

(4) "Assistance" means all forms of assistance and services for needy persons authorized by Subtitle C of this title.[1]

(5) "Financial assistance" means money payments for needy persons authorized by Chapter 31 of this code.

(6) "Medical assistance" means assistance for needy persons authorized by Chapter 32 of this code.

[Acts 1979, 66th Leg., p. 2335, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[1] Section 31.01 et seq.

§ 11.002. Purpose of Title; Construction

(a) The purpose of this title is to establish a program of social security to provide necessary and prompt assistance to the citizens of this state who are entitled to avail themselves of its provisions.

(b) This title shall be liberally construed in order that its purposes may be accomplished as equitably, economically, and expeditiously as possible.

[Acts 1979, 66th Leg., p. 2335, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 11.003. Responsibility of Counties and Municipalities Not Affected

No provision of this title is intended to release the counties and municipalities in this state from the specific responsibilities they have with regard to the support of public welfare, child welfare, and relief services. Funds which the counties and municipalities may appropriate for the support of those programs may be administered through the department's local or regional offices, and if administered in that manner must be devoted exclusively to the programs in the county or municipality making the appropriation.

[Acts 1979, 66th Leg., p. 2335, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 11.004. Powers and Functions Not Affected

The provisions of this title are not intended to interfere with the powers and functions of the Texas Rehabilitation Commission, the State Commission for the Blind, the division of maternal and child health of the Texas Department of Health, or county juvenile boards.

[Acts 1979, 66th Leg., p. 2335, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

CHAPTER 12. PENAL PROVISIONS

Section
12.001. Prohibited Activities.
12.002. Unlawful Use of Funds.
12.003. Disclosure of Information Prohibited.

§ 12.001. Prohibited Activities

(a) A person who is not licensed to practice law in Texas commits an offense if the person charges a fee for representing or aiding an applicant or recipient in procuring assistance from the department.

(b) A person commits an offense if the person advertises, holds himself or herself out for, or solicits the procurement of assistance from the department.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1979, 66th Leg., p. 2336, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 12.002. Unlawful Use of Funds

(a) A person charged with the duty or responsibility of administering, disbursing, auditing, or otherwise handling the grants, funds, or money provided for in this title commits an offense if the person misappropriates the grants, funds, or money or by deception or fraud wrongfully distributes the grants, funds, or money to any person.

(b) An offense under this section is a felony punishable by confinement in the state penitentiary for a term of not less than two or more than seven years.

[Acts 1979, 66th Leg., p. 2336, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 12.003. Disclosure of Information Prohibited

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

(b) An offense under this section is a Class A misdemeanor.

[Acts 1979, 66th Leg., p. 2336, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

SUBTITLE B. STRUCTURE AND FUNCTIONS OF DEPARTMENT

CHAPTER 21. ADMINISTRATIVE PROVISIONS

Section

21.001. Department of Human Resources.
21.002. Application of Sunset Act.
21.003. Board of Human Resources.
21.004. Commissioner.
21.005. Divisions of Department; Personnel.
21.006. Local Administration.
21.007. Merit System.
21.008. Staff Development.
21.009. Political Activities Prohibited for Officers and Employees.
21.010. Budget.
21.011. Reports.
21.012. Confidentiality of Information.
21.013. Oaths and Acknowledgments.

§ 21.001. Department of Human Resources

The Texas Department of Human Resources is composed of the Texas Board of Human Resources, the Commissioner of Human Resources, and other officers and employees required to efficiently carry out the purposes of this title.

[Acts 1979, 66th Leg., p. 2337, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 21.002. Application of Sunset Act

The Texas Department of Human Resources is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the department is abolished and this title expires effective September 1, 1985.

[Acts 1979, 66th Leg., p. 2337, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 21.003. Board of Human Resources

(a) The Texas Board of Human Resources is responsible for the adoption of policies and rules for the government of the department.

(b) The board is composed of three members appointed by the governor with the advice and consent of the senate and representing all geographic regions of the state. To qualify for an appointment to the board, a person must have demonstrated an interest in and knowledge of public welfare and must have had experience as an executive or administrator.

(c) Members of the board serve for staggered terms of six years with the term of one member expiring on January 20 of each odd-numbered year.

(d) After the biennial appointment of a new member, the board shall elect a presiding officer who shall preside over meetings of the board.

(e) Two members of the board constitute a quorum for the transaction of business.

(f) The board's office is in Austin in a building designated by the State Board of Control.

(g) While performing their duties board members are entitled to $25 per day for not more than 60 days during each fiscal year. They are also entitled to reimbursement for actual expenses incurred in the performance of their duties.

[Acts 1979, 66th Leg., p. 2337, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 21.004. Commissioner

(a) The Commissioner of Human Resources is the executive and administrative officer of the department. The commissioner exercises all rights, powers, and duties imposed or conferred by law on the department unless the right, power, or duty is specifically delegated by the board to the department's agents or employees.

(b) The commissioner is appointed by the board with the advice and consent of two-thirds of the membership of the senate and serves at the pleasure of the board.

(c) To be eligible for appointment as commissioner, a person must be at least 35 years old, have been a resident citizen of Texas for at least 10 years prior to the appointment, have had experience as an executive or administrator, and not have served as an elected state officer during the six-month period preceding the appointment.

[Acts 1979, 66th Leg., p. 2337, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 21.005. Divisions of Department; Personnel

(a) The commissioner may establish divisions within the department that he considers necessary for effective administration and the discharge of the department's functions.

(b) The commissioner may allocate and reallocate functions among the divisions.

(c) The commissioner may employ personnel necessary for the administration of the department's duties.

[Acts 1979, 66th Leg., p. 2337, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 21.006. Local Administration

(a) The department shall establish a system of local administration and employ personnel necessary to carry out the purposes of this title in an economical manner.

(b) The commissioner may provide for the appointment of local boards to advise the local administrative units. The commissioner shall determine the size of the boards and the qualifications of the members. The functions of the boards may not conflict with or duplicate the functions of other boards authorized by law to advise the department.

[Acts 1979, 66th Leg., p. 2337, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 21.007. Merit System

The department may establish a merit system for its employees. The merit system may be maintained in conjunction with other state agencies that are required by federal law to operate under a merit system.

[Acts 1979, 66th Leg., p. 2337, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 21.008. Staff Development

(a) The department may establish staff development plans to assist employees in obtaining the technical and professional education required to administer the department's assistance programs more effectively and efficiently and to provide improved services to the needy. The plans must include a provision for granting paid educational leave to selected employees.

(b) The department's plans must conform to the requirements of the Department of Health, Education, and Welfare.

(c) The department may make payments for the paid educational leave or other staff development plans in the form of grants or stipends or by other methods.

(d) The cost of the staff development plans may be made out of state and federal funds within the limits of appropriated funds.

[Acts 1979, 66th Leg., p. 2337, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 21.009. Political Activities Prohibited for Officers and Employees

(a) An officer or employee of the department may not use his official authority or influence or permit the use of the programs administered by the department for the purpose of interfering with or affecting the results of an election or for any political purpose.

(b) An officer or employee of the department may not take an active part in political management or in a political campaign or participate in any political activity. However, an officer or employee retains the right to vote as he or she pleases and may express his or her opinion as a citizen on all political subjects.

(c) An officer or employee of the department may not solicit or receive, or be obliged to contribute or render, any service, assistance, subscriptions, assessments, or contributions for any political purpose.

(d) An officer or employee of the department who violates a provision of this section is subject to discharge or suspension or other disciplinary measures authorized by the department's rules.

[Acts 1979, 66th Leg., p. 2337, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 21.010. Budget

(a) The commissioner shall prepare and submit to the board for approval a biennial budget and request for an appropriation by the legislature of funds necessary to carry out the duties of the department. The budget and request must include an estimate of all federal funds to be allotted to the state for the department's purposes.

(b) The board shall submit the budget and request to the Legislative Budget Board and the governor in the manner prescribed by law.

[Acts 1979, 66th Leg., p. 2337, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 21.011. Reports

On or before October 1 of each year the commissioner shall prepare and submit to the board a full report on the operation and administration of the department together with his recommendations for changes. The board shall submit the report to the governor and the legislature.

[Acts 1979, 66th Leg., p. 2337, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 21.012. Confidentiality of Information

(a) The department shall establish and enforce reasonable rules governing the custody, use, and preservation of the department's records, papers, files, and communications. The department shall provide safeguards which restrict the use or disclosure of information concerning applicants for or recipients of the department's assistance programs to purposes directly connected with the administration of the programs.

(b) If under a provision of law lists of the names and addresses of recipients of the department's assistance programs are furnished to or held by a governmental agency other than the department, that agency shall adopt rules necessary to prevent the publication of the lists or the use of the lists for purposes not directly connected with the administration of the assistance programs.

[Acts 1979, 66th Leg., p. 2337, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 21.013. Oaths and Acknowledgments

A local representative of the department who is responsible for investigating and determining the eligibility of an applicant for assistance authorized in this title may administer oaths and take acknowledgments concerning all matters relating to the administration of this title. The representative shall sign the oaths or acknowledgments and indicate his or her position and title but need not seal the instruments. The agent has the same authority as a notary public coextensive with the limits of the state for the purpose of administering the provisions of this title.

[Acts 1979, 66th Leg., p. 2337, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

CHAPTER 22. GENERAL FUNCTIONS OF DEPARTMENT

Section

22.001. General Powers and Duties of the Department.
22.002. Administration of Federal Welfare Programs.
22.003. Research and Demonstration Projects.
22.004. Provision of Legal Services.
22.005. Funds.

§ 22.001. General Powers and Duties of the Department

(a) The department is responsible for administering the welfare functions authorized in this title.

(b) The department shall administer assistance to needy persons who are aged, blind, or disabled and to needy families with dependent children. The department shall also administer or supervise general relief and child welfare services.

(c) The department shall assist other governmental agencies in performing services in conformity with the purposes of this title when so requested and shall cooperate with the agencies when expedient.

(d) The department shall conduct research and compile statistics on public welfare programs in the state. The research must include all phases of dependency and delinquency and related problems. The department shall cooperate with other public and private agencies in developing plans for the prevention and treatment of conditions giving rise to public welfare problems.

[Acts 1979, 66th Leg., p. 2340, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 22.002. Administration of Federal Welfare Programs

(a) The department is the state agency designated to cooperate with the federal government in the administration of Titles IV, XIX, and XX of the federal Social Security Act.[1] The department shall ± administer other titles added to the act after January 1, 1979, unless another state agency is designated by law to perform the additional functions. The department shall cooperate with federal, state, and local governmental agencies in the enforcement and administration of the federal act, and shall promulgate rules to effect that cooperation.

(b) The department shall cooperate with the United States Department of Health, Education, and Welfare and other federal agencies in a reasonable manner and in conformity with the provisions of this title to the extent necessary to quality for federal assistance for persons entitled to benefits under the federal Social Security Act.[2] The department shall make reports periodically in compliance with federal regulations.

(c) The department may establish and maintain programs of assistance and services authorized by federal law and designed to help needy families and individuals attain and retain the capability of independence and self-care. Notwithstanding any other provision of law, the department may extend the scope of its programs to the extent necessary to ensure that federal matching funds are available, if the department determines that the extension of scope is feasible and within the limits of appropriated funds.

(d) If the department determines that a provision of state welfare law conflicts with a provision of federal law, the department may promulgate policies and rules necessary to allow the state to receive and expend federal matching funds to the fullest extent possible in accordance with the federal statutes and the provisions of this title and the state constitution and within the limits of appropriated funds.

(e) The department may accept, expend, and transfer federal and state funds appropriated for programs authorized by federal law. The department may accept, expend, and transfer funds received from a county, municipality, or public or private agency or from any other source, and the funds shall be deposited in the state treasury subject to withdrawal on order of the commissioner in accordance with the department's rules.

(f) The department may enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized in Subsection (c) of this section. The agreements or contracts between the department and other state agencies are not subject to the Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes).

[Acts 1979, 66th Leg., p. 2340, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[1] 42 U.S.C.A. § 501 et seq.; 42 U.S.C.A. § 1396 et seq.; 42 U.S.C.A. § 1397 et seq.

[2] 42 U.S.C.A. § 301 et seq.

§ 22.003. Research and Demonstration Projects

(a) The department may conduct research and demonstration projects that in the judgment of the commissioner will assist in promoting the purposes of the department's assistance programs. The department may conduct the projects independently or in cooperation with a public or private agency.

(b) The department may use state or federal funds available for its assistance programs or for research and demonstration projects to support the projects. The projects must be consistent with the state and federal laws making the funds available.

[Acts 1979, 66th Leg., p. 2340, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 22.004. Provision of Legal Services

(a) On request, the department may provide legal services to an applicant for or recipient of assistance at a hearing before the department.

(b) The services must be provided by an attorney licensed to practice law in Texas or by a law student acting under the supervision of a law teacher or a legal services organization, and the attorney or law student must be approved by the department.

(c) The department shall adopt a reasonable fee schedule for the legal services. The fees may not exceed those customarily charged by an attorney for similar services for a private client. The fees may be paid only from funds appropriated to the department for the purpose of providing these legal services.

[Acts 1979, 66th Leg., p. 2340, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 22.005. Funds

(a) The children's assistance fund and the medical assistance fund are separate accounts in the Texas Department of Human Resources fund. Money in the separate accounts may be expended only for the purposes for which the accounts were created or as otherwise provided by law.

(b) The comptroller shall maintain a department of human resources administration operating fund and a department of human resources assistance operating fund as funds in the state treasury. The commodity distribution fund may not be included in these operating funds.

(c) On authorization by the department, the comptroller may transfer funds appropriated for the operation of the department, current revenues, and balances on hand into the department of human resources administration operating fund or the department of human resources assistance operating fund. On authorization by the department, the comptroller shall transfer designated funds between the two operating funds.

(d) With the approval of the state auditor, the department shall establish an internal accounting system, and the department's expenditures shall be allocated to the various funds according to the system. At the end of each fiscal biennium the department shall report to the comptroller the amount of the unencumbered balances in each of the department's operating funds that belongs to the children's assistance fund and the medical assistance fund, and those unencumbered balances shall be returned to the appropriate special fund.

(e) If the department determines that a transfer among appropriated state funds is needed to match federal medical assistance funds, the department may authorize the comptroller in writing to transfer funds allocated to the children's assistance fund into the medical assistance fund, and the department may use the transferred funds to provide medical assistance to the greatest extent possible within the limits of state and federal law.

(f) The state treasurer is the designated custodian of all funds administered by the department and received by the state from the federal government or any other source for the purpose of implementing the provisions of the Social Security Act.[1] The treasurer may receive the funds, pay them into the proper fund or account of the general fund of the state treasury, provide for the proper custody of the funds, and make disbursements of the funds on the

order of the department and on warrant of the comptroller.

[Acts 1979, 66th Leg., p. 2340, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[1] 42 U.S.C.A. § 301 et seq.

SUBTITLE C. ASSISTANCE PROGRAMS

CHAPTER 31. FINANCIAL ASSISTANCE AND SERVICE PROGRAMS

SUBCHAPTER A. ELIGIBILITY FOR FINANCIAL ASSISTANCE AND SERVICES

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31.003. Amount of Financial Assistance.
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31.006. Welfare and Related Services.
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31.008. Counseling and Guidance Services.
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SUBCHAPTER A. ELIGIBILITY FOR FINANCIAL ASSISTANCE AND SERVICES

§ 31.001. Aid to Families With Dependent Children

The department shall provide financial assistance and services to families with dependent children in accordance with the provisions of this chapter.

[Acts 1979, 66th Leg., p. 2343, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.002. Definition of Dependent Child

(a) In this chapter, the term "dependent child" applies to a child:

(1) who is a resident of this state;

(2) who is under 18 years of age or is under 21 years of age and is regularly attending a school, college, university, or vocational or technical training program in accordance with standards set by the department;

(3) who has been deprived of parental support or care because of the death, continued absence from home, or physical or mental incapacity of a parent;

(4) who has insufficient income or other resources to provide a reasonable subsistence compatible with health and decency; and

(5) who is living in the home residence of his or her father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(b) In this chapter, the term "dependent child" also applies to a child:

(1) who meets the specifications set forth in Subdivisions (1)–(4) of the preceding subsection;

(2) who has been removed from the home of a relative specified in Subdivision (5) of the preceding subsection as a result of a judicial determination that the child's residence there is contrary to his or her welfare;

(3) whose placement and care are the responsibility of the department or an agency with which the department has entered into an agreement for the care and supervision of the child;

(4) who has been placed in a foster home or child-care institution by the department; and

(5) for whom the state may receive federal funds for the purpose of providing foster care in accordance with rules promulgated by the department.

[Acts 1979, 66th Leg., p. 2343, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.003. Amount of Financial Assistance

(a) The department shall adopt rules governing the determination of the amount of financial assistance to be granted for the support of a dependent child. The amount granted, when combined with the income and other resources available for the child's support, must be sufficient to provide the child with a subsistence compatible with decency and health.

(b) In considering the amount of income or other resources available to a child or a relative claiming financial assistance on the child's behalf, the department shall also consider reasonable expenses attributable to earning the income. The department may permit all or part of the earned or other income to be set aside for the future identifiable needs of the child, subject to limitations prescribed by the department.

(c) The department's agents employed in the region or county in which the dependent child resides shall determine the amount to be paid in accordance with the rules promulgated by the department.

[Acts 1979, 66th Leg., p. 2343, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.004. Foster Care

The department may accept and spend funds available from any source to provide foster care in facilities approved by the licensing division of the department for dependent children who meet the specifications set out in Section 31.002(b) of this code.

[Acts 1979, 66th Leg., p. 2343, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.005. Dependent Child Residing With Relatives

(a) If after an investigation the department determines that a family with a dependent child is needy and that the child resides with the family, the department shall provide financial assistance and services for the support of the family.

(b) The department shall formulate policies for studying and improving the child's home conditions and shall plan services for the protection of the child and for the child's health and educational needs.

(c) A dependent child who is between 18 and 21 years of age and whose family is receiving financial assistance or services on his or her behalf must enroll in school during the regular school term unless the department finds that good cause exists for the nonattendance of the child at school. Failure to comply with this requirement constitutes good cause for the termination of the financial assistance or services.

(d) The department shall develop a plan for the coordination of the services provided for dependent children under this chapter and other child welfare services for which the department is responsible.

[Acts 1979, 66th Leg., p. 2343, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.006. Welfare and Related Services

(a) The department shall develop and implement a program of welfare and related services for each dependent child which, in light of the particular home conditions and other needs of the child, will best promote the welfare of the child and his or her family and will help to maintain and strengthen family life by assisting the child's parents or relatives to attain and retain their capabilities for maximum self-support and personal independence consistent with the maintenance of continued parental care and protection.

(b) The department shall coordinate the services provided under the program with other services provided by the department and by other public and private welfare agencies for the care and protection of children.

(c) The department may promulgate rules which will enable it to fully participate in work and training programs authorized by federal law, to provide for all services required or deemed advisable under the provisions of the program, and to accept, transfer, and expend funds made available from public or private sources for the purpose of carrying out the provisions of this section.

[Acts 1979, 66th Leg., p. 2343, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.007. Financial Assistance to Individuals in Institutions

A person who is in an institution is eligible to receive financial assistance under this chapter if the person would be eligible to receive the financial assistance if he were not in an institution and if the payments are made in accordance with the department's rules promulgated in conformity with federal law and rules.

[Acts 1979, 66th Leg., p. 2343, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.008. Counseling and Guidance Services

(a) If the department believes that financial assistance to a family with a dependent child is not being, or may not be, used in the best interest of the child, the department may provide counseling and guidance services to the relative receiving financial assistance with respect to the use of the funds and the management of other funds in the child's best interest.

(b) The department may advise the relative that continued failure to use the funds in the child's best interest will result in the funds being paid to a substitute payee. If the department determines that protective payments are required to safeguard the best interest of the child, the department may pay the funds to a substitute payee on a temporary basis in accordance with the department's rules.

(c) If the situation in the home which made the protective payments necessary does not improve, and if the department determines that the relative with whom the child is living is unable or does not have the capacity to use the funds for the best interest of the child, then the department may make arrangements with the family for other plans for the care of the child. The other plans may include:

(1) removing the child to the home of another relative;

(2) appointment of a guardian or legal representative for the relative with whom the child is living;

(3) imposition of criminal or civil penalties if a court determines that the relative is not using, or has not used, the payments for the benefit of the child; or

(4) referral of the case to a court for the removal of the child and the placement of the child in a foster home.

(d) The department may make payments on behalf of a dependent child residing in a foster family home or a child-care institution in accordance with the provisions of this chapter and the rules of the department.

[Acts 1979, 66th Leg., p. 2343, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.009. Required Registration With Texas Employment Commission

(a) A person who is required to register with the Texas Employment Commission under the Employment Incentive Act [1] is not eligible to receive financial assistance under this chapter until the person is registered.

(b) Before making a payment, the department shall determine whether the person to whom the payment is to be made is required to register with the Texas Employment Commission under the Employment Incentive Act, and if the person is required to register, whether the person is registered. If the department finds that a person who is required to register is not registered, the department may not make the payment.

(c) On receipt of notice from the Texas Employment Commission that a person has failed to comply with the Employment Incentive Act, the department shall immediately terminate the person's financial assistance.

(d) The department shall maintain a current record of all persons found to be ineligible to receive financial assistance for failure to comply with the Employment Incentive Act. The department shall distribute the record to each division within the department in which the record is or may be relevant in determining eligibility for any welfare benefits.

(e) The department shall arrange placement of the dependent children of an ineligible person with another person or with an institution if the department determines that alternative care is in the best interest of the children.

[Acts 1979, 66th Leg., p. 2343, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[1] Civil Statutes, art. 695n.

§ 31.010. Services

The department may provide services designed to assist needy families and individuals attain and retain the capability of independence and self-care if federal matching funds are available for the support of the services.

[Acts 1979, 66th Leg., p. 2343, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 31.011 to 31.030 reserved for expansion]

SUBCHAPTER B. ADMINISTRATION OF FINANCIAL ASSISTANCE AND SERVICES

§ 31.031. Application for Assistance

(a) The department by rule shall prescribe the form for applications for assistance authorized by this chapter and the manner of their submission.

(b) The department may require the applicant to state the amount of property in which he or she has an interest, the amount of income which he or she has at the time the application is filed, and other information.

[Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.032. Investigation and Determination of Eligibility

(a) On receipt of an application for assistance authorized by this chapter, the department shall investigate and record the applicant's circumstances in order to ascertain the facts supporting the application and to obtain other information it may require.

(b) After completing its investigation, the department shall determine whether the applicant is eligible for the assistance, the type and amount of assistance, the date on which the assistance shall begin, and the manner in which payments shall be made.

(c) The department shall promptly notify the applicant of its final action.

[Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.033. Reinvestigation and Redetermination of Eligibility

(a) The department may require periodic reconsideration of continued eligibility for assistance.

(b) After reconsideration of continuing eligibility, the department may change the amount of assistance or withdraw it if the department finds that the recipient's circumstances have altered sufficiently to warrant that action.

(c) The department may cancel or suspend assistance for a period of time if the department finds that the recipient is currently ineligible to receive it.

(d) The department shall notify the recipient immediately of its decision to change or withdraw assistance.

(e) A recipient of assistance must notify the department immediately if he or she comes into possession of income or resources in excess of the amount previously reported.

[Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.034. Appeal from Local Administrative Units

(a) An applicant for or recipient of financial assistance authorized by this chapter may appeal to the department an action or failure to act by a local administrative unit relating to the financial assistance. The department shall grant the applicant or recipient an opportunity for a hearing after reasonable notice.

(b) An applicant or recipient, or his or her authorized agent, may submit a written request for the information contained in the unit's records on which the action being appealed is based, and the unit shall advise the person making the request of the information within a reasonable time prior to the hearing. Information not provided to the requesting party may not be considered by the department at the hearing as a basis for decision.

[Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.035. Method of Payment

(a) The department shall periodically furnish the comptroller with a list of persons eligible for financial assistance under this chapter and the amount to which each person is entitled.

(b) The comptroller shall draw warrants for the specified amounts on the proper accounts of the Texas Department of Human Resources fund and shall transmit the warrants to the commissioner. The commissioner shall supervise the delivery of the warrants to the persons entitled to them.

[Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.036. Eligibility of Person Leaving the State

A recipient of assistance who moves out of the state is no longer eligible for the assistance. However, a recipient's temporary absence from the state for reasons and for periods of time approved by the department does not terminate the recipient's eligibility for assistance.

[Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.037. Payment of Financial Assistance Funds on Death of Recipient

(a) If a person dies during a month for which the person is eligible for financial assistance and has not endorsed or cashed the warrant issued for financial assistance during that month, the department may pay financial assistance to the person who was responsible for caring for the recipient at the time of his or her death and who is responsible for paying the obligations incurred by the recipient.

(b) The department shall adopt rules prescribing the method of determining the person entitled to receive the deceased recipient's financial assistance, the manner of payment of the funds, and limitations on the payments.

(c) Payments to persons responsible for deceased recipients under this section may be made only in the manner and to the extent permissible under the laws and regulations governing the disbursement of funds received through the Department of Health, Education, and Welfare.

[Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.038. Cancellation of Uncashed Warrants

On authorization by the department, the comptroller may cancel financial assistance warrants that have not been cashed within a reasonable period of time after issuance.

[Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.039. Issuance of Duplicate Assistance Warrants

(a) Except as provided by Subsection (b) of this section, the comptroller may issue a duplicate financial assistance warrant to a recipient who has failed to receive or has lost the original warrant in accordance with Article 4365, Revised Civil Statutes of Texas, 1925, as amended.

(b) The comptroller may not issue a duplicate financial assistance warrant after one year from the date the original warrant was issued.

[Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.040. Nontransferability of Assistance Funds

The right to financial assistance granted to recipients under this chapter may not be transferred or assigned at law or in equity, and the funds are not subject to execution, levy, attachment, garnishment, or other legal process or to the operation of an insolvency law.

[Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.041. Right to Assistance Not Vested

(a) The provisions of this chapter providing assistance shall not be construed as vesting a right in the recipient to the assistance.

(b) Assistance granted under this chapter is subject to modification or repeal by the legislature, and a recipient has no claim for compensation or otherwise because the law authorizing the assistance is amended or repealed.

[Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 31.042. Proration of Financial Assistance

If at any time state funds are not available to pay in full all financial assistance authorized in this chapter, the department may direct the proration of the financial assistance.

[Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

CHAPTER 32. MEDICAL ASSISTANCE PROGRAM

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SUBCHAPTER A. GENERAL PROVISIONS

§ 32.001. Purpose of Chapter

The purpose of this chapter is to enable the state to provide medical assistance on behalf of needy individuals and to enable the state to obtain all benefits for those persons authorized under the Social Security Act or any other federal act.

[Acts 1979, 66th Leg., p. 2348, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 32.002. Construction of Chapter

(a) This chapter shall be liberally construed and applied in relation to applicable federal laws and regulations so that adequate and high quality health care may be made available to all children and adults who need the care and are not financially able to pay for it.

(b) If a provision of this chapter conflicts with a provision of the Social Security Act[1] or any other federal act and renders the state program out of conformity with federal law to the extent that federal matching money is not available to the state, the conflicting provision of state law shall be inoperative to the extent of the conflict but shall not affect the remainder of this chapter.

[Acts 1979, 66th Leg., p. 2348, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[1] 42 U.S.C.A. § 301 et seq.

§ 32.003. Definition of Medical Assistance

In this chapter, "medical assistance" includes all of the health care and related services and benefits authorized or provided under federal law for needy individuals of this state.

[Acts 1979, 66th Leg., p. 2348, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 32.004 to 32.020 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 32.021. Administration of the Program

(a) The department is the state agency designated to administer the medical assistance program provided in this chapter.

(b) The department shall enter into agreements with any federal agency designated by federal law to administer medical assistance when the department determines the agreements to be compatible with the state's participation in the medical assistance program and within the limits of appropriated funds. The department shall cooperate with federal agencies designated by federal law to administer medical assistance in any reasonable manner necessary to qualify for federal funds.

(c) The department shall establish methods of administration and adopt necessary rules for the proper and efficient operation of the program.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 32.022. Medical Care Advisory Committee

(a) The commissioner shall appoint a medical care advisory committee to advise the department in developing and maintaining the medical assistance program and in making immediate and long-range plans for reaching the program's goal of providing high quality, comprehensive medical and health care services to needy persons in the state.

(b) The commissioner shall appoint the committee of the size, membership, and experience the commissioner determines essential for the implementation of the program and in compliance with the federal agency administering medical assistance.

(c) The department shall adopt rules for membership on the committee to provide for efficiency of operation, rotation, stability, continuity, and representation of the various professions and disciplines authorized to provide medical assistance.

(d) Members of the committee receive no compensation for their services but are entitled to reimbursement for actual expenses incurred in performing committee duties.

(e) The commissioner may appoint regional and local medical care advisory committees and other advisory committees he considers necessary.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 32.023. Cooperation With Other State Agencies

(a) The department's plan for administering medical assistance must include procedures for using health services administered by other state agencies pursuant to cooperative arrangements.

(b) The department may enter into agreements with appropriate state agencies that will enable the department to implement Title XIX of the federal Social Security Act [1] to provide medical assistance for individuals in institutions or in alternate care arrangements. The agreements must comply with federal law and rules. The department may make medical assistance payments in accordance with the agreements. The agreements are not subject to the Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes).

(c) State agencies responsible for the administration or supervision of facilities to which medical assistance payments may be made under federal law shall enter into the agreements with the department and maintain compliance with the agreements so that the department may receive federal matching funds to support the medical assistance program.

(d) The department may pay medical assistance to other facilities as required under federal law and rules.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[1] 42 U.S.C.A. § 1396 et seq.±

§ 32.024. Authority and Scope of Program; Eligibility

(a) The department shall provide medical assistance to all persons who receive financial assistance from the state under Chapter 31 of this code and to other related groups of persons if the provision of medical assistance to those persons is required by federal law and rules as a condition for obtaining federal matching funds for the support of the medical assistance program.

(b) The department may provide medical assistance to other persons who are financially unable to meet the cost of medical services if federal matching funds are available for that purpose. The department shall adopt rules governing the eligibility of those persons for the services.

(c) The department shall establish standards governing the amount, duration, and scope of services provided under the medical assistance program. The standards may not be lower than the minimum standards required by federal law and rule as a condition for obtaining federal matching funds for support of the program, and may not be lower than the standards in effect on August 27, 1967. Standards or payments for the vendor drug program may not be lower than those in effect on January 1, 1973.

(d) The department may establish standards that increase the amount, duration, and scope of the services provided only if federal matching funds are available for the optional services and payments and if the department determines that the increase is feasible and within the limits of appropriated funds. The department may establish and maintain priorities for the provision of the optional medical services.

(e) The department may not authorize the provision of any service to any person under the program unless federal matching funds are available to pay the cost of the service.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 32.025. Application for Medical Assistance

(a) A recipient of benefits under Chapter 31 of this code or supplemental security income from the federal government is automatically eligible for medical assistance, and an application for benefits under these programs constitutes an application for medical assistance.

(b) The department shall prescribe application forms for persons who are not recipients of benefits under Chapter 31 of this code or supplemental security income from the federal government and shall adopt rules for processing the applications.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 32.026. Certification of Eligibility and Need for Medical Assistance

(a) The department shall promulgate rules for determining and certifying a person's eligibility and need for medical assistance.

(b) Medical assistance payments may not be made on a person's behalf until the person's eligibility and need for medical assistance have been certified in accordance with the department's rules.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 32.027. Selection of Provider of Medical Assistance

(a) A recipient of medical assistance authorized in this chapter may select any provider authorized by the department to provide medical assistance.

(b) The department shall assure that a recipient of medical assistance under this chapter may select a licensed podiatrist to perform any foot health care service or procedure covered under the medical assistance program if the podiatrist is authorized by law to perform the service or procedure. This subsection shall be liberally construed.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 32.028. Fees, Charges, and Rates

(a) The department shall adopt reasonable rules and standards governing the determination of fees, charges, and rates for medical assistance payments.

(b) The fee, charge, or rate for a professional service is the usual and customary fee, charge, or rate that prevails in the community.

(c) The fee, charge, or rate for other medical assistance is the usual and customary fee, charge, or rate that prevails in the community unless the payment is limited by state or federal law.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 32.029. Methods of Payment

(a) The department may prescribe a method of payment for medical assistance claims by establishing a direct vendor payment program that is administered by the department, or by an insurance plan, a hospital or medical service plan, or any other health service plan authorized to do business in the state, or by a combination of those plans.

(b) The department may use any fiscal intermediary, method of payment, or combination of methods it finds most satisfactory and economical. The department may make whatever changes it finds necessary from time to time to administer the program in an economical and equitable manner consistent with simplicity of administration and the best interest of the recipients of medical assistance.

(c) If the department elects to make direct vendor payments, the payments shall be made by vouchers and warrants drawn by the comptroller on the proper account of the Texas Department of Human Resources fund. The department shall furnish the comptroller with a list of those vendors entitled to payments and the amounts to which each is entitled. When the warrants are drawn, they must be delivered to the commissioner, who shall supervise the delivery to vendors.

(d) If at any time state funds are not available to fully pay all claims for medical assistance, the board shall prorate the claims.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 32.030. Medical Assistance Fund

(a) The medical assistance fund is a special fund in the treasury and constitutes a separate account in the Texas Department of Human Resources fund. The fund may be expended only for the purpose of carrying out the provisions of this chapter.

(b) When necessary the department may request the transfer of money appropriated for financial assistance to the medical assistance fund. The transfer shall be requested and made in the manner authorized in the General Appropriations Act and in accordance with the department's rules.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 32.031. Receipt and Expenditure of Funds

(a) The department may accept federal funds for the support of the medical assistance program and may expend the funds in the manner prescribed by this chapter or other laws. The expenditures must be made in accordance with appropriate agreements between the state and the federal government.

(b) The department may administer and expend state funds appropriated for the program in accordance with its rules and the provisions of this chapter.

(c) The amount of state funds spent for medical assistance on behalf of a qualified individual may not exceed the amount that is matchable with federal funds, and the total amount of state funds spent for all medical assistance on behalf of all qualified individuals may not exceed the amount that is matchable with federal funds.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 32.032. Prevention and Detection of Fraud

The department shall adopt reasonable rules for minimizing the opportunity for fraud, for establishing and maintaining methods for detecting and identifying situations in which a question of fraud in the program may exist, and for referring cases where fraud appears to exist to the appropriate law enforcement agencies for prosecution.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 32.033. Subrogation

(a) The filing of an application for or receipt of medical assistance constitutes an assignment of the applicant's or recipient's right of recovery from:

(1) personal insurance;

(2) other sources; or

(3) another person for personal injury caused by the other person's negligence or wrong.

(b) A person who applies for or receives medical assistance shall inform the department, at the time of application or at any time during eligibility and receipt of services, of any unsettled tort claim which may affect medical needs and of any private accident or sickness insurance coverage that is or may become available. A recipient shall inform the department of any injury requiring medical attention that is caused by the act or failure to act of some other person. An applicant or a recipient shall inform the department as required by this subsection within 60 days of the date the person learns of his or her insurance coverage, tort claim, or potential cause of action. An applicant or a recipient who knowingly and intentionally fails to disclose the information required by this subsection commits a Class C misdemeanor.

(c) A claim for damages for personal injury does not constitute grounds for denying or discontinuing assistance under this chapter.

(d) A separate and distinct cause of action in favor of the state is hereby created, and the department may, without written consent, take direct civil action in any court of competent jurisdiction. A suit brought under this section need not be ancillary to or dependent upon any other action.

(e) The department's right of recovery is limited to the amount of the cost of medical care services paid by the department. Other subrogation rights granted under this section are limited to the cost of the services provided.

(f) The commissioner may waive the department's right of recovery in whole or in part when the commissioner finds that enforcement would tend to defeat the purpose of public assistance.

(g) The department may designate an agent to collect funds the department has a right to recover from third parties under this section. The department shall use any funds collected to pay costs of administering the medical assistance program.

(h) The department may adopt rules for the enforcement of its right of recovery.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2436, ch. 842, art. 2, § 10, eff. Sept. 1, 1979.]

§ 32.034. Contract Cancellation; Notice and Hearing

(a) When the department intends to cancel its contract with a person providing medical assistance, the department shall give reasonable notice and an opportunity for a hearing if one is requested. The department shall adopt rules consistent with the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes) to implement this section, and hearings under this section are contested cases under that act.

(b) The department may not terminate a contract during the pendency of a hearing under this section. The department may withhold payments during the pendency of a hearing, but the department shall pay the withheld payments and resume contract payments if the final determination is favorable to the contractor.

(c) The section does not apply if a contract is cancelled because federal matching funds for contract payments are no longer available or if the contract expires according to its terms.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 32.035. Appeals

The provisions of Section 31.034 of this code governing the right of appeal of an applicant for or recipient of financial assistance authorized under Chapter 31 of this code also apply to applicants for medical assistance authorized in this chapter.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 32.036. Program Payments Nonassignable and Exempt from Legal Process

(a) Neither medical assistance nor payments to providers of medical assistance under this chapter are transferable or assignable at law or in equity.

(b) No money paid or payable under the provisions of this chapter is subject to execution, levy, attachment, garnishment, or any other legal process, or the operation of any insolvency law.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 32.037. Geriatric Center

(a) The department may accept one geriatric center in the city of Austin from the federal government to be operated as a nursing home and a training facility and used in administering the department's programs.

(b) The department may charge reasonable fees for providing nursing home care. However, fees charged persons receiving medical assistance under this chapter may not exceed the amounts paid on their behalf under this chapter.

(c) Fees collected by the department under this section shall be deposited in a special fund in the state treasury or in accounts in financial institutions and may be used by the department to operate the nursing home.

(d) The department may use funds appropriated for nursing home care under its medical services programs for the maintenance and improvement of the property acquired under this section and for the operation of the nursing home.

[Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

CHAPTER 33. NUTRITIONAL ASSISTANCE PROGRAMS

Section

33.001. Distribution of Surplus Commodities.
33.002. Distribution of Commodities and Food Stamps.
33.003. Distribution Districts; Agents.
33.004. Advisory Boards.
33.005. Processing Perishable Commodities.
33.006. Handling Charges.
33.007. Commodity Distribution Fund.
33.008. Sale of Used Commodity Containers.
33.009. Revolving Funds.
33.010. Sale of Equipment and Property.
33.011. Prohibited Activities; Penalties.

§ 33.001. Distribution of Surplus Commodities

(a) The department is the state agency designated to cooperate with the federal government in administering the distribution of federal surplus commodities and other resources.

(b) The department may cooperate with a city or county in any manner necessary for the proper operation of this program.

[Acts 1979, 66th Leg., p. 2353, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 33.002. Distribution of Commodities and Food Stamps

(a) The department is responsible for the distribution of commodities and food stamps allocated to the department by the federal government.

(b) The department may enter into agreements with federal agencies that are required as a prerequisite to the allocation of the commodities or food stamps. The department may enter into agreements with eleemosynary institutions, schools, and other eligible agencies and recipients of the commodities and food stamps.

(c) The department shall establish policies and rules that will ensure the widest and most efficient distribution of the commodities and food stamps to those eligible to receive them.

[Acts 1979, 66th Leg., p. 2353, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 33.003. Distribution Districts; Agents

(a) The department may establish distribution districts and employ distributing agents or may make other arrangements necessary to provide for the efficient distribution of commodities and food stamps.

(b) A distributing agent must be bonded. The department shall audit a distributing agent's records at least once annually and at any other time considered expedient by the department.

[Acts 1979, 66th Leg., p. 2353, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 33.004. Advisory Boards

(a) The department may establish state or district-level advisory boards to facilitate the operations of the commodity distribution or food stamp programs.

(b) The advisory boards shall be of the size, membership, and experience that the commissioner determines to be essential for the accomplishment of the purposes of this chapter and not in conflict with or duplicative of other laws on this subject.

[Acts 1979, 66th Leg., p. 2353, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 33.005. Processing Perishable Commodities

(a) The department may enter into nonprofit contracts with state institutions or state or private agencies for the processing of perishable commodities to preserve them for subsequent distribution to eligible recipients.

(b) The cost of processing shall be borne by each recipient on a pro rata basis in relation to the amount of the processed commodities received by each distribution district.

[Acts 1979, 66th Leg., p. 2353, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 33.006. Handling Charges

(a) The department may assess reasonable handling charges against the recipients of commodities or food stamps to cover the cost of distribution. The total operation must be conducted on a nonprofit basis.

(b) The department shall make the assessments at the times and in the amounts that it considers necessary for the proper administration of the programs. However, the assessments must be uniform in each distribution district and may not exceed 60 cents per recipient per year.

[Acts 1979, 66th Leg., p. 2353, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 33.007. Commodity Distribution Fund

(a) Funds received from assessments for handling charges pursuant to Section 33.006 of this code shall be paid to the department and deposited in a separate account in the state treasury subject to withdrawal on authorization of the commissioner.

(b) The funds may be used only for necessary expenses incurred in operating the commodity distribution and food stamp programs, and their use is subject to the rules of the department, the provisions of this chapter, and the provisions of the general appropriation acts of the legislature.

(c) If the commodity distribution program or food stamp program is terminated, funds remaining in the account after all due and just accounts have been paid shall be refunded to the contributors on a pro rata basis.

[Acts 1979, 66th Leg., p. 2353, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 33.008. Sale of Used Commodity Containers

The department may sell used commodity containers. Proceeds from the sales in each distribution district shall be deposited in the commodity distribution fund and used for the commodity distribution program.

[Acts 1979, 66th Leg., p. 2353, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 33.009. Revolving Funds

(a) The department may establish a revolving fund or petty cash expense fund in each distribution district to provide for emergency payments for services, goods, or other necessary activities. The commissioner shall determine the amount of each fund on the basis of the anticipated needs of each district and in accordance with the department's rules.

(b) The revolving funds shall be established and reimbursed with funds received as assessments for handling charges.

(c) The revolving fund at the disposal of each distributing agent shall be deposited in a bank designated by the commissioner in an account known as the commodity distribution fund. The money shall be expended on the authority of the distributing agent under the direction of the department.

(d) The distributing agent shall make a monthly report to the department of the funds received and disbursed.

(e) If the commodity distribution program and food stamp program are terminated the money remaining in the commodity distribution fund in each district shall be refunded to the contributors on a pro rata basis after all due and just accounts are paid.

[Acts 1979, 66th Leg., p. 2353, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 33.010. Sale of Equipment and Property

If the commodity distribution and/or food stamp programs are terminated, equipment and property purchased with funds from the commodity distribution fund shall be sold by competitive bids. The proceeds from the sales shall be deposited in the commodity distribution fund in each district and distributed in the manner specified by Section 33.009 of this code.

[Acts 1979, 66th Leg., p. 2353, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 33.011. Prohibited Activities; Penalties

(a) A person commits an offense if the person knowingly uses, alters, or transfers food stamp coupons or authorizations to participate in the food stamp program in any manner not authorized by law. An offense under this subsection is a Class A misdemeanor if the value of the coupons or authorization cards is less than $200 and a felony of the third degree if the value of the coupons or authorization cards is $200 or more.

(b) A person commits an offense if the person knowingly possesses food stamp coupons or authorizations to participate in the food stamp program when not authorized by law to possess them, knowingly redeems food stamp coupons when not authorized by law to redeem them, or knowingly redeems food stamp coupons for purposes not authorized by law. An offense under this subsection is a Class A misdemeanor if the value of the coupons or authorization cards is less than $200 and a felony of the third degree if the value of the coupons or cards is $200 or more.

(c) A person commits an offense if the person knowingly possesses blank authorizations to participate in the food stamp program when not authorized by law to possess them. An offense under this subsection is a felony of the third degree.

(d) When food stamp coupons or authorizations to participate in the food stamp program of various values are obtained in violation of this section pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the values aggregated in determining the grade of the offense.

(e) The department may contract with county commissioners courts to provide funds to pay for professional and support services necessary for the enforcement of any criminal offense that involves illegally obtaining, possessing, or misusing food stamps.

[Acts 1979, 66th Leg., p. 2353, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2435, ch. 842, art. 2, § 6, eff. Sept. 1, 1979.]

Section 1 of Acts 1979, 66th Leg., p. 1648, ch. 689, eff. June 13, 1979, amending § 7-B of former Vernon's Ann.Civ.St. art. 695c, was incorporated into the Human Resources Code by Acts 1979, 66th Leg., p. 2435, ch. 842, art. 2, § 6, eff. Sept. 1, 1979. Section 2 of ch. 689 provided:

"Sec. 2. This Act does not affect offenses committed under Section 7-B, The Public Welfare Act of 1941, as added (Article 695c, Vernon's Texas Civil Statutes), before the effective date of this Act. Such an offense is covered by the law in effect on the date that the offense was committed, and the former law is continued in effect for the prosecution of the offense."

SUBTITLE D. CHILD WELFARE AND PROTECTIVE SERVICES

CHAPTER 41. CHILD WELFARE SERVICES

SUBCHAPTER A. GENERAL WELFARE SERVICES

Section

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SUBCHAPTER B. FOSTER CARE

41.021. Foster Care Payments.
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41.024. Parent or Guardian Liability.
41.025. Medical Services Limitation.

SUBCHAPTER A. GENERAL WELFARE SERVICES

§ 41.001. Duties of Department

(a) The department shall promote the enforcement of all laws for the protection of illegitimate,

dependent, neglected, and delinquent children, and shall take the initiative in all matters involving the interests of these children where adequate provision for them has not already been made.

(b) The department shall give special attention to the dissemination of information through bulletins and visits, where practical, to all agencies operating under a provision of law affecting the welfare of these children.

(c) Through the county child welfare boards, the department shall work in conjunction with the commissioners courts, juvenile boards, and all other officers and agencies involved in the protection of these children. The department may use and allot funds for the establishment and maintenance of homes, schools, and institutions for the care, protection, education, and training of these children in conjunction with a juvenile board, a county or city board, or any other agency. However, the funds must be specifically appropriated by the legislature for this purpose.

(d) The department shall visit and study the conditions in state-supported eleemosynary institutions for these children and shall make recommendations for the management and operation of the institutions which will ensure that the children receive the best possible training in contemplation of their earliest discharge from the institutions.

(e) The department may not spend state funds to accomplish the purposes of this chapter unless the funds have been specifically appropriated for those purposes.

[Acts 1979, 66th Leg., p. 2356, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 41.002. County Child Welfare Boards

(a) The commissioners court of a county may appoint a child welfare board for the county. The commissioners court and the department shall determine the size of the board and the qualifications of its members. However, the board must have at least 7 and not more than 15 members, and the members must be residents of the county. The members shall serve at the pleasure of the commissioners court and may be removed by the court for just cause. The members serve without compensation.

(b) With the approval of the department, two or more counties may establish a joint child welfare board if that action is found to be more practical in accomplishing the purposes of this chapter. The combined counties have the same powers as a single county and are subject to the same conditions and liabilities.

(c) The members of the county child welfare board shall select a presiding officer and shall perform the duties required by the commissioners court and the department to accomplish the purposes of this chapter.

(d) A county child welfare board is an entity of the department for purposes of providing coordinated state and local public welfare services for children and their families and the coordinated use of federal, state, and local funds for these services. The child welfare board shall work with the commissioners court.

[Acts 1979, 66th Leg., p. 2356, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 41.003. County Funds

The commissioners court of a county may appropriate funds from its general fund or any other fund for the administration of its county child welfare board. The court may provide for services to and support of children in need of protection or care.

[Acts 1979, 66th Leg., p. 2356, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 41.004. Cooperation With Children's Bureau

The department is the state agency designated to cooperate with the Children's Bureau of the United States Department of Health, Education, and Welfare in:

(1) establishing, extending, and strengthening public welfare services for the protection and care of homeless, dependent, and neglected children in danger of becoming delinquent, especially in rural areas;

(2) developing state services for the encouragement and assistance of adequate methods of community child welfare organizations and paying part of the cost of district, county, or other local child welfare services in rural areas and in other areas of special need; and

(3) developing necessary plans to implement the services contemplated in this section and to comply with the rules of the Children's Bureau issued and prescribed in conformity with and by virtue of the Social Security Act.[1]

[Acts 1979, 66th Leg., p. 2356, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[1] 42 U.S.C.A. § 301 et seq.

§ 41.005. Notification of Charters Filed With the Secretary of State

The secretary of state shall notify the Texas Department of Human Resources in writing of each charter filed with the secretary by a person who proposes to provide care for children under 18 years of age and who is required to be licensed by or registered with the department to provide that care. The secretary shall send a copy of the charter to the department.

[Acts 1979, 66th Leg., p. 2356, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 41.006. Child Welfare Service Fund

The child welfare service fund is a special fund in the state treasury. The fund shall be used to administer the child welfare services provided by the department.

[Acts 1979, 66th Leg., p. 2356, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 41.007 to 41.020 reserved for expansion]

SUBCHAPTER B. FOSTER CARE

§ 41.021. Foster Care Payments

(a) The department may pay the cost of protective foster care for children:

(1) for whom the department has initiated a suit and has been named managing conservator by a court order issued under Article 15.02, Family Code, as amended; and

(2) who are ineligible for foster care payments under the department's aid to families with dependent children program.

(b) The department may not pay the cost of protective foster care for a child for whom the department has been named managing conservator by a court order issued solely under Article 15.02(1)(J), Family Code, as amended.

(c) Payments for protective foster care, including medical care, must be equal to payments made for similar care for a child who is eligible for the department's aid to families with dependent children program.

[Added by Acts 1979, 66th Leg., p. 2434, ch. 842, art. 2, § 4(2), eff. Sept. 1, 1979.]

§ 41.022. County Contracts

(a) The department may contract with a county commissioners court to administer the funds authorized by this subchapter for eligible children in the county and may require county participation.

(b) The payments provided by this subchapter do not abrogate the responsibility of a county to provide child welfare services.

[Added by Acts 1979, 66th Leg., p. 2434, ch. 842, art. 2, § 4(2), eff. Sept. 1, 1979.]

§ 41.023. Direct Payments

The department may make direct payments for foster care to foster parents residing in a county with which the department does not have a contract authorized by Sec. 41.022 of this code.

[Added by Acts 1979, 66th Leg., p. 2434, ch. 842, art. 2, § 4(2), eff. Sept. 1, 1979.]

§ 41.024. Parent or Guardian Liability

The parent or guardian of a child is liable to the state or to the county for any payment made by the state or county for foster care of a child under this subchapter. The funds collected by the state under this section must be used by the department for child welfare services.

[Added by Acts 1979, 66th Leg., p. 2434, ch. 842, art. 2, § 4(2), eff. Sept. 1, 1979.]

§ 41.025. Medical Services Limitation

The department may not provide the medical care payments authorized by Section 41.021(c) of this code if:

(1) a federal law or regulation prohibits those medical payments unless medical payments are also provided for medically needy children who are not eligible for the department's aid to families with dependent children program and for whom the department is not named managing conservator; or

(2) the federal government does not fund at least 50 percent of the cost of the medical payments authorized by this subchapter.

[Added by Acts 1979, 66th Leg., p. 2434, ch. 842, art. 2, § 4(2), eff. Sept. 1, 1979.]

CHAPTER 42. REGULATION OF CHILD-CARE FACILITIES

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SUBCHAPTER A. GENERAL PROVISIONS

§ 42.001. Purpose

The purpose of this chapter is to protect the health, safety, and well-being of the children of the state who reside in child-care facilities by establishing statewide minimum standards for their safety and protection and by regulating the facilities through a licensing program. It is the policy of the state to ensure the protection of all children under care in child-care facilities and to encourage and assist in the improvement of child-care programs. It is also the intent of the legislature that freedom of religion of all citizens is inviolate, and nothing in this chapter gives a governmental agency authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of religious instruction or the curriculum of a school sponsored by a religious organization.

[Acts 1979, 66th Leg., p. 2358, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.002. Definitions

In this chapter:

(1) "Child" means a person under 18 years of age.

(2) "Division" means the division designated by the department to carry out the provisions of this chapter.

(3) "Child-care facility" means a facility that provides care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

(4) "Child-care institution" means a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment camps, emergency shelters, and training or correctional schools for children.

(5) "Foster group home" means a facility that provides care for 7 to 12 children for 24 hours a day.

(6) "Foster family home" means a facility that provides care for not more than six children for 24 hours a day.

(7) "Day-care center" means a facility that provides care for more than 12 children under 14 years of age for less than 24 hours a day.

(8) "Group day-care home" means a facility that provides care for 7 to 12 children under 14 years of age for less than 24 hours a day.

(9) "Registered family home" means a facility that regularly provides care in the caretaker's own residence for not more than six children under 14 years of age, excluding the caretaker's own children, and that provides care after school hours for not more than six additional elementary school siblings of the other children given care, but the total number of children, including the caretaker's own, does not exceed 12 at any given time.

(10) "Family day home" means a facility that provides care for not more than six children under 14 years of age for less than 24 hours a day not in the caretaker's own residence nor in the residence of one or more of the children.

(11) "Agency home" means a private home that provides for care for not more than six children, that is used only by a licensed child-placing agency, and that meets division standards.

(12) "Child-placing agency" means a person other than the natural parents or guardian of a child who plans for the placement of or places a child in an institution, agency home, or adoptive home.

(13) "Facilities" includes child-care facilities and child-placing agencies.

(14) "State of Texas" or "state" does not include political subdivisions of the state.

[Acts 1979, 66th Leg., p. 2359, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 42.003 to 42.020 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 42.021. Division Designated

(a) The department shall designate a division within the department to regulate and license child-care facilities and child-placing agencies. The division shall enforce the provisions of this chapter and the rules and standards adopted by the department under this chapter and shall carry out other responsibilities the department may delegate or assign.

(b) The commissioner of the department shall appoint as director of the division a person who:

(1) meets the qualifications required of a child-care administrator by Chapter 43 of this code;

(2) holds a graduate degree in social science or law and has five years' administrative experience in a field related to child care; or

(3) has 10 years' experience in a field related to child care, at least 5 of which must be administrative.

(c) The department shall employ sufficient personnel and provide training for the personnel to carry out the provisions of this chapter.

(d) The director may divide the state into regions for the purpose of administering this chapter.

[Acts 1979, 66th Leg., p. 2360, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.022. State Advisory Committee

(a) The State Advisory Committee on Child-Care Facilities is composed of 15 citizens of this state appointed by the commissioner.

(b) Members of the committee serve for terms of two years.

(c) The members must represent the following groups:

(1) parents, guardians, or custodians of children who use the facilities;

(2) child advocacy groups;

(3) operators of the facilities; and

(4) experts in various professional fields that are relevant to child care and development.

(d) At least three members of the division staff shall meet with the committee, and the division shall provide staff necessary for the committee.

(e) The committee shall review rules and minimum standards for child-care facilities and child-placing agencies promulgated by state agencies, and shall advise the department, the division, the council, and state agencies on problems of child-care facilities and child-placing agencies.

(f) The committee shall receive and review the annual report of the division.

(g) The committee shall meet twice a year, and the members shall receive their actual travel expenses and the state per diem.

[Acts 1979, 66th Leg., p. 2360, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.023. Annual Report

(a) The division shall send an annual report of its activities to the governor, lieutenant governor, and members of the legislature.

(b) The annual report shall include:

(1) a report by regions of applications for licensure or certification, of provisional licenses issued, denied, or revoked, of licenses issued, denied, suspended or revoked, of emergency closures and injunctions, and of the compliance of state-operated agencies with certification requirements;

(2) a summary of the amount and kind of in-service training and other professional development opportunities provided for division staff;

(3) a summary of training and other professional development opportunities offered to facilities' staffs; and

(4) a report of new administrative procedures, of the number of staff and staff changes, and of plans for the coming year.

(c) Copies of the annual report shall be available to any state citizen on request.

[Acts 1979, 66th Leg., p. 2360, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.024. Administrative Procedure

The Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes) applies to all procedures under this chapter except where it is contrary to or inconsistent with the provisions of this chapter.

[Acts 1979, 66th Leg., p. 2360, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 42.025 to 42.040 reserved for expansion]

SUBCHAPTER C. REGULATION OF CHILD–CARE FACILITIES

§ 42.041. Required License

(a) No person may operate a child-care facility or child-placing agency without a license issued by the division.

(b) This section does not apply to:

(1) a state-operated facility;

(2) an agency home;

(3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities on or near the premises, including but not limited to retreats or classes for religious instruction;

(4) a school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months;

(5) a youth camp licensed by the Texas Department of Health;

(6) a hospital licensed by the Texas Department of Mental Health and Mental Retardation or the Texas Department of Health;

(7) an educational facility accredited by the Central Education Agency or the Southern Association of Colleges and Schools that operates primarily for educational purposes in grades kindergarten and above;

(8) an educational facility that operates solely for educational purposes in grades kindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;

(9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the

Central Education Agency, that offers educational programs through grade six, and that does not provide custodial care during the hours before or after the customary school day; and

(10) a registered family home.

(c) A single license that lists addresses and the appropriate facilities may be issued to a child-care institution that operates noncontiguous facilities that are nearby and that are demonstrably a single operation as indicated by patterns of staffing, finance, administrative supervision, and programs.

[Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.042. Rules and Standards

(a) The department shall make rules to carry out the provisions of this chapter.

(b) The department shall conduct a comprehensive review of all rules and standards at least every six years.

(c) The department shall provide a standard procedure for receiving and recording complaints and a standard form for recording complaints.

(d) The department shall provide standard forms for applications and inspection reports.

(e) The department shall promulgate minimum standards for child-care facilities covered by this chapter that will:

(1) promote the health, safety, and welfare of children attending a facility;

(2) promote safe, comfortable, and healthy physical facilities for children;

(3) ensure adequate supervision of children by capable, qualified, and healthy personnel;

(4) ensure adequate and healthy food service where food service is offered;

(5) prohibit racial discrimination by child-care facilities; and

(6) require procedures for parental and guardian consultation in the formulation of children's educational and therapeutic programs.

(f) In promulgating minimum standards for child-care facilities, the department shall recognize the various categories of facilities, including facilities offering specialized care, and the various categories of children and their particular needs. Standards for child-care institutions must require an intake study before a child is placed in an institution. The intake study may be conducted at a community mental health and mental retardation center.

(g) In promulgating minimum standards the department may recognize and treat differently the following child-care facilities: child-caring institutions, foster homes, day-care centers, group day-care homes, family day homes, registered family homes, and agency homes.

(h) The department shall promulgate minimum standards for child-placing agencies.

(i) Before adopting minimum standards, the division shall present the proposed standards to the State Advisory Committee on Child-Care Facilities for review and comment, and shall send a copy of the proposed standards to each licensee covered by the proposed standards at least 60 days before the standards take effect to provide the licensee an opportunity to review and to send written suggestions to the council and the department.

(j) The department may waive compliance with a minimum standard in a specific instance if it determines that the economic impact of compliance is sufficiently great to make compliance impractical.

(k) The department may not regulate or attempt to regulate or control the content or method of any instruction or curriculum of a school sponsored by a religious organization.

[Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.043. Rules for Immunizations

(a) The department shall make rules for the immunization of children admitted to facilities.

(b) The department shall require that each child at an appropriate age have a test for tuberculosis and be immunized against diphtheria, tetanus, poliomyelitis, rubella, and rubeola. The immunization must be effective on the date of first entry into the facility. However, a child may be provisionally admitted if the required immunizations have begun and are completed as rapidly as medically feasible.

(c) The Texas Department of Health shall make rules for the provisional admission of children to facilities and may modify or delete any of the immunizations listed in Subsection (b) of this section or require additional immunizations as a requirement for admission to a facility.

(d) No immunization may be required for admission to a facility if a person applying for a child's admission submits one of the following affidavits:

(1) an affidavit signed by a licensed physician stating that the immunization would be injurious to the health and well-being of the child or a member of the child's family or household; or

(2) an affidavit signed by the child's parent or guardian stating that the immunization conflicts with the tenets and practices of a recognized religious organization of which the applicant is an adherent or a member.

(e) Each facility shall keep an individual immunization record for each child admitted, and the records shall be open for inspection by the division at all reasonable times.

(f) The Texas Department of Health shall provide the immunizations required by this section to chil-

dren in areas where there is no local provision of these services.
[Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.044. Inspections

(a) An authorized representative of the division may visit a facility during operating hours to investigate, inspect, and evaluate.

(b) The division shall inspect all licensed or certified facilities at least once a year and may inspect other facilities as necessary. At least one of the annual visits must be unannounced and all may be unannounced.

(c) The division must investigate a facility when a complaint is received. The division representative must notify the facility's director or authorized representative when a complaint is being investigated and report in writing the results of the investigation to the director or the director's authorized representative.

(d) The division may call on political subdivisions and governmental agencies for assistance within their authorized fields.
[Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.045. Records

(a) A person who operates a licensed or certified facility shall maintain individual child development records, individual health records, statistical records, and complete financial records.

(b) A person who operates a licensed facility shall have an annual audit by a certified public accountant of the facility's books. A copy of the accountant's statement of income and disbursements must accompany an application for a license. This subsection does not apply to a facility that provides care for less than 24 hours a day or to an agency home.
[Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.046. License Application

(a) An applicant for a license to operate a child-care facility or child-placing agency shall submit to the division a completed application on a form provided by the division.

(b) The division shall supply the applicant the application form and a copy of the appropriate minimum standards.

(c) After receiving an application, the division shall investigate the applicant and the plan of care for children.

(d) The division shall complete the investigation and decide on an application within two months after the date the division receives an application.
[Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.047. Consultations

(a) The department shall offer consultation to potential applicants, applicants, and license and certification holders about meeting and maintaining standards for licensing and certification and achieving programs of excellence in child care.

(b) The department shall offer consultation to prospective and actual users of facilities.
[Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.048. Advisory Opinions

(a) The director of the division may give an advisory opinion on whether or not a planned facility or a planned change in an existing facility complies with the division's rules and minimum standards.

(b) A written opinion authorized by Subsection (a) of this section is binding on the division as a declaratory order if it is signed by the division director and the division representative administering this chapter in a division region, and if an applicant or license holder has acted in reliance on the opinion.
[Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.049. Licensing

(a) The division shall issue a license after determining that an applicant has satisfied all requirements.

(b) When issuing a license, the division may impose restrictions on a facility, including but not limited to the number of children to be served and the type of children to be served.

(c) The division may grant a variance of an individual standard set forth in the applicable standards for good and just cause.

(d) A license holder must display a license issued under this chapter in a prominent place at the facility.

(e) A license issued under this chapter is not transferable and applies only to the operator and facility location stated in the license application. A change in location or ownership automatically revokes a license.

(f) A biennial license must be issued if the division determines that a facility meets all requirements. The evaluation shall be based on a specified number of visits to the facility and a review of all required forms and records.
[Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.050. License Renewal

(a) A license holder may apply for a new license in compliance with the requirements of this chapter and the rules promulgated by the division.

(b) The application for a new license must be completed and decided on by the division before the expiration of the license under which a facility is operating.

(c) The division shall evaluate the application for a new license to determine if all licensing requirements are met. The evaluation must include a specified number of visits to the facility and a review of all required forms and records.

[Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.051. Provisional License

(a) The division shall issue a provisional license when a facility's plans meet the department's licensing requirements and one of the following situations exists:

(1) the facility is not currently operating;

(2) the facility is not licensed for the location stated in the application; or

(3) there is a change in ownership of the facility.

(b) A provisional license is valid for six months from the date it is issued and is not renewable.

[Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.052. Certification and Registration

(a) A state-operated child-care facility or child-placing agency must receive certification of approval from the division. The certification of approval must be renewed every two years.

(b) To be certified, a facility must comply with the department's rules and standards and any provisions of this chapter that apply to a licensed facility of the same category. The operator of a certified facility must display the certification in a prominent place at the facility.

(c) A registered family home must be registered with the division.

(d) To be registered with the division, a registered family home must comply with the department's rules and standards and any provision of this chapter that applies to a registered family home.

[Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.053. Agency Homes

(a) An agency home is considered part of the child-placing agency that operates the agency home for purposes of licensing.

(b) The operator of a licensed agency shall display a copy of the license in a prominent place in the agency home used by the agency.

(c) An agency home shall comply with all provisions of this chapter and all department rules and standards that apply to a child-care facility caring for a similar number of children for a similar number of hours each day.

(d) The division shall revoke or suspend the license of a child-placing agency if an agency home operated by the licensed agency fails to comply with Subsection (c) of this section.

[Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 42.054 to 42.070 reserved for expansion]

SUBCHAPTER D. REMEDIES

§ 42.071. License Suspension

(a) The division may suspend the license of a facility that has temporarily ceased operation but has definite plans for starting operations again within the time limits of the issued license.

(b) The division may suspend a facility's license for a definite period rather than deny or revoke the license if the division finds repeated noncompliance with standards that do not endanger the health and safety of children. To qualify for license suspension under this subsection, a facility must suspend its operations and show that standards can be met within the suspension period.

(c) The division shall revoke the license of a facility that does not comply with standards after a license suspension.

[Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.072. License Denial or Revocation

(a) The division shall deny or revoke the license or certification of approval of a facility that does not comply with the requirements of this chapter, the standards and rules of the department, or the specific terms of the license or certification.

(b) The division shall notify the person operating or proposing to operate a facility of the reasons for the denial or revocation and of the person's right to appeal the decision within 30 days after receiving the notice.

(c) A person who wishes to appeal a license denial or revocation shall notify the director by certified mail within 30 days after receiving the notice required in Subsection (b) of this section. The person shall send a copy of the notice of appeal to the assigned division representative.

(d) Within 14 days after the date the appeal notification was mailed, the director shall appoint an advisory review board to hear the appeal or notify the person requesting the appeal that the request is denied.

(e) Within 14 days after notifying a person that an advisory review board will hear the case, the director shall appoint five of the person's peers to the board and set a date for the hearing. The date

for the hearing must be within 28 days after the date the board members are appointed.

(f) The advisory review board shall hear the appeal and render its opinion to the director within seven days after the last day of the hearing. The board members shall receive actual travel expenses and the state per diem for each day of the hearing.

(g) A committee composed of the director, the division representative responsible for establishing standards, and the division representative administering this chapter in the region where the facility in question is located shall review the opinion. The committee shall make a decision within 14 days after receiving the opinion and shall notify, by certified mail, the person who appealed.

(h) A person whose license has been denied or revoked may challenge the committee's decision by filing a suit in a district court of Travis County or the county in which the person's facility is located within 30 days after receiving the committee's decision. The trial shall be de novo.

(i) Records of the department's hearing shall be kept for one year after a committee decision is rendered. On request, and at the person's own expense, the division shall supply a copy of the verbatim transcript of the advisory board hearing to a person appealing a license denial or revocation in district court.

(j) A person may continue to operate a facility during an appeal of a license denial or revocation unless the division has sought injunctive relief under Section 42.074 or civil penalties under Section 42.075 of this code.

[Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.073. Closing a Facility

(a) The division may close the facility and place the children attending the facility in another facility if the division finds violations of this chapter or violations of the department's rules and standards that create an immediate danger for children.

(b) A division representative who finds conditions described in Subsection (a) of this section shall immediately notify the director and request an immediate inspection of the facility by the director or the director's designee.

(c) The division shall report to the governor and the commissioner of the department when a state-operated facility is found in violation of this chapter or the department's rules and standards and the violation threatens serious harm to the children in the facility.

(d) Closing a facility under this section is an emergency measure. The division shall seek an injunction against continued operation of the facility after closing a facility under this section.

[Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.074. Injunctive Relief

(a) When it appears that a person has violated, is violating, or is threatening to violate the licensing, certification, or registration requirements of this chapter or the department's licensing, certification, or registration rules and standards, the division may file a suit in a district court in Travis County or in the county where the facility is located for assessment and recovery of civil penalties under Section 42.075 of this code, for injunctive relief, including a temporary restraining order, or for both injunctive relief and civil penalties.

(b) The district court shall grant the injunctive relief the facts may warrant.

(c) At the division's request, the attorney general shall conduct a suit in the name of the State of Texas for injunctive relief, to recover the civil penalty, or for both injunctive relief and civil penalties as authorized by Subsection (a) of this section.

[Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.075. Civil Penalty

(a) A person is subject to a civil penalty of not less than $50 nor more than $100 for each day of violation and for each act of violation if the person:

(1) threatens serious harm to a child in a facility by violating a provision of this chapter or a department rule or standard;

(2) violates a provision of this chapter or a department rule or standard three or more times within a 12-month period; or

(3) places a public advertisement for an unlicensed facility.

(b) The civil penalty authorized by this section is cumulative and in addition to the criminal penalties and injunctive relief provided by this chapter.

[Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 42.076. Criminal Penalties

(a) A person who operates a child-care facility or child-placing agency without a license commits a Class B misdemeanor.

(b) A person who places a public advertisement for an unlicensed facility commits a Class C misdemeanor.

[Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

CHAPTER 43. REGULATION OF CHILD-CARE ADMINISTRATORS

Section
43.001. Definitions.
43.002. Advisory Council.

Section
43.003. License Required.
43.004. Qualifications for License.
43.005. Rules.
43.006. Examination Fee.
43.007. License Application.
43.008. Licensing.
43.009. License Renewal.
43.010. License Revocation.
43.011. Appeals.
43.012. Penalty.

§ 43.001. Definitions

In this chapter:

(1) "Child-care institution" means a profit or nonprofit children's home, orphanage, institution, or other place that receives and provides 24-hour-a-day care for more than six children who are dependent, neglected, handicapped, delinquent, in danger of becoming delinquent, or in need of group care.

(2) "Child-care administrator" means a person who supervises and exercises direct administrative control over a child-care institution and who is responsible for its program and personnel, whether or not the person has an ownership interest in the institution or shares duties with other persons.

[Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 43.002. Advisory Council

(a) The board shall appoint an advisory council on child-care administration composed of six persons with experience in the fields of child care or social work.

(b) Each member of the council serves a term of two years from the date of appointment. The members are entitled to reimbursement for actual expenses incurred in performing official duties.

(c) The council shall advise the board on licensing child-care administrators, including the content of the examination administered to license applicants.

[Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 43.003. License Required

A person may not serve as a child-care administrator of a child-care institution without a license issued by the department under this chapter.

[Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 43.004. Qualifications for License

To be eligible for a child-care administrator's license a person must:

(1) present evidence in writing of good moral character, ethical commitment, and sound physical and emotional health;

(2) pass an examination devised and administered by the department that demonstrates competence in the field of child-care administration;

(3) have one year of experience in management or supervision of child-care personnel and programs; and

(4) have one of the following educational and experience qualifications:

(A) a master's or doctor of philosophy degree in social work or other area of study;

(B) a bachelor's degree and two years' experience in child care or a closely related field;

(C) an associate degree from a junior college and four years' experience in child care or a closely related field; or

(D) a high school diploma or its equivalent and six years' experience in child care or a closely related field.

[Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 43.005. Rules

The board may make rules to administer the provisions of this chapter.

[Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 43.006. Examination Fee

To cover the cost of administering the examination, the department shall charge a fee of $25 to each person taking the examination for a license.

[Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 43.007. License Application

(a) A person who has the education and experience required by Section 43.004 of this code may apply to the department for a license.

(b) The applicant shall send a license fee of $25 with the application.

[Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 43.008. Licensing

(a) The department shall issue a license to a person who has satisfied all the licensing requirements.

(b) The license is valid for a period of two years from the date issued.

[Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 43.009. License Renewal

(a) To be eligible for license renewal, a license holder shall present evidence to the department of participation in a program of continuing education

approximating 15 actual hours of formal study during the two-year period before the renewal.

(b) The continuing education requirement may be fulfilled by studies in the areas of legal aspects of child care, concepts related to the field of social work, or other subjects approved by the department.

(c) The fee for a license renewal is $25.

[Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 43.010. License Revocation

The department may revoke a license if the license holder is:

(1) convicted of a felony;

(2) convicted of a misdemeanor involving fraud or deceit;

(3) addicted to a dangerous drug or intemperate in the use of alcohol; or

(4) grossly negligent in performing duties as a child-care administrator.

[Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 43.011. Appeals

(a) A person whose license application is denied or whose license is revoked is entitled to written notice of the reasons and may request that the department provide a hearing.

(b) The hearing shall be held within 30 days after the date the department receives the request.

(c) If the hearing results in the department upholding the license denial or revocation, the person may challenge the department's decision by filing suit in a district court in the county where the person resides within 30 days after the date the person receives notice of the department's final decision.

(d) The trial shall be de novo.

[Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 43.012. Penalty

A person who serves as a child-care administrator without the license required by this chapter commits a Class C misdemeanor and may be fined not less than $50 nor more than $100.

[Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

CHAPTER 44. ADMINISTRATION OF FEDERALLY ESTABLISHED DAY-CARE PROGRAMS

Section

44.001. Designated Agency.
44.002. Administrative Rules.
44.003. Administration of Federal-Local Program.

§ 44.001. Designated Agency

The department is the state agency designated to administer a day-care program established by federal law and financed partially or totally by federal funds.

[Acts 1979, 66th Leg., p. 2370, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 44.002. Administrative Rules

(a) The commissioner shall promulgate rules to carry out the administrative provisions of the program consistent with federal law and regulations.

(b) The rules must include procedures to allow operators of day-care centers to review and comment on proposed rules and policies.

(c) The rules must establish procedures for input by the parents of the children in a day-care center into the operation of the center.

(d) The commissioner may promulgate eligibility standards for admittance into the program, but the standards must allow for exceptions where necessary to maintain family self-sufficiency and integrity.

[Acts 1979, 66th Leg., p. 2370, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 44.003. Administration of Federal-Local Program

(a) If the program is to be funded through political subdivisions of the state or local agencies approved by the department matching federal grants, the department shall promulgate procedures for effective delivery of services consistent with this section and with federal law and regulations.

(b) If the services are provided through contracting with operators of day-care centers on request from political subdivisions or local agencies, the department may not promulgate standards for selection of the type of centers more restrictive than required by federal law or regulations.

(c) The department shall establish an accounting system consistent with federal law and regulations which will provide that an operator of a day-care center contracting with the department:

(1) shall receive prepayment in accordance with policies and procedures mutually agreed on by the state comptroller of public accounts and the department; and

(2) shall be paid on the basis of legitimate and reasonable expenses, insofar as possible, given federal regulations and department policy, instead of being paid on the basis of the number of children attending the center, provided that on being monitored by the department, the contracting operator can substantiate that there were sufficient preparations in the development of the services offered.

[Acts 1979, 66th Leg., p. 2370, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

CHAPTER 45. INTERSTATE PLACEMENT OF CHILDREN

SUBCHAPTER A. PLACEMENT OF CHILDREN FROM ANOTHER STATE

Section
45.001. Definitions.
45.002. Required Notice of Intention to Place a Child.
45.003. Responsibilities of Sending Agency.
45.004. Delinquent Child.
45.005. Private Charitable Agencies.
45.006. Exemptions.
45.007. Penalties.

SUBCHAPTER B. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

45.021. Adoption of Compact; Text.
45.022. Definitions.
45.023. Financial Responsibility for Child.
45.024. Approval of Placement or Discharge.
45.025. Placement in Another State.
45.026. Compact Administrator.

SUBCHAPTER A. PLACEMENT OF CHILDREN FROM ANOTHER STATE

§ 45.001. Definitions

In this subchapter:

(1) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control.

(2) "Child-care facility" means a facility that provides care, training, education, custody, treatment, or supervision for a minor child who is not related by blood, marriage, or adoption to the owner or operator of the facility, whether or not the facility is operated for profit, and whether or not the facility makes a charge for the service offered by it.

(3) "Placement" means an arrangement for the care of a child in a family free, in a boarding home, or in a child-care facility or institution, including an institution caring for the mentally ill, mentally defective, or epileptic, but does not include an institution primarily educational in character or a hospital or other primarily medical facility.

(4) "Sending agency" means a state, a subdivision of a state, an officer or employee of a state or a subdivision of a state, a court of a state, or a person, partnership, corporation, association, charitable agency, or other entity, located outside this state, which sends, brings, or causes to be sent or brought a child into this state.

[Acts 1979, 66th Leg., p. 2371, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 45.002. Required Notice of Intention to Place a Child

(a) Prior to the placement in this state of a child from another state, the sending agency shall furnish the department written notice of its intention to place the child in this state. The notice must contain:

(1) the name and the date and place of birth of the child;

(2) the names and addresses of the child's parents or legal guardian, and the legal relationship of the named persons to the child;

(3) the name and address of the person, agency, or institution with which the sending agency proposes to place the child; and

(4) a full statement of the reasons for the placement and evidence of the authority under which the placement is proposed to be made.

(b) After receipt of a notice provided for in Subsection (a) of this section, the commissioner may request additional or supporting information considered necessary from an appropriate authority in the state where the child is located.

(c) No sending agency may send, bring, or cause to be sent or brought into this state a child for placement until the commissioner notifies the sending agency in writing that the proposed placement does not appear to be contrary to the best interests of the child.

(d) The commissioner may not approve the placement in this state of a child from outside this state without the concurrence of the individuals with whom the child is proposed to be placed or the head of an institution with which the child is proposed to be placed.

(e) No child-care facility in this state may receive a child for placement unless the placement conforms to requirements of this subchapter.

[Acts 1979, 66th Leg., p. 2371, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 45.003. Responsibilities of Sending Agency

(a) After placement in this state, the sending agency retains jurisdiction over the child sufficient to determine all matters relating to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the commissioner. The sending agency may cause the child to be returned to it or transferred to another location, except as provided by Subsection (e) of this section.

(b) The sending agency has financial responsibility for support and maintenance of the child during each period of placement in Texas. If the sending

agency fails wholly or in part to provide financial support and maintenance during placement, the commissioner may bring suit under Section 14.05, Family Code, and may file a complaint with the appropriate prosecuting attorney, claiming a violation of Section 25.05, Penal Code.

(c) After failure of the sending agency to provide support or maintenance, if the commissioner determines that financial responsibility is unlikely to be assumed by the sending agency, or by the child's parents or guardian, if not the sending agency, the commissioner shall cause the child to be returned to the sending agency.

(d) After failure of the sending agency to provide support or maintenance, the department shall assume financial responsibility for the child until responsibility is assumed again by the sending agency, until it is assumed by the child's parents or guardian, or until the child is safety returned to the sending agency.

(e) The commissioner may not concur in the discharge of a child placed in a public institution in this state without the concurrence of the head of the institution.

[Acts 1979, 66th Leg., p. 2371, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 45.004. Delinquent Child

No child adjudicated delinquent in another state may be placed in Texas unless the child has received a court hearing, after notice to a parent or guardian, at which the child had an opportunity to be heard and the court found that:

(1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) institutional care in Texas is in the best interests of the child and will not produce undue hardship.

[Acts 1979, 66th Leg., p. 2371, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 45.005. Private Charitable Agencies

This subchapter does not prevent a private charitable agency authorized to place children in this state from performing services or acting as agent in this state for a private charitable agency in a sending state, or prevent the agency in this state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of a sending agency, without altering financial responsibility as provided by Section 45.003 of this code.

[Acts 1979, 66th Leg., p. 2371, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 45.006. Exemptions

This subchapter does not apply to:

(1) the sending or bringing of a child into this state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's guardian, and the leaving of the child with a person described in this subdivision or with a nonagency guardian in this state; or

(2) the placement, sending, or bringing of a child into this state under the provisions of an interstate compact to which both Texas and the state from which the child is sent or brought are parties.

[Acts 1979, 66th Leg., p. 2371, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 45.007. Penalties

(a) An individual or corporation that violates Subsection (a) or (c) of Section 45.002 of this code is guilty of a Class B misdemeanor.

(b) A child-care facility in this state that violates Subsection (e) of Section 45.002 of this code is guilty of a Class B misdemeanor. On conviction, the court shall revoke any license to operate as a child-care facility or child-care institution issued the facility by the department.

[Acts 1979, 66th Leg., p. 2371, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 45.008 to 45.020 reserved for expansion]

SUBCHAPTER B. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

§ 45.021. Adoption of Compact; Text

The Interstate Compact on the Placement of Children is adopted by this state and entered into with all other jurisdictions joining therein in form substantially as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE I. PURPOSE AND POLICY

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis on which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. DEFINITIONS

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control.

(b) "Sending agency" means a party state, officer, or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. CONDITIONS FOR PLACEMENT

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) the name, date, and place of birth of the child;

(2) the identity and address or addresses of the parents or legal guardian;

(3) the name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;

(4) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to Paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. PENALTY FOR ILLEGAL PLACEMENT

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

ARTICLE V. RETENTION OF JURISDICTION

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized

public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in Paragraph (a) hereof.

ARTICLE VI. INSTITUTIONAL CARE OF DELINQUENT CHILDREN

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. COMPACT ADMINISTRATOR

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. LIMITATIONS

This compact shall not apply to:

(a) the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state;

(b) any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. ENACTMENT AND WITHDRAWAL

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[Acts 1979, 66th Leg., p. 2373, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 45.022. Definitions

In this subchapter:

(1) "Appropriate public authorities," with reference to this state, means the Commissioner of the Texas Department of Human Resources.

(2) "Appropriate authority in the receiving state," with reference to this state, means the Commissioner of the Texas Department of Human Resources.

(3) "Executive head," with reference to this state, means the governor.

(4) "Compact" means the Interstate Compact on the Placement of Children.

[Acts 1979, 66th Leg., p. 2374, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 45.023. Financial Responsibility for Child

(a) Financial responsibility for a child placed as provided in the compact is determined, in the first instance, as provided in Article V of the compact. After partial or complete default of performance

under the provisions of Article V assigning financial responsibility, the commissioner may bring suit under Section 14.05, Family Code, and may file a complaint with the appropriate prosecuting attorney, claiming a violation of Section 25.05, Penal Code.

(b) After default, if the commissioner determines that financial responsibility is unlikely to be assumed by the sending agency or the child's parents, the commissioner shall cause the child to be returned to the sending agency.

(c) After default, the department shall assume financial responsibility for the child until it is assumed by the child's parents, or until the child is safely returned to the sending agency.

[Acts 1979, 66th Leg., p. 2374, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 45.024. Approval of Placement or Discharge

The commissioner may not approve the placement of a child in this state without the concurrence of the individuals with whom the child is proposed to be placed or the head of an institution with which the child is proposed to be placed. The commissioner may not approve the discharge of a child placed in a public institution in this state without the concurrence of the head of the institution.

[Acts 1979, 66th Leg., p. 2374, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 45.025. Placement in Another State

A juvenile court may place a delinquent child in an institution in another state as provided by Article VI of the compact. After placement in another state, the court retains jurisdiction of the child as provided by Article V of the compact.

[Acts 1979, 66th Leg., p. 2374, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 45.026. Compact Administrator

The governor shall appoint the commissioner as compact administrator.

[Acts 1979, 66th Leg., p. 2374, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

CHAPTER 46. CHILD SUPPORT COLLECTION, PARENT LOCATOR, AND PATERNITY DETERMINATION SERVICES

Section

46.001. Administration of Statewide Plan for Child Support.
46.002. Powers and Duties of Department.
46.003. Assignment of Right to Support.
46.004. Fees.
46.005. Disposition of Funds.
46.006. Confidentiality of Records.
46.007. Attorneys Representing Department.

§ 46.001. Administration of Statewide Plan for Child Support

The department is the state agency designated to administer a statewide plan for child support to provide child support collection, parent locator, and paternity determination services which will enable it to participate in programs established by federal law.

[Acts 1979, 66th Leg., p. 2378, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 46.002. Powers and Duties of Department

(a) The department may:

(1) accept, transfer, and expend funds made available by the federal or state government or by another public or private source for the purpose of carrying out the provisions of this chapter;

(2) promulgate rules for the provision of child support services;

(3) initiate legal actions needed to implement the provisions of this chapter;

(4) enter into contracts or agreements necessary to administer this chapter; and

(5) request agencies of the state and its political subdivisions to search their records to help locate absent parents.

(b) The department may assist in the judicial determination of the paternity of an illegitimate child whose support rights have been assigned to the department.

(c) The department shall attempt to locate absent parents and shall cooperate with other governmental agencies in locating the parents.

[Acts 1979, 66th Leg., p. 2378, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 46.003. Assignment of Right to Support

(a) The filing of an application for or the receipt of financial assistance under Chapter 31 of this code constitutes an assignment to the department of any rights to support from any other person which the applicant or recipient may have in his or her own behalf or for a child for whom the applicant or recipient is claiming assistance, including the right to the amount accrued at the time the application is filed or the assistance is received. An applicant's assignment under this section is valid only if the department approves the application. The department may distribute support payments or parts of payments received by it to the family for whom the payments are made or may use the payments to provide assistance and services to and on behalf of needy dependent children.

(b) Child support payments for the benefit of a recipient child shall be made to the department. If a court has ordered support payments to be made to

an applicant for or recipient of financial assistance, the department may file notice of the assignment with the court ordering the payments. The notice must include:

(1) a statement that the child is an applicant for or recipient of financial assistance;

(2) the name of the child and the caretaker for whom support has been ordered by the court;

(3) the style and cause number of the case in which support was ordered; and

(4) a request that the payments ordered be made to the department.

(c) On receipt of the notice and without a requirement of a hearing, the court shall order that the payments be made to the department.

[Acts 1979, 66th Leg., p. 2378, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2430, ch. 842, art. 2, § 1, eff. Sept. 1, 1979.]

§ 46.004. Fees

The department on request may provide parent locator, child support collection, or paternity determination services available to a person other than an applicant for or recipient of financial assistance under Chapter 31 of this code. The department may charge a reasonable application fee and recover costs for the services provided.

[Acts 1979, 66th Leg., p. 2378, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 46.005. Disposition of Funds

(a) The department shall deposit money received under assignments or as fees pursuant to this chapter in a special fund in the state treasury or in accounts in financial institutions. The department may spend these funds for the administration of this chapter or for the provision of assistance to and on behalf of needy dependent children.

(b) All other funds received pursuant to this chapter shall be deposited in a special fund in the state treasury.

[Acts 1979, 66th Leg., p. 2378, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 46.006. Confidentiality of Records

All files and records on recipients of benefits provided under this chapter and on an alleged father of an illegitimate child are confidential. Release of information from the files and records shall be restricted to purposes directly connected with the administration of the child support collection, paternity determination, parent locator, or aid to families with dependent children programs. The department by rule may provide for the release of information to public officials.

[Acts 1979, 66th Leg., p. 2378, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 46.007. Attorneys Representing Department

Attorneys employed by the department may represent the department in a suit to collect child support or determine paternity brought under the authority of federal law and this chapter. At the request of the department, the attorney general may represent the department in an appeal of a suit brought under the authority of this chapter. This section does not limit the authority of the attorney general to represent the state in a proceeding.

[Added by Acts 1979, 66th Leg., p. 2434, ch. 842, art. 2, § 4, eff. Sept. 1, 1979.]

CHAPTER 47. ADOPTION SERVICES FOR HARD-TO-PLACE CHILDREN

Section

47.001. Definition.
47.002. Adoption Services Program.
47.003. Dissemination of Information.
47.004. Financial Assistance.
47.005. Funds.

§ 47.001. Definition

In this chapter, "hard-to-place child" means a child who is three years of age or older and who is difficult to place in an adoptive home because of age, race, color, ethnic background, language, or physical, mental, or emotional handicap, or because he or she is a member of a sibling group that should be placed in the same home.

[Acts 1979, 66th Leg., p. 2379, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 47.002. Adoption Services Program

(a) The department shall administer a program designed to promote the adoption of hard-to-place children by providing information to prospective adoptive parents concerning the availability of the relinquished children, assisting the parents in completing the adoption process, and providing financial assistance necessary for the parents to adopt the children. The legislature intends that the program benefit hard-to-place children residing in foster homes at state or county expense by providing them with the stability and security of permanent homes and that the costs paid by the state and counties for foster home care for the children be reduced.

(b) The program shall be carried out by licensed adoption agencies or county child-care or welfare units pursuant to rules adopted by the department.

(c) The department shall keep records necessary to evaluate the program's effectiveness in encouraging and promoting the adoption of hard-to-place children.

[Acts 1979, 66th Leg., p. 2379, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 47.003. Dissemination of Information

The department, county child-care or welfare units, and licensed adoption agencies shall disseminate information to prospective adoptive parents concerning the availability for adoption of hard-to-place children and the existence of financial assistance for parents who adopt them. Special effort shall be made to disseminate the information to families that have lower income levels or that belong to disadvantaged groups.

[Acts 1979, 66th Leg., p. 2379, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 47.004. Financial Assistance

(a) Adoption fees for a hard-to-place child may be waived.

(b) The adoption of a hard-to-place child may be subsidized by an amount not exceeding the amount that would be paid for foster home care for the child if not adopted. The need for the subsidy shall be determined by the department under its rules.

(c) The county may pay the subsidy if the county is responsible for the child's foster home care at the time of the adoption. The state shall pay the subsidy if at the time of the adoption the child is receiving aid under the department's aid to families with dependent children program, and the state may pay the subsidy if the department is managing conservator for the child.

[Acts 1979, 66th Leg., p. 2379, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2436, ch. 842, art. 2, § 8, eff. Sept. 1, 1979.]

§ 47.005. Funds

(a) The department shall actively seek and use federal funds available for the purposes of this chapter.

(b) Gifts or grants from private sources for the purposes of this chapter shall be used to support the program.

[Acts 1979, 66th Leg., p. 2379, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

TITLE 3. FACILITIES AND SERVICES FOR CHILDREN

SUBTITLE A. FACILITIES FOR CHILDREN

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SUBCHAPTER A. GENERAL PROVISIONS

§ 61.001. Definitions

In this chapter:

(1) "Council" means the Texas Youth Council.

(2) "Chairman" means the chairman of the council.

(3) "Executive director" means the executive director of the council.

(4) "Court" means a juvenile court.

(5) "Delinquent child" means a child adjudged to be a delinquent child under Section 54.03 of the Family Code.

[Acts 1979, 66th Leg., p. 2382, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.002. Purpose

The purpose of this chapter is to provide for administration of the state's correctional facilities for delinquent children, to provide a program of constructive training aimed at rehabilitation and reestablishment in society of children adjudged delinquent by the courts of this state and committed to the Texas Youth Council, and to provide active parole supervision for delinquent children until officially discharged from custody of the Texas Youth Council.

[Acts 1979, 66th Leg., p. 2382, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 61.003 to 61.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 61.011. Texas Youth Council

The Texas Youth Council is an agency of the state.

[Acts 1979, 66th Leg., p. 2383, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.012. Members

(a) The council consists of six members appointed by the governor with the consent of the senate.

(b) Members of the council must be citizens who are recognized within their communities for their interest in youth.

(c) The members hold office for staggered terms of six years, with the terms of two members expiring every two years.

(d) A member is eligible for reappointment.

[Acts 1979, 66th Leg., p. 2383, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.013. Presiding Officer; Meetings

(a) The council shall elect one member presiding officer, who shall preside over meetings of the council.

(b) The council shall meet at least four times each year.

(c) A meeting shall be held on the call of the chairman or on the request of four members at the time and place designated by the chairman.

[Acts 1979, 66th Leg., p. 2383, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.014. Quorum

Four members constitute a quorum for the exercise of functions of the council not delegated to the executive director or other employees.

[Acts 1979, 66th Leg., p. 2383, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.015. Per Diem; Expenses

Members are entitled to receive a per diem of $35 for not more than 90 days in any fiscal year, plus reimbursement for actual expenses incurred while on council business.

[Acts 1979, 66th Leg., p. 2383, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.016. Office

The council shall have its office wherever it chooses, in a building designated and approved by the State Board of Control.

[Acts 1979, 66th Leg., p. 2383, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.017. Executive Director

(a) The council shall employ an executive director to serve at the will of the board.

(b) The executive director shall devote full time to the work of the council.

(c) The executive director is entitled to actual expenses while on council business.

[Acts 1979, 66th Leg., p. 2383, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.018. Superintendents

(a) The council shall employ a superintendent for each institution under its control.

(b) The superintendent for any institution exclusively for the care of girls must be a woman.

(c) To qualify for the position of superintendent, a person must be of high moral character, education, and training, and must be able to recommend and develop an aggressive program for youth rehabilitation.

(d) A superintendent shall take the official oath and shall execute a bond in the sum of $10,000, payable to the governor. The bond must be conditioned on the faithful performance of the duties of the office and must be approved by the attorney general.

[Acts 1979, 66th Leg., p. 2383, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.019. Delegation of Powers and Duties

Any power, duty, or function of the council may be exercised and performed by the executive director or any member or employee designated or assigned by the council or by the executive director.

[Acts 1979, 66th Leg., p. 2383, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.020. Review

The council is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the council is abolished and this chapter expires effective September 1, 1987.

[Acts 1979, 66th Leg., p. 2383, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 61.021 to 61.030 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 61.031. Continuing Study

The council shall carry on a continuing study of the problem of juvenile delinquency in this state and shall seek to focus public attention on special solutions to this problem.

[Acts 1979, 66th Leg., p. 2384, ch. 284, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.032. Administration of Institutions

The council shall administer the training, diagnostic treatment, and supervisory facilities and services of the state for delinquent children committed to the state and shall manage and direct all institutions and training school facilities under the authority of the council.

[Acts 1979, 66th Leg., p. 2384, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.033. Report to Governor, Legislature

Before the convening date of each regular session of the legislature, the council shall make a report to the governor and the legislature of its activities and accomplishments and of its findings as to its major needs in fulfilling its responsibility for children committed to it by courts of the state. The report shall include specific recommendations for legislation, planned and drafted as part of a unified program to serve the best interest of the state and the youth committed to the council, and recommendations for the repeal of any conflicting, obsolete, or otherwise undesirable legislation affecting youth.

[Acts 1979, 66th Leg., p. 2384, ch. 284, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.034. Policies and Rules

(a) The council is responsible for the adoption of all policies and shall make rules appropriate to the proper accomplishment of its functions.

(b) The council shall adopt rules for the government of the schools and facilities under its authority and shall see that the affairs of the schools and facilities are conducted according to law and to the council's rules. The purpose of the rules and of all education, work, training, discipline, recreation, and other activities in the schools and facilities is to restore and increase the self-respect and self-reliance of the youth under the authority of the council and to qualify them for good citizenship and honorable employment.

[Acts 1979, 66th Leg., p. 2384, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.035. Employees

(a) Within the limits specified by legislative appropriation, the council may employ and compensate personnel necessary to carry out its duties.

(b) The council may remove any employee for cause, and a decision by the council is final.

(c) A superintendent may remove for cause any employee under his or her authority, with the approval of the executive director.

[Acts 1979, 66th Leg., p. 2384, ch. 284, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.036. Cooperation With Other Agencies

(a) The council shall cooperate with all existing agencies and encourage the establishment of new agencies, both local and statewide, whose object is services to delinquent and predelinquent youth of this state.

(b) On the request of the governing body of any county or city, the council shall assist in developing, strengthening, and coordinating educational, welfare, health, recreational, and law-enforcement programs which have as their object the prevention of juvenile delinquency and crime.

[Acts 1979, 66th Leg., p. 2384, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.037. Use of Existing Institutions and Agencies

(a) In carrying out its duties, the council may make use of law-enforcement, detention, supervisory, medical, educational, correctional, and other facilities, institutions, and agencies in the state. This section does not authorize the council to assume control of any other agency, institution, or facility in the state, or to require any agency, institution, or facility to serve the council in a manner inconsistent with its authority or function or with any law or regulation governing its activity.

(b) When funds are available for the purpose, the council may enter into agreements with appropriate public or private agencies for the separate care and treatment of persons subject to the control of the council. The council may not make use of any private institution or agency without its consent and may not pay a private institution for services that a public institution is willing and able to perform.

(c) The council shall periodically inspect all public and private institutions and agencies whose facilities it is using. Every public and private institution and agency shall afford to the council reasonable opportunity to examine and consult with children who have been committed to the council and who are in the custody of the institution or agency.

(d) Placement of a child in, or the release of a child by, any institution not operated by the council does not terminate the authority of the council over the child. No child placed in an institution or under an agency by the council may be released by the institution or agency without the approval of the council.

[Acts 1979, 66th Leg., p. 2384, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.038. Local Programs

(a) The council shall assist local communities when funds are available by providing services and funds for programs for predelinquent and delinquent children through contracts with local public or private nonprofit entities.

(b) A local public or private nonprofit entity that provides or plans to provide a service or program for predelinquents or delinquents may request assistance authorized by this subchapter by applying to the council in compliance with council rules.

(c) A request for local assistance must be consistent with the council's statewide plans designed to meet the needs of the different geographical areas of the state.

(d) The council may require that state funds for local services be matched by local funds in amounts determined by the council.

(e) The council shall monitor and evaluate the fiscal management and effectiveness of a service or program funded under this subchapter.

(f) The council shall suspend payment of a contract if the local entity fails to implement the approved program or diverts contract funds to an unauthorized use.

(g) The council shall adopt rules and standards for the contracts and programs authorized by this subchapter.

[Acts 1979, 66th Leg., p. 2384, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.039. Council Programs

The council may provide a service or program as part of its statewide plan if the service or program is not provided by a local community.

[Acts 1979, 66th Leg., p. 2384, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.040. Additional Facilities; Parole Supervision

When funds are available, the council may:

(1) establish and operate places for detention and diagnosis of delinquent children committed to it;

(2) establish and operate additional treatment and training facilities, including forestry or parks-maintenance camps and ranches necessary to classify, segregate, and handle juvenile delinquents according to their needs;

(3) establish active parole supervision to aid children given conditional release to find homes and employment and to become reestablished in the community.

[Acts 1979, 66th Leg., p. 2384, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.041. Study of Treatment Methods; Statistical Records

(a) The council shall conduct continuing inquiry into the effectiveness of the treatment methods it employs in the reformation of delinquent children. To this end, the council shall maintain a record of arrests and commitments of its wards subsequent to their discharge from the jurisdiction of the council and shall tabulate, analyze, and publish biennially these data for use in evaluating the relative merits of treatment methods.

(b) The council shall cooperate with courts and private and public agencies in the collection of statistics and information regarding juvenile delinquency, arrests made, complaints, informations, and petitions filed, and the dispositions made of them, and other information useful in determining the amount and causes of juvenile delinquency in this state.

[Acts 1979, 66th Leg., p. 2384, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.042. Referrals from Federal Court

The council may enter into agreements with the federal government to accept children from the federal court for an agreed compensation.

[Acts 1979, 66th Leg., p. 2384, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.043. Gifts; Grants

The council may accept gifts, grants, or donations of money or property from private sources to effectuate the purpose of this chapter. Donated funds shall be placed in the state treasury in a special fund called the Texas Youth Council fund and expended as other state money is expended, on warrants drawn by the comptroller on the order of the council.

[Acts 1979, 66th Leg., p. 2384, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.044. Duties of Executive Director

(a) The executive director shall perform the duties assigned by the council.

(b) The executive director shall prepare and submit to the council for its approval a biennial budget of all funds necessary to be appropriated by the legislature to the council to carry out the purposes of this chapter. The budget shall be submitted and filed by the council in the form and manner and within the time prescribed by law.

[Acts 1979, 66th Leg., p. 2384, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.045. Duties of Superintendents

(a) The superintendent of each school or facility shall have general charge of and be responsible for the welfare and custody of the children in the school or facility and for carrying out the rehabilitation program prescribed by the council. Under the di-

rection of the council, the superintendent shall seek to establish relationships and to organize a way of life that will meet the spiritual, moral, physical, emotional, intellectual, and social needs of the children under his or her care as those needs would be met in an adequate home.

(b) The superintendent shall see that the buildings and premises are kept in good sanitary order.

(c) The superintendent is responsible for keeping the books of the school or facility fully exhibiting all money received and disbursed, the source from which it is received, and the purposes for which it is expended. All supplies for the school or facility shall be purchased in the same manner as for other similar institutions. The books shall give a full record of all products produced, whether sold or consumed, and shall at all times be open for the inspection of the council, the state auditor, and the governor.

[Acts 1979, 66th Leg., p. 2384, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.046. Religious Training

The council shall provide for the religious and spiritual training of children in its custody.

[Acts 1979, 66th Leg., p. 2384, ch. 1, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.047. Contract With Big Brothers/Big Sisters of America

(a) The council may execute contracts with Big Brothers/Big Sisters of America or its successor organization under which the council agrees to disburse money to the local affiliates in this state of Big Brothers/Big Sisters of America or its successor organization, and Big Brothers/Big Sisters of America or its successor organization agrees to:

(1) pair adult volunteers with children who are between the ages of 6 and 18 to engage in activities in which relationships based on friendship can develop between them;

(2) monitor the relationships between the paired adults and children to determine if meaningful relationships are developing between them that are beneficial to the children; and

(3) plan and implement other programs beneficial to the character development of the children served.

(b) Before December 31 of each even-numbered year, the council shall review and present to the legislature an evaluation of the activities for which the money disbursed under Subsection (a) of this section is used.

[Added by Acts 1979, 66th Leg., p. 2436, ch. 842, art. 2, § 9, eff. Sept. 1, 1979.]

[Sections 61.048 to 61.060 reserved for expansion]

SUBCHAPTER D. ADMISSION AND COMMITMENT

§ 61.061. Admission to State Homes

(a) Subject to the policies adopted by the council, the Corsicana State Home, the West Texas Children's Home at Pyote, and the Waco State Home may accept for admission any child 3 years of age or older but under 19 years of age who is a full orphan, a half-orphan, or the subject of a suit affecting the parent-child relationship under Subtitle A, Title 2, of the Family Code,[1] and may offer, if needed, care, treatment, education, and training to the child until his or her 18th birthday. A person who is 18 years old or older and who leaves the home provided by this section may not return to live there.

(b) A person under the care of a home named in this section who is 18 years old or older may remain at the home if the home determines that room is available and if he or she is a full-time or part-time student at an accredited academic or vocational institution.

(c) A person who remains at the home under the conditions described in Subsection (b) of this section may stay at the home until his or her 21st birthday or until he or she is no longer enrolled in school.

[Acts 1979, 66th Leg., p. 2387, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[1] Family Code, § 11.01 et seq.

§ 61.062. Commitment by Juvenile Court

When a child is found to have engaged in delinquent conduct as provided by Title 3, Family Code,[1] and a juvenile court does not release the child unconditionally or place the child on probation or in a suitable institution or agency other than a state training school, the juvenile court shall commit the child to the council and may suspend the execution of the order of commitment.

[Acts 1979, 66th Leg., p. 2387, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[1] Family Code, § 51.01 et seq.

§ 61.063. Order Conveying Child

When a juvenile court commits a child to the council, the court may order the child conveyed to some place of detention approved, established, or designated by the council, or it may direct that the child be left at liberty until otherwise ordered by the council under conditions ensuring the child's submission to any order of the council.

[Acts 1979, 66th Leg., p. 2387, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.064. Conveyance of Child to Council

(a) When a child is to be conveyed to a facility designated by the council, the juvenile court shall assign an officer or other suitable person to accom-

pany the child. The person assigned to accompany a female must be a woman.

(b) The cost of conveying the child shall be paid by the county from which the child is committed. However, no compensation shall be allowed except for the actual and necessary expenses of the child and the person accompanying the child.

[Acts 1979, 66th Leg., p. 2387, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.065. Notification and Duty to Furnish Information

(a) When a juvenile court commits a child to the council, the court shall forward to the council a certified copy of the order of commitment.

(b) The court, the probation officer, the prosecuting and police authorities, the school authorities, and other public officials shall make available to the council all pertinent information in their possession regarding the case.

(c) If requested by the council, the reports required by this section shall be made on forms furnished by the council or according to an outline furnished by the council.

[Acts 1979, 66th Leg., p. 2387, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.066. Commitment Records

A commitment to the council may not be received in evidence or used in any way in any proceedings in any court except in subsequent proceedings under Title 3, of the Family Code [1] against the same child, and except in imposing sentence in any criminal proceedings against the same person.

[Acts 1979, 66th Leg., p. 2387, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[1] Family Code, § 51.01 et seq.

[Sections 61.067 to 61.070 reserved for expansion]

SUBCHAPTER E. CARE AND TREATMENT OF CHILDREN

§ 61.071. Initial Examination

The council shall examine and make a study of each delinquent child committed to it as soon as possible after the arrival of the child. The study shall be made according to rules established by the council and shall include an investigation of all pertinent circumstances of the life and behavior of the child.

[Acts 1979, 66th Leg., p. 2388, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.072. Reexamination

The council shall periodically reexamine each child under its control except those on release under supervision or in foster homes. The examination of a child may be made as frequently as the council considers desirable, but shall be made at intervals not exceeding one year.

[Acts 1979, 66th Leg., p. 2388, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.073. Records of Examinations and Treatment

The council shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each delinquent child subject to its control. These records are not public and are available only on the order of a district court.

[Acts 1979, 66th Leg., p. 2388, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.074. Failure to Examine or Reexamine

Failure of the council to examine or reexamine a child as required by this chapter does not entitle the child to be discharged from the control of the council, but the child may petition the committing court for discharge. After due notice to the council, the committing court shall discharge the child from the control of the council unless the council satisfies the court that further control is necessary.

[Acts 1979, 66th Leg., p. 2388, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.075. Determination of Treatment

When a delinquent child has been committed to the council, the council may:

(1) permit the child liberty under supervision and on conditions it believes conducive to acceptable behavior;

(2) order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public;

(3) order reconfinement or renewed release as often as conditions indicate to be desirable;

(4) revoke or modify any order of the council affecting a child, except an order of final discharge, as often as conditions indicate; or

(5) discharge the child from control when it is satisfied that discharge will best serve the child's welfare and the protection of the public.

[Acts 1979, 66th Leg., p. 2388, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.076. Type of Treatment Permitted

(a) As a means of correcting the socially harmful tendencies of a delinquent child committed to it, the council may:

(1) require the child to participate in moral, academic, vocational, physical, and correctional training and activities;

(2) require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public;

(3) provide any medical or psychiatric treatment that is necessary; and

(4) place physically fit children in parks-maintenance camps, forestry camps, or ranches owned by the state or the United States and require the performance of suitable conservation and maintenance work.

(b) The dominant purpose of placing children in camps is to benefit and rehabilitate the children rather than to make the camps self-sustaining. Children placed in camps may not be exploited.
[Acts 1979, 66th Leg., p. 2388, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.077. Mentally Ill, Retarded, or Epileptic Child

If the council determines that a delinquent child committed to it is mentally ill or retarded or is an epileptic, the council, without delay, shall return the child to the court of original jurisdiction for appropriate disposition or shall request that the court in the county where the training school is located take any action required by the condition of the child.
[Acts 1979, 66th Leg., p. 2388, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 61.078 to 61.080 reserved for expansion]

SUBCHAPTER F. RELEASE

§ 61.081. Release Under Supervision

(a) The council may release under supervision any delinquent child in its custody and place the child in his or her home or in any situation or family approved by the council.

(b) Subject to legislative appropriation, the council may employ parole officers to investigate, place, supervise, and direct the activities of a parolee to ensure the parolee's adjustment to society in accordance with the rules adopted by the council.

(c) Parole officers may work with local organizations, clubs, and agencies to formulate plans and procedures for the prevention of juvenile delinquency.

(d) The council may resume the care and custody of any child released under supervision at any time before the final discharge of the child.
[Acts 1979, 66th Leg., p. 2390, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.082. Transportation, Clothing, Money

(a) The council shall ensure that each delinquent child it releases under supervision has suitable clothing, transportation to his or her home or to the county in which a suitable home or employment has been found, and money in an amount authorized by the rules of the council.

(b) The expenditure for clothing and transportation and the payment of money may be made from funds for support and maintenance appropriated to the council or to the institution from which the child is released, from local funds, or from any legislative appropriation specifically made for these purposes.
[Acts 1979, 66th Leg., p. 2390, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.083. Contracts With Counties

(a) The council may make a contract with a county to use the services of the county's juvenile probation department for the supervision of delinquent children within the county who are on furlough from a council facility or who are released under supervision from a council facility.

(b) The council shall pay the county $1 a day for each child subject to a contract authorized by Subsection (a) of this section. However, the maximum payment for each child in the county for more than 20 days is $20 a month. The payments shall be made to the county treasurer on a quarterly schedule.

(c) The council may not pay a county for supervision of a child for any time after the child:

(1) is discharged from the council's custody;

(2) is returned to a council facility; or

(3) transfers his or her residence to another county or state.

(d) A county that has a contract with the council must report to the council on the status and progress of each child for whom the county is receiving payments. The reports shall be made at the time and in the manner specified by the contract.
[Acts 1979, 66th Leg., p. 2390, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.084. Termination of Control

The council shall discharge from its custody a child not already discharged on his or her 18th birthday.
[Acts 1979, 66th Leg., p. 2390, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 61.085 to 61.090 reserved for expansion]

SUBCHAPTER G. MISCELLANEOUS PROVISIONS

§ 61.091. Cooperation of Other Agencies

To effectuate the purpose of this chapter and to make maximum use of existing facilities and personnel, all departments and agencies of the state and all officers and employees of the state, when requested by the council, shall cooperate with it in all activities consistent with their proper functions.
[Acts 1979, 66th Leg., p. 2391, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.092. No Forfeiture of Civil Rights

Commitment of a delinquent child to the custody of the council does not disqualify the child in any future examination, appointment, or application for public service under the government of the state or of any political subdivision of the state.

[Acts 1979, 66th Leg., p. 2391, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 61.093. Escape and Apprehension

A delinquent child who has been committed to the council and placed by it in any institution or facility and who has escaped or been released under supervision and broken the conditions of release, may be arrested without a warrant by a sheriff, deputy sheriff, constable, police officer, or parole officer employed or designated by the council, and may be kept in custody in a suitable place and detained until the child is returned to the custody of the council.

[Acts 1979, 66th Leg., p. 2391, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 61.094 to 62.000 reserved for expansion]

CHAPTER 62. DETENTION HOMES AND PARENTAL SCHOOLS

Section
62.001. Detention Homes and Parental Schools.
62.002. Multicounty Facilities.

§ 62.001. Detention Homes and Parental Schools

(a) Any county may establish detention homes and parental schools for juveniles. The commissioners court may appropriate necessary funds from the general fund of the county to establish, equip, and maintain detention homes and parental schools for the juveniles of the county.

(b) Any county in which no detention home or parental school exists may appropriate funds necessary to pay for the proper care and training of its juveniles in the detention home or parental school of any county that agrees to receive the juveniles. The cost of the care shall be agreed on by the commissioners courts of the counties concerned.

(c) If, in the opinion of the commissioners court, it is necessary to levy a special tax to establish and maintain a detention home or parental school or to pay for the care and training of juveniles as provided by Subsection (b) of this section, the commissioners court may hold a special election on the question of levying the tax. If a petition signed by 10 percent of the qualified voters of the county is submitted requesting a special election, the commissioners court shall hold the special election.

(d) All elections held under Subsection (c) of this section shall be governed by the general laws relating to elections for the levy of special school taxes.

[Acts 1979, 66th Leg., p. 2391, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 62.002. Multicounty Facilities

(a) The purpose of this section is to enable counties jointly to provide better probation services and detention and diagnostic facilities for juveniles than the counties, acting singly, would be able to provide.

(b) The commissioners courts of two or more counties may enter into cooperative agreements to acquire, maintain, and operate detention and diagnostic facilities for juveniles. The counties may maintain, improve, and operate the property so acquired and all improvements thereon, and may sell or lease all or any part of the property and improvements in accordance with the terms of the cooperative agreement. The counties may accept any donation or gift made for the purpose of acquiring, maintaining, or operating the juvenile faciiities.

(c) In accordance with the terms of the cooperative agreement, each county which is a party to the agreement may issue the bonds of the county as provided by Chapter 2, Title 22, Revised Civil Statutes of Texas, 1925, as amended [1], for the purpose of acquiring, maintaining, and operating the facilities for juveniles.

(d) The commissioners courts of two or more counties may enter into cooperative agreements to provide probation services for juveniles. The cooperative agreement shall set forth in detail how the probation services are to be provided and financed.

[Acts 1979, 66th Leg., p. 2391, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[1] Civil Statutes, art. 718 et seq.

SUBTITLE B. SERVICES FOR CHILDREN

CHAPTER 71. COMMISSION ON SERVICES TO CHILDREN AND YOUTH

Section
71.001. Commission on Services to Children and Youth.
71.002. Application of Sunset Act.
71.003. Officers; Meetings.
71.004. Expenses.
71.005. Commission Staff; Budget.
71.006. Duties of the Commission.
71.007. Gifts and Grants.
71.008. Annual Report.
71.009. Cooperation of Other Agencies.

§ 71.001. Commission on Services to Children and Youth

(a) The Texas Commission on Services to Children and Youth is composed of:

(1) the commissioner of health;

(2) the commissioner of education;

(3) the presiding officer of the Coordinating Board, Texas College and University System;

(4) the commissioner of human resources;

(5) the commissioner of mental health and mental retardation;

(6) the director of the Texas Department of Corrections;

(7) the director of the Texas Department of Public Safety;

(8) the executive director of the State Commission for the Blind;

(9) the executive director of the Texas Youth Council;

(10) the director of the Texas Employment Commission;

(11) the director of the Texas Rehabilitation Commission; and

(12) 18 lay members.

(b) Lay members of the commission are appointed by the governor with the advice and consent of the senate for staggered terms of six years, with the terms of six members expiring on January 31 of each odd-numbered year. Lay members must be representative of the racial, ethnic, and economic makeup of the population of Texas, and six members must be younger than 21 years of age at the time of appointment.

[Acts 1979, 66th Leg., p. 2392, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 71.002. Application of Sunset Act

The commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission is abolished and this chapter expires effective September 1, 1985.

[Acts 1979, 66th Leg., p. 2392, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 71.003. Officers; Meetings

(a) The commission shall elect a presiding officer and other necessary officers from its membership.

(b) The commission shall hold periodic meetings at a place designated by the commission.

[Acts 1979, 66th Leg., p. 2392, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 71.004. Expenses

Commission members are entitled to receive reimbursement for their actual travel and other necessary expenses incurred in the performance of their duties.

[Acts 1979, 66th Leg., p. 2392, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 71.005. Commission Staff; Budget

(a) The commission may use staff available to it from the Texas Department of Community Affairs.

(b) For budgetary purposes the commission is attached to and considered a part of the Texas Department of Community Affairs, with necessary operating expenses financed by legislative appropriations.

[Acts 1979, 66th Leg., p. 2392, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 71.006. Duties of the Commission

(a) The commission shall assist in coordinating the administrative responsibilities and services of state agencies and programs concerned with the well-being of children and youth.

(b) The commission shall continuously study matters relevant to the protection, growth, and development of children and youth and shall periodically indicate on a priority basis necessary changes to the legislature.

(c) The commission may undertake other activities which it feels will encourage other public and private bodies throughout the state to engage in programs for the development of children and youth.

(d) The commission shall perform any duties assigned to it by the governor or the legislature concerning White House Conferences on Children and Youth.

[Acts 1979, 66th Leg., p. 2392, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 71.007. Gifts and Grants

The commission may accept gifts and grants of money from any individual, group, association, corporation, or the federal government and may expend the funds in accordance with the purposes and under the conditions specified by the donor.

[Acts 1979, 66th Leg., p. 2392, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 71.008. Annual Report

On or before December 1 of each year, the commission shall make a detailed written report of its activities to the governor and to the presiding officer of each house of the legislature.

[Acts 1979, 66th Leg., p. 2392, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 71.009. Cooperation of Other Agencies

All state agencies, officers, and employees shall cooperate with the commission to the extent consistent with their functions.

[Acts 1979, 66th Leg., p. 2392, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

TITLE 4. SERVICES FOR THE DEAF

CHAPTER 81. TEXAS COMMISSION FOR THE DEAF

Section

81.001. Definition.
81.002. Texas Commission for the Deaf.
81.003. Terms.
81.004. Application of Sunset Act.
81.005. Chairman; Meetings; Expenses.
81.006. Duties and Powers.
81.007. Board for Evaluation of Interpreters.
81.008. Executive Director.

Section
81.009. Employees.
81.010. Technical Advisory Council for Planning and Operations.

§ 81.001. Definition

In this chapter, "commission" means the Texas Commission for the Deaf.

[Acts 1979, 66th Leg., p. 2394, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2431, ch. 842, art. 2, § 3, eff. Sept. 1, 1979.]

§ 81.002. Texas Commission for the Deaf

(a) The Texas Commission for the Deaf is composed of nine members appointed by the governor with the advice and consent of the senate.

(b) Three members of the commission must be deaf persons, two must be parents of deaf persons, two must be professionals serving the deaf, and two must be persons from the general public.

[Acts 1979, 66th Leg., p. 2394, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2431, ch. 842, art. 2, § 3, eff. Sept. 1, 1979.]

Section 10 of Acts 1979, 66th Leg., p. 1651, ch. 690, enacting former Vernon's Ann.Civ.St. art. 4413(42b), provided:

"The governor shall appoint members of the commission immediately after this Act takes effect. The governor shall designate three of the first nine members appointed to serve terms expiring in 1981, three to serve terms expiring in 1983, and three to serve terms expiring in 1985."

Section 12 of said Act provided:

"Sec. 12. Chapter 640, Acts of the 62nd Legislature, Regular Session, 1971, as amended (Article 4413(42), Vernon's Texas Civil Statutes), is repealed. The State Commission for the Deaf created by that Act is abolished and its records and property are transferred to the commission created by this Act."

§ 81.003. Terms

Members hold office for staggered terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year.

[Acts 1979, 66th Leg., p. 2394, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2431, ch. 842, art. 2, § 3, eff. Sept. 1, 1979.]

§ 81.004. Application of Sunset Act

The Texas Commission for the Deaf is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless the commission is continued in existence as provided by that Act, the commission is abolished and this chapter expires effective September 1, 1985.

[Acts 1979, 66th Leg., p. 2394, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2431, ch. 842, art. 2, § 3, eff. Sept. 1, 1979.]

§ 81.005. Chairman; Meetings; Expenses

(a) The commission shall elect a chairman from among its members. The chairman serves for a term of one year.

(b) The commission shall hold at least six meetings a year.

(c) Five members of the commission constitute a quorum for the transaction of business.

(d) Members of the commission are entitled to reimbursement for their actual and necessary expenses in attending meetings of the commission and in carrying out official duties.

[Acts 1979, 66th Leg., p. 2394, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2431, ch. 842, art. 2, § 3, eff. Sept. 1, 1979.]

§ 81.006. Duties and Powers

(a) The commission shall:

(1) develop and implement a statewide program to ensure continuity of services to the deaf;

(2) provide direct services to the deaf that have not been previously designated by legislation as the responsibility of other agencies;

(3) work to ensure more effective coordination and cooperation among public and nonprofit organizations providing social and educational services to deaf individuals;

(4) establish a registry of available interpreters for the deaf and a catalogue of resources available for the needs of the deaf, both of which it shall disseminate to interested people and update annually; and

(5) help initiate interpreter training programs in institutions of higher learning, develop guidelines for instruction to promote uniformity of signs taught within these programs, and with the assistance of the Central Education Agency develop standards for evaluation of these programs.

(b) The commission may:

(1) appoint one or more advisory committees to consult with and advise the commission and may reimburse the members of an advisory committee for the actual and necessary expenses incurred in performing duties requested by the commission;

(2) accept gifts, grants, and donations of money, personal property, or real property for use in expanding and improving services to deaf persons of this state; and

(3) adopt rules necessary to implement this chapter.

[Acts 1979, 66th Leg., p. 2394, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2431, ch. 842, art. 2, § 3, eff. Sept. 1, 1979.]

Amendment by Acts 1979, 66th Leg., p. 399, ch. 186, § 7

Section 7 of Acts 1979, 66th Leg., p. 399, ch. 186, purports to amend § 8 of Civil Statutes, art. 4413(42) [now, this section] by adding subsecs. (e) and (f), without reference to repeal of said article by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1). As so added, subsecs. (e) and (f) read:

"(e) The commission shall compile a list of qualified interpreters who are available for assignment by a state agency, a court, or a political subdivision to interpret proceedings for deaf persons. The commission shall disseminate this list to the agencies, courts, political subdivisions, and the general public. The commission shall prescribe the qualifications for interpreters who are to appear on the list and in prescribing those qualifications shall consider interpreters who are certified by the Texas Society of Interpreters for the Deaf or the National Registry of Interpreters for the Deaf, or both.

"(f) The commission by rule shall adopt a schedule of reasonable fees recommended for the payment of interpreters required by law to be provided in proceedings of state agencies, courts, and political subdivisions. In adopting the schedule, the commission shall consider the recommendations of the Texas Society of Interpreters for the Deaf and the National Registry of Interpreters for the Deaf."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 81.007. Board for Evaluation of Interpreters

(a) The commission may establish a program in accordance with this section for the certification of interpreters who have reached varying levels of proficiency in manual communication skills.

(b) The commission shall appoint a board of three persons to administer the certification program.

(c) Subject to approval of the commission, the board shall prescribe qualifications for each of several levels of certification based on proficiency and shall evaluate and certify interpreters using these qualifications.

(d) The commission shall use the recommendations of the board in compiling a statewide registry of interpreters by skill level.

(e) The commission may charge a reasonable fee for the administration of an examination or other requirements for certification of an applicant.

[Acts 1979, 66th Leg., p. 2394, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2431, ch. 842, art. 2, § 3, eff. Sept. 1, 1979.]

§ 81.008. Executive Director

(a) The commission shall appoint an executive director.

(b) In selecting an executive director, the commission shall give preference to a deaf or hard of hearing person.

(c) The executive director is responsible for carrying out policies established by the commission. The commission may not delegate responsibility for establishing policy of the agency to the executive director.

[Acts 1979, 66th Leg., p. 2394, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2431, ch. 842, art. 2, § 3, eff. Sept. 1, 1979.]

§ 81.009. Employees

The commission may hire employees it considers necessary to carry out the purposes of this chapter.

[Acts 1979, 66th Leg., p. 2394, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2431, ch. 842, art. 2, § 3, eff. Sept. 1, 1979.]

§ 81.010. Technical Advisory Council for Planning and Operations

(a) The Technical Advisory Council for Planning and Operations is established. The commissioner of education, the commissioner of public welfare, the commissioner of mental health and mental retardation, the commissioner of the Texas Rehabilitation Commission, the superintendent of the Texas School for the Deaf, the executive director of the State Commission for the Blind, and the commissioner of health, or a designee of each, shall serve as ex officio members of the council. In addition, the executive director of the Texas Commission for the Deaf shall appoint a member of the faculty of a college or university who specializes in the area of training for the deaf, and shall appoint two representatives of nonprofit organizations which provide services for the deaf to serve on the council.

(b) The members of the council appointed by the executive director of the Texas Commission for the Deaf shall serve for terms of two years. They shall receive no compensation but are entitled to be reimbursed for actual and necessary expenses incurred in performing their official duties.

(c) The executive director of the Texas Commission for the Deaf may appoint representatives of other public or private agencies to serve as advisors to the council and may authorize the reimbursement of their actual and necessary expenses incurred in performing their official duties.

(d) The council serves as an interagency planning council for the coordination of services to the deaf. The council shall assist the executive director of the Texas Commission for the Deaf and the commission in resolving the differences that arise among state-supported organizations responsible for direct extension of services to deaf individuals and in determining which agency is responsible for serving a multiply handicapped deaf child.

[Acts 1979, 66th Leg., p. 2394, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2431, ch. 842, art. 2, § 3, eff. Sept. 1, 1979.]

TITLE 5. SERVICES FOR THE BLIND AND VISUALLY HANDICAPPED

CHAPTER 91. STATE COMMISSION FOR THE BLIND

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91.002. Definitions.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

91.011. State Commission for the Blind.
91.012. Executive Director; Other Personnel.
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SUBCHAPTER C. GENERAL POWERS AND DUTIES OF THE COMMISSION

91.021. Responsibility for Visually Handicapped Persons.
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91.023. Rehabilitation Services.
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91.026. Registry of Blind and Visually Handicapped Persons.
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91.052. Vocational Rehabilitation Program for the Blind.
91.053. Cooperation With Federal Government.
91.054. Director; Appointment and Duties.
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SUBCHAPTER E. CENTRAL MEDIA DEPOSITORY

91.081. Purpose.
91.082. Establishment of Central Media Depository.
91.083. Ancillary Services.
91.084. Funding.

SUBCHAPTER A. GENERAL PROVISIONS

§ 91.001. Application of Sunset Act

The State Commission for the Blind is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission is abolished and this chapter expires effective September 1, 1985.

[Acts 1979, 66th Leg., p. 2396, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.002. Definitions

In this chapter:

(1) "Commission" means the State Commission for the Blind.

(2) "Blind" means a person having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(3) "Visual handicap" includes blindness, an eye condition for which there is a medical prognosis indicating that the condition is of a progressive nature and may deteriorate either to blindness or to a substantial loss of vision, and physical or psychological handicaps that accompany or complement a disorder or imperfection of the eye.

(4) "Visually handicapped child" means a child with a visual handicap or with a visual condition requiring cosmetic treatment, psychological assistance, counseling, or other assistance that the commission can render.

[Acts 1979, 66th Leg., p. 2396, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 91.003 to 91.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 91.011. State Commission for the Blind

(a) The State Commission for the Blind is composed of nine members appointed by the governor with the consent of the senate. Two members must be reputable blind citizens of the state and the remaining members must be outstanding citizens of the state.

(b) A person is ineligible for appointment to the commission if the person is a paid employee of an agency carrying on work for the blind or if the person is engaged in or associated with or otherwise represents a business, discipline, profession, or trade conducted for the primary purpose of selling or furnishing goods or services of the type provided by the commission as a significant part of its assistance to eligible individuals.

(c) Members of the commission hold office for terms of six years with the terms of two members expiring on January 1 of odd-numbered years.

(d) Commission members serve without compensation but are entitled to reimbursement for necessary expenses incurred in the performance of their duties.

(e) The governor shall designate a member of the commission to serve as presiding officer, and the officer shall serve at the governor's pleasure.

(f) Five members of the commission constitute a quorum for the transaction of business.

[Acts 1979, 66th Leg., p. 2396, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2437, ch. 842, art. 2, § 11, eff. Sept. 1, 1979.]

§ 91.012. Executive Director; Other Personnel

(a) The commission shall annually appoint an executive director and other necessary employees authorized by law.

(b) On undertaking specific activities supporting special and vocational education programs for the blind and visually handicapped, the commission may appoint an assistant executive director, a deputy director for cooperative programs with other agencies and departments of the state or its political subdivisions, a deputy director for technical and consultative services to private organizations and special resource facilities within the field, and a deputy director for the regular programs of the agency. These positions and the position of executive director are exempt from the state salary classification schedule, and, within the limits of available funds, the commission may fix the salaries for the positions at amounts not exceeding the average amounts paid for equivalent positions in any other five state agencies engaged in the direct extension of state-supported services to eligible individuals. The salaries and related costs of these positions may be paid out of the general funds of the agency, the special grants received by the agency, or other funds available to the agency under interagency agreements.

(c) Within the limits of appropriated funds the commission may employ other personnel necessary to carry out its duties.

[Acts 1979, 66th Leg., p. 2396, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.013. Expenses; Accounts

(a) Expenses of commission members and employees must be paid in the most efficient and practical manner authorized by law.

(b) All accounts must be paid in accordance with laws applicable to the commission or to state agencies generally.

[Acts 1979, 66th Leg., p. 2396, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 91.014 to 91.020 reserved for expansion]

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF THE COMMISSION

§ 91.021. Responsibility for Visually Handicapped Persons

(a) The commission has primary responsibility for providing all services to visually handicapped persons except welfare services and services for children provided by regularly established educational agencies and state authorities.

(b) The commission shall negotiate interagency agreements with other state agencies to provide services for individuals who have both a visual handicap and another handicapping condition so that those multiply handicapped individuals may be provided the most beneficial services with the greatest possible economy.

(c) The commission and other concerned state agencies may not refuse to enter an interagency agreement developed to advance the state's policies regarding the rehabilitation or education of the blind and visually handicapped. In negotiating the agreements the agencies shall seek to extend and improve the regular services provided by the agencies and to effectively use all specialty and fiscal resources that are available. The agencies shall give careful consideration to avoiding unnecessary duplication or overlap of their respective efforts.

(d) The commission shall enter into agreements with the federal government to implement federal legislation authorizing the provision of services to the visually handicapped. The commission shall adopt methods of administration required by the federal government for the proper and efficient implementation of the agreements, and shall comply with other federal requirements necessary to secure the full benefits of the federal legislation.

(e) The commission and other concerned state agencies may not refuse to enter interagency agreements designed to secure the full benefits of federal legislation authorizing services for the visually handicapped.

(f) The commission shall:

(1) provide advocacy and ombudsmanship services for visually handicapped citizens of the state;

(2) serve as an information center and referral resource for the visually handicapped;

(3) develop mechanisms and procedures that tend to assist visually handicapped individuals in bridging gaps between educational, institutional, rehabilitative, vocational, and related types of services operated by public and private nonprofit organizations throughout the state; and

(4) generally supervise, oversee, and assure the effective management and operation of a state program of purchasing goods and services manufactured by handicapped individuals according to the requirements of law and in nonprofit sheltered workshop facilities.

[Acts 1979, 66th Leg., p. 2397, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2437, ch. 842, art. 2, § 12, eff. Sept. 1, 1979.]

§ 91.022. Bureau of Information

The commission shall maintain a bureau of information to assist blind and visually handicapped persons in finding employment.

[Acts 1979, 66th Leg., p. 2397, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.023. Rehabilitation Services

The commission may furnish materials, tools, books, and other necessary apparatus and assistance for use in rehabilitating blind and visually handicapped persons.

[Acts 1979, 66th Leg., p. 2397, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.024. Workshops and Salesrooms

The commission may establish workshops and salesrooms for blind and visually handicapped persons. The commission may use receipts or earnings that accrue from the operation of industrial schools, salesrooms, or workshops authorized in this chapter. Detailed statements of the receipts or earnings and expenditures shall be made to the state auditor monthly.

[Acts 1979, 66th Leg., p. 2397, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.025. Instruction of Blind Persons in Their Homes

The commission may employ teachers to instruct adult blind persons in their homes. However, the commission may not undertake the permanent support or maintenance of a blind person.

[Acts 1979, 66th Leg., p. 2397, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.026. Registry of Blind and Visually Handicapped Persons

The commission shall cooperate with the Governor's Coordinating Office for the Visually Handicapped in maintaining a current and comprehensive registry of blind and visually handicapped persons in the state. The registry must include appropriate information regarding individuals whose medical history or medical prognosis indicates that there is a reasonable likelihood that the individuals may experience a substantial visual handicap in the future.

[Acts 1979, 66th Leg., p. 2397, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.027. Prevention of Blindness and Conservation of Eyesight

The commission shall take measures it considers advisable to prevent blindness and to conserve eyesight.

[Acts 1979, 66th Leg., p. 2397, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.028. Services for Visually Handicapped Children

The commission may provide services to visually handicapped children to supplement the services provided by other state agencies if the commission determines that the provision of the services is appropriate and that the services will assist the children in achieving financial self-sufficiency and a fuller and richer life. It is the intention of the legislature that all state agencies concerned with visually handicapped children cooperate fully to achieve this purpose.

[Acts 1979, 66th Leg., p. 2397, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.029. Vocational Guidance and Related Services

The commission may provide vocational guidance and related services to adults with seriously defective sight through its vocational rehabilitation division if the commission determines that it may appropriately and adequately do so.

[Acts 1979, 66th Leg., p. 2397, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.030. Gifts and Grants

The commission may accept gifts and grants from individuals, associations, and corporations and may expend funds received in accordance with the provisions of this chapter.

[Acts 1979, 66th Leg., p. 2397, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.031. Reports

The commission shall submit a report to the legislature before January 1 of each odd-numbered year detailing the commission's activities and accomplishments during the preceding biennium and accounting for all funds it received or spent. The report must include recommendations for further improvement of the conditions of the blind in the state.

[Acts 1979, 66th Leg., p. 2397, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 91.032 to 91.050 reserved for expansion]

SUBCHAPTER D. VOCATIONAL REHABILITATION OF THE BLIND

§ 91.051. Definitions

In this subchapter:

(1) "Program" means the vocational rehabilitation program authorized in this subchapter.

(2) "Director" means the executive director of the commission or his or her designee who may devote full time to the program or to vocational rehabilitation and other closely related activities to the extent permitted by applicable federal rules.

(3) "Employment handicap" means a physical or mental condition that obstructs or impairs, or if not corrected will probably obstruct or impair, an individual's performance in an occupation.

(4) "Disabled individual" means a person who has a substantial employment handicap.

(5) "Blind disabled individual" means a person who is blind or who has a visual condition for which medical prognosis indicates a progressive deterioration that may result in a substantial vocational handicap.

(6) "Vocational rehabilitation" or "vocational rehabilitation services" means services that are provided directly by the commission or through a public or private agency and that the director determines are necessary to compensate a blind disabled individual for an employment handicap so that the individual may engage in a remunerative occupation. The terms include, but are not limited to, medical and vocational diagnosis; vocational guidance, counseling, and placement; rehabilitation training; physical restoration; transportation; occupational licenses; customary occupational tools and equipment; maintenance; training books and materials; and other goods and services for which the commission receives financial support under federal law.

(7) "Rehabilitation training" means all necessary training provided to a blind disabled individual to compensate for an employment handicap. The term includes, but is not limited to, manual, preconditioning, prevocational, vocational, and supplementary training and training to achieve broader and more lucrative skills and capacities.

(8) "Physical restoration" means medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a blind disabled individual's employment handicap within a reasonable period of time. The term includes, but is not limited to, medical, surgical, dental, and psychiatric treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances. The term excludes treatment to cure acute or transitory conditions.

(9) "Prosthetic appliance" means an artificial device necessary to support or replace a part of the body or to increase the acuity of a sensory organ.

(10) "Occupational license" means a license, permit, or other written authorization required by a governmental unit as a condition for engaging in an occupation.

(11) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation.

(12) "Rule" means a rule promulgated by the director and approved by the commission.

[Acts 1979, 66th Leg., p. 2399, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.052. Vocational Rehabilitation Program for the Blind

(a) The commission shall conduct a program to provide vocational rehabilitation services to eligible blind disabled individuals.

(b) To achieve the purposes of the program, the commission may:

(1) cooperate with other public and private agencies in studying the problems involved in providing vocational rehabilitation and in establishing, developing, and providing necessary or desirable facilities and services;

(2) enter reciprocal agreements with other states to provide vocational rehabilitation for the residents of the states concerned; and

(3) conduct research and compile statistics relating to the vocational rehabilitation of blind disabled individuals.

[Acts 1979, 66th Leg., p. 2399, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.053. Cooperation With Federal Government

(a) The commission shall cooperate with the federal government to accomplish the purposes of federal laws relating to vocational rehabilitation and closely related activities.

(b) The commission shall negotiate agreements or plans with the federal government and shall adopt efficient methods of administration and comply with other conditions required to secure the full benefits of the federal laws. If the commission determines that a provision of state law precludes conformity with a federal requirement and limits federal financial support, the commission may waive or modify the state law to the extent necessary to obtain the full benefits of the federal law.

(c) In adopting the methods of administration, the commission shall include a system of necessary staffing patterns, personnel administration, and employee compensation comparable to the systems used by state agencies that receive substantial federal financial support. However, the commission may not employ personnel or adopt a system of merit pay that is not authorized in the commission's state appropriation unless the commission certifies to the state auditor that the commission's action is necessary to accomplish its statutory purposes and that the action will not be financed with state funds. The commission shall submit financial information required by the state auditor to support the certification.

[Acts 1979, 66th Leg., p. 2399, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.054. Director; Appointment and Duties

(a) The commission shall appoint a director to administer the program under its general supervision.

(b) The commission shall select the director on the basis of his or her education, training, experience, and demonstrated abilities in accordance with established personnel standards.

(c) The director shall promulgate rules governing personnel standards and, with the commission's approval, shall appoint personnel necessary to efficiently accomplish the purposes of the program.

(d) With the commission's approval, the director may delegate to an employee of the program any of the director's powers and duties relating to the program except the power to make rules and appoint personnel.

(e) The director shall make rules governing standards of eligibility for vocational rehabilitation services, the form and manner of filing applications for those services, the procedures for investigating applicants and determining their eligibility, the procedures protecting records and confidential information, procedures for fair hearings, and other matters necessary to achieve the purposes of this subchapter.

(f) With the commission's approval, the director shall establish appropriate administrative units within the program.

(g) The director shall prepare and submit to the commission annual reports of program activities and expenditures, and prior to each regular session of the legislature shall estimate the amount of funds necessary to administer the program and the amount available from all sources for that purpose.

(h) With the commission's approval, the director shall take other actions he or she considers necessary or appropriate to carry out the purposes of this subchapter.

[Acts 1979, 66th Leg., p. 2399, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.055. Eligibility for Vocational Rehabilitation Services

(a) The commission shall provide vocational rehabilitation services to a blind disabled individual if the individual:

(1) resides in this state and the director determines after investigation that the individual's vocational rehabilitation can be satisfactorily achieved; or

(2) is eligible for the services under an agreement with another state or the federal government.

(b) Except as otherwise provided by law or an agreement with the federal government, the commission may provide the following vocational rehabilitation services at public expense only to disabled blind individuals who are found to require financial assistance:

(1) physical restoration;

(2) occupational licenses;

(3) customary occupational tools and equipment;

(4) training books and materials;

(5) maintenance; and

(6) transportation other than that provided to determine the individual's eligibility and the nature and extent of the vocational rehabilitation services necessary.

(c) A disabled blind individual's right to maintenance is not transferable or assignable at law or in equity.

[Acts 1979, 66th Leg., p. 2399, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.056. Receipt and Disbursement of Funds

(a) The state treasurer is custodian of federal funds received by the state to implement federal law relating to vocational rehabilitation.

(b) The director shall certify for disbursement funds available for the vocational rehabilitation program in accordance with regulations.

(c) The treasurer shall disburse state and federal vocational rehabilitation funds on certification by the director.

[Acts 1979, 66th Leg., p. 2399, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.057. Gifts

(a) With the approval of the commission, the director may accept and use unconditional gifts made to the commission to carry out the purposes of this subchapter.

(b) The director may accept, use, hold, or invest conditional gifts if the commission determines that the conditions are consistent with the provisions of this subchapter.

[Acts 1979, 66th Leg., p. 2399, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.058. Hearings

An applicant for or recipient of vocational rehabilitation services who is aggrieved by an action or inaction under the program is entitled to a hearing by the commission in accordance with law.

[Acts 1979, 66th Leg., p. 2399, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.059. Misuse of Information

Except for purposes directly connected with the administration of the vocational rehabilitation program, no person may solicit, disclose, receive, use, or knowingly permit the use of records or other information concerning an applicant for or recipient of vocational rehabilitation services that is directly or indirectly acquired by an officer or employee of the state or its political subdivisions in the course of his or her official duties.

[Acts 1979, 66th Leg., p. 2399, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 91.060. Limitation on Political Activity

(a) No officer or employee engaged in the administration of the vocational rehabilitation program may:

(1) use his or her official authority or influence or permit the use of the program for a partisan political purpose or for the purpose of interfering with or affecting the results of an election;

(2) take an active part in the management of a political campaign or participate in a political activity; or

(3) solicit or receive any service, assistance, subscription, assessment, or contribution for a political purpose.

(b) An officer or employee engaged in the administration of the program may vote as he pleases, may express his opinions as a citizen on any subject, and may not be required to contribute or render any service, assistance, subscription, assessment, or contribution for any political purpose.

(c) An officer or employee who violates Subsection (a) of this section is subject to discharge or suspension.

[Acts 1979, 66th Leg., p. 2399, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

SUBCHAPTER E. CENTRAL MEDIA DEPOSITORY

§ 91.081. Purpose

(a) The purpose of this subchapter is to establish a comprehensive central state depository for braille, large print, slow speed records and machines, tape recordings and tape players, and related forms of media that will enable the Texas State Library, the Central Education Agency, the State Commission for the Blind, volunteer organizations involved in the production of braille or recorded materials for the blind, the Library of Congress, and related types of organizations to work together more closely and effectively.

(b) It is the intent of this subchapter to allow various agencies and organizations interested in or responsible for such services to work together cooperatively in one facility without requiring one central management.

[Acts 1979, 66th Leg., p. 2406, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2438, ch. 842, art. 2, § 15, eff. Sept. 1, 1979.]

§ 91.082. Establishment of Central Media Depository

(a) The Texas State Library and Archives Commission shall generally supervise the establishment and operation of a central media depository in Austin to house materials and devices required by blind and visually handicapped individuals or by other individuals who are unable to use ordinary printed materials.

(b) With the approval of the library and archives commission, the agencies and organizations maintaining and operating the central media depository shall develop and periodically evaluate and modify specific arrangements for administrative support, sharing of staff and equipment, and related matters involved in the operation of the program.

[Acts 1979, 66th Leg., p. 2406, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2438, ch. 842, art. 2, § 15, eff. Sept. 1, 1979.]

§ 91.083. Ancillary Services

The library and archives commission shall allow the central media depository to be used for the repair of special media and equipment required by individuals who are unable to use ordinary print and for research and demonstration, training, and the production of materials in special media by volunteer organizations.

[Acts 1979, 66th Leg., p. 2406, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2438, ch. 842, art. 2, § 15, eff. Sept. 1, 1979.]

§ 91.084. Funding

The cost of establishing and operating the central media depository shall be paid with:

(1) funds appropriated by the legislature for that purpose;

(2) gifts, grants, bequests, and donations received by cooperating agencies for the establishment and support of the depository;

(3) reasonable fees customarily charged for services by the agencies and organizations using or occupying the facility; and

(4) funds budgeted by the cooperating agencies and organizations for that purpose pursuant to interagency contracts and agreements.

[Acts 1979, 66th Leg., p. 2406, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2438, ch. 842, art. 2, § 15, eff. Sept. 1, 1979.]

CHAPTER 92. GOVERNOR'S COORDINATING OFFICE FOR THE VISUALLY HANDICAPPED

SUBCHAPTER A. GENERAL PROVISIONS [REPEALED]
Section
92.001, 92.002. Repealed.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS [REPEALED]
92.011 to 92.013. Repealed.

SUBCHAPTER C. POWERS AND DUTIES OF THE OFFICE [REPEALED]
92.021 to 92.023. Repealed.

SUBCHAPTER D. CENTRAL MEDIA DEPOSITORY [TRANSFERRED]
92.051 to 92.054. Transferred.

SUBCHAPTER E. REGISTER OF BLIND AND VISUALLY HANDICAPPED PERSONS [REPEALED]
92.081 to 92.085. Repealed.

SUBCHAPTER A. GENERAL PROVISIONS [REPEALED]

§§ 92.001, 92.002. Repealed by Acts 1979, 66th Leg., p. 2439, ch. 842, art. 2, § 16, eff. Sept. 1, 1979

The repealed sections, relating to purpose and definitions, respectively, were derived from Acts 1979, 66th Leg., p. 2403, ch. 842, art. 1, § 1.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS [REPEALED]

§§ 92.011 to 92.013. Repealed by Acts 1979, 66th Leg., p. 2439, ch. 842, art. 2, § 16, eff. Sept. 1, 1979.

The repealed sections, relating to the Governor's Coordinating Office for the Visually Handicapped, the Technical Advisory Council for Planning and Operations, and the Policy Board for Services to the Visually Handicapped, respectively, were derived from Acts 1979, 66th Leg., p. 2403, ch. 842, art. 1, § 1.

SUBCHAPTER C. POWERS AND DUTIES OF THE OFFICE [REPEALED]

§§ 92.021 to 92.023. Repealed by Acts 1979, 66th Leg., p. 2439, ch. 842, art. 2, § 16, eff. Sept. 1, 1979.

The repealed sections, relating to general functions of the office, limitation of service activities, and interagency contracts, were derived from Acts 1979, 66th Leg., p. 2405, ch. 842, art. 1, § 1.

SUBCHAPTER D. CENTRAL MEDIA DEPOSITORY [TRANSFERRED]

This subchapter, consisting of §§ 92.051 to 92.054, was transferred to Subchapter E of Chapter 91, § 91.081 et seq., renumbered, and amended by Acts 1979, 66th Leg., p. 2438, ch. 842, art. 2, § 15.

SUBCHAPTER E. REGISTER OF BLIND AND VISUALLY HANDICAPPED PERSONS [REPEALED]

§§ 92.081 to 92.085. Repealed by Acts 1979, 66th Leg., p. 2439, ch. 842, art. 2, § 16, eff. Sept. 1, 1979.

Former § 92.081 related to maintenance of register. Former § 92.082 related to reports. Former § 92.083 related to registration. Former § 92.084 related to systems, standards, and procedures. Former § 92.085 related to data processing. The repealed sections were derived from Acts 1979, 66th Leg., p. 2407, ch. 842, art. 1, § 1.

CHAPTER 93. COMMITTEE ON PURCHASES OF BLIND-MADE PRODUCTS AND SERVICES

Section

93.001. Purpose.
93.002. Texas Committee on Purchases of Blind-made Products and Services.
93.003. Application of Sunset Act.
93.004. Determination of Fair Market Price; Purchasing Procedures.
93.005. Procurement at Determined Price.
93.006. Technical Consultation.
93.007. Cooperation With Department of Corrections.
93.008. Correlation With Related Federal Programs.
93.009. Feasibility Study.
93.010. Rules.
93.011. Product Specifications.
93.012. Determinations of Fair Market Value.
93.013. Exceptions.
93.014. Procurement for Political Subdivisions.
93.015. Political Subdivisions Excluded.

§ 93.001. Purpose

The purpose of this chapter is to further the state's policy of encouraging and assisting handicapped citizens to achieve maximum personal independence by engaging in useful and productive activities and, in addition, to research, demonstrate, and develop approaches through which the state's purchase of blind-made goods and services, if shown to be sound and effective in meeting the needs of severely handicapped individuals, may be generally extended to disability groups other than the blind. [Acts 1979, 66th Leg., p. 2408, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 93.002. Texas Committee on Purchases of Blind-made Products and Services

(a) The Texas Committee on Purchases of Blind-made Products and Services is composed of the following members who are appointed by the governor with the advice and consent of the senate:

(1) a private citizen conversant with the problems incidental to the employment of the blind;

(2) a representative of a sheltered workshop for the blind organized under state law;

(3) a representative of a sheltered workshop organized under state law to serve disability groups other than the blind;

(4) a representative of a volunteer organization operated primarily to serve a disability group or groups other than the blind;

(5) a representative of the department of a state-supported institution of higher education offering an advanced degree in vocational rehabilitation counseling;

(6) a representative of the Texas Rehabilitation Commission;

(7) a representative of the State Board of Control;

(8) a representative of the State Commission for the Blind;

(9) a representative of the Texas Department of Mental Health and Mental Retardation;

(10) a representative of private business who is knowledgeable in the activities and processes

involved in the sale of goods or services to governmental entities; and

(11) a representative of a state agency or department purchasing goods or services under this section but not involved in the daily operation of the program authorized by this Chapter.

(b) Lay members of the committee serve for terms of two years expiring on January 31 of odd-numbered years. Members receive no compensation but are entitled to reimbursement by the State Commission for the Blind for expenses actually incurred in the performance of their duties.

(c) The governor shall select one of the committee members to serve as chairman.

(d) A member who is unable to attend a meeting of the committee may designate a person from his or her agency or department to represent him or her at the meeting.

[Acts 1979, 66th Leg., p. 2408, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2439, ch. 842, art. 2, § 17, eff. Sept. 1, 1979.]

Sections 1 to 9 of Acts 1979, 66th Leg., p. 2052, ch. 803, eff. Aug. 27, 1979, amending various provisions of former Vernon's Ann.Civ.St. art. 664-5, was incorporated into the Human Resources Code by Acts 1979, 66th Leg., p. 2439, ch. 842, art. 2, §§ 17 to 21, eff. Sept. 1, 1979. Section 11 of ch. 803 provided:

"The governor shall appoint two new members to the committee in accordance with the provisions of this Act immediately after the effective date of this Act. Members of the committee holding office on the effective date of this Act shall serve for the remainder of the terms to which they were appointed. Thereafter, the governor shall appoint members in accordance with this Act."

§ 93.003. Application of Sunset Act

The Texas Committee on Purchases of Blind-made Products and Services is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the committee is abolished and this chapter expires effective September 1, 1983.

[Acts 1979, 66th Leg., p. 2408, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2440, ch. 842, art. 2, § 18, eff. Sept. 1, 1979.]

§ 93.004. Fair Market Price; Purchasing Procedures

(a) The committee shall determine the fair market price of all products and services manufactured or provided by the blind and offered for sale to the various agencies and departments of the state and its political subdivisions by a nonprofit agency for the blind organized under state law and recognized by the State Commission for the Blind as capable of contributing to the purposes of this chapter.

(b) The committee shall revise the prices periodically to reflect changing market conditions.

(c) The committee shall make rules regarding designation of a central nonprofit agency to facilitate the distribution of orders among agencies for the blind, and other procedures necessary to achieve the purposes of this chapter.

(d) Requisitions for products and services required by state agencies are processed by the State Board of Control according to rules established by the board.

[Acts 1979, 66th Leg., p. 2408, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2440, ch. 842, art. 2, § 19, eff. Sept. 1, 1979.]

§ 93.005. Procurement at Determined Price

A suitable product or service that meets applicable specifications established by the state or its political subdivisions and that is available within the time specified must be procured from a nonprofit agency for the blind at the price determined by the committee to be the fair market price.

[Acts 1979, 66th Leg., p. 2408, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 93.006. Technical Consultation

Representatives of the governor's budget office and the Legislative Budget Board shall consult with the committee on matters relating to the economic consequences of the state's purchases of blind-made goods and services. The representatives are entitled to access to all pertinent records and shall make reports to the legislature periodically as they deem necessary.

[Acts 1979, 66th Leg., p. 2408, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 93.007. Cooperation With Department of Corrections

The committee shall cooperate with the Texas Department of Corrections to accomplish the purposes of this chapter and to contribute to the economy of state government. The committee and the department may enter into contractual agreements, cooperative working relationships, or other arrangements necessary for effective coordination and the realization of the objectives of both agencies.

[Acts 1979, 66th Leg., p. 2408, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 93.008. Correlation With Related Federal Programs

The committee may adopt procedures, practices, and standards used for federal programs similar to the state program established in this chapter.

[Acts 1979, 66th Leg., p. 2408, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 93.009. Feasibility Study

(a) The committee shall study the feasibility of extending the program established by this chapter to severely handicapped individuals whose disabilities are not of a visual nature.

(b) The study must include:

(1) an assessment of the potential sales to the state and its political subdivisions of goods and services manufactured or provided by severely

handicapped individuals in nonprofit, sheltered workshops in Texas;

(2) an estimate of the number of individuals who might benefit from an extension of the program and who are not being effectively served through other available state-supported programs of education and special services for the handicapped;

(3) consideration of the manufacturing capabilities of sheltered workshops throughout the state; and

(4) consideration of additional costs, if any, or additional savings, if any, accruing to the state's General Revenue Fund if the program were expanded.

(c) The committee shall report its findings and recommendations to the governor and the legislature. If the committee recommends expansion of the program, the committee shall make specific recommendations concerning required statutory changes and implementation schedules and procedures.

(d) In conducting the feasibility study, the committee and cooperating sheltered workshops may use the labor and services of individuals with various types of disabilities of a nonvisual nature in manufacturing goods and services for the state and its political subdivisions.

[Acts 1979, 66th Leg., p. 2408, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 93.010. Rules

After consulting with the committee and reviewing the committee's recommendations, the State Commission for the Blind may make rules necessary to implement and administer this chapter.

[Acts 1979, 66th Leg., p. 2408, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2438, ch. 842, art. 2, § 14, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 2441, ch. 842, art. 2, § 20, eff. Sept. 1, 1979.]

§ 93.011. Product Specifications

Except as otherwise provided by this section, a product manufactured for sale through the State Board of Control to any office, department, institution, or agency of the state under this chapter shall be manufactured or produced according to specifications developed by the State Board of Control. If the State Board of Control has not adopted specifications for a particular product, the production shall be based on commercial or federal specifications in current use by industry for the manufacture of the product for sale to the state.

[Added by Acts 1979, 66th Leg., p. 2441, ch. 842, art. 2, § 21, eff. Sept. 21, 1979.]

§ 93.012. Determinations of Fair Market Value

(a) In determining the fair market value of products or services offered for sale under this chapter, the committee shall give due consideration to the following type of factors:

(1) to the extent applicable, the amounts being paid for similar articles in similar quantities by federal agencies purchasing the products or services under the authorized federal program of like effect to the state program authorized by this chapter;

(2) the amounts which private business would pay for similar products or services in similar quantities if purchasing from a reputable corporation engaged in the business of selling similar products or services;

(3) to the extent applicable, the amount paid by the state in any recent purchases of similar products or services in similar quantities, making due allowance for general inflationary or deflationary trends;

(4) the actual cost of manufacturing the product or service at a sheltered workshop offering employment services to blind or other severely handicapped individuals, with adequate weight to be given to legal and moral imperatives to pay blind or other severely handicapped workers equitable wages; and

(5) the usual, customary, and reasonable costs of manufacturing, marketing, and distribution.

(b) The fair market value of a product or service, determined after consideration of relevant factors of the foregoing type, may not be excessive or unreasonable.

[Added by Acts 1979, 66th Leg., p. 2441, ch. 842, art. 2, § 21, eff. Sept. 1, 1979.]

§ 93.013. Exceptions

(a) Exceptions from the operation of the mandatory provisions of Section 93.011 of this code may be made in any case where:

(1) under the rules of the State Board of Control, the product or service so produced or provided does not meet the reasonable requirements of the office, department, institution, or agency; or

(2) the requisitions made cannot be reasonably complied with through provision of blind-made products or services.

(b) Each month, the State Board of Control shall provide the committee with a list of all items purchased under the exception provided by Subsection (a) of this section. The committee shall adopt the form in which the list is to be provided and may require the list to include the date of requisition, the type of product or service requested, the reason for purchase under the exception, and any other infor-

mation that the committee considers relevant to a determination of why the product or service was not purchased in accordance with Section 93.011 of this code.

(c) No office, department, institution, or agency may evade the intent of this section by slight variations from standards adopted by the State Board of Control, when the products or services produced or provided by the blind, in accordance with established standards, are reasonably adapted to the actual needs of the office, department, institution, or agency.

[Added by Acts 1979, 66th Leg., p. 2441, ch. 842, art. 2, § 21, eff. Sept. 1, 1979.]

§ 93.014. Procurement for Political Subdivisions

A product manufactured for sale to a political subdivision of this state or an office or department thereof shall be manufactured or produced according to specifications developed by the purchaser. The provisions of Section 93.013 of this code shall also apply to procurements of political subdivisions, however those political subdivisions shall make the determinations regarding reasonable requirements and compliance which are required of the State Board of Control in that section. All uses of the exceptions provision shall be reported to the committee in the same manner as that provided in Section 93.013 of this code and no office or department of a political subdivision may evade the intent of this section by slight variations from specifications adopted in accordance with this section, when the products or services produced or provided in accordance with this chapter are reasonably adapted to the actual needs of that office or department.

[Added by Acts 1979, 66th Leg., p. 2441, ch. 842, art. 2, § 21, eff. Sept. 1, 1979.]

§ 93.015. Political Subdivisions Excluded

There are excluded from the application of this chapter the political subdivisions of the state that are not required by Title V of the Federal Rehabilitation Act of 1973, as amended (29 U.S. Code Sections 790 through 794), to take affirmative action with respect to employment and other matters relating to handicapped individuals. Nothing in this chapter shall be construed as limiting blind or other severely handicapped individuals in their capacity to sell their products to any willing buyer.

[Added by Acts 1979, 66th Leg., p. 2441, ch. 842, art. 2, § 21, eff. Sept. 1, 1979.]

CHAPTER 94. VENDING FACILITIES OPERATED BY BLIND PERSONS

Section

94.001. Definitions.
94.002. License or Permit Required.
94.003. Licensing Procedure.
94.004. Location of Vending Facilities.
94.005. Issuance of Licenses; Eligibility.
94.006. Expiration, Renewal, and Revocation of Licenses.
94.007. Operation of Vending Facilities Under the Rehabilitation Commission.
94.008. Closing Certain Facilities Prohibited.
94.009. Employment of Assistants.
94.010. Competing Vending Machines.
94.011. Vending Facility Equipment and Stock.
94.012. Duties and Privileges of Parties.
94.013. Training Programs.
94.014. Conformity With Federal Statutes.
94.015. Application of Chapter.

§ 94.001. Definitions

In this chapter:

(1) "Blind person" means a person having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(2) "Vending facility" means a facility in which food, drinks, drugs, novelties, souvenirs, tobacco products, notions, or related items are sold regularly. The term excludes facilities consisting solely of vending machines that do not compete directly or indirectly with a facility that is or could be operated by a vocationally handicapped person.

(3) "State property" means land and buildings owned, leased, or otherwise controlled by the state.

(4) "Agency" means the state agency in charge of state property.

(5) "Handicapped" means a physical or mental condition that the commission or rehabilitation commission determines to constitute a substantial vocational disadvantage.

(6) "Commission" means the State Commission for the Blind.

(7) "Rehabilitation commission" means the Texas Rehabilitation Commission.

[Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 94.002. License or Permit Required

No person may operate a vending facility or a facility with vending machines or other coin-operated devices on state property unless the person is licensed to do so by the commission or is authorized to do so by an agency granted a permit to arrange for vending facilities.

[Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 94.003. Licensing Procedure

(a) On its own initiative or at the request of an agency that controls state property, the commission shall survey the property, or blueprints and other available information concerning the property, to determine whether the installation of a vending facility is feasible and consonant with the commission's vocational rehabilitation objectives.

(b) If the installation of the facility is feasible, the commission shall either license a blind person to operate a facility to be installed by the commission or allow the rehabilitation commission to install a facility to be operated by a handicapped person who is not blind according to rules and procedures comparable to those adopted by the commission. The commission and the rehabilitation commission may enter into agreements relating to management services and related forms of necessary assistance.

[Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 94.004. Location of Vending Facilities

(a) With the concurrence of the agency in charge of state property, the commission shall designate the location of vending facilities that have been requested by the agency.

(b) The agency responsible for state property shall alter the property to make it suitable for the proper operation of the vending facilities. To this end, the agency in charge of constructing new state property shall consult with the commission during the planning stage on the construction.

[Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 94.005. Issuance of Licenses; Eligibility

(a) The commission may issue a license to operate its vending facilities on state property to blind citizens of the state who are capable of operating the facilities in a manner that is reasonably satisfactory to all parties concerned.

(b) Before issuing a license to a person, the commission shall determine whether the person has the physical, psychological, and personal traits and abilities required to operate a vending facility in a satisfactory manner.

(c) The commission shall maintain a roster of the names of each person who has been certified as suitable for licensing. If two or more equally qualified persons are listed on the roster and apply for a license to operate an available vending facility, the commission shall issue the license to the person who is most in need of employment.

(d) The granting of a license does not vest the licensee with property or other rights which may constitute the basis of a cause of action, at law or in equity, against the state or its officers or employees.

[Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 94.006. Expiration, Renewal, and Revocation of Licenses

(a) A license or general permit to operate a vending facility on state property is valid for a period of three years from the date it is issued.

(b) The commission shall review each license or permit prior to its expiration and shall issue a new or different license or permit as the circumstances warrant.

(c) The commission and the agency may consent mutually to revoke a general permit prior to its expiration if changed circumstances warrant that action.

(d) A blind person's wilful failure to comply with the commission's rules or the provisions of this chapter constitutes grounds for the automatic revocation of the person's license.

(e) The commission shall adopt substantive and procedural rules governing the revocation of licenses.

[Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 94.007. Operation of Vending Facilities Under the Rehabilitation Commission

(a) If the commission determines that a blind person could not properly operate a vending facility at a particular location, the rehabilitation commission may survey the property to determine whether a handicapped person whose disability is not of a visual nature could operate the facility in a proper manner.

(b) The commission and the rehabilitation commission may develop procedures and methods of exchanging information necessary to implement cooperative activities.

(c) The installation and operation of a vending facility by the rehabilitation commission must conform to the provisions of this chapter applicable to vending facilities installed by the commission.

[Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 94.008. Closing Certain Facilities Prohibited

Neither a vending facility operated by a blind or otherwise vocationally handicapped individual nor a vending facility location surveyed by the commission may be closed as a result of the transfer of state property from one agency to another, the alteration of a state building, or the reorganization of a state agency unless the commission or the rehabilitation commission agrees to the closing.

[Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 94.009. Employment of Assistants

(a) If an individual licensed to operate a vending facility on state property requires an assistant, a qualified visually handicapped person must be given preference for employment. If the commission determines that a visually handicapped person could not perform the labor for which an assistant is required, or if a visually handicapped person is not available, a handicapped person whose disability is not of a visual nature must be given preference for employment. If no handicapped person is available for the job, preference must be given to a person who is socially, culturally, economically, or educationally disadvantaged.

(b) An assistant employed by a blind person licensed by the commission must be approved by the commission, and the deliberate refusal of a blind licensee to comply with this section constitutes grounds for the revocation of his or her license.

[Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 94.010. Competing Vending Machines

(a) If the commission and an agency agree to the installation and operation of an additional vending facility or vending machine on property that already has a commission-sponsored vending facility, no additional permit or license is required. However, the installation of a competing vending facility consisting of vending machines or other coin-operated devices must be authorized by the commission. The commission's authorization must be made with a view toward providing the greatest economic benefits for blind persons consonant with supplying the additional services required at the building.

(b) State agencies shall cooperate and negotiate in good faith to accomplish the purposes of this chapter.

(c) Vocationally handicapped individuals who operate vending facilities on state property are entitled to receive all commissions from vending machines installed on the same property. If two or more vending facilities are operated by vocationally handicapped persons in a building in which vending machines are installed, the commission shall divide the commissions from the vending machines among the handicapped operators in a manner that will achieve equity and equality in the incomes of the handicapped operators. If the commission and the rehabilitation commission have decided not to locate a vending facility in a building, the agency to whom a general permit has been issued shall determine the assignment of the commissions from vending machines installed in the building.

[Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 94.011. Vending Facility Equipment and Stock

(a) The commission may supply a blind vending facility operator with equipment and initial stock necessary for the operator to begin business.

(b) The commission shall collect and set aside from the proceeds of the operation of its vending facilities enough money:

(1) to insure a sufficient amount of initial stock for the facilities and for their proper maintenance;

(2) to pay the costs of supervision and other expenses incidental to the operation of the facilities; and

(3) to pay other program costs to the extent necessary to assure fair and equal treatment of the blind persons licensed to operate the facilities and to the extent allowed under federal programs that provide financial support to the commission.

(c) Except for purchasing and installing original equipment, the operation of commission-sponsored vending facilities must be as self-supporting and self-sustaining as possible. To achieve this end, the commission shall periodically review and, when necessary, revise its schedules for collecting and setting aside money from the proceeds of its vending facilities.

[Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 94.012. Duties and Privileges of Parties

(a) The commission may promulgate rules and initiate procedures necessary to implement this chapter.

(b) A blind person licensed to operate a vending facility on state property shall operate the facility in accordance with law and the commission's rules and policies.

(c) The agency in charge of state property shall cooperate with the commission and its blind licensees to accomplish the purposes of this chapter. The agency shall also furnish all necessary utility service, including connections and outlets required for the installation of the facility, janitorial and garbage disposal services where feasible, and other related assistance.

[Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 94.013. Training Programs

The commission may establish training or experimentation locations necessary to train blind persons who desire to be licensed to operate vending facilities and to develop techniques which will allow blind persons to operate the facilities or related types of small businesses more efficiently and productively.

[Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 94.014. Conformity With Federal Statutes

(a) This chapter shall be construed in a manner consistent with the requirements of federal programs that provide financial assistance to the commission.

(b) If a provision of this chapter conflicts with a federal program requirement, the commission may waive or modify the provision to the extent necessary to secure the full benefits of the federal program.

[Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 94.015. Application of Chapter

(a) This chapter does not apply to property over which the federal government maintains partial or complete control or to property maintained and operated by state-supported institutions of higher education. However, the commission may enter into agreements with state institutions of higher education concerning the use of blind labor in vending facilities at the institutions.

(b) This chapter does not apply to vending facilities operated by an institution under the control of the Texas Department of Mental Health and Mental Retardation, or its successor, if the vending facilities are operated without profit for the benefit of the patients at the institution.

(c) This chapter does not prohibit the commission from selecting blind persons to operate other suitable types of vending facilities or business enterprises, and the chapter does not prohibit the installation of automated vending facilities serviced by blind persons.

[Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

TITLE 6. SERVICES FOR THE ELDERLY

CHAPTER 101. GOVERNOR'S COMMITTEE ON AGING

SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

Section
101.001. Governor's Committee on Aging.
101.002. Application of Sunset Act.
101.003. Presiding Officer.
101.004. Coordinator of Aging; Other Personnel.
101.005. Governor's Citizens Advisory Council.

SUBCHAPTER B. POWERS AND DUTIES OF COMMITTEE

101.021. Rules.
101.022. General Functions of Committee.
101.023. Community Senior Citizens Employment Programs.
101.024. Voluntary Community Services Programs.
101.025. Cooperation With Federal and State Agencies.
101.026. Donations.

SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

§ 101.001. Governor's Committee on Aging

(a) The Governor's Committee on Aging is composed of nine members appointed by the governor with the advice and consent of the senate. To be eligible for appointment to the committee, a person must have demonstrated an interest in and knowledge of the problems of aging.

(b) Members of the committee serve for staggered terms of six years with the terms of three members expiring every two years. A member may be reappointed to the committee.

(c) Members serve without compensation, but are entitled to reimbursement for actual travel expenses incurred in the performance of their duties.

(d) The committee shall hold meetings twice annually and may hold other meetings called by the chairman.

[Acts 1979, 66th Leg., p. 2415, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 101.002. Application of Sunset Act

The Governor's Committee on Aging is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the committee is abolished and this chapter expires effective September 1, 1985.

[Acts 1979, 66th Leg., p. 2415, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 101.003. Presiding Officer

(a) In addition to the nine members of the committee, the governor shall appoint a presiding officer of the Governor's Committee on Aging, who shall direct the work of the coordinator of aging and the committee.

(b) If the person appointed as presiding officer holds another state office, the duties of the presiding officer's position are considered an extension of the duties of the other state office.

(c) The presiding officer serves during the tenure of the appointing governor.

(d) The presiding officer serves without compensation but is entitled to reimbursement for actual travel expenses incurred in performing the duties of the office.

[Acts 1979, 66th Leg., p. 2415, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 101.004. Coordinator of Aging; Other Personnel

(a) The governor shall appoint a coordinator of aging, who shall discharge all executive and administrative functions of the committee. The coordinator must be a person with executive ability and experience in the area of aging.

(b) The governor shall appoint other necessary personnel.

(c) Salaries and other office expenses are paid with funds appropriated to the governor's office for those purposes.

(d) The committee may accept services performed by other agencies to accomplish the purposes of this chapter.

[Acts 1979, 66th Leg., p. 2415, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 101.005. Governor's Citizens Advisory Council

(a) The Governor's Citizens Advisory Council is composed of two members appointed by the governor from each senatorial district. Council members serve at the governor's pleasure and without compensation.

(b) The council shall work under the committee's direction.

[Acts 1979, 66th Leg., p. 2415, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 101.006 to 101.020 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF COMMITTEE

§ 101.021. Rules

(a) The committee shall adopt rules governing the functions of the committee.

(b) The committee by rule or order may delegate its rights, powers, and duties to the coordinator.

[Acts 1979, 66th Leg., p. 2416, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 101.022. General Functions of Committee

(a) The committee shall develop and strengthen the services available for the aged in the state by coordinating services provided by governmental and private agencies and facilities.

(b) The committee shall extend and expand services for the aged by coordinating the interest and efforts of local communities in studying the problems of the aged citizens of this state.

(c) The committee shall encourage, promote, and aid in the establishment of programs and services on a local level that improve the living conditions of the aged by enabling them to more fully enjoy and participate in family and community life.

(d) The committee shall sponsor voluntary community rehabilitation and recreational facilities to improve the general welfare of the aged.

(e) The committee, through the coordinator of aging, shall cooperate with state and federal agencies and other organizations in conducting studies and surveys on the special problems of the aged in matters such as mental and physical health, housing, family relationships, employment, income, vocational rehabilitation, recreation, and education. The committee shall make appropriate reports and recommendations to the governor and to state and federal agencies.

[Acts 1979, 66th Leg., p. 2416, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 101.023. Community Senior Citizens Employment Programs

(a) In this section, "suitable employment" means employment which is commensurate with the individual's skills and ability and for which compensation is paid equal to the federal minimum wage rate.

(b) The committee may establish and administer a community program for persons 55 years of age or older who lack suitable employment and have family incomes under federal poverty guidelines.

(c) The committee may contract with a public agency or a private, nonprofit organization with experience in managing similar programs to employ persons under this program in providing recreation, beautification, conservation, or restoration services, or public service employment positions for state, county, city, or regional governments or school districts. The committee may not contract with an organization that is not a subscriber under the state workers' compensation law or that does not pay the federal minimum wage rate or the prevailing wage rate for the particular job, whichever is greater.

(d) The state shall finance 80 percent of the cost of the program, and the governments receiving the services shall finance 20 percent of the cost.

[Acts 1979, 66th Leg., p. 2416, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 101.024. Voluntary Community Services Programs

(a) The committee shall disburse state funds appropriated for the purpose to local public agencies or private, nonprofit corporations that operate programs to recruit retired persons to perform voluntary community services or that operate Foster Grandparent Programs.

(b) A public agency or private, nonprofit corporation may not receive state money under this section if it is not able to qualify for federal matching money for the same purpose.

(c) The committee by rules shall establish guidelines or formulas to determine the proportion of state money distributed to each public agency or private, nonprofit corporation. The committee by rules may establish additional qualifications to receive the state money.

(d) State funds disbursed under this section may not be used to pay compensation to volunteer workers, except for participants in the Foster Grandpar-

ent Programs, or for purposes other than financing the operation or administration of the volunteer programs, but it may be used to defray expenses incurred by volunteers in the performance of volunteer work. The committee by rules may further limit the purposes for which the state money may be spent.

[Acts 1979, 66th Leg., p. 2416, ch. 842, art. 1, § 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2430, ch. 842, art. 2, § 2, eff. Sept. 1, 1979.]

§ 101.025. Cooperation With Federal and State Agencies

(a) The committee is the state agency designated to handle federal programs relating to the aging that require action within the state and that are not the specific responsibility of another state agency under federal or state law.

(b) The committee is not intended to supplant or to take over from the counties and municipalities of this state or from other state agencies or facilities any of the specific responsibilities that they hold. The committee shall cooperate with federal and state agencies, counties, and municipalities and private agencies or facilities in the state in accomplishing the purposes of this chapter.

[Acts 1979, 66th Leg., p. 2416, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 101.026. Donations

The committee may accept and solicit gifts or grants of money or property from public or private sources. Donations of money must be placed in a special fund in the state treasury and expended on warrants drawn by the comptroller on order of the committee. Donations of real property and of personal property other than money may be used or sold as the committee considers proper.

[Acts 1979, 66th Leg., p. 2416, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

TITLE 7. REHABILITATION OF HANDICAPPED AND DISABLED

CHAPTER 111. TEXAS REHABILITATION COMMISSION

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SUBCHAPTER A. GENERAL PROVISIONS

§ 111.001. Purpose

It is the policy of the State of Texas to provide rehabilitation and related services to eligible handicapped individuals so that they may prepare for and engage in a gainful occupation or achieve maximum personal independence.

[Acts 1979, 66th Leg., p. 2419, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.002. Definitions

In this chapter:

(1) "Commission" means the Texas Rehabilitation Commission.

(2) "Commissioner" means the chief administrative officer of the commission.

(3) "Handicapped individual" means any individual, except one whose disability is of a visual nature, who has a disability which constitutes a substantial handicap to employment, or to achieving maximum personal independence, but which is of a nature that rehabilitation services may reasonably be expected to enable the individual to engage in a gainful occupation, including a gainful occupation which is more consistent with his or her capacities and abilities or render the individual fit for self-care and independent living. The term includes an individual for whom rehabilitation services are necessary for the determination of rehabilitation potential. The term also includes individuals disadvantaged by reason of their youth or advanced age, low educational attainments, ethnic or cultural

factors, prison or delinquency records, or other conditions that constitute a barrier to employment, and the term may include members of a handicapped individual's family when the provision of rehabilitation services to family members is necessary for the rehabilitation of a handicapped individual.

(4) "Disability" means a physical or mental condition that materially limits, contributes to limiting, or, if not corrected, will probably result in limiting an individual's activities or functioning. It includes behavioral disorders characterized by deviant social behavior or impaired ability to carry out normal relationships with family and community which may result from vocational, educational, cultural, social, environmental, or other factors. The term includes low educational attainment, ethnic or cultural factors, youth or advanced age, or other factors that constitute a barrier to employment or self-care and independent living.

(5) "Substantial handicap to employment" means a disability that impedes an individual's occupational performance by preventing the individual from obtaining, retaining, or preparing for a gainful occupation consistent with the individual's capacities and abilities.

(6) "Rehabilitation services" means any goods and services necessary to enable a handicapped individual to engage in a gainful occupation or independent living, or to determine the individual's rehabilitation potential, and to provide work adjustment training or adult social services. To enable a handicapped individual to engage in a gainful occupation or independent living, may require the commission to engage in or contract for such activities as outreach, diagnosis and appraisal, treatment, training, job placement or self-employment, guidance, and counseling. Services may include maintenance, transportation, and training allowances, not exceeding the estimated cost of subsistence during rehabilitation, for the handicapped individual as well as members of the individual's family when necessary for the rehabilitation of the handicapped individual.

(7) "Gainful occupation" includes employment in the competitive labor market; practice of a profession; self-employment; homemaking, farm, or family work (including work for which payment is in kind rather than in cash); sheltered employment; and home industries or other gainful homebound work.

(8) "Establishment of a rehabilitation facility" means:

(A) the expansion, remodeling, or alteration of existing buildings necessary to adapt or increase the effectiveness of the buildings for rehabilitation facility purposes;

(B) the acquisition of initial equipment for those purposes; or

(C) the initial staffing of a rehabilitation facility.

(9) "Establishment of a workshop" means the expansion, remodeling, or alteration of existing buildings necessary to adapt the buildings to workshop purposes or to increase the employment opportunities in workshops, and the acquisition of initial equipment necessary for new workshops or to increase the employment opportunities in workshops.

(10) "Construct" includes construction of new buildings, acquisition of existing buildings, and expansion, remodeling, alteration, and renovation of existing buildings, and initial equipment of new, newly acquired, expanded, remodeled, altered, or renovated buildings.

(11) "Extended rehabilitation services" means supplying rehabilitation services to:

(A) a mentally or physically handicapped person beyond a period of 18 months from the initial date that eligibility to receive vocational rehabilitation services was determined; or

(B) mentally or physically handicapped persons who were not eligible for vocational rehabilitation services under laws and regulations in effect before April 2, 1969, and who can now benefit from the provisions of this chapter.

(12) "Extended sheltered workshop employment" means employment in a sheltered workshop of persons with mental or physical handicaps that render the persons incapable of competing in the open or customary labor market.

(13) "Extended community residence" means a group living arrangement providing the essentials of community living, such as room, board, clothing, evening and nighttime supervision, recreational activities, and transportation to and from work for persons living therein who are in extended sheltered workshop employment or who, while physically or mentally handicapped, are employed in the open or customary labor market.

(14) "Sheltered workshop" means an occupation-oriented facility operated by a nonprofit agency, public or private, which except for its staff, employs only mentally or physically handicapped persons.

[Acts 1979, 66th Leg., p. 2419, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 111.003 to 111.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 111.011. Texas Rehabilitation Commission

The Texas Rehabilitation Commission is composed of the board of the Texas Rehabilitation Commission, a commissioner, and other officers and employees required to efficiently carry out the purposes of this chapter.

[Acts 1979, 66th Leg., p. 2419, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.012. Application of Sunset Act

The Texas Rehabilitation Commission is subject to the Texas Sunset Act (Art. 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission is abolished and this chapter expires effective September 1, 1985.

[Acts 1979, 66th Leg., p. 2420, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.013. Composition of Board; Appointment; Terms

(a) The board of the Texas Rehabilitation Commission is composed of six members appointed by the governor with the advice and consent of the senate. Members serve for staggered terms of six years with the terms of two members expiring every two years.

(b) Appointees must be outstanding citizens of the state who have demonstrated a constructive interest in rehabilitation services. No paid employee of an agency carrying on work for the commission is eligible for appointment, nor is a person who owns or is employed by an organization providing rehabilitation services or related services through the commission.

(c) The governor shall designate one board member as presiding officer.

[Acts 1979, 66th Leg., p. 2420, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.014. Meetings

The board shall meet quarterly in regular session and on call by the presiding officer when necessary for the transaction of agency business.

[Acts 1979, 66th Leg., p. 2420, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.015. Expenses

Board members serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in the discharge of their official duties.

[Acts 1979, 66th Leg., p. 2420, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.016. Advisory Committees

(a) The board may appoint an advisory committee to make recommendations for consideration by the board concerning any matter that the advisory committee believes to be pertinent to the purposes of this chapter.

(b) The advisory committee is composed of nine members appointed by the board. Committee members serve for staggered terms of three years with the terms of three members expiring each year.

(c) The advisory committee shall meet at least once in each calendar quarter and may meet on call of the board.

(d) The members of the advisory committee serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in attending the official meetings of the advisory committee.

(e) To be eligible for appointment to the advisory committee a person must have demonstrated an active and constructive interest in the rehabilitation of handicapped people.

(f) The board may also create from time to time additional technical advisory committees necessary to achieve the purposes of this chapter. The members of the committees serve without compensation unless compensation is specifically provided for by appropriation.

[Acts 1979, 66th Leg., p. 2420, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.017. Commissioner

This chapter is administered by the commissioner under operational policies established by the board. The commissioner is appointed by the board on the basis of education, training, experience, and demonstrated ability. The commissioner serves at the pleasure of the board and is secretary to the board, as well as chief administrative officer of the agency.

[Acts 1979, 66th Leg., p. 2420, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.018. Administrative Regulations

In carrying out his or her duties under this chapter, the commissioner shall, with the approval of the board, make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations as necessary to carry out the purposes of this chapter.

[Acts 1979, 66th Leg., p. 2420, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.019. Planning

The commissioner shall, with the approval of the board, make long-range and intermediate plans for the scope and development of the program and make decisions regarding the allocation of resources in carrying out the plans.

[Acts 1979, 66th Leg., p. 2420, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.020. Administrative Units; Personnel

(a) The commissioner shall, with the approval of the board, establish appropriate subordinate administrative units.

(b) The commissioner shall, under personnel policies adopted by the board, appoint the personnel necessary for the efficient performance of the functions of the agency.

[Acts 1979, 66th Leg., p. 2420, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.021. Reports

The commissioner shall prepare and submit to the board annual reports of activities and expenditures and, prior to each regular session of the legislature, estimates of funds required for carrying out the purposes of this chapter, and, with the approval of the board, shall submit the reports to the governor and the legislature.

[Acts 1979, 66th Leg., p. 2420, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.022. Disbursement of Funds

The commissioner shall make certification for disbursement, in accordance with regulations, of funds available for carrying out the purposes of this chapter.

[Acts 1979, 66th Leg., p. 2420, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.023. Other Duties

The commissioner shall take other action as necessary or appropriate to carry out the purposes of this chapter.

[Acts 1979, 66th Leg., p. 2420, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.024. Delegation to Employees

The commissioner may, with the approval of the board, delegate to any officer or employee of the commission those powers and duties, except the making of regulations and the appointment of personnel, the commissioner finds necessary to carry out the purposes of this chapter.

[Acts 1979, 66th Leg., p. 2420, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

[Sections 111.025 to 111.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF COMMISSION

§ 111.051. Commission as Principal Authority

The Texas Rehabilitation Commission is the principal authority in the state on rehabilitation of handicapped and disabled individuals, except for those matters relating to individuals whose handicaps or disabilities are of a visual nature. All other state agencies engaged in rehabilitation activities and related services to individuals whose handicaps or disabilities are not of a visual nature shall coordinate those activities and services with the commission.

[Acts 1979, 66th Leg., p. 2422, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.052. General Functions

(a) The agency shall, to the extent of resources available and priorities established by the board, provide rehabilitation services directly or through public or private resources to individuals determined by the commissioner to be eligible for the services.

(b) In carrying out the purposes of this chapter, the commission may:

(1) cooperate with other departments, agencies, political subdivisions, and institutions, both public and private, in providing the services authorized by this chapter to eligible individuals, in studying the problems involved, and in planning, establishing, developing, and providing necessary or desirable programs, facilities, and services, including those jointly administered with state agencies;

(2) enter into reciprocal agreements with other states;

(3) establish or construct rehabilitation facilities and workshops, make grants to public agencies, make contracts or other arrangements with public and other nonprofit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities, and operate facilities for carrying out the purposes of this chapter;

(4) conduct research and compile statistics relating to the provision of services to or the need for services by disabled individuals;

(5) provide for the establishment, supervision, management, and control of small business enterprises to be operated by severely handicapped individuals where their operation will be improved through the management and supervision of the commission; and

(6) contract with schools, hospitals, private industrial firms, and other agencies and with doctors, nurses, technicians, and other persons for training, physical restoration, transportation, and other rehabilitation services.

[Acts 1979, 66th Leg., p. 2422, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.053. Cooperation With the Federal Government

The commission shall make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this

chapter or of any federal statutes pertaining to rehabilitation, and to this end may adopt methods of administration that are found by the federal government to be necessary, and that are not contrary to existing state laws, for the proper and efficient operation of the agreements, arrangements, or plans for rehabilitation.

[Acts 1979, 66th Leg., p. 2422, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.054. Obtaining Federal Funds

The commission may comply with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportion possible.

[Acts 1979, 66th Leg., p. 2422, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.055. Finances

The state treasurer may receive money appropriated by congress and allotted to Texas for carrying out the purposes of this chapter or authorized agreements, arrangements, or plans, and may make disbursements on the certification of the commissioner. All public money available to the commission must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements required by law for other public funds in the state treasury. The state auditor shall regularly audit all accounts established by the commission in local depositories to assure that nonpublic funds made available to the commission through gift or bequest, by local organizations desiring to participate in projects for the handicapped authorized in Article XVI, Section 6, Subsection (b), of the Texas Constitution, or by endowment or other means, are expended in a manner consistent with the purposes of this chapter. The commission shall comply with the reporting procedures prescribed by the state auditor for the commission's acceptance, holding, investment, and use of nonpublic funds.

[Acts 1979, 66th Leg., p. 2422, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.056. Gifts and Donations to the Commission

The commission may receive and use gifts and donations for carrying out the purposes of this chapter. No person may receive payment for solicitation of any funds.

[Acts 1979, 66th Leg., p. 2422, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.057. Unlawful Use of Lists of Names

Except for purposes directly connected with the administration of the rehabilitation program and in accordance with regulations, it is unlawful for a person to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, names of, or any information directly or indirectly derived from records concerning persons applying for or receiving rehabilitation.

[Acts 1979, 66th Leg., p. 2422, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.058. Criminal History Record Information

The commission may obtain criminal history record information from the Board of Pardons and Paroles, Texas Department of Corrections, and the Texas Department of Public Safety if the records relate to an applicant for rehabilitation services or to a client of the agency. The Board of Pardons and Paroles, Texas Department of Corrections, and the Texas Department of Public Safety upon request shall supply the commission criminal history record information applying to applicants for rehabilitation services or clients of the commission. The commission shall treat all criminal history record information as privileged and confidential and for commission use only.

[Added by Acts 1979, 66th Leg., p. 2435, ch. 842, art. 2, § 1, eff. Sept. 1, 1979.]

Amendment by Acts 1979, 66th Leg., p. 1669, ch. 697, § 1

Acts 1979, 66th Leg., p. 2435, ch. 842, art. 2, § 7, which added this section, purported to do so in order to incorporate the amendment to Education Code, § 30.42, by the addition of subdivision (7) thereto by Acts 1979, 66th Leg., p. 1669, ch. 697, § 1, said § 30.42 being repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(2). However, as so added, subdivision (7) read:

"[T]he agency is authorized:

* * * * *

"(7) to obtain information from the Board of Pardons and Paroles and the Texas Department of Corrections, if such records relate to an applicant for rehabilitation services or to a client of the agency, who has been or is about to be released by the Texas Department of Corrections; the Board of Pardons and Paroles and the Texas Department of Corrections shall upon request supply the commission with information applying to applicants for rehabilitation services or clients of the commission if the person has been or is about to be released by the Texas Department of Corrections; the commission shall treat all information as privileged and confidential and for commission use only."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

[Sections 111.059 to 111.080 reserved for expansion]

SUBCHAPTER D. EXTENDED REHABILITATION SERVICES

§ 111.081. Authority

The commission may plan, institute, support, and maintain programs of extended rehabilitation, including extended employment in a sheltered workshop and extended community residence.

[Acts 1979, 66th Leg., p. 2424, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.082. Administration

The commission may contract with any nonprofit agency, public or private, for the provision of any extended rehabilitation services, including extended sheltered workshop employment or extended community residence for persons participating in vocational rehabilitation, and pay for the services purchased for the state.

[Acts 1979, 66th Leg., p. 2424, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.083. Participant Contributions

A handicapped person in vocational rehabilitation and living in an extended community residence facility operated by a nonprofit agency that has a contract under this subchapter shall contribute to the agency a portion of his or her personal earnings, if any. The commission by rule shall determine the portion of the person's earnings that must be contributed, after deductions for personal use. The earnings contributions made under this section must be credited to the state in arriving at the net sums due to the agency contracting with the state to furnish services.

[Acts 1979, 66th Leg., p. 2424, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.084. Standards

The commission shall establish standards of staffing, physical plant, and services required for the operation of facilities of nonprofit agencies furnishing services under this subchapter by contract with the state. A contract entered into by the state under this subchapter is subject to cancellation by the state for cause at any time by the issuance of written notice of cancellation by the state to the contracting agency at least 30 days in advance of the date of cancellation.

[Acts 1979, 66th Leg., p. 2424, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.085. Quarterly Payments

From funds available for the purpose, the commission shall pay a nonprofit agency on a quarterly basis an amount equal to not less than:

(1) $3 for each six-hour working day for each client in a sheltered workshop; and

(2) $85 per month for each client in an extended community residence.

[Acts 1979, 66th Leg., p. 2424, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 111.086. Funds; Rules

The commission may receive and expend funds from any source, public or private, for the purposes set forth in this subchapter, and shall establish rules for the conduct and control of the programs authorized by this subchapter. A nonprofit agency operating an extended community residence facility under this subchapter shall file annually its budget showing salaries paid and expenditures with the office of the state auditor.

[Acts 1979, 66th Leg., p. 2424, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

TITLE 8. RIGHTS AND RESPONSIBILITIES OF THE HANDICAPPED

CHAPTER 121. PARTICIPATION IN SOCIAL AND ECONOMIC ACTIVITIES

Section

121.001. State Policy.
121.002. Definitions.
121.003. Discrimination Prohibited.
121.004. Penalties for and Damages Resulting from Discrimination.
121.005. Responsibilities of Handicapped Persons.
121.006. Penalties for Improper Use of Dog Guides.
121.007. Blind and Incapacitated Pedestrians.
121.008. Dissemination of Information Relating to the Handicapped.
121.009. Construction of Chapter.

§ 121.001. State Policy

The policy of the state is to encourage and enable physically handicapped persons to participate fully in the social and economic life of the state, to achieve maximum personal independence, to become gainfully employed, and to otherwise fully enjoy and use all public facilities available within the state.

[Acts 1979, 66th Leg., p. 2425, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 121.002. Definitions

In this chapter:

(1) "White cane" means a cane or walking stick which is metallic or white in color or white tipped with some contrasting color, and which is carried by a blind person to assist the blind person in traveling from place to place.

(2) "Dog guide" means a dog that:

(A) is fitted with a special harness so as to be suitable as an aid to the mobility of a blind person;

(B) is used by a blind person who has satisfactorily completed a specific course of training in the use of a dog as an aid to personal travel; and

(C) has been trained by an organization generally recognized by agencies involved in the rehabilitation of the blind as reputable and competent to provide dogs with training of this type.

(3) "Public facilities" includes streets, highways, sidewalks, walkways, all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation, hotels, motels, or other places of lodging, public buildings maintained by any unit or subdivision of government, buildings to which the general public is invited, college dormitories and other educational facilities, restaurants or other places where food is offered for sale to the public, and all other places of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited.

(4) "Handicapped person" means a person who has a mental or physical handicap, including mental retardation, hardness of hearing, deafness, speech impairment, visual handicap, being crippled, or any other health impairment which requires special ambulatory devices or services.

(5) "Housing accommodations" means all or part of real property which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings, except a single family residence whose occupants rent, lease, or furnish for compensation only one room.

[Acts 1979, 66th Leg., p. 2425, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 121.003. Discrimination Prohibited

(a) Subject only to limitations and conditions established by law and applicable alike to all persons, persons who are physically handicapped have the same right as the able-bodied to the full use and enjoyment of any public facility in the state.

(b) No common carrier, airplane, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation operating within the state may refuse to accept as a passenger a person who is physically handicapped solely because of the person's handicap, nor may a handicapped person be required to pay an additional fare because of his or her use of a dog guide, wheelchair, crutches, or other device used to assist the handicapped person in travel.

(c) No person who is physically handicapped may be denied admittance to any public facility in the state because of the handicapped person's use of a white cane, dog guide, wheelchair, crutches, or other device of assistance in mobility, or because the person is handicapped.

(d) The discrimination prohibited by this section includes discrimination through an open and obvious refusal to allow a handicapped person to use or be admitted to any public facility, as well as discrimination based on a ruse or subterfuge calculated to prevent or discourage a handicapped person from using or being admitted to a public facility. Regulations relating to the use of public facilities by any designated class of persons from the general public may not prohibit the use of particular public facilities by handicapped persons who, except for their handicaps or use of dog guides or other devices for assistance in travel, would fall within the designated class. Lists containing the names of persons who desire to use particular public facilities may not be composed or manipulated so as to deny a handicapped person a fair and equal opportunity to use or be admitted to any public facility.

(e) This section does not limit the right of the owner or manager of a public facility to refuse to admit, to refuse to serve, or to evict from a public facility a person who is so unkempt as to be clearly offensive to others using the public facility, who is obviously intoxicated, or who conducts himself in a belligerent, boisterous, profane, or other offensive manner which unreasonably interferes with the right of other persons to use and enjoy the public facility.

(f) An employer who conducts business in this state may not discriminate in his or her employment practices against a handicapped person on the basis of the handicap if the person's ability to perform the task required by a job is not impaired by the handicap and the person is otherwise qualified for the job.

(g) It is the policy of the state that the blind, the visually handicapped and the otherwise physically disabled be employed by the state, by political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

(h) The blind, the visually handicapped, and the otherwise physically disabled shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(i) Nothing in this section shall require any person renting, leasing, or providing for compensation real

property to modify his or her property in any way or provide a higher degree of care for a blind person, visually handicapped person, or otherwise physically disabled person than for a person who is not physically disabled.

(j) A totally or partially blind person who has a guide dog, or who obtains a guide dog, is entitled to full and equal access to all housing accommodations provided for in this section, and may not be required to pay extra compensation for the guide dog but is liable for any damage done to the premises by the guide dog.

[Acts 1979, 66th Leg., p. 2425, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 121.004. Penalties for and Damages Resulting from Discrimination

(a) A person, firm, association, corporation, or other organization, or the agent of a person, firm, association, corporation, or other organization who violates Section 121.003 of this chapter is guilty of a misdemeanor and on conviction shall be punished by a fine of not less than $100 nor more than $300.

(b) In addition to the penalty provided in Subsection (a) of this section, a person, firm, association, corporation, or other organization, or the agent of a person, firm, association, corporation, or other organization who violates the provisions of Section 121.003 of this chapter is deemed to have deprived a handicapped person of his or her civil liberties. The handicapped person deprived of his or her civil liberties may maintain a cause of action for damages in a court of competent jurisdiction, and there is a conclusive presumption of damages in the amount of at least $100 to the handicapped person.

[Acts 1979, 66th Leg., p. 2425, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 121.005. Responsibilities of Handicapped Persons

(a) A blind person who uses a dog guide for assistance in travel is liable for any damages done to the premises or facilities by the dog.

(b) A blind person who uses a dog guide for assistance in travel shall keep the dog guide properly harnessed, and a person who is injured by the dog guide because of a blind person's failure to properly harness the dog guide is entitled to maintain a cause of action for damages in a court of competent jurisdiction under the same law applicable to other causes brought for the redress of injuries caused by animals.

(c) A physically handicapped person who, after being duly warned of a danger unique to a handicapped person's use of a particular public facility, is injured in using the facility because of a danger of the type about which warning was given, is deemed to have assumed the risk of using the public facility.

[Acts 1979, 66th Leg., p. 2425, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 121.006. Penalties for Improper Use of Dog Guides

(a) A person who fits a dog with a harness of the type commonly used by blind persons who use dog guides for purposes of travel, in order to represent that his or her dog is a specially trained dog guide when training of the type described in Section 121.002(2)(C) of this chapter has not in fact been provided, is guilty of a misdemeanor and on conviction shall be punished by a fine of not more than $200.

(b) A person who habitually abuses or neglects to feed or otherwise neglects to properly care for his or her dog guide is not entitled to the benefits of this chapter available to those who use dog guides, and must surrender the dog guide on demand to the person or organization furnishing the dog or to other competent authorities.

[Acts 1979, 66th Leg., p. 2425, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 121.007. Blind and Incapacitated Pedestrians

(a) No person may carry a white cane on a public street or highway unless the person is totally or partially blind or otherwise incapacitated.

(b) The driver of a vehicle approaching an intersection or crosswalk where a pedestrian guided by a guide dog or carrying a white cane is crossing or attempting to cross shall take necessary precautions to avoid injuring or endangering the pedestrian. The driver shall bring the vehicle to a full stop if injury or danger can be avoided only by that action.

(c) The failure of a totally or partially blind or otherwise incapacitated person to carry a white cane or be guided by a guide dog does not deprive the person of the rights and privileges conferred by law on pedestrians crossing streets or highways and does not constitute evidence of contributory negligence.

(d) A person who violates this section commits a Class C misdemeanor.

[Acts 1979, 66th Leg., p. 2425, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 121.008. Dissemination of Information Relating to the Handicapped

(a) To ensure maximum public awareness of the policies set forth in this chapter, the governor may issue a proclamation each year taking suitable public notice of October 15 as White Cane Safety Day. The proclamation must contain appropriate comment about the significance of various devices used by handicapped persons to assist them in traveling, and must call to the attention of the public the provisions of this chapter and of other laws relating to the safety and well-being of this state's handicapped citizens.

(b) State agencies regularly mailing forms or information to significant numbers of public facilities operating within the state shall cooperate with state

agencies responsible for the rehabilitation of the handicapped by sending information about this chapter to those to whom regular mailings are sent. The information, which must be sent only on the request of state agencies responsible for the rehabilitation of the handicapped and not more than once each year, may be included in regular mailings or sent separately. If sent separately, the cost of mailing is borne by the state rehabilitation agency or agencies requesting the mailing and, regardless of whether sent separately or as part of a regular mailing, the cost of preparing information about this chapter is borne by the state rehabilitation agency or agencies requesting distribution of this information.

[Acts 1979, 66th Leg., p. 2425, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

§ 121.009. Construction of Chapter

The provisions of this chapter must be construed in a manner compatible with other state laws relating to the handicapped.

[Acts 1979, 66th Leg., p. 2425, ch. 842, art. 1, § 1, eff. Sept. 1, 1979.]

DISPOSITION TABLE

Showing where provisions of former articles of the Civil Statutes and former sections of the Education Code are covered in the Human Resources Code.

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46b—2, § 1	47.001
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§ 2	47.001
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	47.004
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§ 5	94.006
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§ 6(f)	94.005
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§ 9	94.004
§ 10	94.011
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§ 11A(a)	94.014
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§ 12(b)	94.008
§ 12(d)	94.015
§ 12(f)	94.015

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§ 4	41.002
§ 5	41.001
§ 9	41.005
695a—1, § 1	43.001
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§ 7	43.010
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§ 10	43.005
§ 11	43.012
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§ 13	42.049
§ 14	42.052
§ 15	42.053
§ 16	42.022
§ 17	42.023
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§ 19	42.072
§ 20	42.024

Civ.St. Article	Human Resources Code Section
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§ 22	42.074
§ 23	42.075
§ 24	42.076
695a—4, § 1	44.001
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695a—5, § 1	45.001
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§ 2(3)	21.003
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§ 18–B(f)	46.004
§ 18–B(g)	46.005
§ 18–B(h)	46.006
§ 18–B(i)	46.007
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§ 19–A	31.008
§ 19–B	31.009
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§ 23	31.032

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§ 26	31.035
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§ 28	31.042
§ 29	31.037
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§ 29–A	31.039
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§ 31	21.009
§ 32(1)	22.004
§ 32(2)	12.001
§ 33(1)	12.003
§ 33(2)	21.012
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§ 35	11.002
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§ 5	32.024
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§ 9	32.035
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Civ.St. Article	Human Resources Code Section
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TITLE 1. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Section
1.001. Purpose of Code.
1.002. Construction of Code.

§ 1.001. Purpose of Code

(a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, Regular Session, 1963 (Article 5429b–1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent natural resources law more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

[Acts 1977, 65th Leg., p. 2347, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 1.002. Construction of Code

The Code Construction Act (Article 5429b–2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

[Acts 1977, 65th Leg., p. 2347, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

TITLE 2. PUBLIC DOMAIN

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 11. PROVISIONS GENERALLY APPLICABLE TO THE PUBLIC DOMAIN

SUBCHAPTER A. GENERAL PROVISIONS

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11.041. Permanent School Fund.
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11.075. Appropriation of Land by Fencing.
11.076. Unlawful Enclosures.
11.077. Suit Against Adverse Claimant.
11.078. Venue.

SUBCHAPTER A. GENERAL PROVISIONS

§ 11.001. Definitions

In this chapter:

(1) "State" means the State of Texas.

(2) "Land office" means the General Land Office.

(3) "Commissioner" means the Commissioner of the General Land Office.

[Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 11.002 to 11.010 reserved for expansion]

SUBCHAPTER B. TERRITORY AND BOUNDARIES OF THE STATE

§ 11.011. Vacant and Unappropriated Land

So that the law relating to the public domain may be brought together, the following extract is taken from the joint resolutions of the Congress of the United States relating to the annexation of Texas to the United States, which was approved June 23, 1845: "Said State, when admitted into the Union, . . . shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct. . . ."

[Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.012. Gulfward Boundary of Texas

(a) The gulfward boundary of the State of Texas is the boundary determined in and pursuant to the decision of the United States Supreme Court in Texas v. Louisiana, 426 U.S. 465 (1976).

(b) The State of Texas has full sovereignty over the water, the beds and shores, and the arms of the Gulf of Mexico within its boundaries as provided in Subsection (a) of this section, subject only to the right of the United States to regulate foreign and interstate commerce under Article I, Section 8 of the United States Constitution, and the power of the United States over admiralty and maritime jurisdiction under Article III, Section 2 of the United States Constitution.

(c) The State of Texas owns the water and the beds and shores of the Gulf of Mexico and the arms of the Gulf of Mexico within the boundaries provided in this section, including all land which is covered by the Gulf of Mexico and the arms of the Gulf of Mexico either at low tide or high tide.

(d) None of the provisions of this section may be construed to relinquish any dominion, sovereignty, territory, property, or rights of the State of Texas previously held by the state.

[Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.013. Gulfward Boundaries of Counties, Cities, Towns, or Villages

(a) The gulfward boundary of each county located on the coastline of the Gulf of Mexico is the Three Marine League line as determined by the United States Supreme Court.

(b) The area in the extended boundaries of the counties as provided in this section becomes a part of the public free school land and is subject to the constitutional and statutory provisions of this state pertaining to the use, distribution, sale, and lease of public free school land in this state.

(c) The gulfward boundaries of any city, town, or village created and operating under the general laws of the State of Texas shall not be established or extended by incorporation or annexation more than 5,280 feet gulfward beyond the coastline, and any inclusion of territory in any such city, town, or village more than 5,280 feet gulfward beyond the coastline is void. The term "coastline" as used in this subsection means the line of mean low tide along that portion of the coast which is in direct contact with the open Gulf of Mexico. The term "city, town, or village created and operating under the general laws of the State of Texas" shall not include any city operating under a home-rule charter.

If any such general-law city, town, or village has heretofore been established by incorporation or attempted incorporation more than 5,280 feet gulfward beyond the coastline, the corporate existence of such general-law city, town, or village is in all things validated, ratified, approved, and confirmed.

The boundaries of such general-law city, town, or village, including the gulfward boundaries to the extent of 5,280 feet gulfward beyond the coastline, are in all things validated, ratified, approved, and confirmed and shall not be held invalid by reason of the inclusion of more territory than is expressly authorized in Article 971, Revised Civil Statutes of Texas, 1925, as amended, or by reason of the inclusion of territory other than that which is intended to be used for strictly town or city purposes as required by Article 1134 of the Revised Civil Statutes of Texas, 1925, as amended, or by reason of not constituting a city, town, or village.

Neither this Act nor the general laws nor the special laws of the state shall have the effect of validating, ratifying, approving, or confirming the inclusion of territory in any such general-law city, town, or village more than 5,280 feet gulfward beyond the coastline.

If for any reason it should be determined by any court of competent jurisdiction that any such general-law city, town, or village has heretofore been incorporated in violation of the laws of the state in effect as of the date of such incorporation or is invalid, the corporate boundaries of any such gener-

al-law city, town, or village shall be revised and reformed to exclude all territory more than 5,280 feet gulfward of the coastline.

[Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2165, ch. 828, § 1, eff. June 14, 1979.]

Sections 2 and 3 of the 1979 amendatory act provided:

"Sec. 2. If any provision of this Act or its application to any person or circumstance is held to be invalid for any reason, the invalidity does not affect any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 3. This Act applies to any litigation pending on the date this Act takes effect which questions the validity of the incorporation, boundaries, or governmental proceedings or acts of any city, town, or village and shall be applied thereto and determinative thereof."

§ 11.014. Land Acquired From Oklahoma

(a) Land acquired by the state in Oklahoma v. Texas, 272 U.S. 21 (1926) and subsequent orders of the United States Supreme Court relating to that case, is incorporated into the counties which are adjacent to the land, and the north and south lines of the adjacent counties, Lipscomb, Hemphill, Wheeler, Collingsworth, and Childress, are extended east to the 100th degree of west longitude as it is fixed in the final judgment.

(b) The land acquired from Oklahoma shall become a part of the respective counties as though it were originally included in each county for governmental purposes and shall be assessed for taxes and have taxes collected under the provisions of existing law.

[Acts 1977, 65th Leg., p. 2350, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.015. Extension of Texas-New Mexico Boundary

(a) The boundary lines of all counties in the Texas Panhandle that border on the New Mexico boundary line are extended by extending the north and south lines of certain counties west to the Texas-New Mexico line, which was established by the survey of John H. Clark in 1859 and later retraced to completion on September 26, 1911, by the Boundary Commission composed of Francis M. Cockrell and Sam R. Scott, under authority of S.J.R. No. 124, of the 61st Congress, Third Session.

(b) The boundary line is referred to as the 103rd Meridian and is described as follows:

> Beginning at the point where the one hundred and third degree of longitude west from Greenwich intersects the parallel of thirty-six degrees and thirty Minutes North latitude, as determined and fixed by John H. Clark, the Commissioner on the part of the United States in the years eighteen hundred and fifty-nine and eighteen hundred and sixty; thence South with the line run by said Clark for the said one hundred and third degree of longitude to the Thirty-second parallel of North latitude to the point marked by said Clark as the Southeast corner of New Mexico; and thence West with the thirty-second degree of North latitude as determined by said Clark to the Rio Grande.

(c) Copies of the deeds certified by the custodian of records in each of the counties in New Mexico in which the land is located and other instruments of title are admissible as evidence in suits filed in this state to the same extent as the original deeds or certified copies of them.

(d) The county clerk of each of the counties in Texas in which the land is now located may file the certified copies of deeds and other instruments affecting title in the same manner as the original deeds could have been filed.

[Acts 1977, 65th Leg., p. 2350, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.016. Land Acquired From Mexico in 1933

(a) The State of Texas recognizes the provisions of 54 Stat. 21 (1940) and accepts as part of its territory and assumes civil and criminal jurisdiction over all of certain parcels or tracts of land lying adjacent to the territory of the State of Texas which were acquired by the United States under a convention between the United States of America and the United Mexican States signed February 1, 1933.

(b) The parcels and tracts of land acquired by the state constitute a part of the respective counties within whose boundaries they are located by extending the county boundaries to the Rio Grande and are subject to the civil and criminal jurisdiction of these counties.

(c) Any parcels or tracts, parts of which are located in two separate counties, shall be surveyed by the county surveyors of both counties, who shall determine the portion of the land located in their respective counties and shall file the field notes of the land in their offices together with a map of the parcels or tracts in the map records of the county.

(d) For the purpose of determining the boundaries, the boundary lines of the parcels and tracts established by the American Section of the International Boundary Commission, United States and Mexico, shall be accepted as the true boundaries.

(e) Any parcels or tracts of land that are adjacent to or contiguous to a water improvement district or a conservation and reclamation district may be included within the district by a written contract entered into between the owner of the land and the board of directors of the district. The contract shall specifically describe the land to be included in the district, the character of water service to be furnished to the land, and the terms and conditions on which the land is to be included in the district and shall be acknowledged in the manner required for the acknowledgment of deeds and recorded in the deed records of the county in which the land is located.

(f) None of the provisions of this section may be construed to affect the ownership of the land.
[Acts 1977, 65th Leg., p. 2350, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.017. Chamizal Area

(a) The State of Texas accepts as part of its territory and assumes civil and criminal jurisdiction over the tract of land lying adjacent to the State of Texas which was acquired by the United States of America from the United Mexican States under the Convention for the Solution of the Problem of the Chamizal, signed August 29, 1963, and ceded to Texas by Act of Congress.

(b) The territory shall be a part of El Paso County.

(c) None of the provisions of this section affect the ownership of the land.
[Acts 1977, 65th Leg., p. 2351, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.018. Cession of Certain El Paso Land

(a) To facilitate the project for rectification of the Rio Grande in the El Paso-Juarez Valley under the convention between the United States of America and the United Mexican States signed February 1, 1933, without cost to the state, all right, title, and interest of the State of Texas in and to the bed and banks of the Rio Grande in El Paso County and Hudspeth County which may be necessary or expedient in the construction of the project is ceded to the United States of America.

(b) This cession is made on the express condition that the State of Texas retain concurrent jurisdiction with the United States of America over every portion of land ceded which remains within the territorial limits of the United States after the project is completed so that process may be executed in the same manner and with the same effect as before the cession took place.

(c) None of the provisions of this section may be construed as a cession or relinquishment of any rights which the State of Texas, its citizens, or any property owners have in the water of the Rio Grande, its use, or access to it.
[Acts 1977, 65th Leg., p. 2351, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 11.019 to 11.040 reserved for expansion]

SUBCHAPTER C. SPECIAL FUNDS

§ 11.041. Permanent School Fund

(a) In addition to land and minerals granted to the permanent school fund under the constitution and other laws of this state, the permanent school fund shall include:

(1) the mineral estate in river beds and channels;

(2) the mineral estate in areas within tidewater limits, including islands, lakes, bays, and the bed of the sea which belong to the state; and

(3) the arms and the beds and shores of the Gulf of Mexico within the boundary of Texas.

(b) The land and minerals dedicated to the permanent school fund shall be managed as provided by law.
[Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.042. Asylum Fund

The 400,000 acres of land set apart for the various asylums in equal portions of 100,000 acres for each by act of the legislature, approved August 30, 1856, is recognized and set apart to provide a permanent fund for the support, maintenance, and improvement of the asylums.
[Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.043. University Fund

After payment of the amount due to the permanent school fund for proceeds from the sale of the portion of the public land set aside for payment of the public debt by act of the legislature in 1879 and payment directed to be made to the permanent school and university funds by act of the legislature in 1883, the remainder of the land not to exceed two million acres or the proceeds from their sale shall be divided in half and one of the halves shall constitute a permanent endowment fund for The University of Texas System.
[Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 11.044 to 11.070 reserved for expansion]

SUBCHAPTER D. REGULATION OF THE PUBLIC DOMAIN

§ 11.071. Recovery of Value of Minerals and Timber

(a) At least semiannually, the commissioner and the county attorney of each county shall report to the attorney general the name and address of each person who has taken any minerals or other property of value from public land or who has cut, used, destroyed, sold, or otherwise appropriated any timber from public land and shall report any other data within their knowledge. The county attorneys also shall assist the attorney general relating to these matters in any manner he requests.

(b) The attorney general shall file suit in any county in which all or part of the injury occurred or in the county in which the defendant resides to recover the value of the property, or with the con-

sent of the governor, the attorney general may compromise and settle any of these liabilities with or without suit.

(c) The attorney general shall pay all amounts collected or received by him to the permanent funds to which they belong.

(d) From amounts recovered by suit, the attorney general shall receive a fee of 10 percent and the county attorney shall receive a fee of five percent, and from amounts recovered by compromise, the attorney general and county attorney shall each receive one-half of the fees to be taxed against the defendant as costs. No county attorney may receive compensation from cases not reported by him to the attorney general.

[Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.072. Fences With and Without Gates

(a) A person who has used any of the pasture land by joining fences or otherwise and who builds or maintains more than three miles lineal measure of fences running in the same general direction without a gate in it shall be fined not less than $200 nor more than $1,000.

(b) The gate in the fence described in Subsection (a) of this section shall be at least 10 feet wide and shall not be locked or kept closed so that it obstructs free ingress or egress.

(c) The provisions of this section do not apply to persons who have previously settled on land not their own, if the enclosure is 200 acres or less and if the principal pursuit of the person on the land is agriculture.

[Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.073. Definition of Fencing

In Sections 11.074 and 11.075 of this code, "fencing" means the erection of any structure of wood, wire, wood and wire, or any other material, whether it encloses land on all sides or only one or more sides, which is intended to prevent the passage of cattle, horses, mules, sheep, goats, or hogs.

[Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.074. Herding and Line-Riding

(a) No owner of stock, manager, agent, employee, or servant may fence, use, occupy, or appropriate by herding or line-riding any portion of the public land of the state or land which belongs to the public schools or asylums unless he obtains a lease for the land from the proper authority.

(b) Any owner of stock or his manager, agent, employee, or servant who fences, uses, occupies, or appropriates by herding or line-riding any portion of the land covered by Subsection (a) of this section without a lease for the land, on conviction, shall be fined not less than $100 nor more than $1,000 and confined in the county jail for not less than three months nor more than two years. Each day for which a violation continues constitutes a separate offense.

(c) Prosecution under this section may take place in the county in which a portion of the land is located or to which the county may be attached for judicial purposes or in Travis County.

[Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.075. Appropriation of Land by Fencing

(a) Unless a lease for the land is obtained, any appropriation of public land of the state or land which belongs to the public schools and asylums by fencing or by enclosures consisting partly of fencing and partly of natural obstacles or impediments to the passage of livestock is an unlawful appropriation of land which is punishable by the penalty provided in Subsection (b) of Section 11.074 of this code.

(b) Each day that the violation continues constitutes a separate offense.

[Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.076. Unlawful Enclosures

(a) If the governor is credibly informed that any portion of the public land or the land which belongs to any of the special land funds has been enclosed or that fences have been erected on the land in violation of law, he may direct the attorney general to institute suit in the name of the state for the recovery of the land, damages, and fees.

(b) The fee for the attorney general may not be less than $10 if the amount recovered is less than $100, but if the amount of recovery is over $100, the fee shall be 10 percent paid by the defendant for the use and occupancy of the land and the removal of the enclosure and fences.

(c) The damages may not be less than five cents an acre a year for the period of occupancy.

(d) In a suit brought under this section, the court shall issue a writ of sequestration directed to any sheriff in the state requiring him to take into actual custody the land and any property on the land which belongs to the person who is unlawfully occupying the land and to hold the land and other property until the court issues further orders. The writ may be executed by the sheriff to whom it is delivered, and he shall proceed to execute the writ.

(e) The defendant in the suit may replevy the property as provided in other cases by executing the bond required by law.

(f) A suit brought under this section and any appeal has precedence over other cases.

(g) If judgment is recovered by the state in the suit, the court shall order the enclosure or fences removed and shall charge the costs of the suit to the defendant. Property on the land which belongs to the defendant and which is not exempt from execution may be used to pay costs and damages in addition to the personal liability of the defendant.
[Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.077. Suit Against Adverse Claimant

If any public land is held, occupied, or claimed adversely to the state or to any fund of the state by any person or if land is forfeited to the state for any reason, the attorney general shall file suit for the land, for rent on the land, and to recover damages to the land.
[Acts 1977, 65th Leg., p. 2354, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.078. Venue

A suit brought under the provisions of Section 11.076 or Section 11.077 of this code shall be brought in the county in which the land or any part of the land is located.
[Acts 1977, 65th Leg., p. 2354, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

SUBTITLE B. SURVEYS AND SURVEYORS

CHAPTER 21. SURVEYS AND FIELD NOTES

SUBCHAPTER A. GENERAL PROVISIONS

Section
21.001. Definitions.

SUBCHAPTER B. SURVEYS

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21.077. Unit of Measurement.
21.078. Terms "X Co-Ordinate" and "Y Co-Ordinate".
21.079. Land in More Than One Zone.

SUBCHAPTER A. GENERAL PROVISIONS

§ 21.001. Definitions

In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

(3) "Navigable stream" means a stream which retains an average width of 30 feet from the mouth up.

[Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 21.002 to 21.010 reserved for expansion]

SUBCHAPTER B. SURVEYS

§ 21.011. Surveys of Public Land

Each survey of public land shall be made under authority of law and by a surveyor duly appointed, elected, or licensed and qualified.
[Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.012. Surveys on Navigable Streams

(a) If the circumstances of the lines previously surveyed under the law will permit, land surveyed for individuals, lying on a navigable stream, shall front one-half of the square on the stream with the line running at right angles with the general course of the stream.

(b) A navigable stream may not be crossed by the lines of a survey.
[Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.013. Surveys Not on a Navigable Stream

Surveys that are not made on navigable streams shall be in a square as far as lines previously surveyed will permit.
[Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.014. Survey for Division Line

(a) Before running a division line between two settlers or occupants claiming land, the surveyor shall give written notice to the interested parties.

(b) A survey made contrary to the true intent and meaning of this section is invalid.
[Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 21.015 to 21.040 reserved for expansion]

SUBCHAPTER C. FIELD NOTES

§ 21.041. Field Notes of a Survey of Public Land

The field notes of a survey of public land shall state:

(1) the county in which the land is located;

(2) the authority under which the survey is made and a true description of the survey;

(3) the land by proper field notes with the necessary calls and connections for identification, observing the Spanish measurement by varas;

(4) a diagram of the survey;

(5) the variation at which the running was made;

(6) the names of the chain carriers;

(7) the date the survey was made; and

(8) the signature of the surveyor.

[Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.042. Surveyor's Certification

(a) The surveyor shall certify officially:

(1) to the correctness of the survey;

(2) that the survey was made according to law;

(3) that the survey was actually made in the field; and

(4) that the field notes are duly recorded, giving the book and page.

(b) If the survey was made by a deputy, the county surveyor shall certify officially that:

(1) he has examined the field notes;

(2) he finds them correct; and

(3) he has determined that the survey is duly recorded, giving the book and page of record.

[Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.043. Lost Field Notes

(a) If the original field notes of an authorized survey are lost or destroyed, the owner or his agent may obtain a certified copy of the record from the county surveyor on making an affidavit of the loss or destruction and filing it in the office of the county surveyor where the survey was recorded.

(b) The certified copy shall be as valid as the original record and shall secure to the owner all the rights before the commissioner that the original would have secured.

[Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.044. Incorrect Field Notes

(a) The commissioner shall have a plain statement of errors in any field notes submitted to the land office, together with a sketch of the map, forwarded by mail, or personally by the interested party, to the surveyor who made the survey, with a request to correct and return the field notes and map.

(b) The surveyor shall correct and return the field notes and map at once without further charge.

(c) If the conflict exists only on the map or in the field notes, the surveyor need only officially certify to the facts and furnish a true sketch of the survey with its connections.

[Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 21.045 to 21.070 reserved for expansion]

SUBCHAPTER D. TEXAS CO–ORDINATE SYSTEM

§ 21.071. Adoption of Co-Ordinate System

The system of plane rectangular co-ordinates which has been established by the National Oceanic and Atmospheric Administration for defining and stating the positions or locations of points on the surface of the earth within the State of Texas is adopted and will be known and designated as the "Texas Co-ordinate System."

[Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.072. Purpose and Limitations of Co-Ordinate System

(a) The only purpose for adopting the Texas Co-ordinate System is to recognize the system for use in the State of Texas to definitely ascertain positions on the surface of the earth.

(b) Notwithstanding any other provisions of this subchapter, the use of the system is not required, and the provisions of this subchapter shall not be construed to set aside or disturb any corner or survey already established.

(c) The use of the term "Texas Co-ordinate System" on a map, report, survey, or other document is limited to co-ordinates based on the Texas Co-ordinate System as defined in this subchapter.

[Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.073. Division of State Into Zones

For the purpose of using the system, the state is divided into five zones:

(1) the North Zone;

(2) the North Central Zone;

(3) the Central Zone;

(4) the South Central Zone; and

(5) the South Zone.

[Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.074. Area Within Zones

(a) The area included in the following counties constitutes the North Zone: Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.

(b) The area included in the following counties constitutes the North Central Zone: Andrews, Archer, Bailey, Baylor, Borden, Bowie, Callahan, Camp, Cass, Clay, Cochran, Collin, Cooke, Cottle, Crosby, Dallas, Dawson, Delta, Denton, Dickens, Eastland, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Gaines, Garza, Grayson, Gregg, Hale, Hardeman, Harrison, Haskell, Henderson, Hill, Hockley, Hood, Hopkins, Howard, Hunt, Jack, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Lubbock, Lynn, Marion, Martin, Mitchell, Montague, Morris, Motley, Navarro, Nolan, Palo Pinto, Panola, Parker, Rains, Red River, Rockwall, Rusk, Scurry, Shackelford, Smith, Somervell, Stephens, Stonewall, Tarrant, Taylor, Terry, Throckmorton, Titus, Upshur, Van Zandt, Wichita, Wilbarger, Wise, Wood, Yoakum, and Young.

(c) The area included in the following counties constitutes the Central Zone: Anderson, Angelina, Bastrop, Bell, Blanco, Bosque, Brazos, Brown, Burleson, Burnet, Cherokee, Coke, Coleman, Comanche, Concho, Coryell, Crane, Crockett, Culberson, Ector, El Paso, Falls, Freestone, Gillespie, Glasscock, Grimes, Hamilton, Hardin, Houston, Hudspeth, Irion, Jasper, Jeff Davis, Kimble, Lampasas, Lee, Leon, Liberty, Limestone, Llano, Loving, McLennan, McCulloch, Madison, Mason, Menard, Midland, Milam, Mills, Montgomery, Nacogdoches, Newton, Orange, Pecos, Polk, Reagan, Reeves, Robertson, Runnels, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Shelby, Sterling, Sutton, Tom Green, Travis, Trinity, Tyler, Upton, Walker, Ward, Washington, Williamson, and Winkler.

(d) The area included in the following counties constitutes the South Central Zone: Aransas, Atascosa, Austin, Bandera, Bee, Bexar, Brazoria, Brewster, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Dimmit, Edwards, Fayette, Fort Bend, Frio, Galveston, Goliad, Gonzales, Guadalupe, Harris, Hays, Jackson, Jefferson, Karnes, Kendall, Kerr, Kinney, LaSalle, Lavaca, Live Oak, McMullen, Matagorda, Maverick, Medina, Presidio, Real, Refugio, Terrell, Uvalde, Val Verde, Victoria, Waller, Wharton, Wilson, and Zavala.

(e) The area included in the following counties constitutes the South Zone: Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio, Starr, Webb, Willacy, and Zapata.

[Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.075. Zone Names in Land Description

(a) As established for use in the North Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, North Zone."

(b) As established for use in the North Central Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, North Central Zone."

(c) As established for use in the Central Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, Central Zone."

(d) As established for use in the South Central Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, South Central Zone."

(e) As established for use in the South Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, South Zone."

[Acts 1977, 65th Leg., p. 2358, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.076. Co-Ordinate System Definitions

(a) For the purpose of precisely defining the Texas Co-ordinate System, the following definitions by the National Oceanic and Atmospheric Administration are adopted:

(1) The Texas Co-ordinate System, North Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 34° 39′ and 36° 11′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 101° 30′ west longitude and the parallel 34° 00′ north latitude. This origin is given the co-ordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas).

(2) The Texas Co-ordinate System, North Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 32° 08′ and 33° 58′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 97° 30′ west longitude and the parallel 31° 40′ north latitude. This origin is given the co-ordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas).

(3) The Texas Co-ordinate System, Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard paral-

lels at north latitudes 30° 07′ and 31° 53′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 100° 20′ west longitude and the parallel 29° 40′ north latitude. This origin is given the co-ordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas).

(4) The Texas Co-ordinate System, South Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 28° 23′ and 30° 17′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian of 99° 00′ west longitude and the parallel 27° 50′ north latitude. This origin is given the co-ordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas).

(5) The Texas Co-ordinate System, South Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 26° 10′ and 27° 50′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 98° 30′ west longitude and the parallel 25° 40′ north latitude. This origin is given the co-ordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas).

(b) The position of the Texas Co-ordinate System shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the National Oceanic and Atmospheric Administration for first-order and second-order work, whose geodetic positions have been rigidly adjusted on the North American datum of 1927, and whose co-ordinates have been computed on the system defined in this subchapter. Any of these stations may be used for establishing a survey connection with the Texas Co-ordinate System.

[Acts 1977, 65th Leg., p. 2358, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.077. Unit of Measurement

The unit of measurement in this subchapter has the following values, based on the International Meter established by the National Bureau of Standards:

(1) one meter = 39.37 inches exactly;

(2) one foot = 12.00 inches exactly; and

(3) one vara = 33⅓ inches exactly.

[Acts 1977, 65th Leg., p. 2359, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.078. Terms "X Co-Ordinate" and "Y Co-Ordinate"

(a) The plane rectangular co-ordinates of a point on the earth's surface, to be used in expressing the position or location of the point in the appropriate zone, of this system, shall consist of two distances, expressed in feet and decimals of a foot.

(b) One of these distances, to be known as the "x co-ordinate," shall give the position in an east-and-west direction; the other, to be known as the "y co-ordinate," shall give the position in a north-and-south direction.

(c) These co-ordinates shall be made to depend on and conform to the plane rectangular co-ordinates of the triangulation and traverse stations of the National Oceanic and Atmospheric Administration within the State of Texas, as those co-ordinates have been determined by the survey.

[Acts 1977, 65th Leg., p. 2359, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.079. Land in More Than One Zone

If a tract of land to be defined by a single description extends from one zone into another of the co-ordinate zones, the positions of all points on its boundaries may be referred to by either of the zones, the zone which is used being specifically named in the description.

[Acts 1977, 65th Leg., p. 2360, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 22. BOARD OF EXAMINERS OF LAND SURVEYORS [REPEALED]

SUBCHAPTER A. GENERAL PROVISIONS

Section
22.001. Repealed.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

22.011 to 22.019. Repealed.

SUBCHAPTER C. LICENSING OF LAND SURVEYORS

22.051 to 22.065. Repealed.

SUBCHAPTER D. POWERS AND DUTIES OF LICENSED SURVEYOR

22.101 to 22.111. Repealed.

SUBCHAPTER E. REVOCATION OF LICENSE

22.151. Repealed.

SUBCHAPTER A. GENERAL PROVISIONS

§ 22.001. Repealed by Acts 1979, 66th Leg., p. 1278, ch. 597, § 30(3), eff. June 13, 1979

The repealed section, relating to definitions, was derived from Acts 1977, 65th Leg., p. 2361, ch. 871, art. I, § 1.

See, now, Civil Statutes, art. 5282c.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§§ 22.011 to 22.019. Repealed by Acts 1979, 66th Leg., p. 1278, ch. 597, § 30(3), eff. June 13, 1979

The repealed sections, relating to administrative provisions, were derived from Acts 1977, 65th Leg., p. 2361, ch. 871, art. I, § 1.

See, now, Civil Statutes, art. 5282c.

SUBCHAPTER C. LICENSING OF LAND SURVEYORS

§§ 22.051 to 22.065. Repealed by Acts 1979, 66th Leg., p. 1278, ch. 597, § 30(3), eff. June 13, 1979

The repealed sections, relating to licensing of land surveyors, were derived from Acts 1977, 65th Leg., p. 2362, ch. 871, art. I, § 1.

See, now, Civil Statutes, art. 5282c.

SUBCHAPTER D. POWERS AND DUTIES OF LICENSED SURVEYOR

§§ 22.101 to 22.111. Repealed by Acts 1979, 66th Leg., p. 1278, ch. 597, § 30(3), eff. June 13, 1979

The repealed sections, relating to powers and duties of licensed surveyor, were derived from Acts 1977, 65th Leg., p. 2365, ch. 871, art. I, § 1.

See, now, Civil Statutes, art. 5282c.

SUBCHAPTER E. REVOCATION OF LICENSE

§ 22.151. Repealed by Acts 1979, 66th Leg., p. 1278, ch. 597, § 30(3), eff. June 13, 1979

The repealed section, relating to cause for revocation, was derived from Acts 1977, 65th Leg., p. 2366, ch. 871, art. I, § 1.

See, now, Civil Statutes, art. 5282c.

CHAPTER 23. COUNTY SURVEYORS

SUBCHAPTER A. GENERAL PROVISIONS

Section

23.001. Definitions.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

23.011. Election.
23.012. Residence.
23.013. Bond.
23.014. Deputy Surveyor.
23.015. Chain Carriers and Markers.
23.016. Office Location.

SUBCHAPTER C. POWERS AND DUTIES

23.051. In General.
23.052. Surveys on Which Patents Are to be Obtained.
23.053. Record of Field Notes.
23.054. Right of Inspection.
23.055. Bound Records.
23.056. Lost Records.
23.057. Custody of Records in Absence of County Surveyor.
23.058. Delivery of Records to Successor.
23.059. Failure to Survey.

SUBCHAPTER A. GENERAL PROVISIONS

§ 23.001. Definitions.

In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

[Acts 1977, 65th Leg., p. 2367, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 23.002 to 23.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 23.011. Election

At each general election, a county surveyor shall be elected in each county for a term of two years.

[Acts 1977, 65th Leg., p. 2367, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.012. Residence

The county surveyor shall reside in the county.

[Acts 1977, 65th Leg., p. 2367, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.013. Bond

The county surveyor shall execute a bond conditioned on the faithful performance of the duties of the office. The amount of the bond shall be fixed by the commissioners court and shall be not less than $500 nor more than $10,000.

[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.014. Deputy Surveyor

(a) A county surveyor may appoint a deputy surveyor as he considers necessary.

(b) The county surveyor shall administer the deputy surveyor's official oath and take his bond in the sum of not less than $500 nor more than $10,000, conditioned on the faithful performance of the duties of the office.

(c) The deputy may perform all acts authorized or required by law to be done by the county surveyor.

[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.015. Chain Carriers and Markers

(a) A county surveyor may employ persons 16 years of age or older as chain carriers or markers.

(b) The county surveyor shall administer an oath to each of these employees to faithfully perform his duties in accordance with the instructions given him.

[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.016. Office Location

(a) The county surveyor's office shall be located in the courthouse or in a suitable building at the county seat.

(b) Rent for an office outside the courthouse shall be paid by the commissioners court on showing that:

(1) the rent is reasonable;

(2) the office is necessary; and

(3) an office is not available at the courthouse.

[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 23.017 to 23.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 23.051. In General

The county surveyor shall perform the duties required of him by law.

[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.052. Surveys on Which Patents Are to be Obtained

The county surveyor shall:

(1) receive and examine all field notes of surveys made in the county on which patents are to be obtained;

(2) certify to the same according to law; and

(3) record the field notes in a book to be kept by him for that purpose.

[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.053. Record of Field Notes

(a) The commissioners court shall furnish the county surveyor all necessary books of record.

(b) The county surveyor shall record in a well-bound book all the surveys in his county, with the plats that he may make, whether private or official.

[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.054. Right of Inspection

At all times, any interested person, agent, or attorney may examine the books, papers, plats, maps, or other archives belonging to the office of the county surveyor on the payment of the fee set by law. In addition to the fees allowed by law for field work, the county surveyor may charge 20 cents per 100 words for the record.

[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.055. Bound Records

If the commissioners court considers it necessary, it may order that the county surveyor's record be transcribed in good and substantial books by the county surveyor or special deputies sworn to make true copies of the record. For this service, not more than 15 cents per 100 words shall be allowed to be paid out of the county treasury.

[Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.056. Lost Records

(a) If the maps, field notes, or other records of the county surveyor's office, or any part of them, are lost or destroyed, the county surveyor shall obtain from the commissioner a transcript of the lost records, certified to as required by law.

(b) The certified copy has the same force and effect as the original.

[Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.057. Custody of Records in Absence of County Surveyor

If a county does not have a county surveyor, the county clerk of the county shall take charge of all records, maps, and papers belonging to the county surveyor's office and safely keep them in his office.

[Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.058. Delivery of Records to Successor

On removal from office or at the expiration of his term of office, the county surveyor shall deliver to his successor all records, books, papers, maps, and other things pertaining to his office.

[Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.059. Failure to Survey

If a county surveyor fails, neglects, or refuses to make a survey or have a survey made, within one month after the amount of lawful surveying fees are tendered to him by a person legally entitled to the survey, he and his sureties shall be liable on his official bond to the injured parties in the amount of damages or injury the parties may sustain by reason of the neglect, refusal, or failure.

[Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

SUBTITLE C. ADMINISTRATION

CHAPTER 31. GENERAL LAND OFFICE

SUBCHAPTER A. GENERAL PROVISIONS

Section
31.001. Definitions.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

31.011. Land Office Established.
31.012. Commissioner's Election; Residence.
31.013. Bonds.
31.014. Commissioner's Liability.
31.015. Chief Clerk.
31.016. Abstract Clerk.
31.017. Receiving Clerk.
31.018. Translator.
31.019. Draftsmen.
31.020. Conditions of Employment.
31.021. Reimbursement for Notary Public Expense.

SUBCHAPTER C. POWERS AND DUTIES

31.051. General Duties.
31.052. Custody of Records.
31.053. Filing Papers.
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31.055. Removing Papers.
31.056. Revision and Compilation of Abstracts.
31.057. Printing Supplementary Abstracts.
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SUBCHAPTER D. ISSUANCE OF PERMITS

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31.101. Definition.
31.102. Authority to Make Geological, Geophysical, and Other Surveys.
31.103. Deposit.
31.104. Payments on Areas Surveyed or Investigated Without a Permit.
31.105. Prohibition.
31.106. Methods.
31.107. Rules.
31.108. Penalty.

SUBCHAPTER A. GENERAL PROVISIONS

§ 31.001. Definitions

In this chapter:

(1) "State" means the State of Texas.

(2) "Commissioner" means the Commissioner of the General Land Office.

(3) "Land office" means the General Land Office.

[Acts 1977, 65th Leg., p. 2370, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 31.002 to 31.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 31.011. Land Office Established

There shall be one General Land Office located in Austin, which shall register all land titles emanating from the state if not prohibited by the constitution.

[Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.012. Commissioner's Election; Residence

The commissioner shall be elected at a general election for a term of four years and shall reside in Austin during his term of office.

[Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.013. Bonds

(a) The commissioner shall execute a bond for $50,000 with three or more sureties payable to and approved by the governor and conditioned on the faithful discharge of his duties.

(b) Any bonds required by law to be executed by employees of the land office shall be executed and approved in the manner provided for the commissioner in Subsection (a) of this section.

[Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.014. Commissioner's Liability

The commissioner and the sureties on his official bond are responsible to any person who is injured by removal, withdrawal, or alteration of any record or file in the land office, unless the commissioner is able to show that the act has taken place with the permission of the person owning the file or record.

[Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.015. Chief Clerk

(a) The commissioner shall appoint a chief clerk, who shall execute a bond for $20,000.

(b) The chief clerk may perform any of the duties of the commissioner if the commissioner is sick, is absent, dies, or resigns.

[Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.016. Abstract Clerk

The commissioner shall designate one of his clerks as the abstract clerk and shall assign to him the special duty to correct the abstracts of patented, titled, and surveyed land required to be kept in the land office to reflect errors, changes caused by cancellation of patents and in county lines, and the creation of new counties and to add new patented surveys on the date they are patented.

[Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.017. Receiving Clerk

(a) With the consent of the governor, the commissioner shall appoint a suitable person to serve as receiving clerk for the land office.

(b) The receiving clerk shall execute a bond for $25,000.

[Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.018. Translator

(a) The commissioner shall appoint a translator who thoroughly understands the Spanish and English languages.

(b) The translator shall execute a bond in the amount required for the chief clerk and shall take the official oath.

(c) The translator shall translate into English and record in a book any laws and public contracts relating to titles to land and any original titles or papers which are written in the Spanish language and which are filed in the land office.

[Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.019. Draftsmen

(a) The commissioner shall appoint a chief draftsman and as many assistant draftsmen as authorized by law.

(b) The chief draftsman and his assistant draftsmen shall draw and complete county maps.

(c) The chief draftsman and his assistant draftsmen shall perform drafting and other duties required by the commissioner for the benefit of the state or individuals.

[Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.020. Conditions of Employment

(a) The commissioner shall appoint the number of clerks authorized by law and legislative appropriation.

(b) Clerks and employees of the land office shall hold their offices and positions at the pleasure of the commissioner and may be removed by him at any time for satisfactory cause.

[Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Sec. 31.021. Reimbursement for Notary Public Expense

The land office may reimburse an employee for the fees and costs of a bond that are required for appointment as a notary public if the employee provides notary public service as part of the employee's duties with the land office.

[Added by Acts 1979, 66th Leg., p. 70, ch. 45, § 1, eff. April 11, 1979.]

[Sections 31.022 to 31.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 31.051. General Duties

The commissioner shall:

(1) superintend, control, and direct the official conduct of subordinate officers of the land office;

(2) execute and perform all acts and other things relating to public land of the state or rights of individuals in public land which is required by law;

(3) make and enforce suitable rules consistent with the law; and

(4) give information when required to the governor and the legislature relating to public land and the land office.

[Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.052. Custody of Records

(a) Books, accounts, records, papers, maps, and original documents relating to land titles which are termed archives by law shall be the books and papers of the land office under the control and custody of the commissioner.

(b) The commissioner shall keep in the land office a copy of each permit, lease, or other paper issued under law.

[Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.053. Filing Papers

(a) The commissioner shall adopt the most convenient method for filing papers and preserving records of the land office.

(b) A list of all papers in each file shall be retained in the file.

(c) Each employee who files a paper shall place his name on it.

[Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.054. Public Access to Papers

(a) Any person who desires to examine any paper, record, or file must obtain the written consent of the commissioner or the chief clerk and an order for the detail of a clerk to be present and superintend the examination.

(b) After the examination, the clerk shall carefully examine the papers of the file and make sure that they are all in place.

[Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.055. Removing Papers

(a) No transfer or deed which may be a link in any chain of title to any certificate on file in the land office may be removed by any person, but the commissioner shall deliver to the interested person on demand certified copies which shall have the same force and effect as the originals.

(b) If the genuineness of any original paper is questioned in a suit, the commissioner, on order of the court in which the suit is pending, shall deliver the original paper to the proper person and shall retain a certified copy of the paper which will have the same force and effect as the original if the original is lost.

(c) If the commissioner has good reason to doubt the genuineness of any transfer, power of attorney, or other paper on file in his office, he shall not permit any person to obtain an official copy of the paper until the doubts have been removed.

[Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.056. Revision and Compilation of Abstracts

(a) The commissioner shall prepare a revision and compilation of the various volumes of the abstracts of patented, titled, and surveyed land which were previously made by the land office.

(b) The various counties of the state shall be apportioned into one of not more than eight districts for the purpose of revising and compiling the abstracts and the abstracts of each of the districts shall be compiled in a separate volume.

(c) The commissioner may distribute to the officers of the state who require its use but have not

previously received a set, one complete set of the abstracts of patented, titled, and surveyed land and may sell the surplus volumes to any persons who apply for them at a price that is not less than the cost to the state.

(d) Any money received from the sale of surplus volumes shall be deposited in the general revenue fund.

(e) The commissioner may have a sufficient number of volumes printed to meet the demand.

(f) Printing and binding shall be done exclusively in the State of Texas.

(g) None of the provisions of this section affect the provisions of Section 31.057 of this code.

[Acts 1977, 65th Leg., p. 2373, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.057. Printing Supplementary Abstracts

(a) The commissioner may have not more than 1,500 copies of the supplementary abstracts of patented, titled, and surveyed land printed and bound annually for distribution to the officers of the state and counties whose duties require them to use it, and surplus copies may be sold at a reasonable price to any person who applies for a copy.

(b) The cost incurred in printing the copies shall be paid from the land office appropriation for printing.

(c) The commissioner shall deposit any money received from the sale of the copies of the State Treasury to the credit of the General Revenue Fund.

[Acts 1977, 65th Leg., p. 2373, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.058. Receiving Funds

(a) The receiving clerk shall receive funds required by law to be paid to the commissioner and shall give to each person who deposits money a certificate of deposit stating the amount, the name of the person, and the type of claim on which the deposit was made.

(b) If funds are received which are of a general character in advance of fees and dues, it shall be stated.

(c) The clerk shall be responsible to the state or individual for the funds.

[Acts 1977, 65th Leg., p. 2373, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.059. Receiving Clerk's Books

(a) The receiving clerk shall keep books in which he shall enter:

(1) each deposit separately;

(2) the name of the person; and

(3) the number of the claim and the location of the land to be perfected.

(b) He shall keep letters and other vouchers filed in neat and regular order and number corresponding with his books.

(c) The receiving clerk shall report to the State Treasurer and pay in kind on the last day of each month funds in his possession which are due to the state and shall receive a receipt in his own name.

(d) In his books, the receiving clerk shall keep separate columns indicating the amount of specie or the amount of currency or other funds paid to him.

(e) On removal from office or resignation, the receiving clerk shall turn over his books, accounts, and money to his successor if he has qualified or to the commissioner and shall receive a receipt for them.

[Acts 1977, 65th Leg., p. 2373, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.060. Financial Report

On or before the meeting of the legislature, the receiving clerk shall furnish to the governor through the commissioner a correct report of the condition of his office, including the amount of money received, the type of claim, the amount of money paid out, and the type of payment.

[Acts 1977, 65th Leg., p. 2374, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.061. Examination of Books

The commissioner shall examine the books and accounts of the receiving clerk to determine if they have been properly kept.

[Acts 1977, 65th Leg., p. 2374, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.062. Embezzlement

(a) In examining the books of the receiving clerk, if the commissioner finds evidence of embezzlement, he shall report it immediately to the governor.

(b) The governor shall suspend the receiving clerk from office until an examination of the books and accounts is made.

(c) If the suspended clerk is found guilty of embezzlement, he shall be removed from office and a suit shall be instituted to recover on his bond.

[Acts 1977, 65th Leg., p. 2374, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.063. Location of Coastal Boundaries

(a) The commissioner shall have the area between the coastline of the Gulf of Mexico and the Three Marine League line compiled and platted and shall locate and set the boundary lines between the coastal counties from the coastline to the Three Marine League line.

(b) The boundary lines between the counties from the coastline to the Three Marine League line shall

be located and set by the commissioner in accordance with established engineering practice.

(c) The legal description of the boundary lines set between the counties from the coastline to the continental shelf shall be filed and recorded in the office of the county clerk of the affected county.

[Acts 1977, 65th Leg., p. 2374, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 31.064 to 31.100 reserved for expansion]

SUBCHAPTER D. ISSUANCE OF PERMITS

§ 31.101. Definition

In this subchapter, "areas within tidewater limits" means islands, saltwater lakes, bays, inlets, marshes, and reefs within tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of Texas.

[Acts 1977, 65th Leg., p. 2374, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.102. Authority to Make Geological, Geophysical, and Other Surveys

(a) The commissioner may issue permits for geological, geophysical, and other surveys and investigations of areas within tidewater limits which are not subject to valid oil and gas leases executed by the state.

(b) Any person who has a valid oil and gas lease executed by the state or who has the permission of such a lessee is entitled to conduct geological, geophysical, and other surveys and investigations in the area without obtaining a permit, but the surveys and investigations shall be conducted under rules established by the commissioner.

[Acts 1977, 65th Leg., p. 2375, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.103. Deposit

(a) Before a permit is issued under this subchapter, the applicant shall deposit with the commissioner an amount equal to $50 a day for the desired term of the permit.

(b) A separate permit shall be obtained and deposit made for each party or part of a party engaged in making a survey or investigation.

(c) Deposits shall be retained by the commissioner in a special trust fund until the survey or investigation is completed and the permittee files with the commissioner a report under oath stating the number of days during which actual work on the survey or investigation was conducted on the area covered by the permit.

(d) After the report is filed, the commissioner shall deposit in the State Treasury to the credit of the permanent school fund an amount equal to $50 a day for the number of days during which the actual work on the survey or investigation was conducted, and the remaining portion of the deposit shall be returned to the applicant.

[Acts 1977, 65th Leg., p. 2375, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.104. Payments on Areas Surveyed or Investigated Without a Permit

(a) The commissioner or the attorney general shall demand from any person who conducts a survey or investigation on an area within tidewater limits without a permit or lease from the state payment of $50 a day for each day actual work is done on the survey or investigation.

(b) On refusal to pay, the attorney general shall institute suit to recover as damages for the unauthorized use of the property the amount or the reasonable value of the privilege exercised.

[Acts 1977, 65th Leg., p. 2375, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.105. Prohibition

No person may conduct geological, geophysical, and other surveys and investigations on areas within tidewater limits unless he has a permit or he has an oil and gas leasehold estate in the area or has permission from the owner thereof.

[Acts 1977, 65th Leg., p. 2375, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.106. Methods

The owner of the oil and gas leasehold estate located in an area within tidewater limits or a person having his permission or a person who has a permit may use all reasonable methods including use of explosives to make surveys and investigations.

[Acts 1977, 65th Leg., p. 2375, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.107. Rules

(a) Geological, geophysical, and other surveys and investigations of areas within tidewater limits shall be conducted under rules adopted by the commissioner to prevent unnecessary pollution of water, destruction of fish, oysters, and other marine life, and obstruction of navigation.

(b) The commissioner shall follow the recommendations of the Parks and Wildlife Department to prevent unnecessary pollution of water, destruction of fish, oysters, and other marine life, and obstruction of navigation.

[Acts 1977, 65th Leg., p. 2375, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.108. Penalty

Any person who violates the provisions of this subchapter, the provisions of a permit issued under this subchapter, or any rule adopted by the commissioner is guilty of a misdemeanor and on conviction

shall be fined not less than $100 nor more than $1,000. Each day that a violation occurs constitutes a separate offense.

[Acts 1977, 65th Leg., p. 2376, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 32. SCHOOL LAND BOARD

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SUBCHAPTER A. GENERAL PROVISIONS

§ 32.001. Definitions

In this chapter:

(1) "Board" means the School Land Board.

(2) "Commissioner" means the Commissioner of the General Land Office.

(3) "Land office" means the General Land Office.

(4) "Land" means land dedicated to the permanent school fund and the asylum funds by the constitution and laws of this state and the mineral estate in areas within tidewater limits, including islands, lakes, bays, and the bed of the sea which belong to the state, and the mineral estate in river beds and channels.

[Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.099, purports to add § 3a to Civil Statutes, art. 5421c–3, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 1(a)(1). As so added, § 3a reads:

"The School Land Board is subject to the Texas Sunset Act [Civil Statutes, art. 5429k]; and unless continued in existence as provided by that Act the board is abolished effective September 1, 1985."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

[Sections 32.002 to 32.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 32.011. Creation of Board

There is created a board to be known as the School Land Board.

[Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.012. Members of the Board

(a) The board is composed of:

(1) the commissioner;

(2) a citizen of the state appointed by the governor with the advice and consent of the senate; and

(3) a citizen of the state appointed by the attorney general with the advice and consent of the senate.

(b) The authority of the attorney general to appoint one of the members of the board, including the authority to make appointments during the recess of the senate, is the same as the authority of the governor to fill vacancies in state offices under the Texas Constitution.

(c) Each appointment made by the governor and the attorney general shall be made in accordance with and subject to the provisions of the Texas Constitution authorizing the filling of vacancies in state offices by appointment of the governor.

[Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.013. Terms of Appointed Members

The members appointed to the board by the governor and the attorney general serve for terms of two years.

[Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.014. Chairman of the Board

The commissioner serves as chairman of the board.

[Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.015. Per Diem and Reimbursement

Each citizen member of the board is entitled to receive a per diem allowance for each day spent in performing his duties and as reimbursement for actual and necessary travel expenses incurred in performing his duties the amount provided in the General Appropriations Act.

[Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.016. Board Meetings

(a) The board shall meet on the first and third Tuesdays of each month in the land office.

(b) Subject to recesses at the discretion of the board, meetings of the board shall continue until the board has completed its docket.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.017. Secretary of the Board

(a) The board shall select a secretary from persons nominated by the commissioner.

(b) The person selected as secretary shall be approved by a majority of the board.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.018. Employment of Geologist and Mineralogist

The commissioner may employ a geologist and a mineralogist who shall be informed about minerals on public school land and activities under pending applications and previous leases and sales. The geologist and mineralogist shall report to the board any information relating to these subjects.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.019. Board Employees

(a) The commissioner may employ additional employees necessary for the discharge of the duties of the board.

(b) Employees of the board shall be considered employees of the land office, and civil and criminal laws regulating the conduct and relations of employees of the land office apply to employees of the board.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.020. Minutes of Board

The board shall keep minutes which shall include a record of its proceedings and a docket on which the secretary shall enter matters to be considered by the board.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.021. Records and Proceedings as Archives

The records and proceedings of the board shall be records and archives of the land office.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.022. Inspection of Minutes and Docket

(a) On payment of the fees prescribed by law for examination of other land office records, the minutes and docket shall be subject to inspection by any citizen of the state who desires to make the examination.

(b) An examination made under this section shall be made in the presence of the secretary of the board or a clerk designated by law.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 32.023 to 32.060 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 32.061. Board's General Duties

The board shall:

(1) set the dates for the sale and lease of surveyed land;

(2) determine the prices for which surveyed and unsurveyed land shall be sold and leased; and

(3) perform any other duties which may be required by law.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.062. Adoption of Rules

The board shall adopt rules of procedure and rules for the sale and lease of land covered by this chapter which are not inconsistent with this chapter and laws relating to the sale and lease of school and asylum land and islands, lakes, and bays within tidewater limits and the bed of the sea which belong to the state, and the lease of the mineral estate in river beds and channels.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.063. Duty to Advise Commissioner

The board shall advise the commissioner regarding any matters submitted to it for that purpose.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 32.064 to 32.100 reserved for expansion]

SUBCHAPTER D. SALE AND LEASE OF LAND

§ 32.101. Applicable Law

Land shall be sold and leased subject to the terms and conditions provided by law.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.102. List of Land

From time to time the commissioner shall furnish the board a list of land areas subject to the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.103. Appraised Value of Land

(a) Except as provided in Subsection (b) of this section, no land may be appraised at less than $2 an acre.

(b) Land located west of the Pecos River may be appraised at not less than $1 an acre.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.104. Appraisal Fee

(a) The board shall charge applicants for the purchase of excess acreage and unsurveyed public school land an appraisal fee for appraising the acreage and land to determine the price at which it is to be sold by the state.

(b) The appraisal fee shall be in an amount set by the board, and any part of the fee which in the opinion of the board is unused shall be refunded to the applicant.

(c) The appraisal fee shall be paid to the commissioner who shall deposit all fees that are not refunded in the State Treasury in the fund provided under Section 32.110 of this code.

(d) The money deposited in the fund to the extent necessary is appropriated to the land office to pay salaries, travel expenses, and other expenses of personnel necessary to accomplish the appraisals or other work of the board.

(e) The provisions of this section are cumulative of other laws which are not in conflict, but if a conflict exists, this section is controlling.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.105. Date of Sale and Lease

The sale date for the sale or lease of land shall be the first Tuesday of the month.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.106. Description of Land

The description of public school land offered for sale or lease shall be in accord with the description which may be found in the School Land Registry in the land office.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.107. Notice of Sale and Lease

(a) The board shall publish notice of the sale or lease of land in at least three issues of four daily newspapers.

(b) The notice shall be published at least 30 days before the date of sale or lease.

(c) The notice shall state that land is to be offered for sale or lease on a certain date and that lists describing the land may be obtained at the land office.

[Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.108. Entries on Docket

The descriptions of the land shall be entered on the docket, and as applications are filed, the names of the applicants and the amount of the bids also shall be entered on the docket.

[Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.109. Acceptance and Rejection of Bids

(a) The board may reject any and all bids, but if the board elects not to reject any and all bids, it is required to accept the best bid submitted.

(b) The minutes of the board shall reflect the acceptance or rejection of a bid, and the approval of the minutes constitutes approval of the act of acceptance or rejection.

[Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.110. Special Sale Fee

(a) On land sales and mineral leases made by the board, the bidder is required to pay by separate check an amount equal to one percent of the bid payable to the commissioner as a special fee.

(b) Only the special fees paid on the high bids accepted by the board shall be deposited by the commissioner in the State Treasury as a special fund.

(c) Failure to pay the special fee does not render a bid void, but the commissioner shall demand payment of the fee before he issues a lease to the successful bidder. If the successful bidder fails or refuses to make the payment within 30 days after demand by the commissioner, the bidder is not entitled to a lease or sale on the tract covered by his bid and the cash bonus shall be automatically forfeited to be deposited by the commissioner in the State Treasury to the credit of the permanent school fund or the appropriate special mineral fund.

(d) Checks submitted by unsuccessful bidders shall be returned to the bidders with their bid checks.
[Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.111. Issuance of Award or Lease

Each award or lease shall be issued by the commissioner according to the minutes approved by the board.
[Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 33. MANAGEMENT OF COASTAL PUBLIC LAND

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SUBCHAPTER A. GENERAL PROVISIONS

§ 33.001. Policy

(a) The surface estate in the coastal public land of this state constitutes an important and valuable asset dedicated to the permanent school fund and to all the people of Texas, and it is the declared policy of this state that the estate be managed pursuant to the policies stated in the following subsections of this section.

(b) The natural resources of the surface estate in coastal public land shall be preserved. These resources include the natural aesthetic values of those areas and the value of the areas in their natural state for the protection and nurture of all types of marine life and wildlife.

(c) Uses which the public at large may enjoy and in which the public at large may participate shall take priority over those uses which are limited to fewer individuals.

(d) The public interest in navigation in the intracoastal water shall be protected.

(e) Unauthorized use of coastal public land shall be prevented.

(f) Utilization and development of the surface estate in the coastal public land shall not be allowed unless the public interest as expressed by this chapter is not significantly impaired by it.

(g) For the purposes of this chapter, the surface estate in coastal public land shall not be alienated except by the granting of leaseholds and lesser interests and by exchanges of coastal public land for littoral property as provided in this chapter.

(h) Vested rights in land shall be protected, subject to the paramount authority of the state in the exercise of police powers to regulate the exercise of these rights, and the orderly use of littoral property in a manner consistent with the public policy of this state shall not be impaired.

[Acts 1977, 65th Leg., p. 2382, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.002. Purpose

The purpose of this chapter is to implement the policies stated in Section 33.001 of this code by delegating to the board, assisted by the planning division and other staff of the land office, certain responsibilities and duties with respect to the management of the surface estate in coastal public land.

[Acts 1977, 65th Leg., p. 2383, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.003. Short Title

This chapter may be cited as the Coastal Public Lands Management Act of 1973.

[Acts 1977, 65th Leg., p. 2383, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.004. Definitions

In this chapter:

(1) "Land office" means the General Land Office.

(2) "Commissioner" means the Commissioner of the General Land Office.

(3) "Board" means the School Land Board.

(4) "Person" means any individual, firm, partnership, association, corporation which is public or private and profit or nonprofit, trust, or political subdivision or agency of the state.

(5) "Coastal area" means the geographic area comprising all the counties in Texas which have any tidewater shoreline, including that portion of the bed and water of the Gulf of Mexico within the jurisdiction of the State of Texas.

(6) "Coastal public land" means all or any portion of state-owned submerged land, the water overlying that land, and all state-owned islands or portions of islands in the coastal area.

(7) "Island" means any body of land surrounded by the water of a saltwater lake, bay, inlet, estuary, or inland body of water within the tidewater limits of this state and shall include man-made islands resulting from dredging or other operations.

(8) "Management program" means the coastal public land management program provided by this chapter and shall include a comprehensive statement in words, maps, illustrations, or other media inventorying coastal public land resources and capabilities and setting forth objectives, policies, and standards to guide planning and to control the utilization of those resources.

(9) "Seaward" means the direction away from the shore and toward the body of water bounded by the shore.

(10) "Structure" means any structure, work, or improvement constructed on, affixed to, or worked on coastal public land, including fixed or floating piers, wharves, docks, jetties, groins, breakwaters, artificial reefs, fences, posts, retaining walls, levees, ramps, cabins, houses, shelters, landfills, excavations, land canals, channels, and roads.

(11) "Submerged land" means any land extending from the boundary between the land of the state and the littoral owners seaward to the low-water mark on any saltwater lake, bay, inlet, estuary, or inland water within the tidewater limits, and any land lying beneath the body of water, but for the purposes of this chapter only, shall exclude beaches bordering on and the water of the open Gulf of Mexico and the land lying beneath this water.

(12) "Littoral owner," in this chapter only, means the owner of any public or private upland bordered by or contiguous to coastal public land.

[Acts 1977, 65th Leg., p. 2383, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.005. Effect of Chapter

(a) This subchapter does not repeal the following provisions of the Parks and Wildlife Code: Chapters 83 and 86, Subchapter A of Chapter 46, Subchapter A of Chapter 76, Subchapter D of Chapter 76, Subchapter B of Chapter 81, Subchapter G of Chapter 82, Subchapter C of Chapter 216, or Sections 66.101, 66.107, 66.112 through 66.118, 66.205, 76.031 through 76.036, 78.001 through 78.003, 81.002, 136.047, 184.024, 201.015, or 335.025.

(b) None of the provisions of this chapter may be construed to alter, amend, or revoke any existing right granted pursuant to any law.

[Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 33.006 to 33.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 33.011. Board to Administer, Implement, and Enforce Chapter

The board is the executive agency of the state charged with the administration, implementation, and enforcement of this chapter.

[Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.012. Land Office to Assist Board

The planning division and other staff of the land office shall assist the board in the discharge of its responsibilities and duties under this chapter.

[Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.013. Additional Personnel

The commissioner may employ any additional personnel in the land office that may be necessary for the board to perform effectively its functions under this chapter.

[Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.014. Disposition of Money for Grants of Certain Interests

Money received by the board for grants of surface interests under this chapter whose initial term equals or exceeds 20 years shall be deposited in the State Treasury to the credit of the permanent school fund.

[Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.015. Special Fund

A special fund is created, and money received by the board for the grant of permits under this chapter shall be deposited in the State Treasury to the credit of this special fund.

[Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.016. Disposition of Other Funds

Money received by the board for the grant of any interest not under Section 33.014 or 33.015 of this code shall be deposited in the State Treasury to the credit of the available school fund.

[Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 33.017 to 33.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 33.051. General Duty

The board, with the technical advice and assistance of the planning division and other staff of the land office, shall perform the duties provided in this subchapter.

[Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.052. Development of Management Program

The board shall develop a continuing comprehensive management program pursuant to the policies stated in Section 33.001 of this code.

[Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.053. Elements of Management Program

The management program, in compliance with the Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.), shall include the following elements:

(1) a continuous inventory of coastal public land and water resources including a determination of the extent and location of the coastal public land;

(2) a continuous analysis of the potential uses for which the coastal public land and water might be used, including recommendations as to which configurations of uses consonant with the policies of this chapter maximize the benefits conferred on the present and future citizens of Texas;

(3) guidelines on the priority of uses in coastal public land within the coastal area, including specifically those uses of lowest priority;

(4) a definition of the permissible uses of the coastal public land and water and definitions of the uses of adjacent areas which would have a significant adverse impact on the management or use of coastal public land or water;

(5) recommendations as to increments of jurisdiction or authority necessary to protect coastal public land and water from adverse consequences flowing from the uses of adjacent land;

(6) an inventory of endangered environments and resources in the coastal public land; and

(7) recommendations for any changes necessary in the organizational structure by which the program is implemented and administered.

[Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.054. Review and Amendment of Management Program

The board may review the management program periodically and may amend the management program as new information or changed conditions may warrant.

[Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.055. Public Hearings to Consider Management Program

(a) In developing the management program, after due notice to littoral owners and the public generally, the board shall hold or have held public hearings

in the number and at the locations it determines to be appropriate.

(b) In reviewing or amending the management program, the board may hold or have held public hearings in the manner provided in Subsection (a) of this section.

[Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.056. Structures on Land Adjacent to Coastal Public Land

(a) On receipt of appropriate applications, the board shall register existing structures extending on coastal public land from adjacent land not owned by the state.

(b) Insofar as consonant with the policies of this chapter, the board may regulate the placement, length, design, and the manner of construction, maintenance, and the use of all structures which are built so that they extend on coastal public land from adjacent land not owned by the state.

[Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.057. Gifts of Interests in Land

(a) The board may accept gifts of interests in land, and these interests shall become part of the permanent school fund unless otherwise designated by the grantor.

(b) At the discretion of the board, the land may be managed as if it were coastal public land within the meaning of this chapter.

[Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.058. Purchase of Fee and Lesser Interests in Land

(a) The board may select and purchase fee and lesser interests in land of the coastal area for the creation, maintenance, or protection of wildlife refuges, estuarine preserves, natural scenic reserves, historical or archaeological sites, public recreational areas, and research facilities.

(b) The interests may be purchased by the board with money acquired by gift or grant, but the interests may not be obtained by condemnation.

(c) Interests acquired under this section shall not become a part of the permanent free school fund unless they are so designated by the board.

(d) In the discretion of the board, the interests may be managed as if they were coastal public land within the meaning of this chapter regardless of whether they fall within the meaning of coastal public land.

[Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.059. Studies

The board may study various coastal engineering problems, including the protection of the shoreline against erosion, the design and use of piers, groins, seawalls, and jetties, and the effects of various structures, works, and improvements on the physical and biological systems of the coastal public land.

[Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.060. Locating and Marking Boundaries

The board may locate and have marked on the ground the boundaries separating coastal public land from other land.

[Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.061. Complaints

(a) The board shall receive and evaluate any complaint or report from any person concerning instances of unauthorized construction, maintenance, use, or assertion of control of any structure on coastal public land.

(b) The board shall refer to the attorney general all cases warranting judicial remedies, and the attorney general shall immediately initiate judicial proceedings for the appropriate relief.

[Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.062. Designated Official Representative

The board is designated and shall serve as the official representative of the governor of the state to conduct with the federal government any business concerning any matter affecting the coastal public land which arises out of the exercise by the federal government of any authority it may have over navigable water under the Constitution of the United States.

[Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.063. Fees

The board may prescribe reasonable filing fees and fees for granting leases, easements, and permits.

[Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.064. Rules

The board may adopt procedural and substantive rules which it considers necessary to administer, implement, and enforce this chapter.

[Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 33.065 to 33.100 reserved for expansion]

SUBCHAPTER D. RIGHTS IN COASTAL PUBLIC LAND

§ 33.101. Application to Acquire Rights in Coastal Public Land

Any person who desires to acquire rights in the surface estate in any coastal public land shall make application to the board in writing in the form prescribed by the board.

[Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.102. Contents of Application

The application to acquire rights in coastal public land shall include:

(1) an adequate legal description of the land in which the rights are sought;

(2) a statement of the rights sought;

(3) a statement of the purpose or purposes for which the land is to be used;

(4) a description of the nature and extent of the improvements, if any, which will be made on the land;

(5) an estimate of the time within which any improvements to be made will be completed; and

(6) any additional information the board considers necessary, including, in the case of any application for approval of construction, modification, repair, or removal of a structure, a description of all plans for any filling, dumping, dredging, or excavating to be done.

[Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.103. Interests Which May be Granted by the Board

The board may grant the following interests in coastal public land for the indicated purposes:

(1) leases for public purposes;

(2) easements for purposes connected with ownership of littoral property;

(3) permits authorizing limited continued use of previously unauthorized structures on coastal public land not connected with ownership of littoral property; and

(4) channel easements to the holder of any surface or mineral interest in coastal public land for purposes necessary or appropriate to the use of the interests.

[Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.104. Processing Application

(a) On receiving an application, the board may circulate it for review and comment to the member agencies of the Interagency Natural Resources Council or its successor.

(b) The board shall determine whether the proposed application should be granted not less than 30 days nor more than 90 days after the application is received.

(c) If the application is granted, the board shall determine the reasonable term, conditions, and consideration for the grant and may consummate the transaction.

[Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.105. Persons to Whom Land May be Leased

The board may lease coastal public land to:

(1) the Parks and Wildlife Department or to any eligible city or county for public recreational purposes;

(2) the Parks and Wildlife Department for management of estuarine preserves;

(3) any nonprofit, tax-exempt environmental organization approved by the board for the purpose of managing a wildlife refuge; and

(4) any scientific or educational organization or institution for conducting scientific research.

[Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.106. Policies, Provisions, and Conditions of Leases

In addition to policies generally applicable under this chapter, leases granted under this subchapter shall be subject to the policies, provisions, and conditions stated in Sections 33.107 through 33.110 of this code.

[Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.107. Protection of Rights

The littoral rights of the adjacent upland owner shall be protected in a lease.

[Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.108. Rights of the Public

Members of the public may not be excluded from coastal public land leased for public recreational purposes or from an estuarine preserve.

[Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.109. Counties and Cities Eligible to Lease Coastal Public Land

(a) A county is eligible to apply for a lease of coastal public land inside the county and outside the boundaries of any incorporated city, town, or village for public recreational purposes.

(b) An incorporated city, town, or village is eligible to lease coastal public land within its corporate boundaries for public recreational purposes.

[Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.110. Contracts and Franchises

(a) With the approval of the board, a lessee granted a lease for public recreational purposes may enter into contracts and franchise agreements to promote public recreation.

(b) No contract or franchise agreement may authorize any commercial activity within 300 feet of privately owned littoral property without the written consent of the littoral owner of the property.

[Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.111. Granting Easements

The board may grant easement rights to the owner of adjacent littoral property authorizing the placement or location of a structure on coastal public land for purposes connected with the ownership of littoral property.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.112. Failure to Obtain an Easement

(a) Any owner of littoral property or any person acting under the owner of littoral property who for purposes connected with the ownership of the littoral property shall construct or fix or place on coastal public land any structure without first obtaining an easement from the land office is subject to a civil penalty of not more than $200.

(b) Each day the structure remains on or is affixed to coastal public land constitutes a separate offense.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.113. Interpretation of Easement Grant

The grant of an easement under Section 33.111 of this code and the waiver under Section 33.115 of this code shall not be construed as recognition of a right existing in the littoral owner incident to the ownership of littoral property.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.114. Policies, Provisions, and Conditions of Easements

In addition to the policies, provisions, and conditions generally applicable in this chapter, each grant of an easement is subject to the policies, provisions, and conditions of Sections 33.115 and 33.117 of this code.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.115. Piers

(a) Without obtaining an easement from the board, the owner of littoral property may construct a pier which:

(1) may be used for any purpose except commercial purposes;

(2) is 100 feet or less in length and 25 feet or less in width; and

(3) requires no filling or dredging.

(b) The location and dimensions of the pier must be registered with the board in the manner provided in this chapter.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.116. Failure to Register Pier

Any owner of littoral property who fails to register the location and dimensions of the pier which is authorized to be constructed under Section 33.115 of this code is subject to a civil penalty of not more than $200.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.117. Public Policy of State to be Considered

In administering Sections 33.111 through 33.115 of this code, the board shall consider the public policy of the state that the orderly use of privately owned littoral property in a manner consistent with the public policy of the state will not be impaired.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.118. Single Permit

If the activity for which the easement is sought requires the littoral owner to seek one or more permits from any other agency or department of state government, the board may agree with the agency or department to issue a single document incorporating all rights and privileges of the applicant.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.119. Issuance of Permits

The board may issue permits authorizing limited continued use of previously unauthorized structures on coastal public land if the use is sought by one who is claiming an interest in the structure but is not incident to the ownership of littoral property.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.120. Failure to Obtain a Permit

A person who maintains, uses, or repairs any structure for which a permit is required under Section 33.119 of this code without first obtaining a permit from the board is subject to a civil penalty of not less than $50 nor more than $1,000.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.121. Unauthorized Structures

Any person who constructs, fixes, or places on coastal public land any unauthorized structure for purposes not connected with ownership of littoral property is subject to a civil penalty of not less than $50 nor more than $1,000.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.122. Exception to Permit Requirement

No permit may be required for structures, excavations, or other similar structures as long as they are located wholly on the private littoral upland, even though the activities may result in the area being inundated by public water.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.123. Policies, Provisions, and Conditions of Permits

In addition to the policies, provisions, and conditions generally applicable in this chapter, each grant of a permit is subject to the policies, provisions, and conditions of Sections 33.120 through 33.122 and 33.124 through 33.126 of this code.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.124. Permits Prohibited for Certain Structures

The board may not grant a permit which authorizes the continued use of a structure located within 1,000 feet of:

(1) privately owned littoral property, without written consent of the littoral owner;

(2) any federal or state wildlife sanctuary or refuge; or

(3) any federal, state, county, or city park bordering on coastal public land.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.125. Automatic Revocation and Termination of a Permit

A permit that authorizes the continued use of a previously unauthorized structure on coastal public land is considered automatically revoked and terminated if the coastal public land on which the structure is located is:

(1) subsequently leased for public purposes;

(2) exchanged for littoral property under this chapter; or

(3) conveyed to a navigation district as provided by law.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.126. Termination of Permit by Board

Each permit shall provide that if the terms of the permit are broken, the permit may be terminated at the option of the board.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.127. Terms and Renewal of Permits

Permits may be issued for a period of not more than five years and may be renewed at the discretion of the board.

[Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.128. Use of Previously Unauthorized Structures

Previously unauthorized structures for which permits are obtained may be used only for noncommercial, recreational purposes.

[Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.129. Prohibitions on the Grant of Permits

The board may not grant an application for a permit which would violate the public policy of this state as expressed in this chapter and may not grant a permit for any structure not in existence on August 27, 1973.

[Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.130. Repairs and Rebuilding

If a structure for which a permit is issued is severely damaged or destroyed by any means, no major repairs or rebuilding may be undertaken by the permit holder without the approval of the board.

[Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.131. Structures as Property of the State

A structure presently existing or to be constructed in the future for which a permit is required under this subchapter is the property of the state. Any construction, maintenance, or use of the structure other than as provided in this subchapter is declared to be a nuisance per se and is expressly prohibited.

[Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.132. Registration by Board

(a) The registration by the board on or before December 31, 1973, of a structure located in whole or in part on coastal public land on August 27, 1973, and claimed by the person submitting it for registration as an incident of the ownership of littoral property shall not be construed as evidence of the acquiescence of the state in the claim by the owner.

(b) Failure of the owner to register the structure estops the owner from making any further claim of right against the state in the structure and renders the structure a nuisance per se subject to abatement by the state at the expense of the littoral owner.
[Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.133. Remedies Cumulative

Remedies provided in this subchapter are cumulative of all other remedies which may be applicable, including those remedies arising from the power of a court to enforce its jurisdiction and its judgments.
[Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.134. Use and Development of Land by Littoral Owner

None of the provisions of this chapter shall prevent the littoral owner of property from developing or otherwise using his property in a lawful manner, and this chapter shall not be construed to confer on the board the authority to regulate, control, or restrict the use or development of the property.
[Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 33.135 to 33.170 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT AND APPEAL

§ 33.171. Enforcement of Rights of Littoral Owners

(a) A littoral owner whose rights may be affected by any action of the board under this chapter may bring suit for a declaratory judgment against the State of Texas in a district court in Travis County to try the issues.

(b) Service of citation may be obtained by serving the commissioner.
[Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.172. Venue

Unless expressly waived in writing by the attorney general, venue lies in Travis County in any proceeding:

(1) arising out of an alleged violation of any provision of this chapter or any rule adopted by the board under this chapter;

(2) touching any interest in land sought or granted under this chapter; and

(3) to determine the boundaries or title to any coastal public land.
[Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.173. Right to Appeal

Any interested party who is aggrieved by an action of the board under this chapter may appeal the action by filing a petition in a district court in Travis County.
[Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.174. Time for Filing Petition

The petition for the appeal must be filed within 30 days after the date of the final action of the board or 30 days after the effective date of the action, whichever is the later date.
[Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.175. Service of Citation

Service of citation on the board may be accomplished by serving the commissioner.
[Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.176. Issue on Appeal

In an appeal of a board action, the issue is whether the action is invalid, arbitrary, or unreasonable.
[Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

SUBCHAPTER F. COASTAL COORDINATION

§ 33.201. Short Title

This subchapter may be cited as the Coastal Coordination Act of 1977.
[Added by Acts 1979, 66th Leg., p. 1991, ch. 785, § 1, eff. June 13, 1979.]

§ 33.202. Policy

(a) It is declared to be the policy of this state to make more effective and efficient use of public funds and public facilities in coastal natural resource areas, and to better serve the people of Texas by:

(1) continually reviewing the principal coastal problems of state concern, the performance of state coastal programs, and the measures required to resolve identified coastal problems; and

(2) making the state's many existing coastal management processes more visible, accessible, and accountable to the people of Texas.

(b) It is declared to be the policy of this state that the chief executive officer of the state should represent the State of Texas in discussions and negotiations with the federal government with regard to the effect of federal actions on the coastal programs and policies of the State of Texas.
[Added by Acts 1979, 66th Leg., p. 1991, ch. 785, § 1, eff. June 13, 1979.]

§ 33.203. Definitions

(a) In this subchapter:

(1) "Coastal natural resource areas" means areas in the Gulf of Mexico within the boundaries of this state, tidal inlets and tidal deltas, bays, lagoons which contain seawater and which have unimpaired connection with the Gulf of Mexico, oyster reefs, grassflats, channels which contain seawater, coastal lakes containing seawater, beaches adjacent to seawater, barrier islands, wind tidal flats, marsh which contains seawater, washover areas, sand dune complexes on the Gulf shoreline, river mouths and tidal streams up to the farthest point of intrusion by seawater, and spoil deposits in direct contact with seawater or located within, upon, or in direct contact with any of these coastal natural resource areas, but does not include any mainland area where seawater is present only during storms or hurricanes as defined by the Beaufort Wind Scale.

(2) "Council," means the Natural Resources Council created by the Natural Resources Council Act of 1977 (Article 4413(48), Vernon's Texas Civil Statutes).[1]

(3) "Seawater" means any water containing a concentration of one-twentieth of one percent or more by weight of total dissolved inorganic salts derived from the marine water of the Gulf of Mexico.

(b) The definition in Subsection (a)(1) of this section is not admissible in evidence in any court of law for any purpose other than the implementation and construction of this subchapter unless otherwise agreed by all parties to the case or controversy before the court.

[Added by Acts 1979, 66th Leg., p. 1991, ch. 785, § 1, eff. June 13, 1979.]

[1] Repealed; see, now, Civil Statutes, art. 4413(47c).

§ 33.204. Study of Coastal Problems and Issues

(a) The council shall make studies of problems and issues affecting the coastal natural resource areas of the state that are in the public interest.

(b) The council shall prepare and submit to the governor and legislature before March 1 of each even-numbered year a comprehensive report with recommendations for action on problems and issues affecting the coastal natural resource areas of the state. The comprehensive report may include a minority report and recommendations and shall include:

(1) a short description of the environmental, social, and economic changes in or affecting the coastal natural resource areas of the state during the preceding two years, this description to include changes in boundaries and state or federal coastal policies;

(2) a statement of the principal problems of state concern in or affecting coastal natural resource areas;

(3) a statement of the steps recommended by the council to resolve identified problems, including additions to or changes in state policies, programs, or statutes affecting coastal natural resource areas, transfers of programs among agencies, and the creation of new programs or elimination of old ones;

(4) a review of the effectiveness of current programs for implementing state policy affecting coastal natural resource areas;

(5) a report on the success of actions taken by the council during the preceding two years, including public hearings, administration of federal grant funds, and specific studies; and

(6) recommended state coastal natural resource research and data acquisition priorities.

(c) The state agencies, university systems, other bodies, and elected officials represented on the council shall perform or have performed all research and analyses requested by the council for the preparation of the report and transmit the research and analyses to the council by such time as is necessary to ensure the timely submission of the council's finished report to the governor and legislature.

(d) In the course of preparing the report, the council shall receive and consider the oral or written testimony of any person regarding the coastal policies, programs, and procedures of the state. The council may reasonably limit the length and format of the testimony and the time at which it will be received. Notice of the period during which the testimony will be received shall be published in the Texas Register not less than 30 days before the commencement of that period.

[Added by Acts 1979, 66th Leg., p. 1991, ch. 785, § 1, eff. June 13, 1979.]

SUBCHAPTER G. COASTAL WETLAND ACQUISITION

§ 33.231. Short Title

This subchapter may be cited as the Coastal Wetland Acquisition Act.

[Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979.]

§ 33.232. Policy

It is the declared policy of the state:

(1) to protect the property rights of those who sell interests in land to the state by fairly compensating the sellers;

(2) to protect that coastal wetland which is most essential to the public interest by acquiring fee and lesser interests in the coastal wet-

land and managing it in a manner that will preserve and protect the productivity and integrity of the land as coastal wetland; and

(3) to assure that the state does not expend funds to acquire any coastal wetland to which it already holds a valid title at the time of the expenditure.

[Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979.]

§ 33.233. Definitions

In this subchapter:

(1) "Acquiring agency" means the Parks and Wildlife Department.

(2) "Certifying agency" means the General Land Office.

(3) "Coastal wetland" means marshes and other areas of high biologic productivity where seawater is present during times other than and in addition to storms or hurricanes as defined by the Beaufort Wind Scale, but does not include any areas seaward of the line of mean annual low spring tide, nor any mainland area where seawater is present only during storms or hurricanes as defined by the Beaufort Wind Scale, and the presence at a given point of vegetation characteristic of marshes containing seawater is prima facie evidence that seawater is present at the point during times other than and in addition to storms or hurricanes as defined by the Beaufort Wind Scale.

(4) "Seaward" means the direction away from the shore and toward the body of water bounded by the shore.

(5) "Seawater" means any water containing a concentration of one-twentieth of one percent or more by weight of total dissolved inorganic salts derived from the marine water of the Gulf of Mexico.

[Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979.]

§ 33.234. Duties and Authority of Acquiring Agency

(a) The acquiring agency shall do the following:

(1) accept gifts, grants, or devises of interests in land;

(2) acquire, by purchase or condemnation, fee and lesser interests in the surface estate in coastal wetland certified by the certifying agency as most essential to protection of the public interest, provided that in each instance in which an interest in land is acquired by the acquiring agency pursuant to this section, a sufficient interest shall be acquired to preserve and protect the productivity and integrity of such land as coastal wetland; and

(3) manage interests in land acquired pursuant to this section in a manner that will preserve and protect the productivity and integrity of the land as coastal wetland.

(b) This subchapter shall not be construed to authorize the condemnation of any interest in the mineral estate in any coastal wetland.

(c) The acquiring agency shall promulgate reasonable rules and regulations necessary to preserve and protect the productivity and integrity of the land as coastal wetland acquired pursuant to this subchapter. The rules and regulations shall include regulations governing activities conducted on the land in conjunction with mineral exploration, development, and production.

(d) If the acquiring agency seeks to condemn an interest less than the fee interest in the surface estate in any coastal wetland, the owner of the coastal wetland may demand that the acquiring agency instead seek condemnation of the fee interest in the surface estate in the coastal wetland. Upon this demand, the acquiring agency shall either:

(1) seek to condemn the fee interest in the surface estate in the coastal wetland; or

(2) cease all condemnation proceedings pursuant to this subchapter against the coastal wetland.

[Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979.]

§ 33.235. Agricultural Exemption

Coastal wetland used only for farming or ranching activities, including maintenance and repair of buildings, earthworks, and other structures, shall not be subject to any power of condemnation exercised pursuant to this subchapter. However, this exemption from condemnation shall terminate upon the receipt by any state or federal agency of an application for a permit, license, or other authorization to conduct on the wetland, activities other than farming and ranching activities, including irrigation and water well drilling, and activities necessary to exploration, development, or production of the underlying mineral estate.

[Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979.]

§ 33.236. Duties and Authority of Certifying Agency

(a) The certifying agency shall do the following:

(1) certify to the acquiring agency that coastal wetland which is most essential to the public interest in accordance with the criteria in this subchapter, assign priorities for acquisition of interests in the coastal wetland, and revoke certification made pursuant to this section when it is in the public interest to do so; and

(2) publicize the importance to the public interest of coastal wetland in general, and of designated coastal wetland in particular.

(b) A certification, assignment of priority for acquisition, or revocation of certification made pursuant to this subchapter does not constitute a "contested case" within the meaning of the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes).

(c) The commissioner of the General Land Office shall forward a copy of any certification to the county judge of every county in which any part of the wetland certified is located and shall request the recommendation of the commissioners of the county on the certification.

(d) Within 45 days of receipt of a certification from the commissioner of the General Land Office, the commissioners court shall send to the commissioner of the General Land Office written recommendations concerning the certification.

(e) If the commissioners court of a county described in Subsection (c) of this section agrees that the portion of the certified wetland within the county should be certified, or if the commissioners court does not submit recommendations to the commissioner of the General Land Office within the time specified in Subsection (d) of this section, then as to that portion of the wetland, the certification shall continue in full force and effect.

(f) If the commissioners court of any county described in Subsection (c) of this section recommends that certified wetland or any part of it within the county should not be certified, the certification shall be revoked as to that part of the wetland.

(g) If the commissioner of the General Land Office wishes to contest a revocation of certification pursuant to Subsection (f) of this section, he shall forward the certification to the governor, together with the recommendations of the commissioners courts and any further information the commissioner of the General Land Office shall deem advisable.

(h) If the governor determines that any certification revoked pursuant to Subsection (f) of this section should be reinstated in whole or in part, he shall notify the commissioner of the General Land Office within 60 days of receipt of the certification pursuant to Subsection (g) of this section. Upon receipt of notice from the governor, the commissioner of the General Land Office may recertify the part of the wetland to the acquiring agency, and the certification shall be in full force and effect.

[Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979.]

§ 33.237. Most Essential Coastal Wetland Certification

(a) In selecting and certifying coastal wetland most essential to the public interest, and in assigning priorities of acquisition to coastal wetland, the certifying agency shall consider the following criteria:

(1) whether the land is coastal wetland within the definition, intent, and purpose of this subchapter;

(2) whether the state owns the coastal wetland or claims title to it, which title can be validated by bringing an appropriate action in a court of law;

(3) whether the biological, geological, or physical characteristics of the coastal wetland, including the interrelationship of the coastal wetland with other coastal wetland, is essential to the public interest;

(4) the degree to which the coastal wetland is in danger of being altered, damaged, or destroyed, and the imminence of that danger; and

(5) the cost of acquiring the coastal wetland.

(b) The legislature declares that certifications, assignments of priority for acquisition, and revocations of certifications made pursuant to Section 33.235 of this code are made only for the purpose of administering the provisions of this subchapter. No certifications, assignments of priority for acquisition, or revocations of certification shall be grounds for an inference, or admissible in a court of law to prove, that any coastal wetland is of greater or lesser value than any other coastal wetland for any purpose other than administering the provisions of this subchapter.

(c) A certification made pursuant to this subchapter shall expire one year from the date of certification.

(d) If on or before the expiration date of such certification the acquiring agency files suit in a court of law to condemn the certified coastal wetland, the certification shall extend until the suit is settled, dismissed, or otherwise terminated.

(e) If a contract of sale between the state and the owner of the certified coastal wetland is entered into on or before the expiration date of the certification, the certification shall extend until title to the coastal wetland is conveyed to the state or the contract is rescinded, invalidated, or otherwise terminated.

[Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979.]

§ 33.238. Funding

The acquiring agency may compensate the seller of land acquired pursuant to this subchapter with funds obtained through:

(1) gift, grant, or devise;

(2) legislative appropriation; or

(3) gift or grant from the United States.

[Added by Acts 1979, 66th Leg., p. 1993, ch. 785, § 2, eff. June 13, 1979.]

CHAPTER 34. BOARDS FOR LEASE

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SUBCHAPTER A. GENERAL PROVISIONS

§ 34.001. Definitions

In this chapter:

(1) "Board" means a board for lease.

(2) "Commissioner" means the Commissioner of the General Land Office.

(3) "Land office" means the General Land Office.

[Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.002. Application of Chapter

(a) The provisions of this chapter do not apply to:

(1) land dedicated by the constitution and laws of the state to the public school fund;

(2) land dedicated by the constitution and laws of the state to The University of Texas, or land donated to the Board of Regents of The University of Texas System, as trustees, by a will, instrument in writing, or otherwise in trust for a scientific, educational, or other charitable or public purpose, or to any other land under the control of the Board of Regents of The University of Texas System;

(3) land whose title is vested in the state for use and benefit of any part of The Texas A&M University System, or land under the control of the Board of Regents of The Texas A&M University System; or

(4) land subject to lease under the provisions of Subchapter F, Chapter 52, of this code, commonly known as the "Relinquishment Act." [1]

(b) If title to land subject to the provisions of the Relinquishment Act is acquired by a department, board, or agency of the state, the land is not subject to lease by a board created under the provisions of this chapter but shall be leased in the manner provided for the leasing of unsold public school land.

[Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[1] Section 52.171 et seq.

[Sections 34.003 to 34.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 34.011. Boards for Lease

Boards for lease are created to lease land owned by a department, board, or agency of the State of Texas.

[Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.095, purports to add § 1a to Civil Statutes, art. 5382d, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1). As so added, § 1a reads:

"The Boards for Lease of State-Owned Lands are subject to the Texas Sunset Act [Civil Statutes, art. 5429k]; and unless each board is continued in existence as provided by that Act the board is abolished effective September 1, 1985."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same

legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 34.012. Title of Board

The title of each board shall be selected by each board for lease at its first meeting.

[Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.013. Members of Board

(a) The membership of each board shall include:

(1) the commissioner;

(2) one citizen of the state appointed by the governor with the advice and consent of the senate; and

(3) the president or chairman of the board or agency or head of the department charged with the responsibility of management or control of land owned by or held in trust for the use and benefit of the department, agency, or board.

(b) The appointed member serves for a term of two years.

[Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.014. Officers of Board

(a) The commissioner is the chairman of the board.

(b) Each board shall select a secretary who shall be nominated by the commissioner and approved by a majority of the board.

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.015. Quorum

A majority of a board constitutes a quorum for the transaction of business.

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.016. Records of Board

A board shall keep a complete record of all of its proceedings.

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.017. Special Mineral Funds

Special funds are created in the State Treasury to be known as the "(appropriate department, board, or agency) special mineral fund."

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.018. Deposit of Receipts

Amounts received under the provisions of this chapter shall be deposited in the State Treasury to the credit of the appropriate special fund, with the exception that all money received under the provisions of this chapter enuring to the benefit of the Parks and Wildlife Department from land held by the department for game and fish conservation, protection, and management purposes shall be deposited in the State Treasury to the credit of the special game and fish fund, and all money received under the provisions of this chapter enuring to the benefit of the Parks and Wildlife Department from park, recreation, and historic land shall be deposited in the State Treasury to the credit of the state parks fund.

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.019. Expenditures

(a) The expenses of executing the provisions of this chapter shall be paid by warrants drawn by the comptroller on the State Treasury against the income from the special funds accumulated from leases, rentals, royalties, and other payments.

(b) The amounts received under the provisions of this chapter and deposited to the credit of a special fund shall be used exclusively for the benefit of the appropriate department, board, or agency.

(c) No money may be spent from the special funds except by legislative appropriation and for the purposes and in the amount stated in the Act appropriating it.

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.020. Filing in General Land Office

All surveys, files, records, abstracts of title, copies of sale and lease contracts, and all other records pertaining to sales and leases authorized under the provisions of this chapter shall be filed in the land office and constitute archives.

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 34.021 to 34.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 34.051. Land Subject to Lease

Land owned by or held in trust for the use and benefit of a department, board, or agency may be leased by the appropriate board to any person under the provisions of this chapter for the purpose of prospecting or exploring for and mining, producing, storing, caring for, transporting, preserving, selling, and disposing of the oil, gas, or other minerals.

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.052. Subdivision of Land

A board may have the land subject to its control surveyed or subdivided into tracts, lots, or blocks which will, in its judgment, be most conducive and convenient to facilitate the advantageous sale of oil, gas, or mineral leases.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.053. Maps and Plats

A board may make maps and plats it considers necessary to carry out the purposes of this chapter.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.054. Abstracts of Title

A board may obtain authentic abstracts of title to the land subject to its control that it considers necessary and may take the necessary steps to perfect a marketable title to the land.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.055. Geological Surveys and Investigations

A board may issue a permit for geological, geophysical, and other surveys and investigations on land subject to lease by the board that is not under valid and existing leases and that will encourage the development of the land for oil, gas, or other minerals. A permit may be issued for a consideration and under terms and conditions which the board considers to be in the best interest of the state.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.056. Placing Lease on Market

If a board determines there is a demand for the purchase of oil, gas, or mineral leases on a lot or tract of land subject to the control of the board which will reasonably insure an advantageous sale, the board shall place the oil, gas, or mineral leases on the market in the tract or tracts which the board may designate.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.057. Advertisement of Lease

A board shall insert an advertisement that leases will be offered for sale on a certain date in at least three issues of each of four daily newspapers 30 days in advance of the sale date. The advertisement shall give notice that lists describing the land to be leased may be obtained from the land office.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.058. Minimum Royalty, Bonus, and Rental

(a) A bid shall not be accepted which offers:

(1) a royalty of less than one-eighth of the gross production of oil, gas, or other minerals; or

(2) a cash bonus of less than $2 an acre.

(b) The minimum royalty and bonus may be increased at the discretion of the board.

(c) A bid shall contain an obligation to pay at least $1 an acre annual rental beginning with the second year of the lease, with the amount to be set by the board in advance of the advertisement.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.059. Fixing Royalty, Bonus, and Rental

A board may:

(1) set the royalty and rental and provide for bidding on a basis of the highest cash bonus offered; or

(2) set the cash bonus and rental and provide for bidding on the basis of the highest royalty offered.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.060. Bids

(a) Bidding shall be by sealed bids to be opened at 10 a. m. on the sale date by a majority of the board.

(b) A separate bid shall be made for each tract offered for lease.

(c) The bid shall state the amount of cash bonus offered and the royalty and rental provided.

(d) The bid shall be accompanied by cash or checks, collectible in Austin and payable to the commissioner, to cover the amount of the cash bonus.

[Acts 1977, 65th Leg., p. 2397, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.061. Special Fee

(a) In addition to the payment accompanying a bid as provided in Subsection (d) of Section 34.060 of this code, a bidder on a mineral lease sale held by a board shall remit a special sale fee by separate check in an amount equal to one percent of the bid in the manner provided in Section 32.110 of this code.

(b) Failure to pay the special fee does not render the bid void, but the commissioner shall demand payment of the fee before he issues a lease to the successful bidder.

(c) If the successful bidder fails or refuses to pay the fee within 30 days after demand is made by the commissioner, the bidder is not entitled to a lease on the tract covered by his bid and the cash bonus is automatically forfeited to the state. The commissioner shall deposit the bonus in the State Treasury to the appropriate fund.

(d) Special fee checks submitted by unsuccessful bidders shall be returned to the bidders together with their bid checks.

[Acts 1977, 65th Leg., p. 2397, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.062. Rejection and Acceptance of Bids

(a) A board may reject all bids.

(b) Unless a board elects to reject all bids, it must accept the highest bid submitted.

(c) The minutes of a board shall show the fact of acceptance or rejection of a bid, and the approval of the minutes constitutes the approval of the act of acceptance or the act of rejection, as the case may be.

[Acts 1977, 65th Leg., p. 2397, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.063. Issuance of Lease

The commissioner shall issue awards or leases in accordance with the minutes as approved by each board.

[Acts 1977, 65th Leg., p. 2397, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.064. Easements

(a) A board may grant easements on the land covered by the provisions of this chapter for irrigation canals, laterals, flumes and ditches, telephone, telegraph, and electric power lines, and pipelines for the gathering or transportation of oil, gas, water, and other fluids or substances, together with the devices, equipment, and appurtenances which may be necessary.

(b) The easements may be granted on terms and conditions the board considers to be in the best interest of the state.

(c) The provisions of this section do not apply to land owned by the state as a part of the penitentiary system and do not repeal Chapter 166, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 6203d, Vernon's Texas Civil Statutes).

[Acts 1977, 65th Leg., p. 2397, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 34.065 to 34.100 reserved for expansion]

SUBCHAPTER D. CONDITIONS OF LEASES

§ 34.101. Separate Leases

Leases for minerals, except oil and gas, shall be granted on separate leases and for separate consideration.

[Acts 1977, 65th Leg., p. 2398, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.102. Term of Lease

A lease issued by the commissioner shall be for a primary term of not to exceed five years and as long thereafter as oil, gas, or other minerals covered by the lease are produced in paying quantities.

[Acts 1977, 65th Leg., p. 2398, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.103. Assignment

(a) All rights purchased may be assigned.

(b) An assignment must be recorded in the county or counties in which the area is located.

(c) The recorded assignment or a certified copy of the recorded assignment shall be filed in the land office within 100 days from the date of the first acknowledgment of the assignment, accompanied by 10 cents an acre for each acre assigned and a filing fee of $1. The assignment is not effective if it is not filed and the fee paid in accordance with this section.

[Acts 1977, 65th Leg., p. 2398, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.104. Relinquishment of Lease

(a) Rights to a whole tract or to an assigned portion of a tract may be relinquished to the state at any time by recording an instrument of relinquishment in the county or counties in which the area is located and filing the recorded relinquishment or a certified copy of the recorded relinquishment in the land office, accompanied by a filing fee of $1.

(b) A relinquishment does not release the lessee from an obligation or liability already accrued in favor of the state.

[Acts 1977, 65th Leg., p. 2398, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.105. State Laws and Orders of Regulatory Authority

Drilling or mining operations for oil, gas, or other minerals and the production of oil, gas, or other minerals under a lease issued under the authority of this chapter are subject to:

(1) the laws of the state;

(2) valid orders made by the Railroad Commission of Texas or other regulatory authority controlling the development of leases for the production of oil, gas, or other minerals; and

(3) regulations which the board may adopt.

[Acts 1977, 65th Leg., p. 2398, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 34.106 to 34.140 reserved for expansion]

SUBCHAPTER E. RENTAL AND ROYALTY PAYMENTS

§ 34.141. Annual Rental

(a) Beginning with the second year of the lease, the lessee shall pay the annual rental specified by the board each year during the life of the lease, unless oil, gas, or other minerals are being produced in paying quantities.

(b) If royalties paid during any year of the life of the lease equal or exceed the annual rental, no annual rental is due for the following year.

(c) If royalties paid during the preceding year do not equal or exceed the annual rental, the annual rental is the amount specified by the board less the amount of royalties paid during the preceding year.

[Acts 1977, 65th Leg., p. 2398, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.142. Due Date for Payment

(a) Annual rental is due and payable on or before the anniversary date of the lease.

(b) Royalty payments shall be paid on or before the last day of each month following the month in which the oil, gas, or other minerals are produced.

[Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.143. Payment to Commissioner

The rental and royalty payments shall be paid to the commissioner at Austin.

[Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.144. Statements Accompanying Payment

A payment shall be accompanied by sworn statements of the lessee, manager, or other authorized agent showing the gross amount of production since the last report and the market value of the production, together with copies of all daily gauges of tanks, gas meter readings, pipeline run tickets and receipts, and other checks or memoranda of the amounts produced.

[Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.145. Records Subject to Inspection

The books, accounts, records, and contracts relating to producing, transporting, selling, and marketing the oil, gas, or other minerals are subject to inspection and examination at all times by the commissioner, the attorney general, and the chairman, president, or other member of the board, or the representative of either of them.

[Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.146. State's Lien on Minerals

The state has a first lien on oil, gas, or other minerals produced from the area covered by the lease to secure the payment of all unpaid royalty or other sums of money that may be due under the lease.

[Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 34.147 to 34.180 reserved for expansion]

SUBCHAPTER F. DUTIES OF LESSEE

§ 34.181. Duty to Develop

The lessee shall reasonably develop the lease by drilling or mining to the extent the facts justify.

[Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.182. Protection From Drainage

The lessee shall adequately protect the oil, gas, or other minerals under the land covered by the lease from drainage from adjacent land or leases.

[Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.183. Effect of Payment on Obligation

The payment of the bonus, rentals, or royalties under the lease does not relieve the lessee of the obligation to develop the lease and protect the oil, gas, or other minerals from drainage.

[Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.184. Offset Drilling

(a) If oil or gas is produced in paying quantities from a well on privately owned land and the well is within 1,000 feet of the area covered by the lease, or in any case if the land covered by the lease is being drained, the lessee shall begin in good faith the drilling of an offset well on the area covered by his lease within 60 days after initial production on the private land and shall diligently prosecute the drilling.

(b) The offset well shall be drilled to the depth necessary to prevent the undue drainage of the area covered by the lease.

(c) The lessee, manager, or driller shall use all means reasonably necessary in a good-faith effort to make the offset well produce in paying quantities.

[Acts 1977, 65th Leg., p. 2400, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.185. Forfeiture of Lease

(a) A lease is subject to forfeiture by the commissioner if:

(1) the owner of the rights acquired under the provisions of this chapter fails or refuses to

make the payment of a sum due as rental on the lease or for royalty on production within 30 days after it becomes due;

(2) the owner or his authorized agent knowingly makes a false return or false report concerning production, royalty, or drilling;

(3) the owner fails or refuses to drill an offset well or wells in good faith as required by his lease and the rules adopted by the board;

(4) the owner or his agent refuses the proper authority access to the records and other data pertaining to operations under his lease;

(5) the owner or his authorized agent knowingly fails to furnish the log of a well within 30 days after production is found in paying quantities; or

(6) any of the material terms of the lease are violated.

(b) If a lease is forfeited, the area is subject again to lease to the highest bidder under the same rules controlling the original sale of leases.

(c) A forfeiture may be set aside and the lease and all rights under the lease reinstated at any time before the rights of a third party intervene on satisfactory evidence to the commissioner of future compliance with the provisions of this chapter and the rules adopted relative to this chapter.

[Acts 1977, 65th Leg., p. 2400, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 35. BOARD FOR LEASE OF STATE PARK LANDS

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SUBCHAPTER E. RENTAL AND ROYALTY PAYMENTS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 35.001. Definitions

In this chapter:

(1) "Board" means the Board for Lease of State Park Lands.

(2) "Commissioner" means the Commissioner of the General Land Office.

(3) "Land office" means the General Land Office.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 35.002 to 35.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 35.011. Board for Lease of State Park Lands

A board to be known as the Board for Lease of State Park Lands is created to perform the duties prescribed in this chapter.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.012. Members of Board

(a) The board consists of:

(1) the commissioner;

(2) one citizen of the state appointed by the attorney general with the advice and consent of the senate; and

(3) the chairman of the Parks and Wildlife Commission.

(b) The appointed member serves for a term of two years.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.013. Quorum

A majority of the board constitutes a quorum with power to act in all cases except as otherwise provided in this chapter.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.014. Records of Board

The board shall keep a complete written record of all its proceedings.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.015. Rules

The board shall adopt proper rules, forms, and contracts that in its judgment will protect the income from land leased under the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.016. Expenditures From State Park Development Fund

(a) The state park development fund is created.

(b) All money deposited in the state park development fund shall be appropriated by the legislature for the development, improvement, and maintenance of state parks.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.017. Filing in Land Office

All surveys, files, records, copies of sale and lease contracts, and all other records relating to the sales and leases authorized on state park land under the jurisdiction of the Parks and Wildlife Department shall be filed in the land office and constitute archives.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 35.018 to 35.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 35.051. Land Subject to Lease

Subject to the provisions of this chapter, the board may lease land to any person for prospecting or exploring for and mining, producing, storing, caring for, transporting, preserving, and disposing of oil and gas. The board may lease all land or parcels of land within a park that is a part of the state park system.

[Acts 1977, 65th Leg., p. 2403, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 211, ch. 118, § 1, eff. May 9, 1979.]

Section 2 of the 1979 amendatory act provided:

"All leases of park land entered into by the Board for Lease of State Park Lands before the effective date of this Act are in all things and all respects ratified, confirmed, approved, and validated. This section does not apply to any litigation in progress that questions the validity of a lease of park land if the litigation is ultimately determined against the validity of the lease."

§ 35.052. Subdivision of Land

The board may have state park land surveyed and subdivided into lots or blocks which will be conducive or convenient to facilitate the advantageous sale of oil or gas leases. The board may identify the lots and blocks by permanent markings on the ground.

[Acts 1977, 65th Leg., p. 2403, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.053. Maps and Plats

The board may make the maps and plats it considers necessary to carry out the purposes of this chapter.

[Acts 1977, 65th Leg., p. 2403, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.054. Abstracts of Title

The board shall obtain abstracts of title to the state park land.

[Acts 1977, 65th Leg., p. 2403, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.055. Examination and Perfection of Title

(a) The board shall have the abstracts of title examined by the attorney general, who shall file written title opinions.

(b) The board shall take the necessary steps to perfect a marketable title to the land in the State of Texas.

[Acts 1977, 65th Leg., p. 2403, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.056. Filing Abstract of Title and Title Opinion

The abstract of title and the attorney general's title opinion shall be filed in the land office as public documents for the inspection of prospective purchasers of oil and gas leases on the land.

[Acts 1977, 65th Leg., p. 2403, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.057. Placing Lease on Market

If the board determines there is a demand for the purchase of oil and gas leases on a lot or tract of land that will reasonably ensure an advantageous sale, the board may place the oil and gas in the land on the market in the blocks or lots which the board may designate.

[Acts 1977, 65th Leg., p. 2403, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.058. Advertisement of Lease

(a) The board shall advertise a brief description of the land from which the oil and gas is proposed to be sold. The advertisement shall give notice that sealed bids for the purchase of the oil and gas by lease will be opened at 10 a. m. on the designated day and that sealed bids received up to that time will be considered.

(b) The advertisement shall be made by:

(1) publication in two or more papers of general circulation in the state; and

(2) mailing a copy of the advertisement to the county clerk and county judge of every county in the state in which an advertised area is located.

(c) In addition to the provisions of Subsection (b) of this section, the board may have the advertisement placed in oil and gas journals in and out of this state and mailed generally to persons the board thinks may be interested.

[Acts 1977, 65th Leg., p. 2404, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.059. Minimum Royalty and Rental

(a) A bid may not be accepted which offers a royalty of less than one-eighth of the gross production of oil and gas in the land covered by the bid. If all members concur, the board may increase the minimum royalty or before the promulgation of the advertisement of the land.

(b) A bid shall contain an obligation to pay at least $1 an acre rental for delay in drilling, with the amount to be set by the board in advance of the advertisement.

[Acts 1977, 65th Leg., p. 2404, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.060. Bids

(a) A bid shall be directed to the board in care of the land office, retained by the commissioner until the day designated for opening the bids, and opened on that day by the board, or a majority of its members, who shall list, file, and register all bids and money received.

(b) A separate bid shall be made for each survey or subdivision of a survey.

(c) The bid shall state the amount of royalty offered and the amount the bidder is willing to pay in addition to the royalty and annual delay rentals provided for in this subchapter.

(d) The bid shall be accompanied by cash or checks, collectible in Austin, to cover the amount which the bid offers in addition to the royalty and delay rentals, and a payment equal to the minimum delay rental fixed on the land per acre if the bid is accepted.

[Acts 1977, 65th Leg., p. 2404, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.061. Rejection and Acceptance of Bids

(a) If a bidder offers a reasonable and proper price, and less than the price set by the board, the land advertised, or a whole survey or subdivision, may be leased for oil and gas purposes under the terms of this chapter and rules which the board may prescribe, not inconsistent with the provisions of this chapter.

(b) The board may reject all bids and may withdraw any land advertised for lease before receiving and opening bids.

(c) If the board rejects all bids after a bidding by sealed bids, it may offer for sale and sell the oil and gas in the land, in separate whole surveys only or subdivisions of them, by open public auction at a price less than the price offered by the sealed bids.

(d) If there is no sale at public auction, the subsequent procedure for the sale of oil and gas leases is in the manner provided in the previous sections of this subchapter.

(e) If the board determines that a satisfactory bid has been received for the oil and gas, it shall file the bid in the land office.

[Acts 1977, 65th Leg., p. 2404, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.062. Necessary Facilities

The board shall authorize the laying of a pipeline or telephone line and the opening of roads over state park land which it considers reasonably necessary for and incident to the purposes of this chapter.

[Acts 1977, 65th Leg., p. 2405, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 35.063 to 35.100 reserved for expansion]

SUBCHAPTER D. CONDITIONS OF LEASES

§ 35.101. Term of Lease

If oil or gas is discovered in paying quantities on a tract of land covered by a lease, the lease on that tract remains in force, and title to all rights purchased may be held by the owners, as long as oil or gas is produced in paying quantities from the tract. If oil or gas is not produced in paying quantities before the expiration of three years, the lease terminates.

[Acts 1977, 65th Leg., p. 2405, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.102. Assignment of Lease

(a) All rights purchased may be assigned in quantities of not less than 40 acres, unless there are fewer than 40 acres remaining in a survey, in which case the lesser area may be assigned.

(b) An assignment shall be filed in the land office within 100 days after the date of the first acknowledgment, accompanied by 10 cents an acre for each acre assigned. If the assignment is not filed and payment made, the assignment is ineffective.

[Acts 1977, 65th Leg., p. 2405, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.103. Relinquishment of Lease

(a) All rights to a whole survey or to an assigned portion of a survey may be relinquished to the state at any time by recording an instrument of relinquishment in the county or counties in which the area is located and filing it in the land office, accompanied by a $1 fee for each area assigned.

(b) The assignment does not relieve the owner of an obligation which has already accrued.
[Acts 1977, 65th Leg., p. 2405, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 35.104 to 35.130 reserved for expansion]

SUBCHAPTER E. RENTAL AND ROYALTY PAYMENTS

§ 35.131. Annual Rental

(a) The lessee shall pay the annual delay rental every year for three years unless there is production in paying quantities on the land.

(b) If the royalties paid equal or exceed the annual rental fixed by the board, the payment of annual rental may be discontinued.

(c) If during the term of a lease issued under the provisions of this chapter the lessee is engaged in actual drilling operations for the discovery of oil and gas on land covered by the lease, no rental is payable on the tract on which the operations are being conducted as long as the operations are proceeding in good faith.
[Acts 1977, 65th Leg., p. 2405, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.132. Due Date for Payment

Royalty and bonus stipulated in the sale shall be paid on or before the last day of each month for the preceding month during the life of the rights purchased.
[Acts 1977, 65th Leg., p. 2406, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.133. Recipient of Payment

Royalty, bonus, delay rental, and other payments made under the provisions of this chapter, and royalty, bonus, delay rental, and other payments derived from park lands operated by local park commissions with the advice and consent of the board of control, shall be paid to the commissioner at Austin. The commissioner shall transmit to the State Treasurer for deposit to the credit of the state park development fund all royalty, bonus, rental, and other payments, including filing assignments and relinquishment fees, and royalty, bonus, rental, and other payments derived from park land operated by local park commissions.
[Acts 1977, 65th Leg., p. 2406, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.134. Statements Accompanying Payment

The payment shall be accompanied by the sworn statement of the owner, manager, or other authorized agent, showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises, and the market value of the oil and gas, together with a copy of all daily gauges of tanks, gas meter readings, pipeline receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipelines, tanks or pools, and gas lines or gas storage.
[Acts 1977, 65th Leg., p. 2406, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.135. Records Subject to Inspection

The books, accounts, receipts, and discharges of oil wells, tanks, pools, meters, and pipelines, and all contracts and other records relating to producing, transporting, selling, and marketing the oil and gas are subject to inspection and examination at all times by the commissioner, the attorney general, or any member of the Parks and Wildlife Department.
[Acts 1977, 65th Leg., p. 2406, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.136. State's Lien

The state has a first lien on all oil and gas produced on the leased area, and on all rigs, tanks, pipelines, telephone lines, machinery, and appliances used in the production and handling of oil and gas produced on the leased area, to secure any amount due from the owner of the lease.
[Acts 1977, 65th Leg., p. 2406, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 35.137 to 35.170 reserved for expansion]

SUBCHAPTER F. DUTIES OF LESSEE

§ 35.171. Duty to Develop and Prevent Drainage

(a) If the area in which oil or gas is sold is contiguous to or adjacent to land which is not state park land, the acceptance of the bid and the sale constitute an obligation on the owner of the lease to adequately protect the land leased from drainage from adjacent land.

(b) If oil or gas is discovered on a tract covered by a lease issued under the provisions of this chapter, or on land adjoining the leased tract, the lessee shall conduct the operations necessary to prevent drainage from the tract covered by the lease and properly develop the tract.

(c) If the oil or gas in the area is sold at a lesser royalty, the owner shall protect the state from drainage from the land leased or sold for lesser royalty.
[Acts 1977, 65th Leg., p. 2406, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.172. Forfeiture of Lease

(a) The board may forfeit a lease by an order entered on the minutes of the board reciting the facts constituting the default and declaring the forfeiture.

(b) A lease is subject to forfeiture if:

(1) the owner of the rights acquired under this chapter fails to protect the land from drainage;

(2) the owner fails or refuses to make the payment of an amount due as rental on the lease or royalty on the production within 30 days after it becomes due;

(3) the owner or his authorized agent makes a false return or false report concerning production, royalty, or drilling;

(4) the owner fails or refuses to drill an offset well or wells in good faith as required by his lease;

(5) the owner or his agent refuses the proper authority access to the records and other data pertaining to the operations under the provisions of this chapter;

(6) the owner or his authorized agent fails or refuses to give correct information to the proper authority, or fails or refuses to furnish the log of a well within 30 days after production is found in paying quantities; or

(7) any of the material terms of the lease are violated.

(c) The board may have suit for forfeiture instituted by the attorney general.

(d) On proper showing by the forfeiting owner within 30 days after the declaration of forfeiture, the board may reinstate the lease on terms which it prescribes.

[Acts 1977, 65th Leg., p. 2407, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.173. Suit for Damages or Specific Performance

Forfeiture of the lease is not the exclusive remedy available to the state. If the owner violates the lease contract, the state may institute suit for damages or specific performance.

[Acts 1977, 65th Leg., p. 2407, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 36. BOARD FOR LEASE OF ELEEMOSYNARY AND STATE MEMORIAL PARK LANDS

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SUBCHAPTER F. DUTIES OF LESSEE

36.171. Duty to Develop and Prevent Drainage.
36.172. Forfeiture of Lease.
36.173. Suit for Damages or Specific Performance.

SUBCHAPTER A. GENERAL PROVISIONS

§ 36.001. Definitions

In this chapter:

(1) "Board" means the Board for Lease of Eleemosynary and State Memorial Park Lands.

(2) "Eleemosynary land" means land under the control and management of the Texas Department of Mental Health and Mental Retardation.

(3) "Commissioner" means the Commissioner of the General Land Office.

(4) "Land office" means the General Land Office.

[Acts 1977, 65th Leg., p. 2408, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 36.002 to 36.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 36.011. Board for Lease of Eleemosynary and State Memorial Lands

A board to be known as the Board for Lease of Eleemosynary and State Memorial Lands is created to perform the duties prescribed in this chapter.

[Acts 1977, 65th Leg., p. 2409, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.012. Members of Board

(a) The board consists of:

(1) the commissioner;

(2) one citizen of the state appointed by the governor with the advice and consent of the senate; and

(3) the chairman of the Texas Board of Mental Health and Mental Retardation.

(b) The appointed member serves for a term of two years.

[Acts 1977, 65th Leg., p. 2409, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.013. Quorum

A majority of the board constitutes a quorum with power to act in all cases except as otherwise provided in this chapter.

[Acts 1977, 65th Leg., p. 2409, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.014. Records of Board

The board shall keep a complete written record of all its proceedings.

[Acts 1977, 65th Leg., p. 2409, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.015. Rules

The board shall adopt proper rules, forms, and contracts that in its judgment will protect the income from land leased under the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2409, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.016. Filing in Land Office

Surveys, files, records, copies of sale and lease contracts, and other records relating to the sales and leases authorized under the provisions of this chapter shall be filed in the land office and constitute archives.

[Acts 1977, 65th Leg., p. 2409, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 36.017 to 36.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 36.051. Land Subject to Lease

(a) Subject to the provisions of this chapter, the board may lease to any person land, or a parcel of land, owned by the state as state eleemosynary and state memorial park land for agricultural purposes or for prospecting or exploring for and mining, producing, storing, caring for, transporting, preserving, and disposing of the oil and gas belonging to the state.

(b) The board shall not lease any of the land composing the San Jacinto Battleground State Park or Washington-on-the-Brazos State Park for any purpose.

[Acts 1977, 65th Leg., p. 2409, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.052. Subdivision of Land

The board may have the state eleemosynary and state memorial park land surveyed and subdivided into lots or blocks that will be conducive or convenient to facilitate the advantageous sale of oil and gas leases. The board may identify the lots and blocks by permanent markings on the ground.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.053. Maps and Plats

The board may make the maps and plats it considers necessary to carry out the purposes of this chapter.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.054. Abstracts of Title

The board shall obtain abstracts of title to the eleemosynary and state park land.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.055. Examination and Perfection of Title

(a) The board shall have the abstracts of title examined by the attorney general, who shall file written title opinions.

(b) The board shall take the necessary steps to perfect a marketable title to the land in the State of Texas.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.056. Filing Abstract of Title and Title Opinion

The abstract of title and the attorney general's title opinion shall be filed in the land office as public documents for the inspection of prospective purchasers of oil and gas leases on the land.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.057. Placing Lease on Market

If the board determines there is a demand for the purchase of oil and gas leases on a lot or tract of land which will reasonably ensure an advantageous sale, the board shall place the oil and gas in the land on the market in the blocks or lots which the board may designate.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.058. Advertisement of Lease

(a) The board shall advertise a brief description of the land from which the oil and gas is proposed to be sold. The advertisement shall give notice that sealed bids for the purchase of the oil and gas by lease will be opened at 10 a. m. on a designated day and that sealed bids received up to that time will be considered.

(b) The board may have the advertisement placed in oil and gas journals in and out of the state and mailed generally to persons the board thinks may be interested.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.059. Minimum Royalty and Rental

(a) A bid shall not be accepted that offers a royalty of less than one-eighth of the gross production of oil and gas in the land covered by the bid. If all members concur, the board may increase the minimum royalty before the promulgation of the advertisement of the land.

(b) A bid must contain an obligation to pay at least $1 an acre rental for delay in drilling, with the amount to be set by the board in advance of the advertisement.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.060. Bids

(a) A bid shall be directed to the board in care of the land office, retained by the commissioner until the day designated for opening the bids, and opened on that day by the board, or a majority of its members, who shall list, file, and register all bids and money received.

(b) A separate bid shall be made for each survey or subdivision of the survey.

(c) The bid shall state the amount of royalty offered and the amount the bidder is willing to pay in addition to the royalty and annual delay rentals provided for in this subchapter.

(d) The bid shall be accompanied by cash or checks, collectible in Austin, to cover the amount which the bid offers in addition to the royalty and delay rentals and a payment equal to the minimum delay rental fixed on the land per acre for delay in drilling if the bid is accepted.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.061. Rejection and Acceptance of Bids

(a) If a bidder offers a reasonable and proper price, and less than the price set by the board, the land advertised, or a whole survey or subdivision, may be leased for oil and gas purposes under the terms of this chapter and rules the board may prescribe, not inconsistent with the provisions of this chapter.

(b) The board may reject all bids and may withdraw any land advertised for lease before receiving and opening bids.

(c) If the board rejects all bids after a bidding by sealed bids, it may offer for sale and sell the oil and gas in the land, in separate whole surveys only or subdivisions of them, by open public auction at a price less than the price offered by the sealed bids.

(d) If there is no sale at public auction, the subsequent procedure for the sale of oil and gas leases is the manner provided in the previous sections of this subchapter.

(e) If the board determines that a satisfactory bid has been received for the oil and gas, it shall file the bid in the land office.

[Acts 1977, 65th Leg., p. 2411, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.062. Necessary Facilities

The board shall authorize the laying of a pipeline or telephone line and the opening of roads over eleemosynary and state park land it considers reasonably necessary for and incident to the purposes of this chapter.

[Acts 1977, 65th Leg., p. 2411, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.063. Prohibited Drilling Location

The board may not make a lease for oil or gas which permits the drilling for oil or gas within 1,000 feet of a building in which patients are confined.

[Acts 1977, 65th Leg., p. 2411, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 36.064 to 36.100 reserved for expansion]

SUBCHAPTER D. CONDITIONS OF LEASES

§ 36.101. Term of Lease

If oil or gas is discovered in paying quantities on a tract of land covered by a lease, the lease on that tract remains in force, and title to all rights purchased may be held by the owners, as long as oil or gas is produced in paying quantities from the tract. If oil or gas is not produced in paying quantities before the expiration of three years, the lease terminates.

[Acts 1977, 65th Leg., p. 2411, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.102. Assignment of Lease

(a) Rights purchased may be assigned in quantities of not less than 40 acres, unless there are fewer than 40 acres remaining in a survey, in which case the lesser area may be assigned.

(b) An assignment shall be filed in the land office within 100 days after the date of the first acknowledgment, accompanied by 10 cents an acre for each acre assigned. If the assignment is not filed as

provided in this section and payment made, the assignment is ineffective.
[Acts 1977, 65th Leg., p. 2411, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.103. Relinquishment of Lease

(a) Rights to a whole survey or to an assigned portion of a survey may be relinquished to the state at any time by recording an instrument of relinquishment in the county or counties in which the area is located and filing it in the land office, accompanied by a $1 fee for each area assigned.

(b) Such assignment does not relieve the owner of an obligation which already has accrued.
[Acts 1977, 65th Leg., p. 2412, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 36.104 to 36.130 reserved for expansion]

SUBCHAPTER E. RENTAL AND ROYALTY PAYMENTS

§ 36.131. Annual Rental

(a) The lessee shall pay the annual delay rental every year for five years unless there is production in paying quantities on the land.

(b) If the royalties paid equal or exceed the annual rental fixed by the board, the payment of annual rental may be discontinued.

(c) If during the term of a lease issued under the provisions of this chapter the lessee is engaged in actual drilling operations for the discovery of oil and gas on land covered by the lease, no rental is payable on the tract on which the operations are being conducted as long as the operations are proceeding in good faith.
[Acts 1977, 65th Leg., p. 2412, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.132. Due Date for Payment

The royalty stipulated in the sale shall be paid on or before the last day of each month for the preceding month during the life of the rights purchased.
[Acts 1977, 65th Leg., p. 2412, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.133. Recipient of Payment

The royalty stipulated in the sale shall be paid to the land office for the benefit of the special building fund of the eleemosynary institutions. The payments made under the provisions of this chapter shall be made to the commissioner at Austin, who shall transmit to the State Treasurer for deposit all royalty, delay rentals, and all other payments, including all filing assignments and relinquishment fees.
[Acts 1977, 65th Leg., p. 2412, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.134. Statements Accompanying Payment

The payment shall be accompanied by the sworn statement of the owner, manager, or other authorized agent, showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises, and the market value of the oil and gas, together with a copy of all daily gauges of tanks, gas meter readings, pipeline receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipelines, tanks or pools, and gas lines or gas storage.
[Acts 1977, 65th Leg., p. 2412, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.135. Records Subject to Inspection

The books, accounts, receipts, and discharges of wells, tanks, pools, meters, and pipelines, and all contracts and other records relating to the production, transportation, sale, and marketing of oil and gas are subject to inspection and examination at all times by the commissioner, the attorney general, or any member of the Texas Board of Mental Health and Mental Retardation.
[Acts 1977, 65th Leg., p. 2412, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.136. State's Lien

The state has a first lien on all oil and gas produced on the leased area, and on all rigs, tanks, pipelines, telephone lines, machinery, and appliances used in the production and handling of oil and gas produced on the leased area, to secure any amount due from the owner of the lease.
[Acts 1977, 65th Leg., p. 2413, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 36.137 to 36.170 reserved for expansion]

SUBCHAPTER F. DUTIES OF LESSEE

§ 36.171. Duty to Develop and Prevent Drainage

(a) If the area in which oil or gas is sold is contiguous to or adjacent to land that is not eleemosynary and state park land, the acceptance of the bid and the sale constitute an obligation on the owner of the lease to adequately protect the land leased from drainage from adjacent land.

(b) If oil or gas is discovered on a tract covered by a lease issued under the provisions of this chapter, or on land adjoining the leased tract, the lessee shall conduct the operations necessary to prevent drainage from the tract covered by the lease and properly develop the tract.

(c) If the oil or gas in the area is sold at a lesser royalty, the owner shall protect the state from drainage from the land leased or sold for lesser royalty.
[Acts 1977, 65th Leg., p. 2413, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.172. Forfeiture of Lease

(a) The board may have a lease forfeited by an order entered on the minutes of the board reciting

the facts constituting the default and declaring the forfeiture.

(b) A lease is subject to forfeiture if:

(1) the owner of the rights acquired under this chapter fails to protect the land from drainage;

(2) the owner fails or refuses to make the payment of an amount due as rental on the lease or royalty on the production within 30 days after it becomes due;

(3) the owner or his authorized agent makes a false return or false report concerning production, royalty, or drilling;

(4) the owner fails or refuses to drill an offset well or wells in good faith as required by his lease;

(5) the owner or his agent refuses the proper authority access to the records and other data pertaining to the operations under the provisions of this chapter;

(6) the owner or his authorized agent fails or refuses to give correct information to the proper authority, or fails or refuses to furnish the log of a well within 30 days after production is found in paying quantities; or

(7) any of the material terms of the lease are violated.

(c) The board may have suit for forfeiture instituted by the attorney general.

(d) On proper showing by the forfeiting owner within 30 days after the declaration of forfeiture, the board may reinstate the lease on terms which it prescribes.

[Acts 1977, 65th Leg., p. 2413, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.173. Suit for Damages or Specific Performance

Forfeiture of the lease is not the exclusive remedy available to the state. If the owner violates the lease contract, the state may institute suit for damages or specific performance.

[Acts 1977, 65th Leg., p. 2414, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

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SUBCHAPTER A. GENERAL PROVISIONS

§ 51.001. Definitions

In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

(3) "Board" means the School Land Board.

(4) "Comptroller" means the Comptroller of Public Accounts of the State of Texas.

(5) "State Treasurer" means the Treasurer of the State of Texas.

(6) "Board of regents" means the board of regents of The University of Texas System.

(7) "Public school land" means all land of the state that is dedicated to the permanent school fund.

(8) "Asylum land" means all land of the state that is dedicated to the various asylum funds.

(9) "Surveyed land" means all or part of any tract of land surveyed either on the ground or by protraction and dedicated to the public school fund which is unsold and for which field notes are on file in the land office or that may be delineated on the maps of that office as such.

(10) "Unsurveyed land" means any land that is not included in surveys on file in the land office or surveys delineated on maps of that office.

[Acts 1977, 65th Leg., p. 2417, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 51.002 to 51.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO THE SALE AND LEASE OF PUBLIC SCHOOL AND ASYLUM LAND

§ 51.011. Sale and Lease of Public School and Asylum Land

Any land that is set apart to the permanent school fund and the various asylum funds under the constitution and laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including islands, shall be controlled, sold, and leased by the school land board and the commissioner under the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.012. Commissioner's Authority

Subject to the authority of the board and to exceptions and restrictions that may be imposed by the constitution and laws of this state, the commissioner is vested with the authority necessary to carry out the provisions of this chapter relating to the sale and lease of public school and asylum land and to the protection of this land from free use and occupancy and from unlawful enclosure.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.013. Classification and Valuation of Land

(a) As the public interest may require, the commissioner shall classify or reclassify and value or revalue all public school and asylum land and shall designate the land as agricultural, grazing, timber, or a combination of these classifications based on the facts in the particular case.

(b) After the classification and appraisement is entered on the records of the land office, no further action needs to be taken by the commissioner and no notice is required to be given to the county clerk for the classification and appraisement to be effective.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.014. Rules

(a) The commissioner may adopt rules necessary to carry out the provisions of this chapter and may alter or amend the rules to protect the public interest.

(b) Before rules are adopted under Subsection (a) of this section, the commissioner shall submit the rules to the governor for his approval.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.015. Forms

The commissioner shall adopt forms that are necessary or proper to transact business that he is required to transact and may request that the attorney general prepare the forms.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.016. Duties of the Attorney General

The attorney general shall furnish the commissioner with advice and legal assistance that may be required to execute the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.017. Furnishing Data to Board of Education

On request, the commissioner shall furnish to the State Board of Education all available data.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.018. Records and Accounts

The commissioner shall keep in his custody as records of his office each application, affidavit, obligation, and paper relating to the sale and lease of public school and asylum land and shall keep accurate accounts with each purchaser or lessee.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.019. Special Fee

Each bidder on a mineral lease or land sale by the board shall remit by separate check a special sale fee in the amount and in the manner provided in Section 34.061 of this code.

[Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.020. Refunds

(a) On presentation of proper proof, money paid in good faith to a fund in the State Treasury for public land to which the fund is not entitled shall be refunded by the comptroller in the following instances:

(1) if an error is made in good faith and the refund, stating to whom payment is to be made, is supported by the official signature of the commissioner or the attorney general;

(2) if the payment is made according to law but title cannot issue or possession cannot pass because of a conflict in boundaries, an erroneous sale, an erroneous lease, or other cause;

(3) if there is a sale of leased land;

(4) if lease money is paid on a previous forfeited sale and the sale has been reinstated and the interest paid;

(5) if erroneous timber sales or leases have been made;

(6) if overpayments have been made in final payments to the State Treasurer because of decreased acreage or other cause;

(7) if reduction has been made in acreage of timber sold or leased; or

(8) if payments are made in good faith by claimants of land where the applicants have no right to purchase the land as revealed by investigation of title.

(b) After specific appropriations are made according to law, refunds shall be paid from the funds to which the payments have been credited.

(c) Any claim for refund except a refund covered by Subdivision (1) of Subsection (a) of this section shall be certified by the commissioner, verified by the affidavit of the claimant, and approved by the attorney general as to the correctness and as to whom the refund is due.

(d) In the event of a failure of title or right of possession, money paid by any purchaser or lessee who subsequently sells the land or assigns the lease shall be refunded to the person on whom the loss falls.

[Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 51.021 to 51.050 reserved for expansion]

SUBCHAPTER C. SALE OF PUBLIC SCHOOL AND ASYLUM LAND

§ 51.051. Sale of Land

Subject to the provisions of Section 32.109 of this code, all sales of land described in Section 51.011 of this code shall be made by or under the direction of the school land board to the applicant who submits the highest bid for the land at a price that is not less than the price set by the board for purchase of the land.

[Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.052. Conditions for Sale of Land

(a) Land sold under the provisions of this subchapter shall be sold only in whole tracts and without condition of settlement and residence.

(b) Tracts of less than 80 acres shall be sold for cash.

(c) No land may be sold to corporations, and no corporation may purchase land under this subchapter.

[Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.0521. Conditions for Sale of Land of Less Than 150 Acres

(a) Land in a tract of 150 acres or less shall be sold without condition of settlement, with a reservation of all oil, gas, and other minerals to the state, subject to Subchapter F, Chapter 52 of this code, commonly known as the Relinquishment Act,[1] and subject to Subchapter C, Chapter 53 of this code.[2]

(b) The owner of land that surrounds land in a tract of 150 acres or less shall have a preference right to purchase the tract before the land is made available for sale to any other person, provided the person having the preference right pays not less than the market value for the land as determined by appraisers under Subsection (d) of this section.

(c) A purchaser of land under this section under a contract of sale may make a down payment of at least 10 percent of the total cost of the land and may pay the remainder over a period of 20 years at an interest rate of eight percent a year. On full payment and satisfaction of other conditions, the purchaser is entitled to a patent for the land.

(d) Before land under this section is sold, the appraisers for the General Land Office must appraise the land at its market value and file a copy of the appraisal with the commissioner. No land covered by this section may be sold for less than the market value that appears in the appraisal made under this subsection.

(e) Except as specifically provided in this section, land sold under this section shall be sold in the manner and subject to the conditions for the sale of other land under this subchapter.

[Added by Acts 1979, 66th Leg., p. 543, ch. 257, § 1, eff. May 24, 1979.]

[1] Section 52.171 et seq.
[2] Section 53.061 et seq.

§ 51.053. Prohibited Sale of Certain Land

(a) Except as provided by Subsection (b) of this section, any surveyed public school land located within five miles of a well producing oil or gas in commercial quantities is subject to lease only and the surface rights shall not be sold.

(b) Tracts of land that include 15 acres or less and that are located within five miles of a well producing oil or gas in commercial quantities may be sold under the same terms and conditions as other land sold by the board if:

(1) all oil, gas, and other minerals on or under the tract are reserved to the state;

(2) the purchaser of the tract acquires a one-sixteenth nonparticipating royalty; and

(3) no drilling or mining is allowed within 500 feet of any building located on the tract.

[Acts 1977, 65th Leg., p. 2420, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 194, ch. 104, § 1, eff. May 9, 1979.]

§ 51.054. Reservation of Minerals

(a) Land dedicated to the permanent school fund shall be sold subject to a reservation of one-eighth of all sulphur and other mineral substances from which sulphur may be derived or produced and one-sixteenth of all other minerals as free royalties to the state.

(b) Land that is set apart for the various asylum funds shall be sold with the oil, gas, coal, and all other minerals reserved to the fund to which the land belongs.

(c) The provisions of this section do not apply to oil and gas sold from public school and asylum land covered by Subchapter F, Chapter 52, of this code.

(d) The provisions of this section do not apply to vacancies covered by Section 51.201 of this code.

[Acts 1977, 65th Leg., p. 2420, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.055. Lease of Unsold Land

(a) Unsold public school and asylum land may be leased subject to sale for a term of not more than 10 years and for an amount of not less than five cents an acre a year.

(b) Land leased under this section is subject to sale on any sale date for which it is advertised to be sold.

[Acts 1977, 65th Leg., p. 2420, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.056. Application to Purchase Land

(a) A person who wants to purchase public school or asylum land shall submit to the commissioner a separate written application for each tract applied for as a whole.

(b) Each application shall:

(1) designate the land to be purchased;

(2) state the price offered;

(3) state any mineral reservations; and

(4) include an affidavit that the purchaser is purchasing the land for himself and that no other person or corporation is either directly or indirectly interested in the purchase of the land.

(c) At the time the application is submitted, the applicant shall pay one-fifth of the aggregate price offered for the land and shall submit his obligation in an amount equal to the amount of the unpaid purchase price offered for the land, binding the purchaser to pay to the land office on November 1 of each year until the purchase price is paid one-fortieth of the unpaid balance with interest on the unpaid purchase price at the rate of five percent a year.

(d) The sale of the land is effective from the date of the receipt and filing of the application, affidavit, obligation, and the payment of one-fifth of the price offered.

(e) The application to purchase and the notice of award shall state that the land is sold without condition of settlement and with a reservation of one-eighth of all sulphur and other mineral substances from which sulphur may be produced or derived and one-sixteenth of all minerals as a free royalty to the state.

[Acts 1977, 65th Leg., p. 2420, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.057. Delivery of Applications

(a) An application for the purchase of public school or asylum land shall be delivered to the land office in a sealed envelope addressed to the commissioner with the words "application to buy land" and the date the land is to be sold endorsed on the envelope. Applications that do not have the required endorsements are nevertheless valid.

(b) The envelopes shall remain unopened and the applications unfiled, and the commissioner or his chief clerk shall keep the envelopes and applications in a safe and secure manner until the date of sale.

[Acts 1977, 65th Leg., p. 2421, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.058. Method for Making First Payment

(a) An applicant shall submit with his application the required first payment in the form of money or remittance collectible on demand in Austin and convertible at par into money on order of the State Treasurer without liability.

(b) If a remittance is made payable to the commissioner, the payment is not invalid for that reason, but the commissioner shall endorse it to the State Treasurer without incurring liability and the remittance shall be treated as if it were payable to the State Treasurer.

(c) An application is void if the payment is not made as provided in this section.

[Acts 1977, 65th Leg., p. 2421, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.059. Opening Applications

(a) On the date of sale, the application envelopes shall be opened and the applications shall be filed and the information entered on the docket of the board as provided in Section 32.108 of this code.

(b) Any person who desires to be present at the time the envelopes are opened may do so.

[Acts 1977, 65th Leg., p. 2421, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.060. Recordation of First Payments

(a) After each application envelope is opened and the first payment for the land is in the land office, the commissioner shall have the payment listed on a daily list which shall be made in triplicate, showing the name and address of each applicant and the purpose for which each payment is made and shall transmit to the State Treasurer all of the payments together with two of the lists.

(b) On receiving the payments and the lists, the treasurer shall compare the payments with the lists, and if the treasurer finds that the payments and the lists are correct, he shall receipt one of the lists and return it to the commissioner and shall retain the other list.

(c) On receiving the list from the treasurer, the commissioner shall deliver the third list to the comptroller.

[Acts 1977, 65th Leg., p. 2421, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.061. Collection of Remittances

(a) The State Treasurer shall immediately collect all collectible remittances and shall report to the

commissioner and comptroller all remittances not collectible in Austin.

(b) Any remittances that cannot be collected shall be returned to the commissioner.

[Acts 1977, 65th Leg., p. 2421, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.062. Disposition of First Payments

(a) The State Treasurer shall retain all first payments he has collected until the commissioner notifies him of the final disposition of the applications to purchase land.

(b) After the treasurer is notified, he shall return to each applicant whose application is rejected the amount of his first payment.

(c) A duplicate of the notice to the treasurer of accepted and rejected applications and the amount of the first payment shall be transmitted to the comptroller.

(d) On the last working day of each month, the treasurer shall deposit in the State Treasury to the credit of the proper fund the amount collected by him on accepted applications during that month.

[Acts 1977, 65th Leg., p. 2421, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.063. Duplicate High Bids

If two or more applicants submit the same bid for a tract of land and the bids are the highest bids offered on the sale date, the school land board shall reject all of the bids and the land shall be offered for sale on the next sale date. Any subsequent bid for the land may not be considered if it is less than the high bids rejected under this section.

[Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.064. Individual Bids

(a) Any public school or asylum land offered for sale for which no application is made under Section 51.056 of this code may be sold to any person who files a proper application in the land office in the manner provided by law.

(b) A person who files an application under this section is not required to have any memorandum on the envelope containing the application.

(c) If two or more applications are filed under this section on the same day for the same land, the person offering the highest price shall have his offer accepted, but if two or more persons offer the same price for the land, the commissioner and the school land board shall proceed in the manner provided by this chapter for the first filing.

[Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.065. Notice and Record of Sale

(a) The commissioner shall notify the county clerk of the proper county of the sale of each tract of land, the name and address of the purchaser, and the price of the land.

(b) After being informed of any sale of public school or asylum land, the county clerk shall enter in his books opposite the description of the land sold, the name of the purchaser and the date of the sale.

(c) The notice of sale and the book containing the entry are public records.

[Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.066. Notice of Award

(a) The commissioner shall prepare and issue a notice of award for each tract of land sold.

(b) Each notice of award shall be appropriately numbered and shall be worded in a manner that will constitute a receipt for the first payment after it is signed by the commissioner.

(c) One copy of the notice of award shall be retained in the land office and the other copy shall be sent to the purchaser.

[Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.067. Information Required With Payments

A person who is making a payment of principal, interest, or lease rental on land shall give the name of the original purchaser or lessee and shall sufficiently designate the land.

[Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.068. Fund Accounts

(a) Payments of principal, interest, and lease rental shall be accounted for in a similar form but separate from first payments on land.

(b) The state treasurer shall deposit 80 percent of all these payments received each month to the probable fund to which they belong as indicated by the commissioner and shall hold the remaining 20 percent on deposit receipts furnished by the comptroller until definite notice is received from the commissioner as to the proper fund. After definite notice is received, the State Treasurer shall credit the full amount to the proper fund.

(c) The commissioner shall give definite notice to the State Treasurer and comptroller immediately after he issues receipts to the persons making the payments.

(d) The commissioner, State Treasurer, and comptroller shall keep an account with each fund according to advices given by them and shall retain the advices as permanent records.

[Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.069. Disposition of Payments on Public School Land

(a) Payments on public school land received by the commissioner shall be transmitted to the State Treasurer to be credited to the proper fund.

(b) The State Treasurer shall credit payments received on the purchase price of public school land to the permanent school fund and payments received as interest on the purchase of public school land to the available school fund.

[Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.070. Unpaid Interest on Public School Land

(a) Unpaid and delinquent interest on sales of public school land shall bear interest at a rate of five percent compounded annually as it accrues on November 1 of each year.

(b) No patent may be issued for any public school land until all compounded interest is paid to the time of issuing the patent.

[Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.071. Forfeiture of Land

(a) If interest on a sale of land is not paid when due, the land is subject to forfeiture by the commissioner by entry on the wrapper containing the papers "Land Forfeited" or similar words, the date of the forfeiture, and the official signature of the commissioner.

(b) After the entry is made on the wrapper, the land and all payments that have been made for it are forfeited to the state, and the land may be offered for sale on a subsequent sale date.

[Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.072. Effect of Forfeiture

In cases of forfeiture, the original obligations and penalties are as binding as if no forfeiture occurred.

[Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.073. Classification and Sale of Leased and Forfeited Land

(a) Before it is sold, the commissioner shall classify and value land on which leases have been cancelled or have expired and land forfeited to the state.

(b) Except as provided in Section 51.064 of this code, no land may be sold until it is advertised.

[Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.074. Reinstatement of Land Purchases

(a) If no rights of third persons have intervened, the purchasers or their vendees, heirs, or legal representatives, who claim land that has been forfeited for nonpayment of interest, may have the claim reinstated on written request by paying into the State Treasury the amount of interest due on the claim up to the date of reinstatement.

(b) The right to reinstate a claim under this section is limited to the last purchaser from the state, or his vendees, heirs, or legal representatives, and must be exercised within five years from the date of the forfeiture.

(c) If there is a valid outstanding grazing lease that prevents reinstatement within the time provided in Subsection (b) of this section, the claim may be reinstated within 60 days after the grazing lease expires if the application for reinstatement together with the payment for all past due interest has been filed in the land office within five years from the date of forfeiture.

[Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.075. Forfeiture of a Deceased Purchaser's Land

(a) If a purchaser of land dies, the heirs or legal representatives of the deceased have one year following November 1 after the purchaser's death in which to make payment before the commissioner declares the land to be forfeited.

(b) If the forfeiture is declared by the commissioner within the time period stated in Subsection (a) of this section, it will be set aside on proper proof of death if no rights of third parties have intervened.

[Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.076. Legal Proceedings

None of the provisions of Sections 51.071 through 51.072 and 51.074 through 51.075 of this code shall prevent the state from instituting legal proceedings necessary:

(1) to enforce a forfeiture;

(2) to recover the full amount of interest and penalties that may be owed to the state at the time the forfeiture occurred; or

(3) to protect another right to the land.

[Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.077. Lien

To secure the payment of principal and interest due on a sale of public school land, university land, and asylum land, the state has an express lien for the use and benefit of the fund to which the land belongs. The lien is in addition to any right and remedy that the state has for enforcement of the payment of principal or interest due and unpaid.

[Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.078. Transfer of Indebtedness

(a) If a person or the Federal Farm Loan Bank, with the consent of the owner of land covered by Section 51.077 of this code, pays to the state the principal and interest due on any obligation given for the land, the commissioner, on written request of the owner, may execute, acknowledge, and deliver to the person or the Federal Farm Loan Bank a written transfer of the indebtedness held by the state. The written request of the owner shall be acknowledged in the manner required for the conveyance of real estate and shall be accompanied by an affidavit of ownership.

(b) The person or the Federal Farm Loan Bank is subrogated to all the rights, liens, and remedies held by the state to secure and enforce the payment of the principal and interest that was paid to the state.

(c) If the land claimed by a person claiming to be the owner is held under evidence of title that the law or rules of the land office do not authorize to be filed in the land office, the commissioner may admit the owner to be the person that the person or the Federal Farm Loan Bank paying the indebtedness admits to be the owner, and on making this admission the instrument of transfer shall be executed.

(d) None of the provisions of this section shall change any part of the law or rules that apply to the land office with relation to titles to land and issuance of patents.

[Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.079. Transfers Generally

(a) An owner of public school land or asylum land purchased from the state may sell the land or a definite portion of the land in any size tract.

(b) If land to be sold is separated from another portion of land but is not sufficiently designated by metes and bounds in the papers offered to be filed so that it may be identified with certainty, the commissioner shall require that proper field notes accompany the papers before he files them and separates the land.

[Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.080. Personal Transfers

(a) A vendee who obtains through personal transfer a whole survey or a whole portion of a survey purchased from the state as a whole or who obtains through personal transfer a portion of a survey purchased from the state as a whole or in a quantity less than the whole survey is entitled to become a substitute purchaser directly from the state in the manner provided in this section.

(b) With the approval of the commissioner, the vendee may file in the land office a complete chain of title through personal transfers that have been duly executed and recorded in the counties in which the land or a part of the land is located and shall pay the fees provided by law.

(c) After the papers are filed in the land office, the substituted purchaser shall have his portion of land separated from the other portion of land, if any, on the records of the land office and shall assume and be liable to the state for all unpaid principal and interest due the state for the land conveyed by the deeds that are filed, together with all obligations and penalties attaching to the original purchase.

(d) The obligation of the original purchaser and the obligation of all vendors of the substituted purchaser are enforceable against the substituted purchaser as if he were the original purchaser from the state, and the obligation of the vendor or vendors of the substituted purchaser are canceled.

[Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.081. Transfers Other Than Personal Transfer

A person who claims title through a source other than by personal transfer to a definite portion of a survey that is less than the whole survey purchased from the state, with the approval of the commissioner, may have the portion of land that he claims separated from the other portion of the survey on the records of the land office by filing in the land office evidence of claims that may be required by the commissioner and by paying the fees provided by law for papers filed as evidence of the claim or a right to a separation of the area.

[Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.082. Liability of Vendee

After a separation of land is made on the records of the land office, the portion that is separated shall be charged and credited with its pro rata part of the principal and interest due and paid to November 1 preceding the date of the filing of the transfers or other papers.

[Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.083. Patent on Part of a Tract

(a) If an owner or claimant of land whose ownership or claim is shown on the records of the land office desires a patent on a portion of the whole tract, the owner or claimant, with the approval of the commissioner, may file field notes for the portion of the tract on which the patent is desired, together with the filing fee required by law, and may obtain a patent for the portion of the tract after the full price is paid, together with all fees required by law.

(b) If the ownership of the tract is evidenced by personal transfer, the patent shall be issued to the owner and his assigns, but if the claimant claims title through other evidence than by personal transfer, the patent shall be issued in the name of the person and his assigns who hold title by original purchase or in the name of the person and his assigns who appear on the records to hold title through the last personal transfer.

(c) If a patent is issued in the name of any person other than the legal owner, the patent and the rights granted in the patent inure to the benefit of the legal owner.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.084. Sale Without Condition of Residence

No sale made without condition of settlement may be questioned by the state or any person after one year from the date of the sale.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.085. Time for Purchase of Land

Each purchaser of land has the option of paying the purchase price in full at any time, together with all fees, and obtaining a patent for the land.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 51.086 to 51.120 reserved for expansion]

SUBCHAPTER D. LEASE OF LAND

§ 51.121. Lease of Unsold Land

(a) Except as otherwise provided, unsold public school and asylum land may be leased for a term of not more than 10 years and for an amount of not less than five cents an acre, payable annually in advance, but the land that is leased but remains unsold is subject to sale or trade pursuant to the laws governing the sale or trade of unsold land.

(b) Unsold public school and asylum land may be leased for commercial purposes in tracts of not more than 50 acres for a term of not more than 50 years. Commercial improvements on land under this subsection shall not become the property of the state and shall be taxed in the same manner as other private property.

(c) Commercial improvements on land leased under Subsection (b) of Section 51.121 of the Natural Resources Code shall be removed prior to the expiration of the lease unless a renewal or an extension of the lease has been finalized prior to the expiration of the term of the lease. If commercial improvements are not removed prior to the expiration of the lease and if there has been no renewal or extension prior to the expiration of the lease, then the commercial improvements on the land shall become property of the state.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 472, ch. 215, § 1, eff. May 17, 1979.]

§ 51.122. Advertisement of Leases

Leases under the provisions of this subchapter may be advertised in the manner provided in Section 32.107 of this code.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.123. Lease Application

A person who desires to lease land shall submit a written application to the commissioner specifying and describing the particular land he desires to lease.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.124. Award of Lease

(a) A lease shall be awarded to the highest responsible bidder.

(b) The lease shall be awarded under the rules and in the quantities the board considers to be in the best interest of the state and not inconsistent with the equities of the occupant.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.125. Rejection of Bid or Offer to Lease

Any bid or offer to lease may be rejected by the board for fraud, collusion, or other good and sufficient cause before the lease is signed.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.126. Notification of Acceptance and Execution of Lease

After the applications are received, the commissioner shall give written notification to the successful applicant that his bid or offer to lease is accepted and execute a lease to the applicant in the name and by the authority of the State of Texas.

[Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.127. Recording Lease

(a) After the lessee has paid the rent for the land for a year in advance, the commissioner shall deliver the lease to the clerk of the county in which the land is located.

(b) When a lease is filed for record, the clerk shall prepare a memorandum or abstract of the lease and shall record the memorandum or abstract in a well-bound book or on microfilm kept in his office.

(c) The memorandum or abstract shall contain:

(1) the number of the survey leased;

(2) the name of the original grantee;

(3) the amount of land leased;

(4) the name of the lessee;

(5) the date of the lease; and

(6) the term of years the lease is to run.

(d) On payment of the fee required by law, the clerk shall deliver the lease to the lessee.

(e) Except for the record made under this section, no other record of a lease is required.

[Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.128. Cancellation of Lease

(a) If a lessee fails to pay the annual rent within 60 days after it is due, the commissioner shall cancel the lease with a written document signed by him with his seal attached.

(b) The commissioner shall file the document with the other papers relating to the lease, and the lease shall terminate immediately.

[Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.129. Lien

(a) During the continuance of the lease and after forfeiture, the state has a lien on all property owned by the lessee which is located on the leased premises to secure payment of rent due.

(b) The lien is superior to all other liens.

(c) A reservation of the lien in the lease is not essential to preserve its validity.

[Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.130. Removal of Improvements

An improvement made by a lessee on land leased by him may be removed by the lessee on the expiration of the lease or, at the discretion of the commissioner, may become the property of the state if, in the original lease, the commissioner and the lessee agree on adequate credit to be applied to the rental to be paid the state by the lessee, thereby allowing the lessee an agreed consideration.

[Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 51.131 to 51.170 reserved for expansion]

SUBCHAPTER E. SALE AND LEASE OF VACANCIES

§ 51.171. Sale and Lease of Vacant Land

Vacant and unsurveyed public school land except riverbeds, channels, islands, lakes, bays, and other areas in tidewater limits shall be sold and leased under the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.172. Definitions

In this subchapter:

(1) "Good-faith claimant" and "claimant" mean any person:

(A) who occupies or uses or has previously occupied or used or whose predecessors in interest have occupied or used a vacancy for purposes other than exploring for or removing oil, gas, sulphur, or other minerals from the vacancy; and

(B) who has himself or whose predecessors in interest had the vacancy enclosed or within definite recognized boundaries and in possession for a period of 10 years with a good-faith belief that the vacancy was included inside the boundaries of the survey or surveys that were previously titled, awarded, or sold under circumstances that would have vested title in the vacancy if it were actually located within the boundaries of the survey or surveys whose boundaries are recognized boundaries in the community.

(2) "Vacancy" means an area of unsurveyed public school land that:

(A) is not in conflict on the ground with land previously titled, awarded, or sold;

(B) has not been listed on the records of the land office as public school land; and

(C) was, on the date of filing, neither subject to an earlier subsisting application to purchase or lease by a discoverer or claimant nor involved in pending litigation brought by the state to recover the land.

(3) "Applicant" means any person, other than a good-faith claimant, who discovers and files an application to purchase or lease a vacancy.

[Acts 1977, 65th Leg., p. 2428, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.173. Persons Eligible to Purchase and Lease Land

(a) A vacancy may be sold to a good-faith claimant whether or not the vacancy is located within five miles of a well producing oil, gas, or other minerals in commercial quantities, but a person who is not a good-faith claimant may not purchase a vacancy that is located within five miles of a well producing oil or gas in commercial quantities.

(b) If there is no good-faith claimant or if the claimant fails to exercise his preferential right, a vacancy located within five miles of a well producing oil or gas in commercial quantities shall be available only for lease.

[Acts 1977, 65th Leg., p. 2428, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.174. Purchase of Vacancy by Adjoining Landowner

If the owner of the land adjoining an alleged vacancy files an application to purchase the vacancy and no application to purchase or lease the vacancy has been previously filed, the owner of the adjoining land, who otherwise qualifies as a good-faith claimant, shall be considered a good-faith claimant regardless of the length of time he has owned the adjoining land or has enclosed the vacancy or has had it within definite recognized boundaries and in possession with the belief that the vacancy was included within his survey.

[Acts 1977, 65th Leg., p. 2428, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.175. Application to Purchase or Lease a Vacancy

(a) An applicant who claims that a vacancy exists and who desires to purchase or lease the vacancy shall file with the county surveyor in the county in which any part of the vacancy is located a sworn written application in duplicate to purchase or lease the vacancy.

(b) The application shall:

(1) describe the land that is claimed to be vacant;

(2) state the desire of the applicant to purchase or lease the land under the provisions of this chapter;

(3) give the names and addresses of any owners or claimants of land or any interest in land or of leases on, adjoining, overlapping, or including the land claimed to be vacant as far as can be determined from the records of the land office and the county clerk's office in the county in which the land is located and the tax records of the county in which the land is located;

(4) give the names and addresses of any persons who, from facts known to the applicant, assert any right to the alleged vacant land; and

(5) state that the applicant knows of no other claimants than those listed.

[Acts 1977, 65th Leg., p. 2428, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.176. Filing Fee

At the time the application is filed, the applicant shall pay to the county surveyor a filing fee of $5.

[Acts 1977, 65th Leg., p. 2429, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.177. Filing Application With County

(a) The county surveyor shall mark the exact date and hour of filing on the original and duplicate copy of each application and shall return one copy of the application to the applicant and shall record the other copy in a book kept for that purpose.

(b) If the county does not have a county surveyor, the preliminary filing of the application shall be with the county clerk. The county clerk shall record the application in a book kept for that purpose and not in the deed records.

[Acts 1977, 65th Leg., p. 2429, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.178. Filing Application With Commissioner

(a) Within 10 days after the application is filed with the county surveyor, the copy of the application that is returned to the applicant shall be filed with the commissioner.

(b) The commissioner shall mark the date of filing on the application.

(c) The applicant shall pay to the commissioner a filing fee of $100.

(d) Failure to file the application with the commissioner in the time provided by this section and to pay the filing fee constitutes a waiver of all rights under the application.

(e) As between applicants, priority dates from the time of filing the application with the county surveyor.

[Acts 1977, 65th Leg., p. 2429, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.179. Deposit

(a) The commissioner shall notify the applicant by letter of the estimated cost of proceeding under the application, and within 30 days after the date of the commissioner's letter, the applicant shall make a deposit with the commissioner to pay the cost of the work that may be necessary to comply with the request contained in the application.

(b) On failure to make the deposit required under this section, all rights under the application are lost.

[Acts 1977, 65th Leg., p. 2429, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.180. Insufficient Deposit

(a) If the deposit is insufficient, the applicant shall be requested by letter to make a further deposit of an amount determined by the commissioner.

(b) If the further deposit is not made within 30 days after the date of the letter, work shall be discontinued and the application canceled with the cancellation endorsed on the application.

(c) On cancellation, the right to purchase or lease the vacancy under the application is lost.

[Acts 1977, 65th Leg., p. 2429, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.181. Appeal of Amount of Deposit

(a) The applicant is entitled to appeal the estimated cost determined by the commissioner to a district court in Travis County by giving written notice to

the commissioner within 15 days after receiving the estimated cost from the commissioner as provided in Sections 51.179 through 51.180 of this code.

(b) The applicant has 15 days after the district court enters its decision in which to pay the amount ordered by the court's decision.

[Acts 1977, 65th Leg., p. 2430, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.182. Deposits as Trust Fund

Deposits provided under Sections 51.179 through 51.180 of this code shall be a special trust fund to be used only for the purpose authorized by this subchapter.

[Acts 1977, 65th Leg., p. 2430, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.183. Statement and Refund of Remaining Deposit

As soon as the total expense properly charged against the deposit is determined, the commissioner shall render a complete statement to the applicant together with any balance remaining from the deposit.

[Acts 1977, 65th Leg., p. 2430, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.184. Notice of Intention to Survey

(a) After the application is filed with the commissioner and the deposit is made, the commissioner shall mail a notice of intention to survey to all persons named as interested persons in the application at the addresses provided in the application and to the attorney general.

(b) The notices shall be deposited in the post office in Austin at least 10 days before the date set for the beginning of the survey.

[Acts 1977, 65th Leg., p. 2430, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.185. Appointment of Surveyor

(a) The commissioner shall appoint a surveyor to make the survey in accordance with the notice of intention to survey.

(b) The surveyor shall be a surveyor licensed by the state or the county surveyor of the county in which the vacancy or part of the vacancy is located.

(c) The fees and expenses paid for the survey shall be the same as provided by law, and if the fees and expenses are not provided by law, the commissioner and surveyor shall make an agreement as to fees and expenses that shall not be more than an amount that is reasonable for the work performed.

(d) The fees and expenses shall be paid by the applicant.

[Acts 1977, 65th Leg., p. 2430, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.186. Survey Report

(a) Except as provided in Subsection (b) of this section, a written report of the survey, together with field notes describing the land and the lines and corners surveyed and a plat showing the results of the survey, shall be filed in the land office within 120 days from the filing of the application.

(b) The commissioner may extend the time for filing the survey if good cause is shown. The cause for extension of time shall be stated in writing and filed as part of the record of the proceedings. An extension of time may not be more than 60 days.

(c) The survey report shall give the names and post-office addresses of all persons who have possession of the land described in the application and of all persons found by the surveyor who have or claim any interest in the land.

[Acts 1977, 65th Leg., p. 2430, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.187. Personal Survey

Any interested party at his own expense may have any surveying done that he considers desirable.

[Acts 1977, 65th Leg., p. 2431, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.188. Hearing and Notice

(a) Within 60 days after the surveyor makes his report, a hearing may be held before the commissioner to determine whether or not there is a vacancy.

(b) The date for the hearing shall be provided in the notice that the commissioner shall give to all persons thought to be interested parties and to all persons shown by the record of the proceeding to be interested parties, including the attorney general.

(c) The notice of the hearing shall be deposited at the post office in Austin at least 10 days before the date set for the hearing.

(d) At the hearing, the state and each interested party, whether or not he received notice, is entitled to be heard.

[Acts 1977, 65th Leg., p. 2431, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.189. Determination of Vacancy by Commissioner

(a) If it appears to the commissioner that the alleged vacancy is not in conflict with land previously titled, awarded, or sold by the state, he shall give prompt notice of this finding to the applicant and to all persons who were previously identified as interested parties.

(b) After the notice is given under Subsection (a) of this section, and subject to the preferential right of a good-faith claimant, the applicant is entitled for 120 days to purchase or lease the portion of the land

that is determined to be vacant at a price set by the board as provided in this code and with the same royalty reservation as provided in Section 51.201 of this code.

(c) No award may be made by the commissioner unless a hearing is held, and no presumption may obtain in a suit involving the existence of a vacancy as a result of the action of the commissioner in this respect.

[Acts 1977, 65th Leg., p. 2431, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.190. Purchase or Lease by Applicant

(a) If there is no good-faith claimant or if no good-faith claimant exercises his preferential right within the time allowed, the applicant is entitled to purchase or lease, according to his application, the vacancy for which he made application and which is found to exist.

(b) Consideration shall be determined by the board as provided in this subchapter, but without consideration of potential mineral value.

[Acts 1977, 65th Leg., p. 2431, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.191. Suit to Recover Land

A good-faith claimant of a vacant or unsurveyed tract of land has 90 days after the sale or lease of the land by the commissioner to institute suit to set aside the sale or lease of the land. If the suit is not instituted within the 90-day period by the good-faith claimant, he loses all preferential rights to purchase or lease the land.

[Acts 1977, 65th Leg., p. 2431, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.192. Denial of Vacancy by Commissioner

(a) If the commissioner decides that the area alleged to be vacant is not vacant, he shall endorse this decision on the application and file it with his finding.

(b) The commissioner shall promptly notify the applicant of his decision by registered mail and shall file all reports and papers received in connection with the application.

(c) After the commissioner takes all action provided under Subsections (a) and (b) of this section, he shall take no further action with respect to the application unless the existence of the alleged vacancy is determined by a court of competent jurisdiction.

(d) Within 90 days after the commissioner's decision is mailed, unless the applicant files suit in a district court in a county in which part of the alleged vacancy is located to litigate the question of the existence of a vacancy, the applicant's application and all preference rights acquired to purchase or lease the alleged vacancy become null and void.

[Acts 1977, 65th Leg., p. 2432, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.193. Preferential Right of Good-Faith Claimant

(a) A good-faith claimant who ascertains that a vacancy exists or that a claimed vacancy may exist or who has been notified by the commissioner that a vacancy has been found to exist on land claimed by him shall have a preferential right to purchase or lease the vacancy at any time until 90 days after a decision of the commissioner declaring the existence of a vacancy.

(b) The good-faith claimant may purchase or lease the vacancy by submitting a written application to the commissioner for the purchase or lease of the vacancy and by furnishing to the commissioner satisfactory proof that he is a good-faith claimant.

(c) The good-faith claimant is entitled to purchase or lease the portion of the land that is vacant at the price set by the board subject to the royalty reservations provided in this subchapter which are effective on the date the application is filed.

[Acts 1977, 65th Leg., p. 2432, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.194. Term of Preferential Right

A good-faith claimant has a preferential right to purchase the land alleged or adjudicated to be vacant until 90 days after the final judicial determination of the existence of the vacancy.

[Acts 1977, 65th Leg., p. 2432, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.195. Effect of Good-Faith Claimant's Application

The application of a good-faith claimant may not be used or considered as an admission on his part that a vacancy exists.

[Acts 1977, 65th Leg., p. 2432, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.196. Procedure for Purchase or Lease by Good-Faith Claimant

(a) On the date a good-faith claimant's application is filed, if there is no valid and subsisting application previously filed by an applicant covering the alleged vacancy, the application of the good-faith claimant shall be filed and shall be accompanied by:

(1) a $1 filing fee;

(2) a written report of a surveyor licensed by the state or by the county surveyor of any county in which all or part of the alleged vacancy is located;

(3) field notes describing the land and the lines and corners surveyed;

(4) a plat showing the results of the survey; and

(5) any proof that will show to the satisfaction of the commissioner that the applicant is a good-faith claimant.

(b) The good-faith claimant may file his application to purchase or lease and within 120 days from the date of filing the application with the commissioner have a survey made of the alleged vacancy and file the report, field notes, and plat in the land office together with proof that he is a good-faith claimant.

(c) If it appears to the commissioner that the alleged vacancy is not in conflict with land previously titled, awarded, or sold by the state, the commissioner shall grant the application under the provisions of this subchapter. Before the application is granted, the commissioner may hold a hearing at which interested persons may appear.

[Acts 1977, 65th Leg., p. 2432, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.197. Failure to Exercise Preferential Right Within Certain Time

(a) If the good-faith claimant does not exercise his preferential right to purchase within 90 days after a decision of the commissioner under the provisions of this subchapter, the applicant shall be awarded an oil, gas, and mineral lease on not more than seven-eighths of the minerals.

(b) The consideration for the lease shall not be less than $1 an acre, and the lease shall be for a primary term of five years.

(c) The lease shall be subject to other consideration and terms required by the board and the preferential right of a good-faith claimant until 90 days after final judicial determination under Section 51.194 of this code.

[Acts 1977, 65th Leg., p. 2433, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.198. Repayment of Applicant's Expenses

Within 90 days after the commissioner declares the vacancy to exist, the good-faith claimant shall repay to the applicant the expenses incurred in determining the existence of a vacancy, except filing fees, as provided in this subchapter or the good-faith claimant will lose all preferential rights to purchase or lease the land.

[Acts 1977, 65th Leg., p. 2433, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.199. Judicial Determination of Good-Faith Claimant

If the commissioner fails to determine whether or not there is a good-faith claimant or if his decision is questioned by an applicant or by a person asserting to be a good-faith claimant, the issue shall be determined in any suit brought under this subchapter to determine the existence of the alleged vacancy.

[Acts 1977, 65th Leg., p. 2433, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.200. Rights of Holders of Title and Holders of Interests in Title of a Claimant

(a) If all owners holding title under the claimant or an interest in the title under which the claimant claims to be a good-faith claimant accept the provisions of this section and contribute their proportionate part of the royalty reserved to the state and the royalty awarded to the applicant, the purchase by the good-faith claimant under the preferential right inures distributively to their benefit.

(b) The royalty reservations shall be deducted distributively and proportionately from the mineral interest of each owner including mineral leases if the area is under a mineral lease.

(c) As a condition of this subchapter, the good-faith claimant receiving the patent or award or for whose benefit a patent or award is received shall recognize the proportionate interests of other owners who benefit by the award of the preferential right.

(d) The consideration for the purchase shall be determined by the board without considering the potential value of minerals or any improvements located on the vacancy but shall not be less than $1 an acre. The state retains the right to recover from the party or parties liable the market value when produced of all oil, gas, sulphur, or other minerals that may have been produced from the area before the effective date of the patent or award less an offset to the operator for the actual cost of development and production.

(e) No mineral lease executed by a good-faith claimant before filing the vacancy claim may give the lessee any interest in or to the vacancy.

(f) No title to land or to a mineral interest in land acquired from the state under a preferential right may be held to pass as after-acquired title because of any covenant of general warranty, description, or other provision contained in any conveyance executed before the date of award under the preferential right.

[Acts 1977, 65th Leg., p. 2433, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.201. Reservation of Minerals

(a) If a good-faith claimant purchases a vacancy located within five miles of a well producing oil, gas, or other minerals in commercial quantities, a free royalty of one-eighth of all oil, gas, sulphur, and other minerals shall be reserved to the state.

(b) If a vacancy that is not covered by Subsection (a) of this section is sold, a free royalty of one-sixteenth of all oil and gas production and one-eighth of all sulphur and other minerals shall be reserved to the state.

(c) If a good-faith claimant fails to exercise his preferential right to purchase a vacancy within 90

days after the commissioner determines the existence of the vacancy, the royalty reserved by the state shall be one-eighth of the oil and gas and one-sixth of the sulphur and other minerals.

(d) The state shall reserve as a free royalty at least one-eighth of all oil, gas, sulphur, and other minerals on vacancies that are leased by the state as determined by the board.

[Acts 1977, 65th Leg., p. 2434, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.202. Mineral Reservations Under Sale Made to Claimant After 90-Day Deadline

(a) If a good-faith claimant does not exercise his preferential right to purchase until after 90 days after the decision of the commissioner determining the existence of a vacancy, the sale made to the claimant shall be subject to a reservation to the state of a free royalty of one-eighth of all oil, gas, sulphur, and other minerals and subject to any lease made by the state to the applicant of not more than thirteen-sixteenths mineral interest as provided in this chapter.

(b) If the commissioner has previously executed a mineral lease on a larger portion of the minerals under the land, the lease shall be amended to cover only thirteen-sixteenths of the minerals so that it will conform to preferential rights given to good-faith claimants.

[Acts 1977, 65th Leg., p. 2434, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.203. Royalty for Applicant

If there is a valid subsisting application previously filed by an applicant on the date that the good-faith claimant files his application to purchase under a preferential right, and if the good-faith claimant exercises his preferential right to purchase within 90 days after the commissioner's decision under this subchapter, a free royalty of one-sixteenth of all oil, gas, sulphur, and other minerals that may be produced from the land shall be added to the free royalty interest reserved to the state and shall be awarded by the state to the applicant. The free royalty shall be deducted proportionately from the good-faith claimant's award.

[Acts 1977, 65th Leg., p. 2434, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.204. Lease of Vacancy for Mineral Development

(a) The instrument of sale for a vacancy shall provide that the purchaser is entitled to execute oil, gas, and mineral leases on the vacancy without the joinder or approval of the commissioner or the board.

(b) Bonus money and rentals paid under a lease executed under this section shall be paid to and shall be the property of the purchaser of the land.

(c) Any lease executed under the provisions of this section shall reserve to the state the free royalty provided in Section 51.201 of this code.

[Acts 1977, 65th Leg., p. 2435, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.205. Appeal

(a) A person who is aggrieved by any action taken by the commissioner under the provisions of this subchapter or with reference to any application to purchase or lease a vacancy may institute suit in the district court of any county in which part of the land is located to try the issues of boundary, title, ownership of any alleged vacancy involved, and preferential rights of the person.

(b) Within 30 days after the suit is filed, the plaintiff shall have a certified copy of the original petition served on the attorney general and the commissioner by the sheriff or a constable of Travis County and shall have the officer's return filed with the papers in the suit.

(c) Whether the attorney general answers or intervenes in the suit or institutes a suit, the venue of all suits following the filing of the application shall be in the county in which the land or part of the land is located.

(d) If the litigation is prosecuted to a final judgment, the judgment is binding on the state.

(e) The attorney general must intervene on behalf of the state in suits brought under this section.

[Acts 1977, 65th Leg., p. 2435, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.206. Effect of Land Office Records on Certain Vacancies

In any case involving the boundary, title, or possession of surveys partly or wholly included in any incorporated city, town, or village validated under Section 1, Chapter 254, General Laws, Acts of the 42nd Legislature, Regular Session, 1931,[1] where there is sought to be established a vacancy between surveys, the field notes and official maps in use in the land office at the date of the incorporation are conclusive concerning the nonexistence of the vacancy. If no vacancy appears from the field notes or maps, it is conclusively presumed that no vacancy exists.

[Added by Acts 1979, 66th Leg., p. 2006, ch. 785, § 8, eff. June 13, 1979.]

[1] Civil Statutes, art. 5305a (repealed).

[Sections 51.207 to 51.240 reserved for expansion]

SUBCHAPTER F. PATENTS

§ 51.241. Issuance of Patent

The commissioner shall issue a patent when the records of his office reflect that full payment for

land has been made where required and fees that are due on the land have been paid to the land office and have not been withdrawn, including the fee for recording the patent in the county or counties in which the land is located.

[Acts 1977, 65th Leg., p. 2435, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.242. Patent Fees

When a person applies for a patent, he shall pay to the land office in addition to all other required payments $1 for each county in which all or a part of the land is located and shall give the name and address of the owner or agent.

[Acts 1977, 65th Leg., p. 2435, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.243. Requisites of a Patent

(a) Each patent for land from the state shall be issued in the name and by authority of the state under the seal of the state and the land office and shall be signed by the governor and countersigned by the commissioner.

(b) Before the patent is delivered to the person who is entitled to it, it shall be registered in the land office patent book.

[Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.244. Delivery of Patent

(a) When a patent is ready for delivery, the commissioner shall send it, together with the check for payment of the fee required by Section 51.242 of this code and the name and address of the owner or his agent, by registered mail to the clerk of the proper county.

(b) On receiving the patent, the clerk shall record it and shall send the patent, together with the name and address of the owner or his agent and the remaining recording fees, by registered mail to the clerk of another proper county until the patent has been recorded in each county in which all or part of the land is located.

(c) After the patent is recorded in all the proper counties, it shall be sent by registered mail to the proper party.

[Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.245. Deceased Patentee

A patent issued in the name of a person who is deceased at the time the patent is issued conveys and secures valid title to the heirs or assignee of the deceased person.

[Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.246. Acquisition of Deed of Acquittance to Excess Acreage

(a) If the area of a tract of land that is titled or patented exceeds the quantity provided in the title or patent and if under the existing law the title to all or a part of the tract may be affected by the existence of the excess acreage, the person who owns the survey or portion of the survey or has an interest in it may pay for the total excess acreage in the survey or the total excess in a given tract out of the patented or titled survey at the price fixed by the board.

(b) Any person who owns an interest in a titled or patented survey or any portion of a titled or patented survey in which excess acreage is located and who desires to pay for the excess acreage shall file with the commissioner a request for an appraisement of the land with corrected field notes in the form provided by law, together with a sworn statement of facts relating to his right to purchase and other evidence of his right to purchase which may be required by the commissioner. The corrected field notes shall describe the patented tract, and if purchasing excess in a portion of a tract, shall include a description of the portion in which the applicant is making application to purchase excess.

(c) If it appears that excess acreage actually exists and that the applicant is entitled to obtain it under the law, the commissioner shall execute a deed of acquittance covering the land in the name of the original patentee or his assignees with a mineral reservation or with no mineral reservation accordingly as may have been the case when the survey was titled or patented.

(d) The transfer shall inure distributively to the benefit of the lawful owners of the land in proportion to their holdings.

[Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.247. Patents for Land That Cannot be Patented by Other Methods

(a) Any headright survey, homestead donation, preemption survey, scrip survey, or other survey awarded or sold before August 20, 1931, which has been held and claimed in good faith by a person for 10 years before the date of application for a patent but which cannot be patented under existing law may be patented on payment to the commissioner of the purchase price as set by the board.

(b) The patent shall be issued to the owner of record as shown in the records of the land office and shall inure distributively to the legal owners of the land.

(c) If a tract of school land has been occupied by mistake as part of another tract, the occupant shall have a preference right for a period of six months after discovery of the mistake to purchase the land

at the same price paid or contracted to be paid for the land actually conveyed to him.
[Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.248. Doubtful Claim

If it appears to the commissioner from the records of his office or from information given to him under oath that there is an illegality in a claim, the commissioner, if he considers it necessary, shall refer the matter to the attorney general, and the attorney general's written decision is sufficient authority for the commissioner to issue or withhold the patent.
[Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.249. Conflicting Surveys

If conflicts exist between surveys, the commissioner shall issue patents to the portions of the surveys that are free from conflict.
[Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.250. Conflicting Title

(a) If a patent to land is issued by mistake on any valid claim for land and is afterwards found to be in conflict with an older title, the owner of the patent or any part of the land embraced by the patent which is in conflict may return the patent to the commissioner for cancellation. If the owner of the land that is the subject of the conflict cannot obtain the patent, he shall return to the commissioner legal evidence of his title to the patent or part of the patent.

(b) The person returning the patent or filing the evidence also shall make and file with the commissioner an affidavit stating that he is still the owner of the land and has not sold or transferred it.

(c) If the land office records or a duly certified copy of a judgment of a court of competent jurisdiction that has adjudicated the title reflects that a conflict exists, the commissioner may cancel the patent or the part of a patent that appears to belong to the party making the application.
[Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.251. Partial Conflict of Title

If there is only a partial conflict of title under a patent, the commissioner in the manner provided in Section 51.250 of this code may cancel any patent presented to him and issue a patent to the applicant for the portion of the land that is covered by his original patent but that is not in conflict with the older title if the area can be determined from the field notes.
[Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.252. Refund of Purchase Money

(a) If a patent cannot be issued for land because of a conflict, erroneous survey, or illegal sale or if a patent is issued for land and is later canceled, the comptroller, on proper proof, may issue his warrant to the proper parties for amounts paid in good faith to the State Treasury for taxes, lease payments, or purchase payments on this land.

(b) Proof of these good-faith payments may be shown by the certificate of the commissioner if the records of the land office show that a patent cannot be issued because of conflict, erroneous survey, or illegal sale or that a patent has been canceled.

(c) The provisions of this section do not apply to surveys on which the errors may be corrected.
[Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 51.253 to 51.290 reserved for expansion]

SUBCHAPTER G. EASEMENTS

§ 51.291. Grants of Easements

The commissioner may execute grants of easements for rights-of-way across unsold public school land, the portion of the Gulf of Mexico within the jurisdiction of the state, and all islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits for telephone, telegraph, electric transmission, and powerlines, for oil pipelines, including pipelines connecting the onshore storage facilities with the offshore facilities of a deepwater port, as defined by the federal Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), gas pipelines, sulphur pipelines, and other electric lines and pipelines of any nature, and for irrigation canals, laterals, and water pipelines.
[Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.292. Easements and Leases for Certain Facilities

The commissioner may execute grants of easements or leases for electric substations, pumping stations, loading racks, and tank farms to be located on state land other than land owned by The University of Texas System.
[Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.293. Easements on University Land

(a) The Board of Regents of The University of Texas System may continue to execute all right-of-way easements under authority already granted across land that belongs to the state but is dedicated to the support and maintenance of The University of Texas System for telephone, telegraph, electric transmission, and powerlines, for oil pipelines, gas

pipelines, sulphur pipelines, and other electric lines and pipelines of any nature, and for irrigation canals, laterals, and water pipelines.

(b) The board of regents may continue to execute under authority already granted grants of easements or leases for the erection and maintenance of electric substations, pumping stations, loading racks, and tank farms on university land.

[Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.294. Forms for Grant

Easements granted under Sections 51.291 through 51.293 of this code shall be granted on forms approved by the attorney general.

[Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.295. Conditions for Easement

Telephone, telegraph, electric transmission, powerline, and pipeline right-of-way easements and easements or rights-of-way for irrigation canals, laterals, and water pipelines shall be executed on terms to be determined by the commissioner or the board of regents, but no easement for an oil, gas, or sulphur pipeline or a telephone, telegraph, electric transmission, or powerline easement may be granted that does not provide for the annual privilege fee of not less than two and one-half cents a lineal rod a year.

[Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.296. Term of Easements

(a) Except as provided in Subsection (b) of this section, no grant of easement or lease enumerated under Sections 51.291 through 51.293 of this code may be granted for a term that is longer than 10 years, but an easement may be renewed by the officials responsible for execution of grants of easement and leases under this subchapter.

(b) A right-of-way easement for a pipeline connecting onshore storage facilities with the offshore facilities of a deepwater port, as defined by the Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), may be granted for a term coincident with the term of the license issued by the secretary of transportation pursuant to the Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), and the easement may be renewed for additional terms of up to 10 years coincident with the term for each renewal of the license.

[Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.297. Recording Easements

(a) Each easement granted under Sections 51.291 through 51.293 of this code shall be recorded in the county clerk's office of the county in which the land is located, and the recording fee shall be paid by the person who obtains the easement.

(b) The person who obtains the easement shall furnish to the commissioner a certificate showing that the easement has been recorded.

[Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.298. Annual Privilege Fee

(a) A person who occupies or uses any unsold public school land, any islands, saltwater lakes, bays, inlets, marshes, or reefs owned by the state within tidewater limits, any portion of the Gulf of Mexico within the jurisdiction of the state, or any unsold public land dedicated to The University of Texas System as a right-of-way for a telephone, telegraph, electric transmission, or powerline, for an oil pipeline, gas pipeline, or sulphur pipeline, or for an irrigation canal, lateral, or water pipeline shall pay annually in advance to the commissioner an amount equal to two and one-half cents a lineal rod a year for each rod of telephone, telegraph, electric transmission, or powerline, or each rod of oil or gas pipeline.

(b) The annual privilege fee shall be paid by those persons who have not previously paid this fee on all oil pipelines, gas pipelines, and telephone, telegraph, electric transmission, and powerlines that are in existence and located on public land mentioned in Subsection (a) of this section.

(c) The fee shall be paid annually unless the grant of the easement makes some other provision.

(d) A higher annual privilege fee may be set by contract between the authorized officials and the grantee of the easement.

[Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.299. Fees for Certain Facilities

The rent to be charged for an easement or lease for an electric substation site, pumping station, loading rack, or tank farm shall be an amount agreed to between the lessee and the board of regents with respect to university land and the commissioner with respect to other state land.

[Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.300. Disposition of Income

Income received by the commissioner under this subchapter from public school land shall be credited to the available school fund, and income received from university land shall be credited to the available university fund. Other income received by the commissioner on other land under this subchapter shall be credited to the General Revenue Fund.

[Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.301. Interest on Past-Due Payments

(a) Payments under this subchapter that are past due shall bear interest at a rate of 10 percent a year.

(b) If no date for payment is provided in the contract or if no written contract has been executed, the unpaid annual fees shall bear interest at a rate of 10 percent calculated from January 1 following the year for which the annual privilege fee was due.

[Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.302. Prohibition and Penalty

(a) No person may construct any of the facilities listed in Sections 51.291 through 51.293 of this code on or across any section or part of a section of land of the character enumerated in Sections 51.291 through 51.293 of this code and owned by the state, nor may any person who has not acquired a proper easement as provided in this subchapter and who owns or possesses any of the facilities listed in Sections 51.291 through 51.293 of this code that are now located on or across any section or part of a section of land of the character enumerated in Sections 51.291 through 51.293 of this code and owned by the state continue in possession of the land unless he obtains from the commissioner or the board of regents a grant of a right-of-way easement or other easement for the land on which the facility is to be constructed or is located.

(b) A person violating the provisions of Subsection (a) of this section shall be liable to a penalty of $100 a day for each day that a violation occurs. The penalty shall be recovered by the attorney general.

[Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.303. Venue

The venue for suits by the state under Sections 51.291 through 51.302 of this code or for violation of provisions of Sections 51.291 through 51.302 of this code shall be in Travis County.

[Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.304. Easements for Soil Conservation and Flood Prevention

The commissioner may execute grants of easements on unsold public school land to conservation and reclamation districts for soil conservation and flood prevention projects authorized by the Watershed Protection and Flood Prevention Act (16 U.S.C. Section 1001 et seq.), as amended.

[Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.305. Terms and Form of Grant

The grant of the easement may contain any provisions that the commissioner considers necessary to protect the interests of the state and may be perpetual or for a term of years.

[Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.306. Consideration

The consideration paid to the state for the grant of the easement under Section 51.304 of this code shall be determined by the commissioner to compensate the state for any damage to the land or to the use of the land caused by the easement, but if the commissioner determines that the benefits resulting from the grant of the easement are more than the damage, the commissioner may waive the consideration for the easement.

[Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.307. Reservation of Mineral Rights

Mineral rights together with the right to explore for, produce, and market the minerals in land granted as an easement under Section 51.304 of this code shall be reserved to the state and shall be subject to lease for minerals in the same manner as other unsold public school land.

[Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 51.308 to 51.340 reserved for expansion]

SUBCHAPTER H. SALE OF TIMBER, GAYULE, AND LECHUGUILLA

§ 51.341. Definition

In this subchapter, "timbered land" means land that is valued chiefly for the timber located on it.

[Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.342. Sale of Timber

Timber located on public land shall be sold in full tracts for cash at its fair market value.

[Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.343. Rules

Subject to the provisions of this chapter, the commissioner shall adopt rules for the sale of timber which are considered necessary and judicious.

[Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.344. Application to Purchase Timber

An application to purchase timber shall be made in the manner provided for filing an application to purchase land.

[Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.345. Ingress and Egress From Land

The purchaser of timber without the land is entitled to ingress and egress on the land for a period of five years after the date of the award to remove or protect the timber on the land.

[Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.346. Reversion of Title to Timber

After the five-year period provided in Section 51.345 of this code, title to the timber reverts to the fund to which the land belongs and is subject to sale by the state.

[Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.347. Sale of Gayule and Lechuguilla

The board may sell the gayule or lechuguilla growing or found on the public school land, exclusive of timber.

[Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.348. Conditions of Sale

The sale of gayule and lechuguilla may be on any terms and conditions and with any limitations that the board considers most advantageous and in the best interest in protecting the public school fund and the state.

[Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.349. Contracts

The board may enter into any contract including an executory contract of sale which they consider wise for the purpose of having the commercial properties and value of gayule and lechuguilla determined, but it may not spend any public money or incur any liability on behalf of the state through these contracts.

[Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.350. Replacement Value for Unlawful Use

(a) If a person without authority or right cuts or removes any mineral, gayule, or lechuguilla from land that belongs to the permanent school fund, a judgment shall be rendered against the person on behalf of the state in an amount that is equal to the value of the substance that was cut or removed.

(b) The judgment shall be collected in the same manner as a collection is made under execution.

(c) After the judgment is collected, the money shall be paid to the State Treasurer, who shall credit the money to the public school fund.

[Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 52. OIL AND GAS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 52.001. Definitions

In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

(3) "Board" means the school land board.

[Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 52.002 to 52.010 reserved for expansion]

SUBCHAPTER B. LEASE OF PUBLIC SCHOOL AND GULF LAND

§ 52.011. Area Subject to Lease

Under the provisions of this subchapter, the board may lease to any person for the production of oil and natural gas:

(1) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits;

(2) the portion of the Gulf of Mexico within the jurisdiction of the state; and

(3) all unsold surveyed and unsurveyed public school land.

[Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.012. Conditions for Lease

Oil and gas shall only be leased together and shall be leased separately from other minerals.

[Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.013. Determination of Lease Price and Delay Rentals

The board shall determine the price at which areas under this subchapter shall be leased and the amount of delay rentals that shall be charged.

[Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.014. Date for Lease and Notice

(a) The date for lease of areas covered by this subchapter shall be set and notice of the date shall be given in the manner provided in Sections 32.105 and 32.107 of this code.

(b) Notice of areas being offered for lease shall be advertised for a period of 30 days before the lease date.

[Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.015. Application for Lease

(a) Each application for a separate area and the first payment shall be delivered to the land office on or before the day and hour on which the area is subject to lease.

(b) The application and payment shall be delivered in a sealed envelope endorsed with "application to lease oil and gas" and the date on which the area is subject to lease.

(c) Any application received up to the hour in which the applications are to be opened shall be considered to be properly delivered regardless of whether it is opened or sealed or endorsed or unendorsed.

[Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.016. Special Fee

Each bidder on a lease under this subchapter shall remit by separate check a special sale fee in the amount and in the manner provided in Section 34.-061 of this code.

[Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.017. Keeping and Opening Bids

The envelopes shall be kept securely and unopened by the commissioner or his chief clerk until the day on which the applications are to be opened, and at that time, the board shall open the envelopes in the presence of any persons who desire to be present.

[Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.018. Void Application

An application that includes two or more areas or that is for a price that is less than the fixed royalty and price per acre is void.

[Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.019. Tie Bids

(a) If the highest bid for an area is made by more than one applicant, all applications shall be rejected and the board shall set a date for lease of the area that shall not be later than the 15th day of the following month.

(b) The area will be subject to lease in the same manner as it was originally subject to lease.

(c) No bids for a lease shall be considered if the price is less than the highest bid offered in the original application.

[Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.020. Return of Payments on Rejected Applications

The State Treasurer shall return all amounts paid on rejected applications.

[Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.021. Term of Lease

A lease granted under this subchapter shall be for a primary term of five years and for as long after that time as oil or gas is produced from the leased area.

[Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.022. Royalty and Delay Rentals

(a) In addition to the cash amount bid for a lease, the area included in the lease shall be leased for not less than one-eighth of the gross production of oil produced and saved, or its value, and not less than one-eighth of the gross production of gas produced and sold off the area or its value, plus an amount determined by the board, until production is secured.

(b) If production is secured in commercial quantities and the payment of royalty begins and continues to be paid, the lessee is exempt from further delay rental payments on the acreage.

(c) If production ceases and royalty is not paid, the lessee shall pay at the end of the lease year in which the royalty ceased to be paid and annually after that time in advance, an amount determined by the board for as long as the lessee desires to maintain the rights acquired under the lease, but not for more than five years from the date of the lease.

[Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.023. Lease Provisions for Drilling and Reworking

Each lease shall provide that:

(1) if the production of oil or gas on premises leased under this subchapter ceases for any reason at or after the expiration of the primary term, the lease will not terminate if the lessee commences additional drilling or reworking operations within 60 days after the cessation of production;

(2) the lease shall remain in effect as long as the drilling and reworking operations continue in good faith and in a workmanlike manner, without interruptions, totaling more than 60 days during any one such operation; and

(3) if the drilling or reworking operations result in the production of oil or gas, the lease shall remain in effect as long as oil or gas is produced from the premises in paying quantities or payment of shut-in gas royalties or compensatory royalties is made as provided by law.

[Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2005, ch. 785, § 6, eff. June 13, 1979.]

§ 52.024. Lease Provisions for Shut-In Gas Royalty and Compensatory Royalty

Each lease shall provide that:

(1) if at the expiration of the primary term or at any time after the expiration of the primary term a well or wells capable of producing gas in paying quantities are located on the leased premises but gas is not being produced for lack of a suitable market and the lease is not being maintained in force and effect, before the expiration of the primary term or if the primary term has expired, within 60 days after the lessee ceases to produce gas from the well, the lessee may pay as a shut-in gas royalty an amount equal to double the annual rental provided in the lease but not less than $1,200 a year for each well capable of producing gas in paying quantities;

(2) if the shut-in gas royalty is paid, the lease shall be considered to be a producing lease and the payment shall extend the term of the lease for a period of one year from the end of the primary term or from the first day of the month next succeeding the month in which production ceased and after that if no suitable market for the gas exists, the lessee may extend the lease for four additional and successive periods of one year by paying the same amount each year on or before the expiration of the extended term;

(3) if, during the period the lease is kept in effect by payment of the shut-in gas royalty, gas is sold and delivered in paying quantities from a well located within 1,000 feet of the leased premises and completed in the same producing reservoir or in any case in which drainage is occurring, the right to continue to extend the lease by paying the shut-in gas royalty shall cease, but the lease shall remain effective for the remainder of the year for which the royalty has been paid and for an additional period of not more than five years from the expiration of the primary term by the lessee paying compensatory royalty at the royalty rate provided in the lease of the value at the well of production from the well which is causing the drainage or which is completed in the same producing reservoir and within 1,000 feet of the leased premises;

(4) the compensatory royalty is to be paid monthly to the commissioner beginning on or before the last day of the month next succeeding the month in which the gas is sold and delivered from the well located within 1,000 feet of or draining the leased premises and completed in the same reservoir;

(5) if the compensatory royalty paid in any 12-month period is in an amount less than the annual shut-in gas royalty, the lessee shall pay an amount equal to the difference within 30 days from the end of the 12-month period; and

(6) none of these provisions will relieve the lessee of the obligation of reasonable development nor the obligation to drill offset wells as provided in Section 52.034 of this code.

[Acts 1977, 65th Leg., p. 2447, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.025. Disposition of Lease Payments

The State Treasurer shall credit the permanent school fund with amounts received from unsurveyed school land and with two-thirds of the amount received from other areas and shall credit the General Revenue Fund with the remaining one-third of the payments for the other areas.

[Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.026. Lease Transfer

(a) A lessee of an area under this subchapter may transfer his lease at any time.

(b) The transfer of the lease shall be recorded in any county in which all or part of the leased area is located.

(c) Within 90 days after the execution of the transfer, the recorded transfer or a certified copy of the recorded transfer accompanied by a $5 filing fee shall be filed in the land office.

(d) The transferee shall succeed to all rights and be subject to all obligations and penalties of the original lessee.

[Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.027. Lease Relinquishment

(a) A lessee may relinquish his lease to the state at any time by recording the relinquishment in each county in which all or part of the leased area is located.

(b) Within 90 days after the execution of the relinquishment, the recorded relinquishment or a certified copy of the recorded relinquishment together with a $5 filing fee shall be filed in the land office.

(c) After the lessee relinquishes the area, he is relieved of any further obligations to the state, but the relinquishment does not release the lessee from any obligations or liabilities previously accrued in favor of the state.

[Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.028. Suspension of Oil and Gas Leases

(a) If an oil and gas lease issued by the commissioner is involved in litigation relating to its validity or to the authority of the commissioner to lease the

land, the primary term of the lease shall be suspended and all obligations imposed by the lease set aside during the period of the litigation.

(b) If the litigation is instituted at least six months before the expiration of the primary term, after final judgment is rendered, the primary term provided in the lease shall begin to run again and shall continue to run for the remainder of the period specified in the lease and all obligations and duties imposed by the lease shall be operative.

(c) The lessee shall pay all annual delay rentals and any royalties that accrue during the period of litigation in the same manner as they are paid during the period of an extended primary term. The delay rentals paid during the period of litigation shall be held and returned to the lessee if the state is unsuccessful in the litigation.

[Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.029. Forfeiture of Rights

The provisions of Subchapter F of this chapter governing the forfeiture and reinstatement of rights apply to forfeiture and reinstatement of leases issued under this subchapter, and on forfeiture of a lease, the area covered by the lease may be leased, after advertisement, by any other person.

[Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.030. Refund of Lease Money in Certain Situations

(a) If a lessee is prevented from exploring, developing, drilling, or producing oil and gas from the tract leased to him as a result of the action of any agency of the United States or of this state during the entire primary term of the lease, he is entitled to a refund of all money paid for bonus, delay rentals, and other fees under the lease as provided by legislative appropriation.

(b) A refund shall be made only on verification of the claim by the board or on the judgment of a court of competent jurisdiction.

(c) A lessee who has a claim under this section is given permission to bring suit against the state within two years after the expiration of the lease in any court of competent jurisdiction to recover the money paid.

[Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.0301. Suspension of Terms of Lease in Certain Situations

(a) If the owner of a valid oil and gas lease granted by the state is denied access to or is denied a permit to drill on or produce from the leased premises by any duly constituted authority of the United States after a bona fide attempt has been made by the owner to obtain access or a permit to drill on or produce from the leased premises, the owner may file with the board an application describing and giving the date of the action that deprives him of access to or the right to drill on or produce from the premises.

(b) If the board is satisfied that the facts included in the application are true, the board may enter an order in its minutes suspending the running of both the primary and the principal term of the lease or suspending any condition, obligation, or duty under the lease, from the date of the cause for the suspension through the continued existence of the cause for the suspension, so long as the lessee continues to make the annual rental payments that are stipulated in the lease on each anniversary date of the lease during the period of suspension.

(c) Until 90 days after the board enters an order in its minutes stating that the cause for suspension has ceased to exist, the oil and gas lease shall remain in status quo, and all obligations and conditions existing under the lease or any of those obligations or conditions that are suspended by the board are inoperative and of no force and effect except for the obligation to pay delay rentals.

(d) Ninety days after the board enters its order stating the cause for suspension has ceased to exist, the oil and gas lease shall again become operative if the rental payments have been made during the period of suspension, and all suspended obligations and conditions, including the payment of rentals, shall again attach and be in force. In the case of the suspension of the primary and principal terms of the lease, the lease shall continue in force for a period equivalent to the unexpired term of the lease on the date the cause of suspension began.

(e) The commissioner shall give notice immediately to the lessee of the entry of an order stating that the cause of suspension has ceased to exist, provided annual rental payments have been made.

(f) This section may not be construed as abridging any rights or privileges conveyed under Chapter 287, Acts of the 47th Legislature, Regular Session, 1941 (Article 5366a, Vernon's Texas Civil Statutes).

[Added by Acts 1979, 66th Leg., p. 2006, ch. 785, § 7, eff. June 13, 1979.]

§ 52.031. Extension of Lease by Commissioner

(a) At the expiration of the primary term of a lease made under the provisions of this subchapter, if production of oil or gas has not been obtained on the leased premises but drilling operations are being conducted in good faith and in good and workmanlike manner, the lessee may file in the land office on or before the expiration of the primary term a written application to the commissioner for a 30-day extension of the lease accompanied by $3,000 for 640 acres or less or $6,000 for more than 640 acres.

(b) The commissioner shall extend the lease in writing for a 30-day period from the expiration of the primary term and as long after that time as oil or gas is produced in paying quantities.

(c) As long as drilling operations are being conducted, the lessee may submit an application and payment during any 30-day extended period for an additional extension of 30 days. On receiving the application and payment, the commissioner shall again extend the lease in writing so that it will remain effective for an additional 30-day period and as long after that time as oil or gas is produced in paying quantities.

(d) No lease may be extended under this section for more than 390 days after the expiration of the primary term unless production is obtained in paying quantities.

[Acts 1977, 65th Leg., p. 2449, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.032. Regulation of Development and Operations

(a) Development and operations on areas covered by this subchapter shall be done insofar as practicable in a manner that will prevent the pollution of water, destruction of fish, oysters, and other marine life, and obstruction of navigation.

(b) The commissioner shall adopt and enforce rules that may be necessary for the purposes stated in Subsection (a) of this section.

(c) Any rules and changes of rules adopted under this section shall be submitted to the attorney general for his written approval before the rules or their changes become effective.

[Acts 1977, 65th Leg., p. 2449, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.033. Access to Land

(a) If it is necessary for the lessee to enter the enclosed land of another person for the purpose of ingress and egress to and from the area leased from the state and if the lessee and the owner cannot agree on the place or the conditions of entry and exit, the lessee or his agent may petition the commissioners court of the county in which all or part of the enclosure is located to open the places of ingress and egress that may be necessary.

(b) On filing the petition, the commissioners court shall delineate the roads necessary for the stated purpose in the manner provided for delineating third-class public roads.

[Acts 1977, 65th Leg., p. 2449, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.034. Offset Wells

(a) If oil or gas is produced in commercial quantities from a well located on a privately owned area and the well is located within 1,000 feet of an area leased under this subchapter, the lessee of the state area shall begin in good faith and prosecute diligently the drilling of an offset well or wells on the area leased from the state within 60 days after the initial production on the privately owned area.

(b) An offset well shall be drilled to a depth and the means shall be employed which may be necessary to prevent undue drainage of oil or gas from beneath the state area.

(c) Within 30 days after an offset well has been completed or abandoned, a log of each well shall be filed in the land office.

[Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 52.035 to 52.070 reserved for expansion]

SUBCHAPTER C. DEVELOPMENT OF RIVERBEDS AND CHANNELS

§ 52.071. Authority Over Riverbeds and Channels

The riverbeds and channels belonging to the state are subject to development by the state and to lease or contract for recovery of oil and gas.

[Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.072. State Policy

(a) With regard to leases and contracts for the development of riverbeds and channels, it is the policy of the state that activities of the state and all lessees and contracting parties or their heirs, successors, or assigns under a lease or contract shall comply with laws of the state and rules and orders of any state agency that are applicable to development of oil and gas bearing land in the state by persons other than the state.

(b) Each lease and contract issued under the provisions of this subchapter is subject to the provisions of Subsection (a) of this section.

[Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.073. Area Subject to Lease

Riverbeds and channels that belong to the state may be leased to any person by the board under the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.074. Size of Tract

Subject to the conditions in this subchapter, riverbeds and channels shall be leased in tracts of the size determined by the board.

[Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.075. Board Meetings

(a) The board may transact business only at a meeting attended by two or more of its members.

(b) The member calling the meeting shall give written notice of the meeting to the other members.

[Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.076. Duty to Advertise

(a) The board shall advertise for proposals:

(1) to lease riverbeds and channels for oil and gas development;

(2) to drill riverbeds and channels on consideration involving compensation with oil and gas or money so that the state will receive a portion of the oil and gas as it is produced or advanced royalties paid in money; and

(3) to purchase oil and gas in place or recoverable without requiring mineral development.

(b) The board shall advertise the proposals as provided in Section 32.107 of this code.

[Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.077. Bids

(a) The board may receive bids on all proposals listed in Section 52.076 of this code.

(b) The board may accept any bid it considers to be in the best interest of the state, or it may reject any and all bids.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.078. Special Fee

Each bidder on a lease under this subchapter shall remit by separate check a special sale fee in the amount and in the manner provided in Section 34.-061 of this code.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.079. Contract to Drill Wells

(a) If the board considers it advisable to reject all bids, it may give additional notice for bids or it may enter into a contract for drilling of the wells.

(b) A well that is drilled by order of the board shall be done under a contract let on competitive bids to the lowest and best bidder for a completed well.

(c) A contractor drilling under a contract with the board shall carry workmen's compensation insurance for all employees engaged in the drilling operation.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.080. Forms for Lease and Contract

Leases and contracts for the development of riverbeds and channels shall be executed on forms approved by the attorney general and the board.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.081. Procedure for Orders and Contracts

Orders and contracts made or entered into by the board shall be authorized at a meeting of the board and shall be signed by two members of the board. The orders and contracts shall be approved as to their legality by the attorney general.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.082. Term of Lease

A lease granted under this subchapter shall be for a primary term of five years and for as long after that time as oil or gas is produced from the leased area.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.083. Conditions of Lease

Oil and gas shall only be leased together and separately from other minerals.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.084. Special Lease Provisions

Each lease shall include the provisions required by Sections 52.023 and 52.024 of this code.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.085. Prevention of Pollution

(a) Each lease and contract shall require the lessee or contracting party or his successors or assigns to use the highest degree of care and all proper safeguards to prevent pollution of streams.

(b) If the lessee or contracting party fails to meet the requirements in Subsection (a) of this section, the state is entitled to take charge of the property immediately and to cancel the lease.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.086. Development of Riverbeds and Channels More Than Two Miles From a Well

(a) The board may not lease or contract for the development or drilling of any riverbed or channel located at the time the lease or contract is to be executed more than two miles from a well producing or capable of producing oil or gas in paying quantities unless the owner of the leasehold or mineral interest in the oil or gas estate in land located adjacent to or within two miles of the riverbed or

channel desires to drill a test well in, under, or within two miles of the riverbed or channel.

(b) The owner of the interest desiring to drill the test well shall apply to the board for an oil and gas lease on the available portions of the riverbed or channel he desires to lease, indicating the site in or within two miles of the riverbed or channel where he desires to drill the well.

(c) Within 60 days after the date the application is received, the board shall lease the riverbed or channel to the highest bidder for oil and gas development.

(d) The leased area shall be limited to the portion of the riverbed or channel which is within two miles of a point therein at the end of a line drawn from the designated well site perpendicular to the general course of the riverbed or channel.

(e) The lease shall expire at the end of two years from the date of its delivery to the highest bidder unless oil or gas is produced in paying quantities from the portion of the riverbed or channel covered by the lease or from adjacent or nearby land with which the leased land or a portion of it has been lawfully pooled or unitized so that royalties payable under the lease are accruing to the state on that date.

[Acts 1977, 65th Leg., p. 2452, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.087. Determination of Lease Price and Delay Rentals

The board shall determine the price at which riverbeds and channels shall be leased and the amount of delay rentals that shall be charged.

[Acts 1977, 65th Leg., p. 2452, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.088. Royalty and Delay Rentals

(a) In addition to the cash amount bid for a lease, the board shall lease the area for not less than one-eighth of the gross production of oil produced and saved or its value and not less than one-eighth of the gross production of gas produced and sold off the area or its value plus an amount determined by the board until production is secured.

(b) If production is secured in commercial quantities and the payment of royalty begins and continues to be paid, the lessee is exempt from further delay rental payments on the acreage.

(c) If production ceases and royalty is not paid, the lessee shall pay at the end of the lease year in which the royalty ceased to be paid and annually after that time in advance, in an amount determined by the board as long as the lessee desires to maintain the rights acquired under the lease, but not for more than five years from the date of the lease.

[Acts 1977, 65th Leg., p. 2452, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.089. Mineral Development Fund

(a) Money collected by the board under the provisions of this subchapter shall be deposited in the State Treasury and shall be credited to the mineral development fund.

(b) The board may make disbursements from the mineral development fund to carry out the provisions of this subchapter and the necessary amounts for disbursement are appropriated from the fund.

(c) Any portion of the fund not needed for the purposes stated in Subsection (b) of this section shall be paid from time to time to the General Revenue Fund, but any portion of the mineral development fund that belongs to the public school fund shall be paid to that fund.

[Acts 1977, 65th Leg., p. 2452, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.090. Extension of Lease

A lease may be extended in the manner provided in Section 52.031 of this code.

[Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.091. Refund of Lease Money in Certain Situations

A lessee under this subchapter is entitled to a refund of all money paid for bonus, delay rentals, and other fees for the reasons and in the manner provided in Section 52.030 of this code.

[Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.092. Power of Eminent Domain

The board or any person including a leaseholder or assignee, who has a contract with the board for the development of oil and gas resources in riverbeds and channels may exercise the power of eminent domain to condemn land as provided in the general laws of this state for the purposes stated in Section 52.093 of this code.

[Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.093. Eminent Domain Purposes

The board and any person, including a leaseholder or assignee, who has a contract with the board for the development of oil and gas resources in riverbeds and channels may exercise the power of eminent domain for the following purposes:

(1) to secure additional adjoining land that may be necessary to erect power machinery and to construct storage tanks and slush pits for the operation of the river or channel development and to prevent or lessen the dangers of pollution involved in the drilling of any well in the riverbed or channel; and

(2) to secure a right-of-way to and from any well that is drilled in the riverbed or channel so that the board or any of the leaseholders or contracting parties may go to and from the well and may transport any materials necessary to develop the riverbed or channel and to transport oil and gas away from the well.

[Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.094. Drilling Offset Well on Condemned Land

(a) If the landowner or other interested party and the board or the lessee of the riverbed or channel cannot agree on the amount of damages, if any, and it is necessary to commence condemnation proceedings and if it is necessary for the landowner or other interested party to drill an offset well within the area to be condemned, the mineral rights of the condemned party are superior to the surface rights of the condemning party.

(b) If there is any conflict surrounding the drilling of an offset well under a permit from the Railroad Commission of Texas, the condemning party is required to move any interference or hindrance or to go around any offset well, and if he fails or refuses to immediately move the interference or hindrance on demand, the owner of the mineral rights is entitled to do so immediately without liability.

[Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.095. Rights of Parties to Condemnation

It is the intent of this subchapter that the mineral rights of the owner are superior to the surface rights of the condemning party.

[Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.096. Exclusion From Damages in Condemnation

In determining the damages resulting from condemnation, the commissioners or any other tribunal shall not consider the value of oil or gas located beneath the rights-of-way of the condemned property.

[Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.097. Injunction

(a) No injunction may be granted against the board, its agents, or persons with whom it has contracted, to restrain the board from enforcing its orders or contracts or from carrying out any development that has begun or was contemplated by the board until notice is given to the board and its agents or the contracting parties and a hearing is held.

(b) Before an injunction or restraining order is issued or becomes effective, the court shall require the complaining party to execute a bond payable to the governor with good and sufficient sureties authorized to do business in this state in an amount determined by the court to be sufficient to protect the state from loss from drainage of the riverbed or channel, of lease or bonus or consideration, or from any other reason. In determining the amount of the bond, the court shall consider the probable and possible loss to the state by granting the injunction.

(c) The attorney general shall bring suit on the bond to recover any loss to the state caused by the suit for injunction.

[Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.098. Appeal

(a) Either party to the suit for an injunction or restraining order is entitled to appeal from the final judgment.

(b) The appeal shall be returnable to the appellate court at once and shall have precedence in that court over all pending cases, proceedings, and causes of a different character.

(c) The court of civil appeals shall decide the questions involved in the appeal at as early a date as possible.

(d) If any question is certified to the supreme court or if writ of error is requested or granted, the supreme court shall set the cause for hearing immediately, and the cause shall have precedence over all other cases, proceedings, and causes of a different character. The supreme court shall decide the cause at as early a date as possible.

[Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.099. Venue

The venue for any suit arising from this subchapter either by or against the board and regardless of the kind or nature shall be in Travis County.

[Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.100. Effect of Subchapter

The provisions of this subchapter do not repeal or supersede Chapter 138, Acts of the 41st Legislature, Regular Session, 1929 (Article 5414a, Vernon's Texas Civil Statutes), which validated, relinquished, quitclaimed, and granted to patentees and awardees and their assignees land and minerals that are included in surveys lying across or partly across watercourses and navigable streams in the state and that have been patented or awarded as provided in that chapter.

[Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 52.101 to 52.130 reserved for expansion]

SUBCHAPTER D. ROYALTIES

§ 52.131. Payment of Royalty Generally

(a) Royalties due under a lease of state land or minerals that are required to be paid to the land office shall be due and shall be paid as provided in this section.

(b) Royalty on oil is due and payable on or before the 5th day of the second month succeeding the month of production and royalty on gas is due and payable on or before the 15th day of the second month succeeding the month of production.

(c) Royalty payments shall be accompanied by:

(1) an affidavit of the owner, manager, or other authorized agent, completed in the form and manner required by the land office and showing the gross amount and disposition of all oil and gas produced and the market value of the oil and gas;

(2) a copy of all documents, records, or reports confirming the gross production, disposition, and market value, including gas meter readings, pipeline receipts, gas line receipts, and other checks or memoranda of amount produced and put into pipelines, tanks, pools, and gas lines or gas storage;

(3) a check stub, schedule, summary, or other remittance advice showing by the assigned land office lease number the amount of royalty being paid on each lease; and

(4) other reports or records that the land office may require to verify the gross production, disposition, and market value.

(d) The lessee has the responsibility for paying royalties or having royalties paid by the date provided for payment in this section.

(e) Any royalty not paid or affidavits and supporting documents not filed when due shall become delinquent and a delinquency penalty of one percent for each 30-day period of delinquency or fractional part of that period shall be added to the amount owed, however, no penalty may be less than $5. Payment of this penalty in no way operates to prohibit the state's right of forfeiture as provided by law and does not postpone the date on which royalties were originally due. The penalty does not apply in cases of title dispute as to the state's portion of the royalty or to that portion of the royalty in dispute as to fair market value.

[Acts 1977, 65th Leg., p. 2455, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.132. Form of Payment

Except as provided in Section 52.133 of this code, royalty payments shall be made in cash, by bank draft drawn on a state or national bank in Texas, by a post-office or express money order, or in any other form that the law may provide for making payments to the State Treasury and are payable to the commissioner in Austin.

[Acts 1977, 65th Leg., p. 2455, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.133. Payment of Royalty in Kind

(a) In this section, "royalty" means royalty payable in a sum of money equal to the market value for the general area where produced and when run or royalty that may be collected in kind.

(b) Each oil or gas lease covering land leased by the board, by a board for lease other than the Board for Lease of University Lands, or by the surface owner of land under which the state owns the minerals, commonly referred to as Relinquishment Act land, which shall be subject to approval by the commissioner before it is effective, shall include a provision granting the board authorized to lease the land or the owner of the soil of Relinquishment Act land and the commissioner authority to take their royalty in kind, and the commissioner and the boards for lease may include any other reasonable provisions that are not inconsistent with this section.

(c) The option to take the royalty in kind may be exercised at any time or from time to time on not less than 60 days' notice to the holder of the lease.

(d) The board, the commissioner, each board for lease other than the Board for Lease of University Lands, or the owner of the soil under Subchapter F of this chapter may negotiate and execute sales contracts or any other instruments or agreements necessary to dispose of their portion of the royalty taken in kind.

(e) This section does not apply to or have any effect on the Board for Lease of University Lands or any lease executed on university land.

(f) This section shall not be construed to surrender or in any way affect the right of the state or the owner of the soil under existing or future leases to receive royalty from its lessee on the basis of the fair market value produced from state public land or land under the provisions of Subchapter F of this chapter.

[Acts 1977, 65th Leg., p. 2455, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.134. Filing Contracts and Agreements

Copies of contracts for the sale or processing of gas and subsequent agreements and amendments to those contracts shall be filed in the land office within 30 days after the contracts, agreements, or amendments are made. These contracts and agreements received by the land office shall be held in confidence by the land office unless otherwise authorized by the lessee.

[Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.135. Inspections and Examinations

The books and accounts, receipts, and discharges of all lines, tanks, pools, and meters and all contracts and other records relating to the production, transportation, sale, and marketing of the oil and gas are subject at any time to inspection and examination by the commissioner and the attorney general and governor or their representatives.

[Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.136. Lien

The state has a first lien on all oil and gas produced on any lease area to secure payment of unpaid royalty and other amounts due.

[Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 52.137 to 52.150 reserved for expansion]

SUBCHAPTER E. UNITIZATION OF LEASED AREAS

§ 52.151. Authorization to Operate Areas as Units

(a) The commissioner on behalf of the state or any fund that belongs to the state may execute agreements that provide for operating areas as a unit for the exploration, development, and production of oil or gas or both and to commit to the agreements the royalty interests in oil or gas or both reserved to the state or any fund of the state by law, in a patent, in a contract of sale, or under the terms of an oil and gas lease legally executed by an official, board, agent, agency, or authority of the state.

(b) The commissioner must find that the agreement is in the best interest of the state.

[Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.152. Approval of Unit Agreements

(a) An agreement that commits the royalty interest in land belonging to the permanent school fund or the asylum funds in riverbeds, inland lakes, and channels, or in an area within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea must be approved by the board and executed by the owner of the soil if the agreement covers land leased for oil and gas under Subchapter F of this chapter.

(b) An agreement that commits the royalty interest in any land or an area not listed in Subsection (a) of this section must be approved by the board, official, agent, agency, or authority of the state which has the authority to lease or to approve the lease of the land for oil and gas.

[Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.153. Agreement Provisions

(a) The agreement to operate areas as units may provide:

(1) that operations incident to drilling a well on any portion of a unit shall be considered for all purposes to be conduct of the operations on each separately owned tract in the unit by the several owners;

(2) that production allocated by the agreement to each tract included in the unit when produced shall be considered for all purposes to have been produced from the tract;

(3) that the agreement and lease, with respect to the interest of the state, shall be effective as long as oil or gas or both are produced from the unit in paying quantities and royalties are paid to the state; and

(4) that royalties reserved to the state or to any fund of the state on production from any tract or portion of a tract included in the unit shall be paid only on the portion of the production allocated to the tract by the agreement.

(b) The agreement may include any other provision which the board, official, agent, agency, or authority of the state which has the authority to lease or to approve the leasing of the land may consider necessary for the protection of the interests of the state.

[Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 52.154 to 52.170 reserved for expansion]

SUBCHAPTER F. RELINQUISHMENT

§ 52.171. School and Asylum Lands

The state hereby constitutes the owner of the soil its agent for the purposes herein named, and in consideration therefor, relinquishes and vests in the owner of the soil an undivided fifteen-sixteenths of all oil and gas which has been undeveloped and the value of the same that may be upon and within the surveyed and unsurveyed public free school land and asylum lands and portions of such surveys sold with a mineral classification or mineral reservation, subject to the terms of this law. The remaining undivided portion of said oil and gas and its value is hereby reserved for the use of and benefit of the public school fund and the several asylum funds.

[Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.172. Sale and Lease by Agent

The owner of said land is hereby authorized to sell or lease to any person, firm, or corporation the oil and gas that may be thereon or therein upon such terms and conditions as such owner may deem best, subject only to the provisions hereof, and he may

have a second lien thereon to secure the payment of any sum due him. All leases and sales so made shall be assignable. No oil or gas rights shall be sold or leased hereunder for less than 10 cents per acre per year plus royalty, and the lessee or purchaser shall in every case pay the state 10 cents per acre per year of sales and rentals; and in case of production shall pay the state the undivided one-sixteenth of the value of the oil and gas reserved herein, and like amounts to the owner of the soil.

[Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.173. Offset Wells

If oil and/or gas should be discovered in commercial quantities on lands not included in this law and within 1,000 feet of and draining land that is so included, or in any case where land so included in this law is being drained by production of oil or gas from land not so included, the owner, lessee, sublessee, receiver, or other agent in control of land included herein shall in good faith begin the drilling of a well or wells upon such land within 100 days after such well or wells on lands not so included commence to produce in commercial quantities, and shall prosecute such drilling with diligence to reasonably develop the land included hereunder and to protect such land against drainage by wells on other lands in the locality.

[Acts 1977, 65th Leg., p. 2458, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.174. Failure to Drill Offset

If such persons fail or refuse to begin the drilling of such well or wells within the time required or to prosecute such drilling as necessary for the purpose intended herein, any lease of such land executed under the provisions of this law shall be subject to forfeiture by the Commissioner of the General Land Office, and he shall forfeit same when he is sufficiently informed of the facts which authorize a forfeiture, and shall, on the wrapper containing the papers relating to such lease, write and sign officially words declaring such forfeiture, and the lease and all rights thereunder shall thereupon be forfeited together with all payments made thereunder. Notice of such action shall forthwith be mailed to the persons shown by the records of the General Land Office to be the owners of the surface and the owners of the forfeited lease at their last known addresses as shown by the records of said office. Upon proper showing by the owner of the forfeited lease within 30 days after the declaration of forfeiture, the lease may, at the discretion of the commissioner and upon the terms of this subchapter and such other terms as he may prescribe, be reinstated. If such lease be not reinstated within such time, or if the commissioner finds that any unleased land included in this law is being drained, the commissioner shall notify the person at his last known address, as shown by records of the General Land Office to be the surface owner, that the oil and gas is subject to sale or lease by the owner of the soil in accordance with this law, and that drilling is required. If such owner shall fail or refuse to obtain the commencement of such a well within 100 days after the date of such notice, the relinquishment herein granted and the rights acquired thereunder shall be subject to forfeiture by the commissioner by endorsing on the file wrapper containing the papers relating to the sale of the land, words indicating such forfeiture, and such rights shall thereupon be forfeited, and notice of such forfeiture shall be forwarded to the county clerk of the county wherein the land is situated. The rights of any owner of the soil which may have ipso facto terminated under prior laws shall be reinstated and are hereby reinstated, together with all rights acquired thereunder except where rights of third parties may have intervened. All rights herein reinstated shall be subject to the terms and provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2458, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.175. Lease of Oil and Gas After Forfeiture

When the relinquishment herein granted has been so forfeited by the commissioner, the land shall be subject to lease for oil and gas under the procedure provided by law for the leasing of unsold surveyed public school lands. No lease shall be executed which provides for a royalty of less than one-eighth, payable to the state for the benefit of the permanent free school fund, and the lessee shall in every case pay to the surface owner amounts equal to the bonus money and the delay rentals paid to the state, and in case of production such lessee shall pay to the surface owner amounts equal to one-half of all royalty above the reserved one-eighth. Upon the termination or expiration of a lease so executed by the Commissioner of the General Land Office, or if no acceptable offer is received for such lease after due advertisement, the rights of the surface owner to act under this law shall be ipso facto reinstated.

[Acts 1977, 65th Leg., p. 2459, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.176. Forfeiture of Rights

If any person, firm, or corporation operating under this law shall fail or refuse to make the payment of any sum within 30 days after it becomes due, or if such one or an authorized agent should knowingly make any false return or false report concerning production or drilling, or if such one should fail to file reports in the manner required by law or fail to comply with General Land Office rules and regulations or refuse the proper authority access to the records pertaining to the operations, or if such one or an authorized agent should knowingly fail or

refuse to give correct information to the proper authority, or knowingly fail or refuse to furnish the land office a correct log of any well, or if any lease is assigned and the assignment is not filed in the General Land Office as required by law, the rights acquired under the permit or lease shall be subject to forfeiture by the commissioner, and he shall forfeit same when sufficiently informed of the facts which authorize a forfeiture, and the oil and gas shall be subject to sale in the manner provided for the sale of other forfeited rights hereunder, except that the owner of the soil shall not thereby forfeit his interest in the oil and gas. Such forfeiture may be set aside and all rights theretofore existing shall be reinstated at any time before the rights of another intervene, upon satisfactory evidence of future compliance with the provisions of this subchapter.
[Acts 1977, 65th Leg., p. 2459, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.177. Rights of Subsequent Purchaser

If one acquires a valid right by permit or lease to the oil and gas in any unsold public free school or asylum land under any other law, a subsequent purchaser of such land shall not acquire any rights to any of the oil and gas that may be therein, but when the rights under such permit or lease terminate in the manner provided in the law under which they were obtained, then the owner of the soil shall become the owner of that portion of the oil and gas herein relinquished, and shall be thereafter subject to the provisions of this law. A forfeiture of the purchase of any survey or tract for any cause shall operate as a forfeiture of the minerals therein to the state. A relinquishment to the state of a lease producing oil or gas in paying quantities shall not operate to relinquish or convey to the owner of the soil any interest whatever in the oil and gas that may be in the land included in said lease.
[Acts 1977, 65th Leg., p. 2459, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.178. Operation Under Permit

The owner of a permit or combination of permits shall have 18 months from the date or average date thereof in which to begin drilling a well for oil and gas on some portion of the land included therein. The drilling on one permit shall be sufficient protection against forfeiture of all the permits included in a combination. Owners of permits or combination of permits included herein shall have three years after the date or average date thereof in which to complete the development of oil and gas thereon, and if oil and gas should not be found in paying quantities and a lease applied for within said time all rights in such permit or combination of permits shall terminate, and the oil and gas in such land shall become subject to the provisions of this law relating to the relinquishment of oil and gas to the owner of the soil.
[Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.179. Lease Under Permit

If oil or gas should be produced in paying quantities upon any land included in this law, the owner of the permit shall report the development to the commissioner within 30 days thereafter and apply for a lease upon such whole surveys or tracts in each permit as the owner or owners of a combination of permits may desire to be leased, and accompany the application with a log of the wells, and the correctness of the log shall be sworn to by the owner, manager, or driller, and thereupon a lease shall be issued without the payment of any additional sum of money and for a period not to exceed 10 years, subject to renewal or renewals.
[Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.180. Payments Under Permit

The owner of a permit or combination of permits who desires to avail himself of the terms of this law, shall pay the state 10 cents per acre, annually in advance, for the second and third years, and shall likewise pay the owner of the soil 10 cents per acre for the first year of such permit, before availing himself of the privileges hereof, and a like sum thereafter annually in advance. A failure to make either of said payments shall subject the permit or permits to forfeiture by the commissioner, and when sufficiently informed of the facts which subject the permits to forfeiture, said commissioner shall forfeit the same by an endorsement of forfeiture upon the wrapper containing the papers relating to the permits and sign it officially. The payment of 10 cents per acre to the owner of the soil may be made to him or to the county clerk of the county in which the land is situated, and said clerk shall deposit such payment as he receives, in some bank at the county seat to the credit of the record owner of such land. If the owner of the soil refuses to accept such payment, said clerk shall withdraw such deposit and return it to the owner of the permit. The payment, or the tender of payment, shall be evidenced by the receipt of the owner or part owner or county clerk filed among the papers in the land office relating to such permits.
[Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.181. Relinquishment Under Permit

The owner of a permit or combination of permits may relinquish to the state a permit or combination of permits or any whole survey or whole tract included in a permit at any time before obtaining a lease therefor by having such relinquishment recorded in the counties in which the land or part thereof is situated, and by filing it in the land office within 60 days after its execution, with $1 as a filing fee.
[Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.182. Damages to Soil

The payment of the 10 cents per acre and the obligation to pay the owner of the soil one-sixteenth of the production and the payment of same when produced and the acceptance of same by the owner, shall be in lieu of all damages to the soil.

[Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.183. Effective Date of Lease

No mineral lease executed by the owner of the land or minerals under this subchapter is effective until a certified copy of the lease is filed in the land office.

[Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.184. Statement of Consideration

No lease executed under this subchapter after September 17, 1939, is binding on the state unless it recites the actual and true consideration paid or promised.

[Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.185. University Land

The provisions of this subchapter relating to a combination of permits and extension of time for beginning development and time for development applies to permits on university land.

[Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.186. Lease of Oil and Gas When Owner of the Soil Unavailable

When the commissioner finds, upon the written request of any party interested in bargaining for an oil and gas lease, that the owner of the soil or of any undivided interest therein of any land subject to the terms of this subchapter is unavailable to act as the state's agent for oil and gas leasing purposes, or that his name, identity, or place of residence is unknown, such land or undivided interest therein shall be subject to lease for oil and gas under the procedure provided by Subchapter B of this Chapter 52[1] for the leasing of unsold surveyed public school lands.

An owner of the soil or of an undivided interest therein may be found to be unavailable by the commissioner if the written request for such finding is supported by a sworn affidavit detailing attempts to locate and contact such surface owner, which attempts satisfy the commissioner that reasonable diligence has been used in attempting to locate and contact such surface owner and by written certification from the tax assessor-collector of each taxing entity in which the land is located stating that ad valorem taxes owed to that entity have not been paid by the owner of the soil or an undivided interest therein or his representative for any year within the five years preceding the year in which the written request is submitted to the commissioner under this section. Notice of such finding shall forthwith be mailed to the person shown by the records of the tax assessor-collector in the county where the land is located to be the surface owner at his last known address as shown by the records of said office.

If the surface owner appears within 30 days after the date of such finding or prior to the execution of an oil and gas lease on his land pursuant to this section, his rights to act under this subchapter may, at the discretion of the commissioner and upon such terms as the commissioner may prescribe, be reinstated. If the owner of the soil or of any undivided interest therein appears within two years after the execution of such oil and gas lease on his land pursuant to this section, he shall be entitled to one-half of all royalties theretofore paid or thereafter to be paid under such oil and gas lease, reduced in the proportion which his interest bears to the whole and undivided surface estate, upon showing to the satisfaction of the commissioner that a reasonably diligent search would have resulted in his being located.

Upon the termination or expiration of a lease for oil and gas executed pursuant to this section, or if no acceptable offer is received for such lease after due advertisement, the rights of the owner of the soil to act under this subchapter shall be ipso facto reinstated.

[Added by Acts 1979, 66th Leg., p. 860, ch. 384, § 1, eff. June 6, 1979.]

[1] Section 52.011 et seq.

[Sections 52.187 to 52.220 reserved for expansion]

SUBCHAPTER G. PERMITS AND LEASES

§ 52.221. Definitions

In this subchapter:

(1) "Surveyed land" includes any tract for which there are approved field notes filed in the land office and 80-acre tracts and multiples of these tracts in these surveys.

(2) "Unsurveyed areas" includes all areas for which there are no approved field notes filed in the land office.

[Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.222. Application for Prospect and Development of Surveyed Land

(a) A person who desires to obtain the right to prospect for and develop oil and gas on surveyed land shall file with the county clerk of the county in which the tract or a portion of the tract is located or with the county clerk of the county to which the

county is attached for judicial purposes a written application which designates the land sufficiently to identify it.

(b) On receiving $1 as a filing fee, the county clerk shall file and record the application and shall note the filing and recording together with the time of filing on his record of surveys opposite the entry of the proper survey.

(c) The application shall be filed with the land office within 30 days after it is filed with the county clerk.

[Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.223. Limitations on Surveyed Areas for Prospect and Development

(a) If an applicant under Section 52.222 of this code obtains four sections or their equivalent that are eligible to be included in one permit, he shall not obtain any more land within two miles of the permitted land, but if the applicant obtains less than four sections that are eligible to be included in one permit, he may obtain any additional area within two miles of the other area which will equal the four sections.

(b) No applicant may obtain more than 1,000 acres of land located within one mile of a well that is producing oil.

[Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.224. Application for Prospect and Development of Unsurveyed Areas

(a) A person who desires to obtain the right to prospect for and develop oil and gas in an unsurveyed area shall file with the county surveyor of the county in which the area or part of the area is located a written application for each area for which application is made, designating the area sufficiently to identify it.

(b) The area shall be surveyed within 90 days and the application, field notes, and plat shall be filed in the land office within 100 days after the date of filing the application with the county surveyor.

(c) Unsurveyed areas for which application is made under this section shall not exceed 2,560 acres.

(d) On receipt of $1 as a filing fee, the county surveyor shall file and record the application.

[Acts 1977, 65th Leg., p. 2462, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.225. Filing Documents and Issuing Permit

(a) When the commissioner receives an application that was filed with the county clerk or surveyor, the field notes and plat, a $1 filing fee plus 10 cents an acre for each acre for which application is made, and an affidavit made by the applicant indicating interests he has in any other permit, lease, or patent issued under this subchapter and in good standing, he shall file these documents.

(b) If examination of the application and the field notes are found to be correct and the area for which application is made is covered by the provisions of this subchapter, the commissioner shall issue to the applicant or his assignee a permit conferring on him an exclusive right to prospect for and develop oil and gas within the designated area for a period of not more than two years.

[Acts 1977, 65th Leg., p. 2462, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.226. Annual Permit Fee

The permittee shall pay each year 10 cents an acre for each acre which he holds under a permit.

[Acts 1977, 65th Leg., p. 2462, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.227. Independent Development of Areas

The area covered by each permit shall be developed independently of other areas.

[Acts 1977, 65th Leg., p. 2462, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.228. Extension of Permit

A permit may be extended for a term of five years from its effective date conditioned on the payment in advance of the annual fee provided by law.

[Acts 1977, 65th Leg., p. 2462, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.229. Suspension of Annual Fee

After production of oil and gas is obtained in paying quantities and the payment of royalty begins, the permittee is not required to pay any further annual rental fee.

[Acts 1977, 65th Leg., p. 2462, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.230. Conditions for Development

(a) Within 12 months after the effective date of the permit, the permittee shall begin in good faith actual work necessary to the physical development of the area.

(b) If oil and gas are not developed in commercial quantities within the 12-month period provided in Subsection (a) of this section, the permittee or manager shall file in the land office within 30 days after the expiration of the 12-month period an affidavit supported by two disinterested credible persons stating:

(1) that actual work was begun within the 12-month period;

(2) that a bona fide effort to develop the area was made during the 12-month period preceding the filing of the affidavit; and

(3) what work was done, what expenditures were incurred, and whether or not oil or gas was discovered in commercial quantities.

(c) A permit is subject to forfeiture for failure to file the affidavit within the specified time or for filing an affidavit that is false in material matters.

[Acts 1977, 65th Leg., p. 2462, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.231. Right to Lease

After production of oil and gas is obtained in paying quantities and subject to the provisions of this subchapter, the permittee is entitled to a lease that shall run as long as the area covered by the lease produces oil or gas in paying quantities.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.232. Removal of Oil and Gas

(a) Except as provided in Subsection (b) of this section, no permittee may take, carry away, or sell any oil or gas before a lease is obtained.

(b) Before a lease is obtained, the quantity of oil or gas necessary for continued development of the area may be used without accounting for it.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.233. Issuance and Renewal of Lease

On payment of $2 an acre for each acre covered by the permit, a lease shall be issued for a term of not more than 10 years, as desired by the permittee, and the lease shall include an option to renew for an equal or shorter period.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.234. Areas Covered by Applications, Permits, and Leases

(a) A separate written application shall be made for the area desired in a permit.

(b) No permit or lease may cover areas included in two or more applications.

(c) No application, permit, or lease shall cover a divided area.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.235. Application Without Field Notes

Application may be made for whole tracts of surveyed land either as a whole or in 80-acre tracts or multiples of 80-acre tracts without furnishing field notes for the tracts.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.236. Rental and Royalty

On expiration of the first year after the effective date of the lease, $2 an acre shall be paid during the term of the lease, and in addition to the $2 an acre, the lessee shall pay a royalty of one-eighth of the value of the gross production of oil and a royalty of one-tenth of the value of the meter output of all gas disposed of off the premises of a gas well.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.237. Application of Fee to Certain Land

The provisions of Section 52.236 of this code relating to the payment of $2 an acre during the lease period and the life of the lease do not apply to leases of bays, marshes, reefs, saltwater lakes, or other submerged land that contains as much as 100 acres but not in excess of 500 acres on which as many as five wells have been drilled and on which as much as $100,000 has been spent. The drilling of the wells and the expenditure of the stated amount shall be established to the satisfaction of the commission.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.238. Terms of Permits and Leases

Each permit and lease shall contain the terms on which it is issued including authority for the commissioner to require drilling of wells necessary to offset wells drilled on adjacent private land and any other provisions that the commissioner considers important to the rights of the permittee, lessee, or the state.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.239. Compensation of Surface Owner

(a) If the surface of an area covered by the provisions of this subchapter is acquired by a person before an application is filed under the provisions of this subchapter, the area shall still be subject to permit and lease, but the permittee or lessee shall pay annually in advance to the owner of the surface 10 cents an acre during the term of the lease.

(b) The amount paid to and accepted by the surface owner shall be full compensation for all damages to the surface.

[Acts 1977, 65th Leg., p. 2464, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.240. Statement of Interests

A person who applies for a permit or lease shall file with his application an affidavit showing any interest the applicant has in another permit or lease issued by the state that is in good standing on the date of the application.

[Acts 1977, 65th Leg., p. 2464, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.241. Disposition of Proceeds

(a) Proceeds arising from activities under this subchapter that affect land which belongs to the public school fund or the asylum funds shall be credited to the permanent funds of these institutions.

(b) Except for funds required to be credited to the permanent university fund by the constitution, proceeds paid or collected from activities under this subchapter affecting the land that belongs to the permanent fund of The University of Texas shall be credited by the State Treasurer to the available fund of that institution. These funds shall be held by the Board of Regents of The University of Texas System in a special building fund and shall be spent only for constructing buildings and equipping the buildings and for other permanent improvements.

(c) Proceeds arising from the activities affecting land other than that belonging to the public school fund, The University of Texas, and the asylums shall be credited to the same fund.

(d) Funds apportioned by this section do not include proceeds and royalties derived from the sand, gravel, and shell fund whose disposition is determined by another law.

[Acts 1977, 65th Leg., p. 2464, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.242. Abandoning Tracts; Leasing Remaining Tracts

A person who desires a lease may abandon one or more whole tracts in a permit by relinquishment filed in the land office as provided in this subchapter and may obtain a lease on the remaining area if the area is in a solid body.

[Acts 1977, 65th Leg., p. 2464, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.243. Relinquishment Procedure

(a) A permittee or lessee may relinquish his permit or lease at any time by having the deed of relinquishment acknowledged, recorded by the proper county clerk, and filed in the land office accompanied by a $1 filing fee.

(b) The commissioner shall mail notice to the proper county clerk of the filing of the relinquishment and as soon as the notice has had time through the due course of mail to reach the clerk, the area shall be subject to applications as in the first instance.

[Acts 1977, 65th Leg., p. 2464, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.244. Transfer of Rights

(a) A permittee or lessee under this subchapter may sell his permit or lease and the rights secured by the permit or lease at any time.

(b) A permittee or lessee may give a lien of any kind on his permit or lease to any person who may be qualified to receive a permit or lease under this subchapter.

(c) The instrument evidencing the sale or lien shall be recorded in the county in which the area or part of the area is located or in the county to which the county may be attached for judicial purposes.

(d) The instrument shall be filed also in the land office within 60 days after the date it is filed with the county accompanied by a filing fee of $1.

(e) If the instrument is not filed as provided in this section, the contract evidenced by the instrument shall be void and the obligations in the contract assumed by the parties are not enforceable.

(f) A sublease contract does not have to be filed with the land office.

[Acts 1977, 65th Leg., p. 2464, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.245. Transfer of University Land

(a) A permittee or lessee of university land may sell and transfer his permitted or leased land or area in whole or in tracts of not less than 40 acres.

(b) On payment of $1 filing fee for each transfer and an additional fee of 10 cents an acre for each acre in the transfer, the assignee may have the instruments evidencing the transfer filed in the land office and may have the portion transferred separated from the parent tract or parent subdivision of a permit or lease on the records of the land office.

(c) When considered necessary, the commissioner may require field notes before filing a transfer.

(d) Before offering a transfer in the land office, the transfer shall be recorded in the county or counties in which the area or part of the area is located.

(e) The $1 filing fee shall be deposited in the State Treasury to the credit of the General Revenue Fund and the acreage fee shall be deposited in the State Treasury to the credit of the available fund of the state university.

[Acts 1977, 65th Leg., p. 2465, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.246. Dissolution of Combined Permits and Leases

(a) Permittees and lessees that have permits and leases which have been combined may dissolve the combinations in a manner that is satisfactory to the permittees and lessees.

(b) Dissolution of the combination shall be conditioned on:

(1) the payment of the fees prescribed in this subchapter at the time transfers are presented for filing in the land office; and

(2) recording the dissolution in the county or counties in which the area or part of the area is located.

[Acts 1977, 65th Leg., p. 2465, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.247. Acreage Fee Exemption

No acreage fee may be charged under Sections 52.245 through 52.246 of this code if the transfer includes a whole permit or a whole lease or a whole tract in a permit or lease.

[Acts 1977, 65th Leg., p. 2465, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.248. Application to Single and Combination Permits and Leases

The provisions of Sections 52.245 through 52.247 of this code apply to permits and leases that may be held singly or in combination with other permits or leases.

[Acts 1977, 65th Leg., p. 2465, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.249. Status of Assignees

After transfers provided in Sections 52.245 through 52.246 of this code are filed in the land office, the assignee or assignees in the transfer are substituted for the original permittee or lessee and assume the obligations, pains, and penalties that the law has imposed on the original permittee or lessee.

[Acts 1977, 65th Leg., p. 2465, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.250. Forfeiture of Rights

(a) A permit or lease is subject to forfeiture if:

(1) it is issued on a statement by the applicant that is false or untrue in material matters;

(2) the permittee fails or refuses to begin in good faith necessary work to develop the area in the time required;

(3) the permittee fails or refuses to proceed in good faith and with reasonable diligence in a bona fide effort to develop an area included in his permit after having begun the development;

(4) the permittee fails or refuses to apply for a lease within the required time;

(5) the lessee fails or refuses to make proper remittances in payment of royalty or other payments;

(6) the lessee fails or refuses to make the proper statement;

(7) the lessee fails or refuses to furnish the required evidence of the output and market value and material matters relating to them on request; or

(8) the lessee fails to make the annual payment on the area on request to do so.

(b) After the commissioner is informed sufficiently of the facts, he may declare the permit or lease forfeited by proper entry on the duplicate of the permit or lease in his office.

(c) The commissioner shall mail a notice of the forfeiture to the proper county clerk, and the area shall be subject to the application of other persons than the forfeiting permittee or lessee after the notice has had time to reach the county clerk through regular mail.

(d) The commissioner may exercise great discretion in requiring persons to develop gas wells.

(e) Forfeitures may, in the discretion of the commissioner, be set aside and rights reinstated before the rights of another person intervene.

[Acts 1977, 65th Leg., p. 2466, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.251. Pollution of Streams

(a) Development in water or on islands or in river beds and channels shall be done under rules that will prevent the pollution of the water, and to prevent the pollution, the commissioner may request the Parks and Wildlife Department for assistance in the adoption and enforcement of rules for protection of the water from pollution.

(b) The commissioner may cancel a permit or lease for a failure or refusal of the owner to comply with the rules that are adopted.

[Acts 1977, 65th Leg., p. 2466, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.252. Property Taxable

The rights acquired under this subchapter are subject to taxation as is other property.

[Acts 1977, 65th Leg., p. 2466, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 52.253 to 52.290 reserved for expansion]

SUBCHAPTER H. LEASE LIMITATIONS

§ 52.291. Coverage

The following persons, agencies, and entities are subject to the provisions of Sections 52.292 through 52.293 of this code:

(1) the commissioner;

(2) the board;

(3) boards for lease of land owned by a department, board, or agency of the state created by Chapter 34 of this code;

(4) the Board for Lease of University Lands;

(5) the Board of Regents of Texas A & M University;

(6) the Board of Regents of Texas Tech University;

(7) the Board of Directors of Texas A & I University;

(8) the Board of Regents, State Senior Colleges;

(9) the Board of Regents of the University of Houston;

(10) any other board of regents or other governing board of a state-supported institution of higher learning having authority to execute oil, gas, and mineral leases on land owned by the institution;

(11) an owner of land or minerals in this state whose authority to lease the land or minerals as agent for the state arises in whole or in part from what is commonly known as the Relinquishment Act, codified in Subchapter F of this chapter;

(12) the Board for Lease of State Park Lands;

(13) the Board for Lease of the Texas Department of Corrections; and

(14) the commissioners court of any county in this state.

[Acts 1977, 65th Leg., p. 2466, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.292. Prohibited Leases

It is illegal for any person included in Section 52.291 of this code to execute an oil, gas, or mineral lease on land on which he is authorized by law to execute the lease unless the lease includes the terms provided in Section 52.293 of this code.

[Acts 1977, 65th Leg., p. 2467, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.293. Prerequisite to Sale Outside State

No natural gas or casinghead gas, including both associated and nonassociated gas, produced from the mineral estate subject to this lease may be sold or contracted for sale to any person for ultimate use outside the state unless the Railroad Commission of Texas, after notice and hearing as provided in Title 3 of this code, finds that:

(1) the person, agency, or entity that executed the lease in question does not require the natural gas or casinghead gas to meet its own existing needs for fuel;

(2) no private or public hospital, nursing home, or other similar health-care facility in this state requires the natural gas or casinghead gas to meet its existing needs for fuel;

(3) no public or private school in this state that provides elementary, secondary, or higher education requires the natural gas or casinghead gas to meet its existing needs for fuel;

(4) no facility of the state or of any county, municipality, or other political subdivision in this state requires the natural gas or casinghead gas to meet its existing needs for fuel;

(5) no producer of food and fiber requires the natural gas or casinghead gas necessary to meet the existing needs of irrigation pumps and other machinery directly related to this production; and

(6) no person who resides in this state and who relies on natural gas or casinghead gas to provide in whole or part his existing needs for fuel or raw material requires the natural gas or casinghead gas to meet those needs.

[Acts 1977, 65th Leg., p. 2467, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.294. Prerequisite to Filing Leases

The commissioner shall not receive and file an oil, gas, and mineral lease required to be filed by law unless the lease includes the terms and conditions provided in Section 52.293 of this code.

[Acts 1977, 65th Leg., p. 2467, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.295. Certain Leases Null, Void, and of No Force and Effect

An oil, gas, and mineral lease executed or received and filed in violation of the provisions of this subchapter is null, void, and of no force and effect.

[Acts 1977, 65th Leg., p. 2468, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.296. Granting Exceptions to Subchapter

After notice and hearing as provided in Title 3 of this code, the commission may grant exceptions to the provisions of this subchapter if it finds and determines that enforcement of the provisions of this subchapter:

(1) would cause physical waste as defined in Title 3 of this code; or

(2) would unreasonably deny to the lessee an opportunity to produce economically hydrocarbons from the land subject to the lease in question.

[Acts 1977, 65th Leg., p. 2468, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

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SUBCHAPTER A. GENERAL PROVISIONS

§ 53.001. Definitions.

In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

[Acts 1977, 65th Leg., p. 2469, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 53.002 to 53.010 reserved for expansion]

SUBCHAPTER B. PROSPECT AND LEASE ON STATE LAND

§ 53.011. Land Subject to Prospect

Any tract of land that belongs to the state, including islands, salt and freshwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits, the part of the Gulf of Mexico within the state's jurisdiction, unsold surveyed public school land, rivers and channels that belong to the state, and land sold with a reservation of minerals to the state are subject to prospect by any person for all minerals except:

(1) oil and gas;

(2) coal, lignite, sulphur, salt, and potash;

(3) shell, sand, and gravel; and

(4) fissionable minerals other than uranium and thorium on land sold with a reservation of minerals to the state.

[Acts 1977, 65th Leg., p. 2469, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.012. Application for Right to Prospect

(a) A person who desires to prospect land covered by this subchapter shall file an application with the commissioner designating the area to be prospected.

(b) Each area covered by an application may not be in excess of 640 acres with a 10 percent tolerance for tracts, sections, and surveys that include more than 640 acres.

(c) Each application shall be accompanied by a rental payment of not less than 25 cents an acre.

[Acts 1977, 65th Leg., p. 2469, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.013. Conditions of Permit

(a) The commissioner shall issue to the first applicant a permit to prospect the area designated in his application for a period of one year from the date his application is filed.

(b) The commissioner may extend the permit for a period of one year on payment of an annual rental of 25 cents an acre.

(c) No permit may be extended for a period of more than five consecutive years from the date of its issuance.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.014. Assignment Prohibited

No permit issued under this subchapter may be assigned.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.015. Application for Lease

(a) At any time during the term of the permit, the permittee may file an application to lease the area or a designated portion of the area covered by the permit for the purpose of mining or producing the minerals covered by the permit.

(b) The application shall be accompanied by the first lease payment of not less than $2 an acre.

(c) If the area designated for lease in the application is less than the area covered by the permit, the applicant shall include with his application field

notes prepared by the county surveyor or by a licensed state land surveyor describing the land designated.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.016. Issuance of Lease

(a) The lease shall be issued by the commissioner under the provisions of this subchapter and shall be for a primary term of five years and as long after that time as the minerals are produced in paying quantities.

(b) The commissioner may include in the lease any other provision he considers necessary for protection of the interests of the state.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.017. Annual Lease Payment

The annual lease payment after the first year and during the primary term of the lease shall not be less than $1 an acre, which is payable unless production in paying quantities is obtained and royalty is being paid to the state.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.018. Royalty

The royalty under the lease shall not be less than one-sixteenth of the value of the minerals produced under the lease.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.019. Payments

Lease payments and royalty shall be paid to the commissioner at Austin, and all payments shall be credited to the account of the permanent school fund.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.020. Assignment of Lease

(a) A lease may be assigned in quantities of not less than 40 acres, but if there are fewer than 40 acres remaining in the tract originally leased, the lesser area may be assigned.

(b) The assignment shall be recorded in the county in which the land is located, and within 90 days after it is recorded a certified copy of the assignment, certified by the county clerk from his records, shall be sent to the land office, together with a $1 filing fee for each tract affected.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.021. Forfeiture of Lease

(a) A lease is subject to forfeiture by act of the commissioner if:

(1) the lessee fails or refuses to pay any amount which is due either as a lease payment or royalty;

(2) the lessee or his authorized agent knowingly makes any false return or false report concerning the lease;

(3) the lessee or his agent refuses the commissioner or his authorized representative access to the records or other data relating to operations under the lease; or

(4) a material term of the lease is violated.

(b) Any area forfeited under this section is subject to application for a permit under the same terms as the original application.

[Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.022. Effect of Subchapter

None of the provisions of this subchapter shall apply to, alter, or affect any rights existing on June 22, 1955, under a valid permit issued by the commissioner under the provisions of Section 12, Chapter 271, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 5421c, Vernon's Texas Civil Statutes), but if the permittee desires that his lease continue as long as production is obtained in paying quantities, he shall pay lease payments and royalty provided in this subchapter.

[Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 53.023 to 53.060 reserved for expansion]

SUBCHAPTER C. LEASE OF COAL, LIGNITE, SULPHUR, POTASH, URANIUM, AND THORIUM

§ 53.061. Authority to Lease Certain Minerals

(a) The state constitutes the owner of the surface its agent to lease to any person the coal, lignite, sulphur, potash, uranium, thorium, and any minerals produced in conjunction with these which may be within all or part of a survey previously sold with all minerals reserved to the state.

(b) The lease shall be made on terms and conditions that may be prescribed by the school land board.

[Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.062. Lease of Minerals Separately and Together

Minerals covered by the provisions of this subchapter may be leased either separately or together.

[Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.063. Forms

The owner of the surface may lease to any person the minerals covered by this subchapter on lease forms prepared by the land office.

[Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.064. Prerequisites for Effectiveness of Lease

(a) No lease executed by the owner of the surface is binding on the state unless it recites the actual consideration paid or promised for the lease.

(b) No lease is effective until a certified copy is filed in the land office and the bonus accruing to the state is paid to the commissioner. The commissioner is entitled to reject for filing any lease submitted to him that he feels is not in the best interest of the state.

[Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.065. Payments Under Lease

(a) Under a lease executed under this subchapter, the lessee shall pay to the state 60 percent of all bonuses agreed to be paid for the lease and 60 percent of all rentals and royalties that are payable under the lease.

(b) The lessee shall pay to the owner of the surface 40 percent of all bonuses agreed to be paid for the lease and 40 percent of all rentals and royalties payable under the lease.

(c) If production is obtained, the state shall receive not less than one-sixteenth of the value of the minerals produced.

[Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.066. Damages to Surface

Payments made by the lessee to the owner of the surface as provided in this subchapter and acceptance of the payments by the owner of the surface are in place of all damages to the soil.

[Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.067. Payment Procedure

Royalties and other payments accruing to the state under this subchapter shall be paid to the commissioner in Austin and shall be deposited in the fund to which the minerals belong.

[Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.068. Production Report and Records

(a) Each payment shall be accompanied by an affidavit of the lessee or his authorized agent indicating:

(1) the amount of minerals produced and marketed during the month;

(2) the person to whom the minerals were sold; and

(3) the selling price for the minerals as shown by copies of the smelter, mint, mill, refinery, or other returns or documents attached to the affidavit.

(b) Books, accounts, weights, wage contracts, correspondence, and other documents or papers relating to production under this subchapter are open at all times to inspection by the commissioner or his authorized representatives.

[Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.069. Forfeiture of Lease

(a) A lease and all rights under a lease are subject to forfeiture by action of the commissioner if the lessee or his assignee, sublessee, receiver, or other agent in control of the lease:

(1) fails or refuses to pay any royalty within 30 days after it becomes due;

(2) fails or refuses to the proper authorities access to the records relating to the operations; or

(3) knowingly fails or refuses to give correct information to the proper authorities.

(b) The commissioner may declare the forfeiture when he is sufficiently informed of the facts that authorize the forfeiture. He shall write on the wrapper containing the papers relating to the lease words declaring the forfeiture and shall sign it officially. Then the lease and all rights under the lease together with payments made under it are forfeited.

(c) Notice of the forfeiture shall be mailed to the person shown by the records of the land office to be the owner of the surface and the owner of the forfeited lease at their last known addresses as shown in the land office records.

[Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.070. Reinstatement of Lease

(a) If the owner of the forfeited lease complies with the provisions of this subchapter within 30 days after the declaration of forfeiture, the commissioner may reinstate the lease under the terms of this subchapter and other terms that he may prescribe.

(b) If the lease is not reinstated within the 30-day period, the owner of the surface, as agent of the state, is entitled to lease the minerals.

[Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.071. Lien

The state has a first lien on all minerals produced from any lease to secure the payment of unpaid royalty or other amounts that are due under this subchapter.

[Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.072. Effect of Certain Laws

Any rights acquired under Articles 5388 through 5403, Revised Civil Statutes of Texas, 1925, before March 15, 1967, are not affected by the repeal of those articles, and the rights, powers, duties, and obligations conferred or imposed by those articles are governed by those repealed articles.

[Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.073. Certain Minerals and Laws Exempt From Subchapter

The provisions of this subchapter do not apply to or affect oil and gas and do not affect the provisions of Subchapter F, Chapter 52 of this code or Subchapter B of this chapter.

[Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 53.074 to 53.110 reserved for expansion]

SUBCHAPTER D. UNITIZATION OF SULPHUR PRODUCTION

§ 53.111. Authority to Operate an Area as a Unit for Production of Sulphur

Subject to the provisions of this subchapter, the commissioner, on behalf of the state or any of its funds, may execute agreements that provide for the operation of areas as a unit for the exploration, development, and production of sulphur and may commit to the agreements the royalty interests in sulphur reserved to or provided for the state or any fund of the state, in or in connection with any patent, award, mining claim, or contract of sale or under any lease made by an official, board, agent, agency, or authority of the state.

[Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.112. Approval of Certain Agreements by School Land Board

An agreement authorized by Section 53.111 of this code that commits royalty interests in land dedicated to the permanent free school fund and the asylum funds, in riverbeds, inland lakes, channels, and areas within tidewater limits including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea must be approved by the school land board and must be executed by the owners of the surface if the agreements cover land leased for sulphur under Subchapter C of this chapter.

[Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.113. Approval of Other Agreements

Agreements that commit the royalty interest in land that is not covered by Section 53.112 of this code must be approved by the board, official, agent, agency, or authority of the state which has the authority to lease or to approve a lease of the land or area for sulphur.

[Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.114. Commissioner's Approval

An agreement authorized by Section 53.111 of this code must be found by the commissioner to be in the best interest of the state.

[Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.115. Provisions of Agreement

(a) An agreement executed under this subchapter may include the following provisions:

(1) that operations incident to the drilling of a well on any portion of the unit are considered for all purposes to be the conduct of the operations on each tract in the unit;

(2) that the production allocated by the agreement to each tract included in the unit shall be considered for all purposes after production to be produced from the tract;

(3) that the royalty interest reserved to or provided for the state or any of its funds on production from any tract included in the unit shall be paid only on that portion of the production from the unit which is allocated to the tract under the agreement; and

(4) that each lease included in the unit shall remain in effect so long as the agreement remains in effect and that on termination of the agreement each lease shall continue in effect under the terms and provisions of the lease.

(b) The agreement may include any other terms, conditions, and provisions the commissioner or any board, official, agent, agency, or authority of the state that has the authority to lease or to approve a lease of the land or area for sulphur may consider to be in the best interest of the state.

[Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.116. Application to University Land

None of the provisions of this subchapter apply to any land under the control and management of the Board of Regents of The University of Texas System.

[Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.117. Construction of Subchapter

(a) Agreements and operations under this subchapter are necessary to prevent waste and conserve the natural resources of the state and are not a violation of the provisions of Chapter 15, Business & Commerce Code, as amended.

(b) If a court finds a conflict between the provisions of this subchapter and the code cited in the previous subsection, this subchapter is intended as a reasonable exception to those laws which is necessary to prevent waste and conserve the natural resources.

(c) If a court finds that a conflict exists between this subchapter and the laws cited in Subsection (a) of this section and that this subchapter is not a reasonable exception to those laws, it is the intent of the legislature that this subchapter or any conflicting portion of this subchapter be declared invalid and that the previously cited laws remain valid.
[Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

SUBCHAPTER E. LEASE OF PUBLIC SCHOOL AND GULF LAND FOR COAL, LIGNITE, SULPHUR, SALT, AND POTASH

§ 53.151. Lease of Certain Areas

Under this subchapter, the board may lease to any person for the production of coal, lignite, sulphur, salt, and potash:

(1) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits;

(2) the portion of the Gulf of Mexico within the jurisdiction of the state; and

(3) unsold surveyed and unsurveyed public school land.

[Added by Acts 1979, 66th Leg., p. 49, ch. 29, § 1, eff. April 3, 1979.]

§ 53.152. Laws Applicable to Leases

(a) Leases of land described by Section 53.151 of this code shall be made in the same manner as leases of that land for oil and gas under Chapter 52 of this code.

(b) Sections 52.034 and 52.086 of this code do not apply to leases of coal, lignite, sulphur, salt, and potash under this subchapter.
[Added by Acts 1979, 66th Leg., p. 49, ch. 29, § 1, eff. April 3, 1979.]

§ 53.153. Conditions of Lease

Coal, lignite, sulphur, salt, and potash may be leased together or separately.
[Added by Acts 1979, 66th Leg., p. 49, ch. 29, § 1, eff. April 3, 1979.]

§ 53.154. Royalty and Delay Rentals

(a) In addition to the cash amount bid for a lease, the board shall lease the area for not less than one-eighth of the gross production of sulphur or the value of the sulphur that may be produced or that may be produced and sold off the area and not less than one-sixteenth of the value of the coal, lignite, salt, and potash that may be produced plus an amount determined by the board until production is secured.

(b) If production is secured in commercial quantities and the payment of royalty begins and continues to be paid, the lessee is exempt from further delay rental payments on the acreage.

(c) If production ceases and royalty is not paid, the lessee shall pay at the end of the lease year in which the royalty ceased to be paid and annually after that time in advance, in an amount determined by the board as long as the lessee desires to maintain the rights acquired under the lease, but not for more than five years from the date of the lease.
[Added by Acts 1979, 66th Leg., p. 49, ch. 29, § 1, eff. April 3, 1979.]

SUBTITLE E. BEACHES AND DUNES

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SUBCHAPTER A. GENERAL PROVISIONS

§ 61.001. Definitions

In this chapter:

(1) "Department" means the Parks and Wildlife Department.

(2) "Line of vegetation" means the extreme seaward boundary of natural vegetation which spreads continuously inland.

(3) "Highest wave" means the highest swell of the surf with such regularity that vegetation cannot grow and does not refer to the extraordinary waves which temporarily extend above the line of vegetation during storms and hurricanes.

(4) "Littoral owner" means the owner of land adjacent to the shore and includes anyone acting under the littoral owner's authority.

(5) "Public beach" means any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired the right of use or easement to or over the area by prescription, dedication, presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom.

[Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 61.002 to 61.010 reserved for expansion]

SUBCHAPTER B. ACCESS TO PUBLIC BEACHES

§ 61.011. Public Policy

It is declared and affirmed to be the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or if the public has acquired a right of use or easement to or over an area by prescription, dedication, or has retained a right by virtue of continuous right in the public, the public shall have the free and unrestricted right of ingress and egress to the larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.

[Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.012. Definition

In this subchapter, "beach" means state-owned beaches to which the public has the right of ingress and egress bordering on the seaward shore of the Gulf of Mexico or any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

[Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.013. Prohibition of Obstructions

(a) It is an offense against the public policy of this state for any person to create, erect, or construct any obstruction, barrier, or restraint that will interfere with the free and unrestricted right of the public, individually and collectively:

(1) to enter or to leave any public beach; or

(2) to use lawfully and legally any public beach or any larger area abutting on or contiguous to a public beach if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) For purposes of this section, "public beach" shall mean any beach bordering on the Gulf of Mexico which extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom. This definition does not include a beach which is not accessible by a public road or public ferry.

(c) A person who creates, erects, or constructs an obstruction, barrier, or restraint in violation of Subsection (a) of this section is liable to the state for a civil penalty of not less than $50 nor more than $1,000.

[Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1607, ch. 681, § 2, eff. Aug. 27, 1979.]

§ 61.014. Denial of Access by Posting

(a) As used in this section, "public beach" means the area extending from the line of mean low tide of the Gulf of Mexico to the line of vegetation bordering on the Gulf of Mexico, or to a line 200 feet inland from the line of mean low tide, whichever is nearer the line of mean low tide, if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) Any person who displays or causes to be displayed on any public beach any sign, marker, or warning, or who shall make or have made any written or oral communication which states that the public beach is private property or who states in any other manner that the public does not have the right of access to the public beach in violation of the lawful access rights of the public guaranteed by this subchapter is liable to the state for a civil penalty of not less than $50 nor more than $1,000.

(c) Each day that the communication is made constitutes a separate offense.

(d) Any person who violates the provisions of this section shall be prosecuted in the county in which the public beach is located.

(e) This section does not apply to any island or peninsula that is not accessible by public road or common carrier ferry facility so long as the condition exists.

[Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1607, ch. 681, § 1, eff. Aug. 27, 1979.]

§ 61.015. Satisfaction of Ingress and Egress Requirement

The requirement of free and unrestricted right of ingress and egress over an area landward of the line of vegetation is considered fully satisfied by access roads or ways which are in existence now and available to the public or which by or with the approval of any governmental authority having jurisdiction may be provided in the future.

[Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.016. Boundaries for Areas With No Marked Vegetation Line

(a) To determine the elevation reached by the highest waves of the Gulf of Mexico, in any area in which there is no clearly marked vegetation line (for instance, a line immediately behind well-defined dunes or mounds of sand and at a point where vegetation begins) recourse shall be to the nearest clearly marked line of vegetation on each side of the unmarked area.

(b) The "line of vegetation" for the unmarked area shall be the line of constant elevation connecting the two clearly marked lines of vegetation on each side.

(c) If the elevation of the two points on each side of the area are not the same, the extension defining the line reached by the highest waves of the Gulf shall be the average elevation as between the two points, but if there is no clearly marked line of vegetation, the extended line shall not extend inland further than 200 feet from the seaward line of mean low tide.

[Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.017. Line of Vegetation Unaffected by Certain Conditions

(a) The "line of vegetation" is not affected by the occasional sprigs of salt grass on mounds and dunes or seaward from them and by artificial fill, the addition or removal of turf, or by other artificial changes in the natural vegetation of the area.

(b) If the changes listed in Subsection (a) of this section are made and the vegetation line is obliterated or is created artificially, the line of vegetation

shall be determined in the same manner as in those areas covered by Section 61.016 of this code, but if there is a vegetation line consistently following a line more than 200 feet from the seaward line of mean low tide, the 200-foot line shall constitute the landward boundary of the area subject to public easement until a final court adjudication establishes the line in another place.

[Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.018. Suit to Remove Obstructions

(a) The attorney general or any county attorney, district attorney, or criminal district attorney shall file in a district court of Travis County, or in the county in which the property is located, a suit to obtain either a temporary or permanent court order or injunction to remove any obstruction or barrier or to prohibit any restraint or interference which restricts the right of the public, individually or collectively, to free and unrestricted ingress and egress to and from any area described in Section 61.012 of this code or any property abutting on or contiguous to the state-owned beach on which the public has acquired a prescriptive right.

(b) In the same suit, the attorney general, county attorney, district attorney, or criminal district attorney may seek recovery of the costs of removing any obstruction or barrier if it is removed by public authorities pursuant to an order of the court.

[Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.019. Declaratory Judgment Suits

(a) A littoral owner whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.

(b) Service of citation on the state shall be made by serving the citation on the attorney general.

[Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.020. Prima Facie Evidence

In a suit brought or defended under this subchapter or whose determination is affected by this subchapter, a showing that the area in question is located in the area from mean low tide to the line of vegetation is prima facie evidence that:

(1) the title of the littoral owner does not include the right to prevent the public from using the area for ingress and egress to the sea; and

(2) there is imposed on the area, subject to proof of easement, a prescriptive right or easement in favor of the public for ingress and egress to the sea.

[Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.021. Area Not Covered by Subchapter

None of the provisions of this subchapter apply to beaches on islands or peninsulas that are not accessible by a public road or ferry facility for as long as the condition exists.

[Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.022. Exemption for Certain Structures

The provisions of this subchapter do not prevent any agency, department, institution, subdivision, or instrumentality of this state or of the federal government from erecting or maintaining any groin, seawall, barrier, pass, channel, jetty, or other structure as an aid to navigation, protection of the shore, fishing, safety, or other lawful purpose authorized by the constitution or laws of this state or the United States.

[Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.023. Effect on Land Titles and Property Adjacent to and on Beaches

The provisions of this subchapter shall not be construed as affecting in any way the title of the owners of land adjacent to any state-owned beach bordering on the seaward shore of the Gulf of Mexico or to the continuation of fences for the retention of livestock across sections of beach which are not accessible to motor vehicle traffic by public road or by beach.

[Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.024. Effect of Subchapter on Definition of Public Beach

None of the provisions of this subchapter shall reduce, limit, construct, or vitiate the definition of public beaches which has been defined from time immemorial in law and custom.

[Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 61.025 to 61.060 reserved for expansion]

SUBCHAPTER C. MAINTENANCE OF THE PUBLIC BEACHES

§ 61.061. Purpose

It is the purpose of this subchapter to allocate responsibility for cleaning the beaches of this state and to preserve and protect local initiative in the maintenance and administration of beaches.

[Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.062. Public Policy

It is the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or continuous use. This creates a responsibility for the state, in its position as trustee for the public to assist local governments in the cleaning of beach areas which are subject to the access rights of the public as defined in Subchapter B of this chapter.

[Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.063. Definition

In this subchapter, "clean and maintain" means the collection and removal of litter and debris and the supervision and elimination of sanitary and safety conditions that would pose a threat to personal health or safety if not removed or otherwise corrected and includes the employment of lifeguards, beach patrols, and litter patrols.

[Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.064. Application of Subchapter

This subchapter applies to incorporated cities, towns, and villages that are located or border on the Gulf of Mexico and to all counties that are located or border on the Gulf of Mexico if the city, town, or village or county that makes application for funds under this subchapter has within its boundaries public beaches.

[Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 366, ch. 163, § 1, eff. Aug. 27, 1979.]

§ 61.065. Duty of Cities

(a) It is the duty and responsibility of the governing body of any incorporated city, town, or village located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches within the corporate boundaries.

(b) The duty to clean and maintain the condition of public beaches does not extend to any public beach within the corporate boundaries that is owned by the county in which it is located.

[Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.066. Duty of County

It is the duty and responsibility of the commissioners court of any county located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches located inside the county but outside the boundaries of any incorporated city located or bordering on the Gulf of Mexico and all public beaches owned by the county and located inside the boundaries of an incorporated city, town, or village.

[Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.067. Duty of State

It is the duty and responsibility of the state to clean and maintain the condition of all public beaches located within state parks designated by the department.

[Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.068. Application Requirement

A city or county that seeks state funds under this subchapter to clean the public beaches must submit an application to the department.

[Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.069. Contents of Application

To be approved, the application must provide:

(1) for the administration or supervision of the public beaches of the city or county by a beach park board of trustees, county parks board, commissioners court, or other administrative body that the legislature may from time to time authorize, and provide that the board or agency will have adequate authority to administer an effective program of keeping clean the public beaches within its jurisdiction;

(2) for the receipt by the city or county treasurer or other officer exercising similar functions, if there is no city or county treasurer, of all funds paid to the city or county under this subchapter and provide for the proper safeguarding of the funds by the officer, provide that the funds will be spent solely for the purposes for which they are paid, and provide for the repayment by the city or county of any funds lost or diverted from the purposes for which paid;

(3) that the governing body of the city or county will make reports as to amounts and categories of expenditures that the department may from time to time require;

(4) that entrance to all public beaches under the jurisdiction of the governing body of the city or county is free of charge; and

(5) for the establishment, maintenance, and administration of at least one beach park by the city or county which meets the minimum requirements of size and facilities available to the public as determined by the department.

[Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.070. Parking and Use Fees

Subsection (4), Section 61.069 of this code shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or for the use of facilities provided for the use and convenience of the public.

[Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.071. Compliance Before Approval

The department shall not approve any application that fails to meet the conditions specified in Section 61.069 of this code.

[Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.072. State Funds

The department shall pay to each city or county that has an application approved under Sections 61.068 through 61.070 of this code from appropriations that are made available the state share for cleaning and maintenance of public beaches.

[Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.073. Conditions for Payments

No payments shall be made under this section until the department finds that:

(1) there will be available in the budget of the city or county not less than $20,000 to clean and maintain public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought; and

(2) there will be available in the budget of the city or county for the purpose of cleaning and maintaining the public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought an amount not less than the total amount spent by the city or county to clean the beaches in the state fiscal year ending August 31, 1969.

[Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.074. Submission of Proposed Expenditures

A city or county that seeks reimbursement under the provisions of this subchapter shall submit to the department proposed expenditures for cleaning and maintaining the public beaches.

[Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.075. Fair Distribution of Funds

The department shall distribute the state share to the cities and counties in a fair and impartial manner and under procedures and accounting methods to be adopted by the department.

[Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.076. Limitation on State Share

(a) No city or county may receive as its state share an amount that is greater than two-thirds of the amount the city or county spends for the purpose of cleaning and maintaining public beaches within its jurisdiction during the state fiscal year for which reimbursement is sought.

(b) The department shall allocate the state share to eligible cities and counties taking into account the frequency with which public beaches within the jurisdiction of the cities and counties are used.

[Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.077. Funds for Administrative Purposes and Emergencies

(a) The department may use for administrative purposes not more than 10 percent of the appropriated funds for any state fiscal year.

(b) The department may withhold a portion of the appropriated funds to maintain a reserve emergency fund to be used for cleaning beaches in the event of a catastrophe, such as an oil spill, an influx of seaweed, or other major interference with public recreational use of public beaches.

[Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.078. Authority to Spend County Funds

The commissioners court of any county located or bordering on the Gulf of Mexico may spend from any available fund the amount it considers necessary to carry out the responsibilities provided in this subchapter.

[Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.079. Notice of Ineligibility

After reasonable notice and opportunity for a hearing to a city or county that is receiving funds under the provisions of this subchapter, if the department finds that the city or county no longer complies with the requirements of this subchapter, it shall notify the city or county that further payments will not be made until the department is satisfied that there is no longer any failure to comply.

[Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.080. Public Beaches in Ineligible City

(a) The governing body of any incorporated city located or bordering on the Gulf of Mexico that is not entitled to receive funds under this subchapter may contract with the commissioners court of the county in which the city is located to allow the county to clean the beaches within the corporate limits of the city.

(b) The city may apply to the department for rebates of 40 percent of the contract price, and the city is not required to meet the terms and conditions imposed in Section 61.069 of this code unless otherwise provided by law.

(c) The department shall make the rebates at the close of each fiscal year on a showing by the city that entrance to all public beaches under the jurisdiction of the city is free of charge.

(d) This section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or the use of facilities provided for the use and convenience of the public.

[Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.081. Public Beaches in Ineligible County

(a) The commissioners court of a county that is not entitled to receive funds under this subchapter may contract with the commissioners court of any adjacent county that is entitled to receive funds under this subchapter to allow the adjacent county to clean the public beaches of the ineligible county.

(b) The contracting county that is not entitled to receive funds under this subchapter may apply to the department for rebates of 40 percent of the contract price, but the ineligible county is not required to meet the terms and conditions imposed in Section 61.069 of this code.

(c) The department shall make the rebates at the close of each state fiscal year on a showing by the ineligible county that entrance to all public beaches under the jurisdiction of the county is free of charge.

(d) This section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or for the use of facilities provided for the use and convenience of the public.

[Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.082. Authority of Local Governments

(a) The provisions of this subchapter shall not be construed to interfere with local initiative and responsibility in the cleaning, maintenance, and supervision of public beaches.

(b) The administration of public beaches, the selection of personnel, and the determination of the best uses of the funds insofar as is consistent with the purposes of this subchapter are reserved to the several political subdivisions receiving funds under this subchapter.

[Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.083. Exemptions From Subchapter

None of the provisions of this subchapter apply to any beach area that does not border on the Gulf of Mexico or to any island or peninsula that is not accessible by a public road or common carrier ferry facility as long as that condition exists.

[Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 61.084 to 61.120 reserved for expansion]

SUBCHAPTER D. REGULATION OF TRAFFIC AND LITTER

§ 61.121. Definition

In this subchapter, "beach" shall have the same definition as provided in Section 61.012 of this code.

[Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.122. Regulation of Traffic, Prohibition of Litter, Possession of Animals on Beaches, and Swimming in Passes to and from the Gulf of Mexico

(a) The commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits, by order, may regulate motor vehicle traffic on any beach within the boundaries of the county and may prohibit the littering of the beach and may define the term "littering."

(b) The commissioners court of a county bordering the Gulf of Mexico or its tidewaters, by order, may regulate the possession of animals on the beach within its boundaries, including but not limited to prohibiting animals to run at large on said beach.

(c) The commissioners court of a county bordering the Gulf of Mexico or its tidewaters, by order, may regulate swimming in passes leading to and from the Gulf of Mexico, located within its boundaries, including but not limited to prohibiting swimming in said passes and posting signs notifying persons of such regulation or prohibition.

[Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 775, ch. 341, § 1, eff. Aug. 27, 1979.]

§ 61.123. Notice of Hearing

(a) Before the commissioners court adopts an order under Section 61.122 of this code, it must publish notice of the intention to adopt the order in at least one newspaper with general circulation in the county.

(b) The notice shall state the time and place of the public hearing on the proposed order and that interested persons may obtain copies of the proposed order from the commissioners court.

[Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.124. Copies of Order

The commissioners court shall make copies of the proposed order available to interested persons.

[Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.125. Public Hearing

(a) Not less than one month but more than two weeks after notice is published, the commissioners court shall conduct a hearing at the time and place stated in the notice.

(b) At the hearing, the commissioners shall allow all interested persons to express their views on the proposed order.

[Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.126. Traffic Regulations

If the order includes a traffic regulation, the order shall provide for signs that are designed and posted in compliance with the current provisions of the Texas Manual on Traffic Control Devices for Streets and Highways, stating the applicable speed limit, parking requirement, or that vehicles are prohibited.

[Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.127. Criminal Penalties

In any order adopted under this subchapter, the commissioners court may adopt the following criminal penalties for violation of the order:

(1) for a first conviction, a fine of not more than $50;

(2) for a second conviction, a fine of not more than $200;

(3) for any subsequent convictions after the second conviction, a fine of not more than $500 or confinement in the county jail for not more than 60 days, or both.

[Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.128. Order Prevails Over State Law

If an order adopted under this subchapter conflicts with the general law of the state, the order shall control over the state law, and in cases of violation, prosecution may be maintained only under the order.

[Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.129. Ordinance Prevails Over Order and State Law

(a) This subchapter does not limit the power of an incorporated city, town, or village bordering on the Gulf of Mexico or any adjacent body of water to regulate motor vehicle traffic and prohibit littering on any beach within its corporate limits.

(b) If these regulatory ordinances are adopted by a city, town, or village and the ordinance conflicts with the general law of the state or with an order of the commissioners court adopted under this subchapter, the ordinance shall control over the state law and the order, and in cases of violation, prosecution may be maintained only under the ordinance.

[Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.130. Rights of the Public

The right of the public to use the public beaches defined in this subchapter is inviolate and is subject only to orders adopted by a commissioners court under this subchapter and to ordinances enacted by an incorporated city, town, or village.

[Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.131. Effect of Subchapter on Definition of Public Beach

None of the provisions of this subchapter shall reduce, limit, construct, or vitiate the definition of public beaches which has been defined from time immemorial in law and custom.

[Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 61.132 to 61.160 reserved for expansion]

SUBCHAPTER E. LICENSES FOR BUSINESS ESTABLISHMENTS

§ 61.161. Public Policy

It is the public policy of this state that the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, and any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, if the public has acquired a right of use or easement to or over the area by the prescription or dedication or has retained a right by virtue of continuous right in the public, shall be used primarily for recreational purposes, and any use which substantially interferes with the enjoyment of the beach area by the public shall constitute an offense against the public policy of the state. Nothing in this subchapter prevents any agency, department, political subdivision, or municipal corporation of this state from exercising its lawful authority under any law of this state to regulate safety conditions on any beach area subject to public use.

[Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.162. Findings

(a) The legislature finds that the operation and maintenance of business establishments at fixed or permanent locations on the public beaches of this state bordering on the seaward shore of the Gulf of Mexico constitute a potential public health hazard and a substantial interference with the free and unrestricted rights of ingress and egress of the public, both individually and collectively, to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico or any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico if the public has acquired a right of use or easement to or

over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) The legislature finds that a reasonable number of mobile business establishments which traverse the public beach while doing business are beneficial to the public interest and do not interfere with the free and unrestricted rights of ingress and egress of the public as provided in this subchapter.

[Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.163. Definition

In this subchapter, "business establishment" means any structure or vehicle where any commodity including memberships in any private club or other similar organization is offered to the public for sale or lease but does not include any structure or vehicle where only services are offered to the public for sale.

[Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.164. Application

A person who desires to operate a mobile business establishment on a public beach located outside the municipal limits of an incorporated city shall submit a written application to the department.

[Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.165. Contents of Application

The application shall include:

(1) the name and street address of the applicant;

(2) the commodity to be sold or leased; and

(3) the limits of the territory within which the mobile business establishment will operate.

[Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.166. Filing Fee

(a) The application shall be accompanied by a filing fee in an amount determined by the department, not to exceed $25.

(b) The filing fee shall be deposited in the state treasury in the Land and Water Recreation and Safety Fund 63, and the department may pay from this fund the expenses of carrying out the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.167. Separate Applications

Any applicant who plans to operate more than one mobile business establishment must file a separate application accompanied by a separate filing fee for each mobile business establishment that he seeks to have licensed.

[Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.168. Granting License

(a) On finding that the issuance of a license is consistent with recreational needs and the public welfare, and that the mobile business establishment would not create a traffic or safety hazard, and on compliance with this subchapter by the applicant, the department shall grant the license.

(b) The license shall be valid for one year from the day it is issued.

(c) If the license is not granted, the department shall return the filing fee to the applicant.

[Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.169. Applications Not to be Granted

The department shall not grant an application:

(1) for a business establishment located at a fixed or permanent location on a public beach;

(2) for a business establishment that does not traverse the beach while doing business; or

(3) that does not otherwise meet the terms and provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.170. License Prohibition Against Glass Containers

(a) Each license granted under this subchapter authorizing the sale of commodities on a public beach shall include a prohibition against the sale of any commodity in a glass container.

(b) Any person selling a commodity in a glass container on a public beach outside the boundaries of any incorporated city shall have his rights conferred by the license immediately terminated and revoked as provided in Section 61.172 of this code.

[Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.171. Assignment

No license issued under this subchapter may be assigned.

[Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.172. Termination and Revocation of License

(a) The failure or refusal of the licensee to comply with the terms and conditions of a license shall operate as an immediate termination and revocation of all rights conferred in or claimed under the license.

(b) The termination and revocation of the license is not effective until notice is delivered by mail to the address of the licensee listed on the application for the license.

[Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.173. Maximum Territorial Limits

(a) If territorial limitations are applied uniformly to all applicants seeking to operate mobile business establishments in the territory, the department may establish maximum territorial limits over which mobile business establishments may operate.

(b) A license to sell or lease only surfboards and related equipment may not be limited as to the territory over which the mobile business establishment may operate.

[Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.174. Additional Standards

In addition to other standards provided in this subchapter, it is the intention of the legislature that the department exercise the authority delegated to it under this subchapter according to the following considerations:

(1) that the number of mobile business establishments licensed by the department should not constitute a substantial interference with the free and unrestricted rights of ingress and egress of the public provided in this subchapter;

(2) that the number of licenses issued by the department under this subchapter are sufficient to ensure free and unrestricted competition in selling or leasing of commodities to the public; and

(3) that no person should be allowed to operate any mobile business establishment on any public beach in restraint of trade or competition by which the person controls all or substantially all the business establishments on the public beach licensed by the department.

[Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.175. Rules, Procedures, and Conditions

The department may establish additional rules, procedures, and conditions necessary or appropriate to carry out the purposes of this subchapter.

[Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.176. Areas Exempt From Subchapter

This subchapter does not apply to a public beach that is within the boundaries of a state park designated by the department or to a remote beach on any island or peninsula which is not accessible by public road or common carrier ferry facility as long as that condition exists.

[Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.177. Penalty

A person, who for himself or on behalf of or under the direction of another person, operates any business establishment, whether mobile or at a fixed or permanent location, on any public beach outside the boundaries of any incorporated city without first obtaining a license to operate the business establishment from the department shall be fined not less than $10 nor more than $200.

[Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 61.178 to 61.210 reserved for expansion]

SUBCHAPTER F. REMOVAL OF SAND, MARL, GRAVEL, AND SHELL

§ 61.211. Findings

The legislature finds that the unregulated excavation, taking, removal, and carrying away of sand, marl, gravel, and shell from islands and peninsulas bordering on the Gulf of Mexico and from the public beaches of the state constitute a substantial interference with public enjoyment of Texas beaches and a hazard to life and property.

[Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.212. Exemptions From Subchapter

(a) The provisions of this subchapter do not apply:

(1) to excavating, taking, removing, or carrying away sand, marl, gravel, or shell made for the purpose of constructing improvements on real property if the improvements are constructed on the property on which the excavating, taking, removing, or carrying away occurs;

(2) to any landowner who desires to shift sand, marl, gravel, or shell from one location to another on land wholly owned by him; or

(3) to any agency of the federal or state government or any county, city, or other political subdivision or any of their agents or officers acting in their official capacities.

(b) Any person who holds a lease that was issued by the state under Chapter 377, Acts of the 57th Legislature, Regular Session, 1961 (Article 5415e, Vernon's Texas Civil Statutes), before it was repealed shall be treated as an owner of the land and shall be entitled to excavate, take, remove, and carry away sand, marl, gravel, or shell for the purposes provided in Subsection (a) of this section without obtaining a permit from the commissioners court.

[Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.213. Application

Before a person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a mainland public beach that is located

outside the boundaries of an incorporated city, town, or village, he must submit a written application to the commissioners court of the county in which the excavation, taking, removal, or carrying away is to take place.
[Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.214. Contents of Application

The application shall include:

(1) the name of the applicant;

(2) the location and dimensions of the proposed excavation;

(3) the property interest or contractual right that enables the applicant to excavate, take, remove, or carry away sand, marl, gravel, or shell; and

(4) certification by the county treasurer, or other official exercising similar authority if there is no county treasurer, that the applicant has deposited a filing fee of $50.

[Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.215. Prerequisites to Issuance of Permit

No permit may be issued by the commissioners court under this subchapter to excavate, take, remove, or carry away sand, marl, gravel, or shell from land owned by the state, public beach, or privately owned land that is subject to this subchapter and that is not located on a public beach, unless the applicant is the owner of the land on which the proposed excavating, taking, removing, or carrying away is to take place or unless the applicant is acting with the knowledge and consent of the owner.
[Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.216. Notice of Applications Received

(a) The commissioners court shall give public notice of all applications received for permits to excavate, take, remove, or carry away sand, marl, gravel, or shell.

(b) The notice shall be published once in a newspaper of general circulation in the county.

(c) The notice shall include the name of the applicant and the location and dimensions of the proposed activity.
[Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.217. Public Hearing

(a) The commissioners court shall hold a public hearing if the hearing is requested by any citizen within 10 days after notice is published under Section 61.216 of this code.

(b) The hearing may not be held less than 30 days from the date of the first publication of notice under Section 61.218 of this code.
[Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.218. Notice of Public Hearing

Notice of the public hearing shall be published at least once a week for at least two weeks in a newspaper of general circulation in the county.
[Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.219. Issuance of Permit

(a) On a finding that the proposed excavating, taking, removing, or carrying away would not create hazardous conditions or imperil lives or property by exposing the island or peninsula or public beach to the ravages of storm water, the commissioners court may issue a permit to the applicant, and it shall be valid for six months from the date of its issuance.

(b) The decision to issue a permit shall be made with the advice and counsel of the county engineer in counties in which the commissioners court employs a county engineer.

(c) None of the provisions of this subchapter prohibit a commissioners court from issuing a permit to a person who holds a right-of-way easement granted by the commissioner for a pipeline to cross state land, provided the applicant complies with the provisions of this subchapter relating to the issuance of permits.
[Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.220. Return of Filing Fee

If the commissioners court refuses to issue the permit, the applicant may recover his filing fee from the county treasurer or other official exercising similar authority if there is no county treasurer.
[Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.221. Assignment of Permits

No permit may be assigned without the approval of the commissioners court.
[Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.222. Termination and Revocation of Permit

Failure or refusal of the permittee to comply with the terms and conditions of the permit operates as an immediate termination and revocation of all rights conferred by or claimed under the permit.
[Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.223. Suits for Orders and Injunctions

The attorney general, any county attorney, district attorney, or criminal district attorney of the state shall file in a district court in the county in which the conduct take place, a suit seeking temporary or permanent court orders or injunctions to prohibit any excavating, taking, removing, or carrying away of any sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a public beach of this state if the land is located outside the boundaries of an incorporated city, town, or village in violation of the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.224. Penalty

A person who for himself or on behalf of or under the direction of another person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a public beach of this state, if the land is located outside the boundaries of any incorporated city, town, or village, in violation of the provisions of this subchapter shall be fined not less than $10 nor more than $200. Each day a violation occurs constitutes a separate offense.

[Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.225. Sand, Marl, Gravel, or Shell From Public Beaches Within Incorporated Cities, Towns, or Villages

No incorporated city, town, or village having within its boundaries a public beach may authorize a person to excavate, take, remove, or carry away any sand, marl, gravel, or shell from the public beach except for the construction of a publicly owned and operated recreational facility or for the construction of a shoreline protection structure.

[Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.226. Application of Subchapter to Certain Islands and Peninsulas

The provisions of this subchapter do not apply to any island or peninsula that is not accessible by a public road or common carrier ferry facility as long as that condition continues.

[Acts 1977, 65th Leg., p. 2491, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.227. Authority of Parks and Wildlife Department

None of the provisions of this subchapter may be construed to repeal or modify the provisions of Chapter 86, Parks and Wildlife Code, which relate to the powers and duties of the Parks and Wildlife Department over matters pertaining to the sale, taking, carrying away, or disturbing of sand, marl, gravel, or shell of commercial value and gravel, shells, mud shell, and oyster beds and their protection from free use and unlawful disturbing or appropriation, nor may this subchapter be construed to create additional or supplemental requirements or procedures to those provided in Chapter 86, Parks and Wildlife Code.

[Acts 1977, 65th Leg., p. 2491, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 62. BEACH PARK BOARD OF TRUSTEES

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SUBCHAPTER A. GENERAL PROVISIONS

§ 62.001. Applicability

(a) The provisions of this chapter apply to counties that are located or border on the Gulf of Mexico and have within their boundaries beaches that are suitable for park purposes. The suitability of a beach for park purposes is established conclusively when the commissioners court of the county makes a finding that the beach located within its boundaries, but not located within the boundaries of an incorporated city, is suitable for park purposes.

(b) As long as an island or peninsula is not accessible by a public road or common carrier ferry facility, the provisions of this chapter do not apply to that island or peninsula.

(c) The provisions of this chapter do not interfere with, preempt, or in any manner restrict or usurp the authority of the land office over state-owned beaches.

(d) The provisions of this chapter do not prohibit the creation of, or limit the lawful actions of, a beach park board of trustees of a home-rule city as provided in Chapter 33, Acts of the 57th Legislature, 3rd Called Session, 1962, as amended (Article 6081g–1, Vernon's Texas Civil Statutes).

(e) The provisions of this chapter do not permit any interference with the right the public has under the provisions of Subchapter B of Chapter 61 of this code to the free and unrestricted use of, and to ingress and egress to, the area bordering on the Gulf of Mexico from mean low tide to the line of vegetation, as that term is defined in Subsection (2), Section 61.001 of this code. A county, county official, or anyone acting under the authority of this chapter may not exercise any authority, contract out a right to exercise authority, or otherwise delegate authority beyond that specifically granted to it in Sections 61.122 through 61.128 of this code over that area notwithstanding any of the specific provisions of this chapter. The rights established in Subchapters B and D of Chapter 61 of this code are paramount over the rights or interests that might otherwise be created by the provisions of this chapter, and nothing in this chapter encroaches on those rights or upon land, or interests in land, that may ultimately be held subject to those rights.

[Acts 1977, 65th Leg., p. 2492, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.002. Definition

In this chapter, "board" means the Beach Park Board of Trustees.

[Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 62.003 to 62.010 reserved for expansion]

SUBCHAPTER B. CREATION OF BOARD

§ 62.011. Purpose and Authority

A county located or bordering on the Gulf of Mexico with a beach suitable for park purposes may create a board in the manner provided in this subchapter for the purpose of improving, equipping, maintaining, financing, and operating a public park or parks, or any facilities owned by the county, or to be acquired by the county, or to be managed by the county under the terms of a written contract. The board, to be designated Beach Park Board of Trustees, has the powers and duties specified in this chapter.

[Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.012. Method of Creating Board

A board may be created after a favorable majority vote of the qualified voters of the county voting at an election held on the proposition.

[Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.013. Election

(a) The election shall be called by the commissioners court.

(b) Notice of the election shall be given in the manner provided by Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended.[1]

(c) The ballots shall be printed to provide for voting for or against the proposition: "Establishing a beach park board of trustees."

[Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[1] Civil Statutes, art. 701 et seq.

[Sections 62.014 to 62.040 reserved for expansion]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 62.041. Members of Board

(a) The board is composed of seven members appointed by the commissioners court.

(b) One board member shall be a member of the commissioners court.

[Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.042. Term of Office

(a) With the exception of the trustees first appointed, a trustee serves for a term of two years from the date of appointment.

(b) At the time of the appointment of the first trustees, the commissioners court shall designate three trustees to serve for one year and four trustees to serve for two years.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.043. Oath and Bond

(a) A trustee shall qualify within 15 days after his appointment by taking the official oath and filing a good and sufficient bond with the county clerk.

(b) The bond shall be approved by the commissioners court, payable to the county, in a sum not to exceed $5,000 as approved by the commissioners court of the county, and conditioned on the faithful performance of the duties of the trustee, including his proper handling of all money which may come into his hands in his capacity as a member of the board.

(c) The cost of the bond shall be paid by the board.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.044. Compensation; Expenses

A trustee serves without compensation but shall be reimbursed for travel and other necessary expenses incurred in the performance of his official duties.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.045. Vacancy

A vacancy on the board shall be filled by appointment of the commissioners court.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.046. Officers of Board

(a) On the appointment of the first trustees, the commissioners court shall designate one of the trustees to serve as chairman of the board for a period of one year.

(b) After the first year the board annually shall elect a chairman, a vice-chairman, a secretary, and a treasurer from among its members. The office of secretary and treasurer may be held by the same person.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.047. Park Manager

The board may employ and compensate a manager for any parks or facilities and may give him full authority in the management and operation of the park or parks or facilities subject only to the direction and orders of the board.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.048. Legal Services

(a) The board may call on the county attorney of the county for the legal services it requires.

(b) In lieu of or in addition to the county attorney, the board may employ and compensate its own counsel and legal staff.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.049. Employees of Board

(a) The board may employ temporary or permanent secretaries, stenographers, bookkeepers, accountants, technical experts, and other agents and employees it requires.

(b) The board shall determine the qualifications, duties, and compensation of its employees.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.050. Meetings

(a) The board shall hold regular meetings at times set by the board.

(b) The board may hold special meetings at the times business or necessity requires. Special meetings may be called by the chairman or any three members of the board.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.051. Board Records

(a) The board shall keep a true and full record of all its meetings and proceedings and preserve its minutes, contracts, accounts, and all other records in a fireproof safe or vault.

(b) The board may contract with the commissioners court of the county to have the county keep and maintain its records.

(c) All the records are the property of the board and are subject to inspection by the commissioners court at all reasonable times.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.052. Management of Funds

The money belonging to or under control of the board shall be deposited and secured in the same manner prescribed by law for county funds.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.053. Audit

Independent auditors selected by the board shall make an annual audit of all financial transactions and records of the board.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.054. Court Actions

The board may sue and be sued in its own name.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.055. Seal

The board shall adopt a seal which shall be placed on all leases, deeds, and other instruments usually executed under seal and on other instruments required by the board.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 62.056 to 62.090 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES

§ 62.091. Land Under Jurisdiction, Management, and Control

(a) The following land is under the jurisdiction of the board:

(1) public beaches owned in fee by the county; and

(2) land used as parks in connection with public beaches not located inside the boundaries of an incorporated city and not inside the area bordering on the Gulf of Mexico from the line of mean low tide to the line of vegetation as that term is defined in Section 61.001(2) of this code.

(1) additional parks and facilities owned by the county; or

(2) additional parks and facilities to be managed by the county under the terms of a written contract.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.092. Priority of Jurisdiction

(a) The board has no jurisdiction over a public beach located inside the boundaries of the county that has been designated a national park, national seashore, or state park.

(b) The authority of the board preempts the right of the county board of park commissioners to act with regard to a beach, park, or facility within the jurisdiction of the board.

(c) The provisions of this chapter are cumulative of other laws relating to county parks but take precedence in the event of conflict.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.093. Park Authority

The board may manage, operate, maintain, equip, and finance an existing public park placed under its jurisdiction by the commissioners court and may improve, manage, operate, maintain, equip, and finance additional parks acquired by gift but not acquired by the exercise of the power of eminent domain.

[Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1263, ch. 487, § 1

Acts 1977, 65th Leg., p. 1263, ch. 487, § 1, purports to amend § 7 of Civil Statutes, art. 5415d–3 [now, this section in part], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1). As so amended, the applicable part of § 7 reads:

" * * In addition to the powers and authority herein granted, the board shall have and exercise the following powers and authority:*

"(a) To manage, operate, maintain, equip, improve, and finance any and all existing public parks placed under its jurisdiction by the commissioners court;

*"(b) To improve, manage, operate, maintain, equip, and finance additional parks acquired by gift or otherwise, but not by the exercise of the power of eminent domain; * * *".*

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 62.094. Fee Charged

The board may charge and collect a reasonable fee for access or entrance to or parking on the land under its jurisdiction, other than public beaches owned by the county, or use of a facility located on land under its jurisdiction.

[Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.095. Use of Funds

(a) The board may accept, receive, and spend gifts of money or other things of value from any person for the purpose of performing any function, power, or authority vested in the board and funds from the county that are appropriated by the county from time to time for the purpose of improving, equipping, maintaining, operating, and promoting recreational facilities under the board's supervision and control.

(b) The board may spend money appropriated by the commissioners court for the purpose of cleaning and maintaining public beaches and land within its jurisdiction, including money appropriated to the commissioners court by the state for that purpose.

[Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.096. Contracts, Leases, and Other Agreements Relating to Land and Facilities

The board may enter into a contract, lease, or other agreement connected with, incident to, or affecting the financing, construction, equipping, maintenance, or operation of facilities located or to be located on or pertaining to land under its jurisdiction or facilities under its control and may execute and perform its lawful powers and functions on land leased from others.

[Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.097. Contracts, Leases, and Other Agreements Relating to Management, Operation, and Maintenance of Land and Facilities

The board may enter into any contract, lease, or agreement with any person for a period of not more than 40 years relating to the management, operation, and maintenance of a concession, facility, improvement, leasehold, land, or other property over which the board has jurisdiction and control.

[Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.098. Contracts With Other Governmental Agencies

To accomplish any purpose authorized in this chapter, the board may enter into contracts with:

(1) adjacent counties;

(2) boards in adjacent counties; and

(3) boards in cities of the same county in which the board has jurisdiction.

[Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.099. Advertising

The board may advertise the county's recreational advantages for the purpose of attracting tourists, residents, and other users of the public facilities operated by the board.

[Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1263, ch. 487, § 1

Acts 1977, 65th Leg., p. 1263, ch. 487, § 1, purports to amend § 7 of Civil Statutes, art. 5415d–3 [now, this section in part], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1). As so amended, the applicable part of § 7 reads:

" * * In addition to the powers and authority herein granted, the board shall have and exercise the following powers and authority:*
** * **

*"(d) To publish brochures and otherwise advertise the county's recreational advantages for the purposes of attracting tourists, residents, and other users of the public facilities operated by the board; * * *".*

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 62.100. Rules

The board may adopt and enforce reasonable rules for the use of parks and facilities under the jurisdiction and control of the board by the public or by lessees, concessionaires, and other persons carrying on a business activity inside the area of the public parks and facilities.

[Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.101. Legislative Intent

It is the intent of the legislature in enacting the provisions of this chapter that the rights established or recognized in Subchapters B and D of Chapter 61 of this code are paramount over any rights or interests that might otherwise be considered created by this chapter, and none of the provisions of this chapter may trench on those rights or encroach on land or interests in land that may ultimately be held subject to those rights.

[Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 62.102 to 62.130 reserved for expansion]

SUBCHAPTER E. ISSUANCE OF BONDS

§ 62.131. Authority to Issue Revenue Bonds

For the purpose of improving and enlarging public parks and facilities, the board may issue revenue bonds payable solely from the revenue of all or any designated part of the properties or facilities under the jurisdiction and control of the board.

[Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1263, ch. 487, § 1

Acts 1977, 65th Leg., p. 1263, ch. 487, § 1, purports to amend § 7 of Civil Statutes, art. 5415d–3 [now, this section in part], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1). As so amended, the applicable part of § 7 reads:

" * * In addition to the powers and authority herein granted, the board shall have and exercise the following powers and authority:*
** * **

*"(l) To issue revenue bonds in the name of the board which shall be payable solely from the revenues of all or any designated part or parts of the properties or facilities under the jurisdiction and control of the board or from any other source of funds the board may wish to dedicate for that purpose, for the purpose of acquiring, developing, improving, and enlarging public recreational areas and facilities. * * *".*

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 62.132. Formal Requirements of Bonds

(a) The bonds may be issued by resolution adopted by the board without the necessity of an election.

(b) The bonds may be issued in the name of the board in one or more installments or series and shall mature serially or otherwise within 40 years from their date or dates.

(c) The bonds shall be issued on the terms and conditions, with regard to the security, manner, place, and time of payment, pledge of designated revenue, redemption before maturity, and the issuance of additional parity or junior lien bonds, that the board specifies in the resolution or resolutions authorizing the bonds.

(d) The bonds shall be executed by the chairman and secretary of the board and shall be signed by the chairman and secretary or shall bear the facsimile signature of either or both.

(e) The bonds shall display the seal of the board, which may be impressed, printed, or lithographed on the bonds.

[Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1263, ch. 487, § 1

Acts 1977, 65th Leg., p. 1263, ch. 487, § 1, purports to amend § 7 of Civil Statutes, art. 5415d–3 [now, this section in part], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1). As so amended, the applicable part of § 7 reads:

" * * In addition to the powers and authority herein granted, the board shall have and exercise the following powers and authority: * * **

*"(l) * * * Such bonds may be issued in one or more installments or series by resolutions adopted by the board without the necessity of an election, shall bear interest at a rate not to exceed 10 percent per annum, shall mature serially or otherwise within 40 years from their date or dates, shall be sold by the board on the best terms obtainable, except that the annual interest rate and discount may not exceed 10 percent per annum, * * *".*

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 62.133. Sale of Bonds

The board shall sell the bonds on the best terms obtainable but not for less than par and accrued interest.

[Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.134. Approval and Registration

The bonds shall not be delivered until a transcript of the proceedings authorizing their issuance has been submitted to the attorney general and approved as to legality by the attorney general and the bonds are registered by the comptroller of public accounts.

[Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.135. Authorized Investments

The bonds issued under the provisions of this subchapter are legal and authorized investments for banks, saving banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the state.

[Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.136. Security for Deposits

The bonds are eligible to secure the deposit of public funds of the state and public funds of cities, towns, villages, or other political corporations or subdivisions of the state and are lawful and sufficient security for deposits to the extent of their face value when accompanied by all unmatured interest coupons appurtenant to them.

[Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.137. Tax Bonds

(a) The board shall not issue bonds payable in whole or in part from ad valorem taxes.

(b) The board may receive and spend the proceeds of bonds payable from taxes which are issued by the governing body of the county for park purposes after the bonds are authorized at an election held in the manner required by law.

[Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.138. Refunding Bonds

(a) The board may issue refunding bonds for the purpose of refunding one or more series or installments of outstanding original or refunding bonds of the board.

(b) The refunding bonds shall be issued, approved as to legality by the attorney general, and registered by the comptroller of public accounts in the manner and on the terms and conditions provided in this subchapter for the issuance of original revenue bonds.

[Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 63. DUNES

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SUBCHAPTER A. GENERAL PROVISIONS

§ 63.001. Findings of Fact

The legislature finds and declares:

(1) that the barrier islands and peninsulas of this state and the adjacent mainland areas contain a significant portion of the state's human, natural, and recreational resources;

(2) that these areas are wholly or in part protected from the action of the water of the Gulf of Mexico and storms on the Gulf by a system of natural or artificially constructed vegetated sand dunes that provide a protective barrier for adjacent land and inland water and land against the action of sand, wind, and water;

(3) that certain persons have from time to time modified or destroyed the effectiveness of the protective barriers in the process of developing the shoreline for various purposes;

(4) that the operation of recreational vehicles over these dunes has destroyed the natural vegetation on them;

(5) that these practices constitute serious threats to the safety of adjacent properties, to public highways, to the taxable basis of adjacent property and constitute a real danger to the health, safety, and welfare of persons living, visiting, or sojourning in the area;

(6) that it is necessary to protect these dunes as provided in this chapter because stabilized, vegetated dunes offer the best natural defense against storms;

(7) that vegetated stabilized dunes help preserve state-owned beaches and shores by protecting against erosion of the shoreline;

(8) that the area bounded on the north by the Mansfield Ship Channel and extending to the southern tip of South Padre Island is an area of irregular dunes, the vast majority of which are unvegetated, unstable, and migratory, and these dunes do not afford significant protection to persons and property inland from this area; and

(9) that the area bounded on the north by the inlet known as Aransas Pass and on the south by the Mansfield Ship Channel is an area of a mixture of irregular dunes as described in Subdivision (8) of this section and dunes that afford protection to persons and property inland.

[Acts 1977, 65th Leg., p. 2499, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.002. Definitions.

In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Barrier island" means an island bordering on the Gulf of Mexico and entirely surrounded by water.

(3) "Peninsula" means an arm of land bordering on the Gulf of Mexico surrounded on three sides by water.

(4) "Recreational vehicle" means a dune buggy, marsh buggy, minibike, trail bike, jeep, or any other mechanized vehicle that is being used for recreational purposes, but does not include any vehicle not being used for recreational purposes.

[Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.003. Effect of Chapter

The provisions of this chapter do not apply to any island or peninsula not accessible by public road or common carrier ferry facility for as long as that condition exists.

[Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 63.004 to 63.010 reserved for expansion]

SUBCHAPTER B. DUNE PROTECTION LINE

§ 63.011. Establishing Dune Protection Line

After notice and hearing, the commissioners court of any county bordering on the Gulf of Mexico that has within its boundaries a barrier island or peninsula located north of the Mansfield Ship Channel may establish a dune protection line on the island or peninsula for the purpose of preserving sand dunes that offer a defense against storm water and erosion of the shoreline.

[Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.012. Location of Dune Protection Line

The dune protection line shall not be located further landward than a line drawn parallel to and 1,000 feet landward of the line of mean high tide of the Gulf of Mexico.

[Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.013. Notice

(a) Notice of a hearing to consider establishing the dune protection line shall be published at least three times in the newspaper with the largest circulation in the county. The notice shall be published not less than one week nor more than three weeks before the date of the hearing.

(b) Notice shall be given to the commissioner not less than one week nor more than three weeks before the hearing.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.014. Map and Description of Dune Protection Line

(a) The commissioners court in establishing a dune protection line shall define the line by presenting it on a map or drawing, by making a written description, or by both. Each shall be designated appropriately and filed with the county clerk and with the commissioner.

(b) Notice of alterations in the dune protection line shall be filed with the county clerk and with the commissioner, and the appropriate changes shall be made on the map, drawing, or description.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.015. Dune Protection Line Prohibited

No dune protection line may be established for the purpose of protecting dunes located inside a state or national park area.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 63.016 to 63.050 reserved for expansion]

SUBCHAPTER C. PERMITS

§ 63.051. Permit Requirement

An owner of land or a person holding an interest in land under the owner who desires to perform any acts on the land which are prohibited in Sections 63.091 through 63.092 of this code must apply for a permit from the commissioners court.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.052. Permit Not Required

No permit is required for the following activities:

(1) grazing livestock;

(2) production of oil and gas; and

(3) recreational activity other than the operation of a recreational vehicle.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.053. Fee

The commissioners court may require a reasonable fee to accompany the application.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.054. Grant of Application

(a) The commissioners court shall evaluate the permit application, and if the commissioners court finds as a fact after full investigation that the particular conduct proposed will not materially weaken the dune or reduce its effectiveness as a means of protection from the effects of high wind and water, it may grant the application.

(b) In determining whether or not to grant the application, the commissioners court shall consider the height, width, and slope of the dune and the restoration of protection affected by construction as well as the restoration of vegetation.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.055. Terms and Conditions of Permit

The commissioners court may include in a permit the terms and conditions it finds necessary to assure the protection of life and property.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.056. Notice to and Comments of Commissioner on Permits

(a) After receiving an application for a permit to perform any of the acts prohibited in Sections 63.091 through 63.092 of this code in a critical dune area, the commissioners court shall notify the commissioner by sending to him, not less than 10 days before the public hearing on the application, notice of the hearing and a copy of the application.

(b) The commissioner may submit any written or oral comments regarding the effect of the proposed activity on the dunes that protect state-owned land, shores, and submerged land.

[Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.057. Permit for Recreational Vehicle Prohibited

No permit may be issued by the commissioners court that allows the operation of a recreational vehicle on a sand dune seaward of the dune protection line.

[Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 63.058 to 63.090 reserved for expansion]

SUBCHAPTER D. PROHIBITIONS

§ 63.091. Conduct Prohibited Between the Texas-Louisiana State Line and Aransas Pass

Unless a permit is obtained authorizing the conduct, no person in any county in the area bounded on the south by the inlet known as Aransas Pass and on the north by the Texas-Louisiana state line, where a dune protection line has been established, may damage, destroy, or remove a sand dune or portion of a sand dune on a barrier island or peninsula seaward of the dune protection line or kill, destroy, or remove in any manner any vegetation growing on a sand dune seaward of the dune protection line.

[Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.092. Conduct Prohibited Between Aransas Pass and Mansfield Ship Channel

In any county in the area bounded on the north by the inlet known as Aransas Pass and on the south by the Mansfield Ship Channel, where a dune protection line has been established, no person without a permit may:

(1) excavate, remove, or relocate a sand dune or a portion of a sand dune that is located seaward of the dune protection line, thus reducing the sand dune to an elevation less than the elevation or elevations shown on the Special Flood Hazard Map of the area adopted by the administrator of the Federal Insurance Administration under the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.); or

(2) kill, destroy, or remove in any manner vegetation growing on a sand dune seaward of the dune protection line without making provision for the stabilization of the dune by the installation or construction of improvements or the replanting or resodding of vegetation on the dune to maintain the dune at the minimum elevation provided in Subdivision (1) of this section.

[Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.093. Prohibited Operation of Recreational Vehicles

No person may operate a recreational vehicle on a sand dune seaward of the dune protection line in any county in which a dune protection line has been established.

[Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 63.094 to 63.120 reserved for expansion]

SUBCHAPTER E. CRITICAL DUNE AREAS

§ 63.121. Identification of Critical Dune Areas

The commissioner, in his role as trustee of the public land of this state, shall identify the critical dune areas that are essential to the protection of state-owned land, shores, and submerged land.

[Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.122. Notice to Counties

After the commissioner has identified the critical dune areas, notice of the critical dune areas shall be given to the commissioners court of each county in which one or more of these areas is located.

[Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 63.123 to 63.150 reserved for expansion]

SUBCHAPTER F. APPEALS

§ 63.151. Appeal by Littoral Owner

A littoral owner aggrieved by a decision of the commissioners court under this chapter may appeal to a district court in that county.

[Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.152. Appeal by Commissioner

The commissioner, in his role as trustee of the public land of this state, may appeal to a district court of that county any decision of the commissioners court that the commissioner determines to be a violation of this chapter.

[Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 63.153 to 63.180 reserved for expansion]

SUBCHAPTER G. PENALTIES

§ 63.181. Penalty

(a) A person who violates the provisions of this chapter shall be fined not more than $200.

(b) Each day that a violation occurs constitutes a separate offense.

[Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

SUBTITLE F. LAND OF POLITICAL SUBDIVISIONS

CHAPTER 71. LEASE FOR MINERAL DEVELOPMENT

SUBCHAPTER A. LEASES BY POLITICAL SUBDIVISIONS

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71.002. Authority to Lease.
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SUBCHAPTER A. LEASES BY POLITICAL SUBDIVISIONS

§ 71.001. Definition

In this subchapter, "political subdivision" means any body corporate with a recognized and defined area.

[Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.002. Authority to Lease

A political subdivision may lease land owned by it for mineral development, including development of coal and lignite.

[Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.003. Governing Body to Exercise Authority

The governing body of the political subdivision which is vested by law with management, control, and supervision of the political subdivision shall exercise the right to lease the land.

[Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.004. Notice and Hearing

Before a lease is made under this subchapter, notice must be given and a public hearing must be held for consideration of bids.

[Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.005. Notice of Intention to Lease Land

(a) After the governing body determines that it is advisable to lease land belonging to the political subdivision, it shall give notice of the intention to lease the land.

(b) The notice shall describe the land to be leased and designate the time and place at which the governing body will receive and consider bids for the lease.

(c) The notice shall be published once a week for three consecutive weeks in a newspaper published in the county and with general circulation in the county.

[Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.006. Receiving Bids and Awarding Lease

On the date specified in the notice, the governing body of the political subdivision shall receive and consider bids submitted for leasing all or part of the land that was advertised for lease, and the governing body may award the lease to the highest and best bidder who submits a bid.

[Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.007. Rejection of Bids and Additional Bids

If the governing body believes that the bids submitted to it do not represent the fair value of the

leases, the governing body may reject the bids, give notice, and call for additional bids.
[Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.008. Grant of Lease

A lease made under this subchapter, including leases for coal and lignite, may be granted by public auction.
[Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.009. Royalty

(a) In each lease other than a lease for coal and lignite executed under this subchapter, the lessor shall retain at least a one-eighth royalty.

(b) In a lease for coal and lignite executed under this subchapter, the lessor shall retain at least a royalty based on one of the following or a combination of the following:

(1) a sum certain per ton;

(2) a percentage certain of the gross sale price F.O.B. at the mine site of the coal and lignite; or

(3) a sum certain for each acre-foot of coal and lignite mined and removed from the premises.

(c) Royalties under a coal and lignite lease may be paid as advanced mineral royalties.
[Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.010. Lease Term

(a) No primary term of a lease other than a lease for coal and lignite made under this subchapter may be for a period of more than 10 years from the date of the execution and approval of the lease.

(b) No primary term for a coal and lignite lease made under this subchapter may be for a period of more than 35 years from the date of execution.
[Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 71.011 to 71.050 reserved for expansion]

SUBCHAPTER B. POOLING MINERAL LEASES

§ 71.051. Definitions

In this subchapter:

(1) "City or town" means a city or town organized or chartered under the general laws of the state or under a special act or charter.

(2) "Political subdivision" means a body corporate which has a recognized and defined area.
[Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.052. Inserting Pooling Provisions in Leases

A city, town, or political subdivision may insert in an oil and gas lease or in an oil, gas, and mineral lease executed by it a provision authorizing the lessee to pool the lease, the land or minerals included in the lease, or any part of these with any other land, leases, mineral estates, or parts of any of these to form a drilling or spacing unit for the exploration, development, and production of oil or gas and authorizing the lessee to form the units and accomplish the pooling by written designations filed in the county in which the land is located.
[Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.053. Compliance With Governmental Agencies

With respect to land owned by the city or town or other land owned by the political subdivisions, the drilling or spacing units may not be more than the minimum number of acres on which an oil and gas well must be located to comply with the rules or orders of the Railroad Commission of Texas or any other federal or state regulatory body that has authority to control or regulate the spacing of oil and gas wells.
[Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.054. Terms and Conditions of Leases of County School Land

Leases of county school land that are governed by Article VII, Section 6, of the Texas Constitution, may include authorization for the formation of drilling and spacing units on any terms and provisions the commissioners court considers best.
[Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.055. Additional Terms of Leases

A lease covered by this subchapter may provide:

(1) that the entire acreage pooled into a unit shall be treated for all purposes except the payment of royalties as if it were included in the lease and drilling or reworking operations and production of oil or gas on any part of the unit shall be considered for all purposes except the payment of royalties as if the operations were on and production were from the land included in the lease whether or not the well or wells are located on the premises included in the lease; and

(2) that instead of the royalties provided in the lease, the lessor shall receive on production from a pooled unit only the proportion of the royalty provided in the lease as the amount of the lessor's acreage placed in the unit or its royalty interest on an acreage basis bears to the total acreage included in the unit.
[Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.056. Amending Lease

On application of the lessee or present owner of any oil and gas lease or any oil, gas, and mineral

lease validly executed before June 4, 1953, by any city, town, or political subdivision, the governing body of the city, town, or political subdivision may amend the lease to include a pooling provision that includes the terms provided in this subchapter.
[Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.057. Authority to Commit Royalty Interests

(a) A city, town, or political subdivision without notice may commit, to any agreement that provides for the operation of areas as a unit for the exploration, development, and production of oil or gas, any royalty interests owned by the city, town, or political subdivision in oil or gas.

(b) The agreement may include any terms and provisions that the city, town, or political subdivision considers best and may provide in substance:

(1) that operations incident to drilling a well on any portion of a unit shall be considered for all purposes to be the conduct of the operation on each separately owned tract in the unit by the several owners of the tracts;

(2) that the production allocated to each tract included in a unit shall, when produced, be considered for all purposes to have been produced from the tract by a well drilled on it;

(3) that any lease that covers any part of the area committed to the agreement shall continue in force as long as oil or gas is produced in paying quantities from any part of the unit area; and

(4) that royalties reserved to the city, town, or political subdivision from any tract or portion of a tract included within the unit shall be paid only on that portion of the production allocated to the tract or on the value of the production allocated according to the agreement.

(c) No agreement may be made by any city, town, or political subdivision which commits the city, town, or political subdivision to the payment of any part of the cost or expense of operating any unit area or any well located on the area.
[Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

TITLE 3. OIL AND GAS

SUBTITLE A. ADMINISTRATION

CHAPTER 81. RAILROAD COMMISSION OF TEXAS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 81.001. Definitions

In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Commissioner" means any member of the Railroad Commission of Texas.

[Acts 1977, 65th Leg., p. 2508, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 81.002 to 81.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 81.011. Chief Supervisor

(a) The commission shall employ a chief supervisor of its oil and gas division to assist the commission in enforcing the laws relating to the production, transportation, and conservation of oil and gas and rules and orders of the commission adopted under these laws.

(b) The chief supervisor also shall perform the duties of the pipeline expert as provided in the pipeline laws of this state.
[Acts 1977, 65th Leg., p. 2508, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.012. Qualifications of Chief Supervisor

In addition to other qualifications that may be required by the commission, a person appointed chief supervisor must have had at least five years' experience in some line of the oil or gas business, or in some other business or profession that would provide the necessary knowledge and experience for the performance of his duties.

[Acts 1977, 65th Leg., p. 2508, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.013. Deputy Supervisors, Assistants, and Clerical Personnel

The commission may appoint a chief deputy supervisor, deputy supervisors, assistants, and clerical personnel necessary to execute the laws relating to oil and gas.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.014. Qualifications of Chief Deputy Supervisor

A person appointed chief deputy supervisor must have had at least three years' experience in oil and gas field work.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.015. Qualifications of Deputy Supervisors

Any person appointed deputy supervisor must have had at least two years' experience in oil and gas field work, including substantial experience in drilling or production.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.016. Salaries

The salary of the chief supervisor, the chief deputy supervisor, and the deputy supervisors shall be the same as that provided in the General Appropriations Act.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.017. Additional Employees

The commission may employ gaugers, inspectors, investigators, supervisors, and clerical employees. These employees shall include a chief engineer, chief petroleum engineer, and an administrative chief, and their salaries shall be paid from the Railroad Commission operating fund in the amounts provided in the General Appropriations Act.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.018. Payment of Salaries and Other Expenses

(a) Salaries and other expenses necessary in the administration and enforcement of the oil and gas laws shall be paid by warrants drawn by the comptroller on the State Treasury from funds provided under Section 81.112 of this code.

(b) Warrants for expenses shall be issued only on duly verified statements of the persons entitled to the funds and on approval of the chairman of the commission.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.019. Duties of Chief Supervisor, Chief Deputy Supervisor, Deputy Supervisors, and Other Employees

The chief supervisor, chief deputy supervisor, deputy supervisors, and other employees shall perform the duties prescribed by the commission in conformity with rules of the commission relating to the production, transportation, and conservation of crude oil and natural gas.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.020. Additional Duties of Chief Supervisor and His Deputies

(a) The chief supervisor and his deputies shall supervise the plugging of all abandoned wells and the shooting of wells and shall follow the rules of the commission relating to the production and conservation of oil and gas.

(b) The chief supervisor shall gather information and assist the commission in the performance of its duties under this title.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 81.021 to 81.050 reserved for expansion]

SUBCHAPTER C. JURISDICTION, POWERS, AND DUTIES

§ 81.051. Jurisdiction of Commission

(a) The commission has jurisdiction over all:

(1) common carrier pipelines defined in Section 111.002 of this code in Texas;

(2) oil and gas wells in Texas;

(3) persons owning or operating pipelines in Texas; and

(4) persons owning or engaged in drilling or operating oil or gas wells in Texas.

(b) Persons listed in Subsection (a) of this section and their pipelines and oil and gas wells are subject to the jurisdiction conferred by law on the commission.

[Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, § 5, eff. Sept. 1, 1977.]

§ 81.052. Rules

The commission may adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the commission as set forth in Section 81.051, including such rules as the commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations.

[Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 19, ch. 12, § 1, eff. March 15, 1979.]

§ 81.053. Commission Powers

In the discharge of its duties and the enforcement of its jurisdiction under this title, the commission shall:

(1) institute suits;

(2) hear and determine complaints;

(3) require the attendance of witnesses and pay their expenses out of funds provided for that purpose;

(4) obtain the issuance of writs and process which may be necessary for the enforcement of its orders; and

(5) punish for contempt or disobedience of its orders in the manner provided for the district courts.

[Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.054. Enforcement by Attorney General

The attorney general shall enforce the provisions of this title by injunction or other adequate remedy and as otherwise provided by law.

[Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 81.055 to 81.090 reserved for expansion]

SUBCHAPTER D. WITNESSES

§ 81.091. Incriminating Testimony

If a witness fails or refuses to appear on being summoned, to answer any question he is asked, or to produce any record or data required by subpoena, the claim that the testimony may tend to incriminate the person giving it does not excuse the witness from testifying or producing the records and data, but the evidence or testimony may not be used against the person on the trial of any criminal proceeding.

[Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.092. Fee for Executing Process

The sheriff or constable executing process shall receive the compensation authorized by the commission.

[Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 81.093 to 81.110 reserved for expansion]

SUBCHAPTER E. TAX

§ 81.111. Tax Levy

(a) A tax is levied on crude petroleum produced in this state in the amount of three-sixteenths of one cent on each barrel of 42 standard gallons.

(b) This tax is in addition to and shall be collected in the same manner as the occupation tax on the production of crude petroleum.

[Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.112. Railroad Commission Operating Fund

The tax shall be deposited in the Railroad Commission operating fund in the State Treasury and shall be paid from the fund by warrants in the manner provided for other funds.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.113. Use of Tax Proceeds

Proceeds from the tax shall be used for the administration of the state's oil and gas conservation laws.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.114. Production Reports

Producers of crude petroleum shall make reports of production in the same manner and under the same penalties as provided for the occupation tax on the production of crude oil.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.115. Payments to Oil and Gas Division

No money appropriated to the oil and gas division of the commission under the General Appropriations Act may be paid from the General Revenue Fund.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 81.116 to 81.150 reserved for expansion]

SUBCHAPTER F. CAMPAIGNING

§ 81.151. Penalty for Campaigning

A person who receives a salary from funds provided under this title and who uses his time or a state-owned automobile for campaign purposes or for the purpose of furthering the candidacy of his employer or any other candidate for state office is guilty of a misdemeanor and on conviction shall be fined not less than $100 nor more than $500 and shall be confined in jail for not less than 30 nor more than 90 days.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.152. Discharge and Ineligibility

A person found guilty under Section 81.151 of this code shall be discharged immediately from his position and shall be ineligible for employment by the state in the future.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.153. Setting Civil Complaint for Hearing

If a citizen of this state files a civil complaint with a district court in Travis County charging an employee with use of his time or a state-owned automobile for campaign purposes or to further the candidacy of his employer or any other candidate for state office, the court shall set the complaint for hearing at a time not less than 10 nor more than 20 days after the day on which the complaint is filed.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.154. Notice to Employee

The court shall have notice of the hearing served on the employee against whom the complaint was filed at least five days before the date of the hearing.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.155. Court's Order

At the hearing, if the court determines that the employee has used his time or a state-owned automobile as charged in the complaint, the court shall certify the fact to the department, agency, or commission which employs the person and order the employee's immediate discharge.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.156. Appeal

Any person against whom charges have been filed is entitled to appeal to the court of civil appeals, but the pendency of the appeal does not suspend his discharge.

[Acts 1977, 65th Leg., p. 2512, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

SUBTITLE B. CONSERVATION AND REGULATION OF OIL AND GAS

CHAPTER 85. CONSERVATION OF OIL AND GAS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 85.001. Definitions

(a) In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Pool," "common pool," "field," or "common source of supply" means a common reservoir.

(3) "Pool" means an underground reservoir containing a connected accumulation of crude petroleum oil, or natural gas, or both.

(4) "Product" and "product of oil or gas" mean a commodity or thing made or manufactured from oil or gas and derivatives or by-products of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, lubricating oil, casinghead gas, casinghead gasoline, blended gasoline, and blends or mixtures of oil, or gas, or any derivatives or by-products of them.

(b) "Oil" means crude petroleum oil, crude petroleum, and crude oil, and "gas" means natural gas. These terms shall not be construed as referring to substances different from those referred to in this chapter and other laws as "oil and gas" and these terms mean the same whether used in this chapter or in other laws relating to the conservation of oil and gas.

[Acts 1977, 65th Leg., p. 2514, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.002. Antitrust and Monopoly Statutes

(a) The provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, and Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, do not affect, alter, diminish, change, or modify the antitrust and monopoly laws of this state and do not directly or indirectly authorize a violation of the antitrust and monopoly laws of this state.

(b) It is the legislative intent that no provision of this chapter that was formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, or Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, shall affect, alter, diminish, or amend in any manner a provision of the antitrust and monopoly laws of this state or authorize a violation of the antitrust and monopoly laws. The legislative intent expressed in this subsection shall prevail and take precedence over sections cited in this subsection regardless of any statement in these sections to the contrary.

(c) If any provision of this chapter that was formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, or Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, is construed by a court of this state in a manner that will affect, alter, diminish, or modify any provision of the antitrust and monopoly laws of this state, this provision which is in conflict is declared null and void rather than the antitrust and monopoly laws.

[Acts 1977, 65th Leg., p. 2515, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.003 to 85.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 85.011. Supervisors, Deputy Supervisors, and Umpires

The commission shall employ all supervisors, deputy supervisors, and umpires necessary to carry out the provisions of this chapter and other related laws and rules and orders of the commission.

[Acts 1977, 65th Leg., p. 2515, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.012. Assistants and Clerical Help

The commission shall employ other assistants and clerical help necessary to carry out the provisions of this chapter and other related laws and rules and orders of the commission.

[Acts 1977, 65th Leg., p. 2515, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.013. Persons Enforcing Rules and Orders

A person entrusted with the enforcement of the rules and orders of the commission shall be a regular employee of the state and paid by the state. No person other than a regular employee of the state may be charged with or relied on for the performance of these duties.

[Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.014 to 85.040 reserved for expansion]

SUBCHAPTER C. PROVISIONS GENERALLY APPLICABLE TO THE CONSERVATION OF OIL AND GAS

§ 85.041. Acts Prohibited in Violation of Laws, Rules, and Orders

(a) The purchase, acquisition, or sale, or the transporting, refining, processing, or handling in any other way, of oil or gas, produced in whole or in part in violation of any oil or gas conservation statute of this state or of any rule or order of the commission under such a statute, is prohibited.

(b) The purchase, acquisition, or sale, or the transporting, refining, processing, or handling in any other way, of any product of oil or gas which is derived in whole or in part from oil or gas or any product of either, which was in whole or part produced, purchased, acquired, sold, transported, refined, processed, or handled in any other way, in violation of any oil or gas conservation statute of this state, or of any rule or order of the commission under such a statute, is prohibited.

[Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.042. Rules and Orders

(a) The commission may promulgate and enforce rules and orders necessary to carry into effect the provisions of Section 85.041 of this code and to prevent that section's violation.

(b) When necessary, the commission shall make and enforce rules either general in their nature or applicable to particular fields for the prevention of actual waste of oil or operations in the field dangerous to life or property.

[Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.043. Application of Certain Rules and Orders

If the commission requires a showing that refined products were manufactured from oil legally produced, the requirement shall be of uniform application throughout the state; provided that, if the rule or order is promulgated for the purpose of controlling a condition in any local area or preventing a violation in any local area, then on the complaint of a person that the same or similar conditions exist in some other local area and the promulgation and enforcement of the rule could be beneficially applied to that additional area, the commission shall determine whether or not those conditions do exist, and if it is shown that they do, the rule or order shall be enlarged to include the additional area.

[Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.044. Exempt Purchases

The provisions of Sections 85.041 through 85.043 of this code do not apply to the purchase of products of oil if made by the ultimate consumer from a retail distributor of the products.

[Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.045. Waste Illegal and Prohibited

The production, storage, or transportation of oil or gas in a manner, in an amount, or under conditions that constitute waste is unlawful and is prohibited.

[Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.046. Waste

(a) The term "waste," among other things, specifically includes:

(1) operation of any oil well or wells with an inefficient gas-oil ratio and the commission may determine and prescribe by order the permitted gas-oil ratio for the operation of oil wells;

(2) drowning with water a stratum or part of a stratum that is capable of producing oil or gas or both in paying quantities;

(3) underground waste or loss, however caused and whether or not the cause of the underground waste or loss is defined in this section;

(4) permitting any natural gas well to burn wastefully;

(5) creation of unnecessary fire hazards;

(6) physical waste or loss incident to or resulting from drilling, equipping, locating, spacing, or operating a well or wells in a manner that reduces or tends to reduce the total ultimate recovery of oil or gas from any pool;

(7) waste or loss incident to or resulting from the unnecessary, inefficient, excessive, or improper use of the reservoir energy, including the gas energy or water drive, in any well or pool; however, it is not the intent of this section or the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, to require repressuring of an oil pool or to require that the separately owned properties in any pool be unitized under one management, control, or ownership;

(8) surface waste or surface loss, including the temporary or permanent storage of oil or the placing of any product of oil in open pits or earthen storage, and other forms of surface waste or surface loss including unnecessary or excessive surface losses, or destruction without beneficial use, either of oil or gas;

(9) escape of gas into the open air in excess of the amount necessary in the efficient drilling or operation of the well from a well producing both oil and gas; and

(10) production of oil in excess of transportation or market facilities or reasonable market demand, and the commission may determine when excess production exists or is imminent and ascertain the reasonable market demand.

(b) Notwithstanding the provisions contained in this section or elsewhere in this code or in other statutes or laws, the commission may permit production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas where the commission, after notice and hearing, has found that producing oil or gas or oil and gas in a commingled state will prevent waste, promote conservation, or protect correlative rights.

[Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 673, ch. 300, § 1, eff. May 29, 1979.]

§ 85.047. Exclusion From Definition of Waste

The use of gas produced from an oil well within the permitted gas-oil ratio for manufacture of natural gasoline shall not be included in the definition of waste.

[Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.048. Authority to Limit Production

(a) Under the provisions of Subsection (10), Section 85.046 of this code, the commission shall not restrict the production of oil from any new field brought into production by exploration until the total production from that field is 10,000 barrels of oil a day in the aggregate.

(b) The commission's authority to restrict production from a new field under other provisions of Section 85.046 of this code is not limited by this section.

[Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.049. Hearing

(a) On verified complaint of any person interested in the subject matter that waste of oil or gas is taking place in this state or is reasonably imminent, or on its own initiative, the commission, after proper notice, may hold a hearing to determine whether or not waste is taking place or is reasonably imminent and if any rule or order should be adopted or if any other action should be taken to correct, prevent, or lessen the waste.

(b) The hearing shall be held at the time and place determined by the commission.

[Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.050. Procedure at Hearing

(a) At the hearing, interested parties shall be entitled to be heard and to introduce evidence and require the attendance of witnesses.

(b) The production of evidence may be required as provided by law.

[Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.051. Adoption of Rule or Order

If the commission finds at the hearing that waste is taking place or is reasonably imminent, it shall adopt a rule or order in the manner provided by law as it considers reasonably required to correct, prevent, or lessen the waste.

[Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.052. Compliance With Rule or Order

From and after the promulgation of a rule or order of the commission, it is the duty of each person affected by the rule or order to comply with it.

[Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.053. Distribution, Proration, and Apportionment of Allowable Production

If a rule or order of the commission limits or fixes in a pool or portion of a pool the production of oil, or

the production of gas from wells producing gas only, the commission shall distribute, prorate, or otherwise apportion or allocate the allowable production among the various producers on a reasonable basis.
[Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.054. Allowable Production of Oil

(a) To prevent unreasonable discrimination in favor of one pool as against another, and on written complaint and proof of such discrimination, the commission may allocate or apportion the allowable production of oil on a fair and reasonable basis among the various pools in the state.

(b) In allocating or ascertaining the reasonable market demand for the entire state, the reasonable market demand of one pool shall not be discriminated against in favor of another pool.

(c) The commission shall determine the reasonable market demand of the respective pool as the basis for determining the allotments to be assigned to the respective pool so that discrimination may be prevented.
[Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.055. Allowable Production of Gas

(a) If full production from wells producing gas only from a common source of supply of gas in this state is in excess of the reasonable market demand, the commission shall inquire into the production and reasonable market demand for the gas and shall determine the allowable production from the common source of supply.

(b) The allowable production from a common source of supply is that portion of the reasonable market demand that can be produced without waste.

(c) The commission shall allocate, distribute, or apportion the allowable production from the common source of supply among the various producers on a reasonable basis and shall limit the production of each producer to the amount allocated or apportioned to the producer.
[Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.056. Public Interest

In the administration of the provisions of this chapter that were formerly a part of Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, the commission shall take into consideration and protect the rights and interests of the purchasing and consuming public in oil and all its products, such as gasoline and lubricating oil.
[Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.057. Restriction on Unexplored Territory

The provisions of this chapter that were formerly a part of Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, shall not be construed to grant the commission any authority to restrict or in any manner limit the drilling of wells to explore for oil or gas or both in territory that is not known to produce either oil or gas.
[Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.058. Commission Inquiry and Determination

From time to time, the commission shall inquire into the production, storage, transportation, refining, reclaiming, treating, marketing, and processing of oil and gas, and the reasonable market demand for oil and gas, so that it may determine whether or not waste exists or is imminent or whether the oil and gas conservation laws of this state or the rules and orders of the commission promulgated under those laws are being violated.
[Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.059. Records

Each person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either shall keep in this state accurate records of the amount of oil or gas which such person produced, stored, transported, refined, reclaimed, treated, marketed, or processed and of the source from which the person produced, obtained, or received the oil or gas or the products of either and the disposition made of them.
[Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.060. Sworn Statements and Reports

The commission may require a person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either to make and file with the commission sworn statements or reports as to facts within his knowledge or possession pertaining to the reasonable market demand for oil and to the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of oil or gas and the products of either. The report shall include those facts enumerated in Section 85.059 of this code.
[Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.061. Inspection and Gauging

The commission may require any well, lease, refinery, plant, tank or storage, pipeline, or gathering line that belongs to or is under the control of a person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the

products of either to be inspected or gauged by the agents of the commission whenever and as often as and for such periods as the commission considers necessary.

[Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.062. Examination of Books and Records

The commission and its agents and the attorney general and his assistants and representatives may examine the books and records of a person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either as often as considered necessary for the purpose of determining the facts concerning matters covered by Sections 85.058 through 85.061 of this code.

[Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.063. Violations by Corporations

(a) The failure of a corporation chartered under the laws of this state to comply with the provisions of Sections 85.059 through 85.062 of this code and to keep the records required by Section 85.059 of this code in this state or the refusal to permit officers designated in Section 85.062 of this code to inspect and examine the records required by Section 85.059 of this code shall constitute grounds for forfeiture of the corporation's charter rights and privileges and dissolution of its corporate existence.

(b) The failure of a foreign corporation to comply with the provisions of Sections 85.059 through 85.062 of this code and to keep the records required by Section 85.059 of this code in this state or the refusal to permit officers designated in Section 85.062 of this code to inspect and examine the records required by Section 85.059 of this code shall be grounds for enjoining and forever prohibiting such corporation from doing business in this state.

[Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.064. Action Against Corporation

(a) If he determines that the public interest requires it, the attorney general shall institute suit or other appropriate action in Travis County for forfeiture of charter rights of a domestic corporation or to enjoin a foreign corporation from doing business in this state when a corporation is deemed guilty of violating the provisions of Sections 85.059 through 85.062 of this code. The attorney general may take this action on his own motion and without leave or order of any judge or court.

(b) On judgment against a defendant for violating the provisions of Sections 85.059 through 85.062 of this code, the court may, if in its judgment the public interest requires it, forfeit the charter rights of a defendant domestic corporation or enjoin a defendant foreign corporation from doing business in this state.

[Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.065 to 85.120 reserved for expansion]

SUBCHAPTER D. MARGINAL WELLS

§ 85.121. Definitions

(a) In this subchapter, "marginal well" means an oil well that is incapable of producing its maximum capacity of oil except by pumping, gas lift, or other means of artificial lift, and which well so equipped is capable, under normal unrestricted operating conditions, of producing such daily quantities of oil, as provided in this subchapter, that would be damaged, or result in a loss of production ultimately recoverable, or cause the premature abandonment of the well, if its maximum daily production were artificially curtailed.

(b) As used in Subsection (a), Section 85.121 and Section 85.122 of this code, "gas lift" means gas lift by the use of gas not in solution with oil produced.

[Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.122. Wells Considered as Marginal Wells

Wells that are considered marginal wells include any oil well in this state that is incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift and having:

(1) when producing from a depth of 2,000 feet or less, a maximum daily capacity for production of 10 barrels or less, averaged over the preceding 30 consecutive days;

(2) when producing from a horizon deeper than 2,000 feet and less in depth than 4,000 feet, a maximum daily capacity for production of 20 barrels or less, averaged over the preceding 30 consecutive days;

(3) when producing from a horizon deeper than 4,000 feet and less in depth than 6,000 feet, a maximum daily capacity for production of 25 barrels or less, averaged over the preceding 30 consecutive days;

(4) when producing from a horizon deeper than 6,000 feet and less in depth than 8,000 feet, a maximum daily capacity for production of 30 barrels or less, averaged over the preceding 30 consecutive days; or

(5) when producing from a horizon deeper than 8,000 feet, a maximum daily capacity for production of 35 barrels or less, averaged over the preceding 30 consecutive days.

[Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.123. Curtailment of Marginal Well Production as Waste

To artificially curtail the production of a marginal well below the marginal limit as set out in Sections 85.121 through 85.122 of this code before the marginal well's ultimate plugging and abandonment is declared to be waste.

[Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.124. Rules and Orders Restricting Marginal Wells

No rule or order of the commission or of any other constituted legal authority shall be adopted requiring the restriction of the production of a marginal well.

[Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.125. Effect of Other Subchapters

None of the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, or Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, authorize or may be construed to limit, modify, or repeal the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.126 to 85.160 reserved for expansion]

SUBCHAPTER E. CERTIFICATE OF COMPLIANCE

§ 85.161. Well Owners and Operators Certificates

The owner or operator of an oil or gas well, before connecting with any oil or gas pipeline, shall secure from the commission a certificate showing compliance with the oil or gas conservation laws of the state and conservation rules and orders of the commission.

[Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.162. Prohibited Connection

No operator of a pipeline or other carrier shall connect with any oil or gas well until the owner or operator of the well furnishes a certificate from the commission that the owner or operator has complied with the conservation laws of this state and the rules and orders of the commission.

[Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.163. Temporary Connection

The provisions of this subchapter do not prevent a temporary connection with a well in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of the well to secure the certificate.

[Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.164. Cancellation of Certificate

The commission may cancel any certificate of compliance issued under the provisions of this subchapter if it appears that the owner or operator of a well covered by the provisions of the certificate, in the operation of the well or the production of oil or gas from the well, has violated or is violating the oil and gas conservation laws of this state or rules or orders of the commission adopted under those laws.

[Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.165. Effect of Cancellation on Operator of Pipeline or Other Carrier

(a) On notice from the commission to the operator of a pipeline or other carrier connected to an oil or gas well that the certificate of compliance pertaining to that well has been cancelled, the operator of the pipeline or other carrier shall disconnect from the well.

(b) It shall be unlawful for the operator of a pipeline or other carrier to transport oil from the well until a new certificate of compliance has been issued by the commission.

[Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.166. Effect of Cancellation on Owner or Operator of Well

On notice from the commission that a certificate of compliance for an oil or gas well has been cancelled, it shall be unlawful for the owner or operator of the well to produce oil or gas from the well until a new certificate of compliance covering the well has been issued by the commission.

[Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.167 to 85.200 reserved for expansion]

SUBCHAPTER F. RULES AND ORDERS OF THE COMMISSION

§ 85.201. Adoption of Rules and Orders

The commission shall make and enforce rules and orders for the conservation of oil and gas and prevention of waste of oil and gas.

[Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.202. Purposes of Rules and Orders

(a) The rules and orders of the commission shall include rules and orders:

(1) to prevent waste, as defined in Section 85.046 of this code, of oil and gas in drilling and producing operations and in the storage, piping, and distribution of oil and gas;

(2) to require dry or abandoned wells to be plugged in a manner that will confine oil, gas, and water in the strata in which they are found and prevent them from escaping into other strata;

(3) for the drilling of wells and preserving a record of the drilling of wells;

(4) to require wells to be drilled and operated in a manner that will prevent injury to adjoining property;

(5) to prevent oil and gas and water from escaping from the strata in which they are found into other strata;

(6) to provide rules for shooting wells and for separating oil from gas;

(7) to require records to be kept and reports made; and

(8) to provide for issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the commission's rules or orders for the prevention of waste.

(b) The commission shall do all things necessary for the conservation of oil and gas and prevention of waste of oil and gas and may adopt other rules and orders as may be necessary for those purposes.

[Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.203. Considerations in Adopting Rules and Orders to Prevent Waste

The commission may consider any or all of the definitions of waste stated in Section 85.046 of this code, whenever the facts, circumstances, or conditions make them applicable, in adopting rules or orders to prevent waste of oil or gas.

[Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.204. Prohibited Rules and Orders

The commission is not authorized to adopt a rule or order or to make a determination or holding that any mode, manner, or process of refining oil constitutes waste.

[Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.205. Notice and Hearing

No rule or order pertaining to the conservation of oil and gas or to the prevention of waste of oil and gas may be adopted by the commission except after notice and hearing as provided by law.

[Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.206. Emergency Order

(a) If the commission finds an emergency to exist, that in the commission's judgment requires the adoption of an order without giving notice or holding a hearing, the emergency order may be adopted and shall be valid as though notice had been given and a hearing held.

(b) The emergency order shall remain in force no longer than 15 days from its effective date.

(c) The emergency order shall expire, in any event, at the time an order relating to the same subject matter and adopted after proper notice and hearing becomes effective.

[Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.207. Effect of Amendment, Repeal, or Expiration of a Rule or Order

The amendment, repeal, or expiration of a rule or order of the commission adopted under the provisions of this chapter that were formerly a part of Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, or the provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, shall not have the effect of releasing or discharging from liability, penalty, or forfeiture any person violating the rule or order before the effective date of the amendment, repeal, or expiration. Prosecutions and suits for these violations, liabilities, penalties, and forfeitures shall be instituted and proceeded with in all respects as if the rule or order had not been amended or repealed, or had not expired.

[Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.208 to 85.240 reserved for expansion]

SUBCHAPTER G. SUITS CHALLENGING THE VALIDITY OF LAWS AND ORDERS

§ 85.241. Suits by Interested Persons

Any interested person who is affected by the conservation laws of this state or orders of the commission relating to oil or gas and the waste of oil or gas, and who is dissatisfied with any of these laws or orders, may file suit against the commission or its members in a court of competent jurisdiction in Travis County to test the validity of the law or order.

[Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.242. Expeditious Trial

A suit brought under Section 85.241 of this code shall be advanced for trial and shall be determined as expeditiously as possible. No postponement or continuance shall be granted except for reasons considered imperative by the court.

[Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.243. Burden of Proof

In the trial of a suit brought under Section 85.241 of this code, the burden of proof shall be on the party complaining of the law or order, and the law or order is deemed prima facie valid.

[Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.244. Conditions for Injunctive Relief

No temporary restraining order, temporary or permanent injunction, or other form of injunctive relief may be granted against the commission, its members, agents, and representatives to restrain it or them from enforcing any rule or order adopted by the commission under the oil and gas conservation laws of this state or from enforcing any of these laws unless notice is given to the commission and a hearing is held as provided in this subchapter.

[Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.245. Notice to Commission

(a) At the time a petition or application is filed requesting a temporary restraining order or any form of temporary injunctive relief, the clerk of the court in which the petition or application is filed shall issue notice in writing to the commission.

(b) The notice shall include:

(1) the docket number;

(2) the style of the case; and

(3) a brief statement of the nature of the suit.

(c) The notice shall be served on the commission in Travis County by delivering a copy of the citation to the commission, a member of the commission, or the secretary of the commission for the service of other citations.

(d) Five days after the citation has been served a hearing may be held on the petition or application.

[Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.246. Intervention in Suit

In the discretion of the court, any person who is interested in the subject matter of the suit may intervene.

[Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.247. Rules and Orders Prima Facie Valid

The rule or order complained of in the suit is prima facie valid, and the use and introduction of the verified petition of the plaintiff shall not be sufficient to overcome the prima facie validity of the rule or order or to authorize the court to grant any injunctive relief against the enforcement of the rule or order.

[Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.248. Bond

Before an order granting injunctive relief against an oil and gas conservation law, rule, or order of the commission becomes effective, the plaintiff shall be required by the court to execute a bond with good and sufficient sureties in a reasonably sufficient amount determined by the court to indemnify any persons whom the court may find from the facts proven will suffer damage as a result of the violation of the law, rule, or order in question. The persons shall be named in the order of the judge at the time the amount of the bond is fixed by the court and entered in the record.

[Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.249. Conditions of Bond

(a) In determining the amount of the bond, the judge shall consider all facts and circumstances surrounding the parties and the ability of the plaintiff to make the bond so that the judge can determine the amount and reasonableness of the bond under the facts and circumstances.

(b) A bond made or executed by a bonding or surety company shall be by a company authorized to do business in Texas.

(c) The bond shall be approved by the judge and shall be for the use and benefit of and may be sued on by any person named in the order who suffers damage as a result of violation of the law, rule, or order.

[Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.250. Changing Amount, Parties, and Sureties

On a motion and for good cause shown, and after notice to the parties, the court periodically may:

(1) increase or decrease the amount of the bond;

(2) add new beneficiaries; and

(3) require new and additional sureties that the facts may justify.

[Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.251. Suits on Bonds

A suit on a bond must be instituted within six months from the date of the final determination of the validity in whole or in part of the rule or order.
[Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.252. Inadmissible Evidence

A finding by the court that any party is likely to suffer damage is not admissible as evidence of damages in a suit on the bond.
[Acts 1977, 65th Leg., p. 2525. ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.253. Appeal

After notice and hearing on an application for injunctive relief, either party to the suit is entitled to appeal the judgment or order granting or refusing the temporary restraining order, temporary or permanent injunction, or other form of injunctive relief or granting or overruling a motion to dissolve the temporary restraining order, temporary or permanent injunction, or other form of injunctive relief.
[Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.254. Appeal Has Precedence

The appeal is returnable at once to the appellate court and the action appealed shall have precedence in the appellate court over all cases, proceedings, and causes of a different character that are pending.
[Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.255. Early Decision by Court of Civil Appeals

The court of civil appeals shall decide the question in the appeal at as early a date as possible.
[Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.256. Appeal Procedures

The provisions and requirements of Article 4662, Revised Civil Statutes of Texas, 1925, as amended, and Rule 385 of the Texas Rules of Civil Procedure, as amended, relating to temporary injunctions, apply to appeals from any order granting or refusing a temporary restraining order, or granting or overruling a motion to dissolve a temporary restraining order under the provisions of this subchapter.
[Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.257. Certified Questions and Writs of Error

(a) If a question is certified or writ of error requested or granted to the supreme court, the supreme court shall set the cause for hearing immediately and shall decide the cause at as early a date as possible.

(b) The cause shall have precedence over all other causes, proceedings, and causes of a different character in the court.
[Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.258. Authority of Court of Civil Appeals to Issue Writs

The court of civil appeals and its judges have the jurisdiction to issue writs of prohibition, mandamus, and injunction to prevent the enforcement of any order or judgment of a trial court or judge who grants any type of injunctive relief without notice and hearing in violation of the requirements of Sections 85.244 and 85.245 of this code.
[Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.259. Issuance of Writs by Court of Civil Appeals

If it appears that the provisions of Sections 85.244 and 85.245 of this code have not been complied with, then on proper application from the commission to the court of civil appeals having jurisdiction, the court shall issue instanter the necessary writs of prohibition, mandamus, or injunction to prohibit and restrain the trial judge from enforcing or attempting to enforce the provisions of the injunction issued by him and to prohibit and restrain the party or parties in whose favor the order is entered from acting or attempting to act under the protection of the order or from violating the law, rule, or order of the commission attacked.
[Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.260 to 85.290 reserved for expansion]

SUBCHAPTER H. RECEIVERSHIP

§ 85.291. Request for Receiver

If a rule or order of the commission has been finally adjudicated to be valid in whole or part in a suit to which the commission is a party, and if after that time a party to the suit or other proceedings in which the rule or order was declared valid violates the rule, order, or judgment or shall thereafter use or permit to be used any property owned or controlled by him in violation of the rule, order, or judgment, the commission shall make application to the judge of the trial court setting out the rule, order, or judgment and stating that the party subsequent to the date of the judgment violated or is violating the rule, order, or judgment and requesting that a receiver be appointed as provided in this subchapter.
[Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.292. Appointment of Receiver and Bond

After an application is submitted as provided in Section 85.291 of this code, the judge of the trial court, after notice and hearing, may appoint a receiver of the property involved or used in violation of the rule, order, or judgment and shall set a proper bond for the receiver.

[Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.293. Duties of Receiver

As soon as the receiver is qualified, he shall take possession of the property and shall perform his duties as receiver of the property under the orders of the court, strictly observing the rule, order, or judgment.

[Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.294. Dissolution of Receivership

A party whose property is placed in receivership may move to dissolve the receivership and to discharge the receiver on the terms the court may prescribe.

[Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.295 to 85.320 reserved for expansion]

SUBCHAPTER I. DAMAGES

§ 85.321. Suit for Damages

A party who owns an interest in property or production that may be damaged by another party violating the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, or another law of this state prohibiting waste or a valid rule or order of the commission may sue for and recover damages and have any other relief to which he may be entitled at law or in equity.

[Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.322. Proceedings Not to Impair Suit for Damages

None of the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, no suit by or against the commission, and no penalties imposed on or claimed against any party violating a law, rule, or order of the commission shall impair or abridge or delay a cause of action for damages or other relief that an owner of land or a producer of oil or gas, or any other party at interest, may have or assert against any party violating any rule or order of the commission or any judgment under this chapter.

[Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.323 to 85.350 reserved for expansion]

SUBCHAPTER J. INJUNCTIONS

§ 85.351. Suit for Injunction

(a) If it appears that a person is violating or threatening to violate the provisions of this chapter that were formerly a part of Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, or Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission adopted under those laws, the commission, through the attorney general, shall bring suit in the name of the state to restrain the violation or threatened violation.

(b) The suit shall be brought against the person violating or threatening to violate the law, rule, or order in a court of competent jurisdiction in Travis County or in the county of residence of the defendant. If there is more than one defendant, the suit to restrain the violation of the law, rule, or order or part of it may be brought in the county of residence of any of the defendants or in the county in which the violation is alleged to have occurred.

[Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.352. Types of Court Orders

In the suit, the commission in the name of the state may obtain prohibitory and mandatory injunctions, including temporary restraining orders and temporary injunctions, that the facts may warrant.

[Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.353. Appointment of Receiver

(a) The violation by a person of any injunction granted under the provisions of this subchapter shall be sufficient grounds for appointment by the court of a receiver to take charge of the person's property and to exercise authority that in the judgment of the court is necessary to bring about compliance with the injunction. The court may appoint the receiver either on its own motion or on motion of the commission in the name of the state.

(b) No receiver may be appointed until after notice is given and a hearing is held.

(c) The authority to appoint a receiver is in addition to and cumulative of the authority to punish for contempt.

[Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.354 to 85.380 reserved for expansion]

SUBCHAPTER K. PENALTIES, IMPRISONMENT, AND CONFINEMENT

§ 85.381. Penalty for Violation of Laws, Rules, and Orders

In addition to being subject to any forfeiture provided by law and to any penalty imposed by the commission for contempt for violation of its rules or orders, any person who violates the provisions of Sections 85.045 and 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission promulgated under those laws shall be subject to a penalty of not more than $1,000 for each and every day of violation and for each and every act of violation.

[Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.382. Venue

The penalty provided in Section 85.381 of this code shall be recovered in a court of competent jurisdiction in Travis County or in the county of the residence of the defendant. If there is more than one defendant, the penalty may be recovered in the county of residence of any of the defendants or in the county in which the violation is alleged to have occurred.

[Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.383. Suit

By direction of the commission, the suit to recover the penalty shall be instituted and conducted in the name of the state by the attorney general or by the county or district attorney in the county in which the suit is brought.

[Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.384. Effect of Recovery or Payment of Penalty

The recovery or payment of the penalty shall not authorize the violation of any provision of Section 85.045 or 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission adopted under those laws.

[Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.385. Persons Aiding or Abetting Violation

Any person who aids or abets any other person in violating Section 85.045 or 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order adopted by the commission under those laws is subject to the same penalties as provided in Section 85.381 of this code.

[Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.386. Forging Names on Permits and Tenders

A person shall be imprisoned in the penitentiary for not less than two nor more than five years if he:

(1) forges the name of an agent, officer, or employee of the commission to a permit or tender of the commission relating to oil or gas or any product or by-product of oil or gas;

(2) forges the name of any person to such a tender or permit; or

(3) knowingly uses a forged instrument to induce another to handle or transport oil or gas or any product or by-product of oil or gas.

[Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.387. Procuring Tenders and Permits

A person shall be imprisoned in the penitentiary for not less than two nor more than five years if he:

(1) knowingly procures or causes an agent, officer, or employee of the commission to approve or issue a permit or tender of the commission relating to oil or gas or any product or by-product of oil or gas that includes a statement or representation that is false and that materially misrepresents the true facts respecting the oil or gas or any product or by-product of either; or

(2) procures or causes an agent, officer, or employee of the commission to issue to him a permit or tender relating to oil or gas or any product or by-product of either with the intent to defraud.

[Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.388. Possessing a Forged Permit or Tender

Any person who knowingly has in his possession a forged tender or permit of the commission relating to oil or gas or any product or by-product of oil or gas for the purpose of transporting, handling, or selling oil or gas shall be guilty of a misdemeanor and on conviction shall be fined not less than $25 nor more than $1,000 or shall be confined in the county jail for not less than 30 days nor more than one year, or both.

[Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 86. REGULATION OF NATURAL GAS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 86.001. Declaration of Policy

In recognition of past, present, and imminent evils occurring in the production and use of gas as a result of waste in this production and use of gas in the absence of correlative opportunities of owners of gas in a common reservoir to produce and use the gas, the provisions of this chapter are enacted for the protection of public and private interests against these evils by prohibiting waste and compelling ratable production.

[Acts 1977, 65th Leg., p. 2531, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.002. Definitions

In this chapter:

(1) "Oil" means crude petroleum oil.

(2) "Gas" means natural gas.

(3) "Commission" means the Railroad Commission of Texas.

(4) "Common reservoir" means all or part of any oil or gas field or oil and gas field that comprises and includes any area that is underlaid or that, from geological or other scientific data or experiments or from drilling operations or other evidence, appears to be underlaid by a common pool or accumulation of oil or gas or oil and gas.

(5) "Gas well" means a well that:

(A) produces gas not associated or blended with oil at the time of production;

(B) produces more than 100,000 cubic feet of gas to each barrel of oil from the same producing horizon; or

(C) produces gas from a formation or producing horizon productive of gas only encountered in a well bore through which oil also is produced through the inside of another string of casing.

(6) "Oil well" means any well that produces one barrel or more of oil to each 100,000 cubic feet of gas.

(7) "Dry gas" means gas produced from a stratum that does not produce oil.

(8) "Sour gas" means gas:

(A) containing more than one and one-half grains of hydrogen sulphide per 100 cubic feet;

(B) containing more than 30 grains of total sulphur per 100 cubic feet; or

(C) which in its natural state is found by the commission to be unfit for use in generating light or fuel for domestic purposes.

(9) "Sweet gas" means all gas except sour gas and casinghead gas.

(10) "Casinghead gas" means any gas or vapor indigenous to an oil stratum and produced from the stratum with oil.

(11) "Natural gasoline" means gasoline manufactured from casinghead gas or from any gas.

(12) "Cubic foot of gas" or "standard cubic foot of gas" means the volume of gas, including natural and casinghead gas, contained in one cubic foot of space at a standard pressure base of 14.65 pounds per square inch absolute and at a standard temperature base of 60 degrees Fahrenheit, and if the conditions of pressure and temperature differ from this standard, conversion of the volume from the differing conditions to the standard conditions shall be made in accordance with the ideal gas laws, corrected for deviation.

[Acts 1977, 65th Leg., p. 2531, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.003. Determination of Separate Wells

If oil or gas, or both, is produced through different strings of casing set in the same well bore, the inner string through which oil or gas, or both, is produced shall be regarded as one well, and each successive additional string of casing through which oil or gas, or both, is produced from a different producing horizon through the same well bore shall be regarded as another well.

[Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.004. Applicability

The provisions in this chapter do not impair the authority of the commission to prevent waste under the oil and gas conservation laws of this state and do not repeal, modify, or impair any of the provisions relating to oil and gas conservation in Sections 85.002, 85.041 through 85.055, 85.056 through 85.064, 85.125, 85.201 through 85.207, 85.241 through 85.243, 85.249 through 85.252, and 85.381 through 85.385 of this code and Subchapters E and J of Chapter 85 of this code.

[Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 86.005 to 86.010 reserved for expansion]

SUBCHAPTER B. WASTE OF GAS

§ 86.011. Prohibition Against Waste

The production, transportation, or use of gas in a manner, in an amount, or under conditions which constitute waste is unlawful and is prohibited.

[Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.012. Definition of Waste

(a) The term "waste" includes:

(1) the operation of an oil well or wells with an inefficient gas-oil ratio;

(2) the drowning with water of a stratum or part of a stratum capable of producing gas in paying quantities;

(3) permitting a gas well to burn wastefully;

(4) the creation of unnecessary fire hazards;

(5) physical waste or loss incident to or resulting from so drilling, equipping, or operating a well or wells as to reduce or tend to reduce the ultimate recovery of gas from any pool;

(6) the escape of gas from a well producing both oil and gas into the open air in excess of the amount that is necessary in the efficient drilling or operation of the well;

(7) the production of gas in excess of transportation or market facilities or reasonable market demand for the type of gas produced;

(8) the use of gas for the manufacture of carbon black without first having extracted the natural gasoline content from the gas, except it shall not be necessary to first extract the natural gasoline content from the gas where it is utilized in a plant producing an average recovery of not less than five pounds of carbon black to each 1,000 cubic feet of gas;

(9) the use of sweet gas produced from a gas well for the manufacture of carbon black unless it is used in a plant producing an average recovery of not less than five pounds of carbon black to each 1,000 cubic feet and unless the sweet gas is produced from a well located in a common reservoir producing both sweet and sour gas;

(10) permitting gas produced from a gas well to escape into the air before or after the gas has been processed for its gasoline content, unless authorized as provided in Section 86.185 of this code;

(11) the production of natural gas from a well producing oil from a stratum other than that in which the oil is found unless the gas is produced in a separate string of casing from that in which the oil is produced;

(12) the production of more than 100,000 cubic feet of gas to each barrel of crude petroleum oil unless the gas is put to one or more of the uses authorized for the type of gas so produced under allocations made by the commission or unless authorized as provided in Section 86.185 of this code; and

(13) underground waste or loss however caused and whether or not defined in other subdivisions of this section.

(b) Notwithstanding the provisions contained in this section or elsewhere in this code or in other statutes or laws, the commission may permit production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas where the commission, after notice and hearing, has found that producing oil or gas or oil and gas in a commingled state will prevent

waste, promote conservation, or protect correlative rights.

[Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2695, ch. 871, art. II, § 8, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 674, ch. 300, § 2, eff. May 29, 1979.]

[Sections 86.013 to 86.040 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSION

§ 86.041. In General

The commission has broad discretion in administering the provisions of this chapter and may adopt any rule or order in the manner provided by law that it finds necessary to effectuate the provisions and purposes of this chapter.

[Acts 1977, 65th Leg., p. 2533, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.042. Rules and Orders

The commission shall adopt and enforce rules and orders to:

(1) conserve and prevent the waste of gas;

(2) prevent the waste of gas in drilling and producing operations and in the piping and distribution of gas;

(3) require dry or abandoned wells to be plugged in a way that confines gas and water in the strata in which they are found and prevents them from escaping into other strata;

(4) provide for drilling wells and preserving a record of them;

(5) require wells to be drilled and operated in a manner that prevents injury to adjoining property;

(6) prevent gas and water from escaping from the strata in which they are found into other strata;

(7) require records to be kept and reports made;

(8) provide for the issuance of permits and other evidences of permission when the issuance of the permit or permission is necessary or incident to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law; and

(9) otherwise accomplish the purposes of this chapter.

[Acts 1977, 65th Leg., p. 2533, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.043. Determining Gas-Oil Ratio

The commission may fix and determine the gas-oil ratio of all oil wells in the state but none of the provisions of this chapter may be construed to authorize the limitation of the production of marginal wells below the amount fixed by statute. If a restriction imposed by the commission on the production of oil from an oil well operates to increase the gas-oil ratio of the well so as to then classify it as a gas well under the provisions of this chapter, the well nevertheless shall be considered to be an oil well.

[Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 86.044 to 86.080 reserved for expansion]

SUBCHAPTER D. PRODUCTION OF GAS

§ 86.081. Regulation of Production

For the protection of public and private interests, the commission shall prorate and regulate the daily gas well production from each common reservoir to:

(1) prevent waste; and

(2) adjust the correlative rights and opportunities of each owner of gas in a common reservoir to produce and use or sell the gas as permitted in this chapter.

[Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.082. Exercise of Authority to Prevent Waste

The commission shall exercise its authority to prevent waste when the presence or imminence of waste is supported by a finding based on the evidence introduced at a hearing after proper notice.

[Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.083. Exercise of Authority to Adjust Correlative Rights and Opportunities

The commission shall exercise its authority to adjust correlative rights and opportunities of each owner of gas in a common reservoir to produce and use or sell the gas when evidence introduced at a hearing after proper notice will support a finding made by the commission that the aggregate lawful volume of the open flow or daily potential capacity to produce of all gas wells located in a common reservoir is in excess of the daily reasonable market demand for gas from gas wells that may be produced from the common reservoir, to be used as permitted in this chapter.

[Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.084. Determination of Status of Production

(a) The commission shall determine the status of gas production from all reservoirs in the state.

(b) If the commission finds that waste exists or is imminent in the production of gas from a reservoir, or that the capacity of the wells to produce gas from

a reservoir exceeds the market demand for gas from the reservoir, the commission by proper order shall prorate and regulate the gas production from the reservoir on a reasonable basis.

[Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.085. Determination of Demand and Volume

On or before the 20th day of each month, the commission, after notice and hearing, shall determine:

(1) the lawful market demand for gas to be produced from each reservoir during the following month; and

(2) the volume of gas that can be produced without waste from the reservoir and each well in the reservoir during the following month.

[Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.086. Monthly Reservoir Allowable

After determining demand and volume of production as provided in Section 86.085 of this code, the commission shall fix the monthly reservoir allowable of gas to be produced from the reservoir at the lawful market demand for the gas or at the volume that can be produced from the reservoir without waste, whichever is the smaller quantity.

[Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.087. Monthly Well Allowable

The monthly reservoir allowable shall be allocated among all wells entitled to produce gas from the reservoir to give each well its fair share of the gas to be produced from the reservoir, but each well is restricted to the amount of gas that can be produced from it without waste. The volume of gas allocated to each well is the monthly allowable for that well.

[Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.088. Daily Allowable

The daily market demand for gas and the daily allowable shall be determined by dividing the monthly demand and the monthly allowable by the number of days in the month.

[Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.089. Factors in Determining Allowable

(a) In determining the daily allowable production for each gas well, the commission shall take into account:

(1) the size of the tract segregated with respect to surface position and common ownership on which the gas well or wells are located;

(2) the relation between the daily producing capacity of each gas well and the aggregate daily capacity of all gas wells producing the same kind of gas in the same common reservoir or zone; and

(3) other factors that are pertinent.

(b) In determining the daily allowable production for each gas well, the commission shall not take into account the size of the tract on which any gas well or wells are located in excess of the efficient drainage area of the well or wells, producing at 25 percent of the daily productive capacity. The drainage area shall be determined by the commission.

(c) In ascertaining the drainage area of a well, the commission shall take into account such factors as are reflected in the productive capacity of a gas well, including formation pressure, the permeability and porosity of the producing formation, and the well bore's structural position, together with all other factors taken into account by a reasonably prudent operator in determining the drainage area for a gas well.

[Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.090. Authorizing Overproduction and Underproduction

(a) In order to adjust the correlative rights and opportunities of each owner to produce, use, and sell gas from a common reservoir from which a portion of the market demand is seasonal or where a portion of the market demand fluctuates from month to month, the commission may permit the wells in the reservoir to be produced in excess of the monthly allowable, in accordance with the conditions and limitations set forth in Subsections (b), (c), and (d) of this section, if no waste is caused.

(b) No well may be permitted in any one month to produce:

(1) at a rate in excess of 25 percent of the daily producing capacity of the well as found by the commission; or

(2) in excess of two times its monthly allowable, except that if on application to the commission there is shown to exist, or there is threatened and unforeseen, an emergency requiring an increase in the demand for the gas from the reservoir which cannot be satisfied otherwise from the reservoir, then the wells under the application may be produced as authorized in this subchapter but not in excess of four times each of the well's monthly allowable.

(c) No well may ever be allowed to produce in excess of twice its allowable for more than two months in any period of six months beginning on the first day of March and September of each year. If a well has produced twice its allowable or more during a period of six months beginning on the first day of

March or September, it shall be closed in until its production and allowable are in balance.

(d) On the first day of March and September of each year, the commission shall restrict production from all wells that are then overproduced to the fractional part of their monthly allowable that will bring the accumulated allowables and the accumulated monthly production in balance during the next six months. If the overproduction is not balanced during that six-month period, the overproduced well shall be shut in until its production and allowable are in balance.

(e) The commission by appropriate order may permit a gas well to be underproduced for a period of six consecutive months and may allow the accumulated underproduction to be produced in addition to the regular monthly allowable during the following six-month period.

[Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.091. Minimum Limits on Well Restrictions

(a) None of the provisions of this chapter require that the production from a gas well with a daily natural open flow of 200,000 cubic feet of gas or more be restricted to a quantity less than 50,000 cubic feet of gas daily.

(b) None of the provisions of this chapter require that the production from a gas well with a daily natural open flow of less than 200,000 cubic feet of gas be reduced to a quantity less than 25 percent of its natural open flow.

[Acts 1977, 65th Leg., p. 2536, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.092. Maximum Well Production

(a) In a common reservoir producing both sweet and sour gas, no gas well may be permitted to produce in excess of 25 percent of its daily productive capacity except as provided in Subsection (b) of this section.

(b) If the commission finds that reservoir conditions require that the percentage be increased to prevent waste and that the increase will not create a drainage condition between sweet and sour gas land, the commission may authorize an increase in the allowable production.

(c) If the allowable production previously allocated to a well is more than 15 percent of its daily producing capacity and the commission finds that the production of its daily allowable from the well will cause waste due to the intermingling of sweet and sour gas, the commission may order the production from the well restricted to 15 percent of its daily producing capacity. This subsection shall not be construed to militate against the right of the commission to fix the allowable production of a well below 15 percent of its daily producing capacity in carrying out the requirements of Sections 86.089 and 86.090 of this code.

[Acts 1977, 65th Leg., p. 2536, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.093. Effect of Oil and Gas Stratum on Gas Only Stratum

If gas is produced from one stratum and oil and gas are produced from another stratum in the same well bore, the commission shall taken into account the amount of gas produced from the oil stratum in determining the amount of gas that may be produced from the stratum producing gas only. The commission may subtract the amount of the casinghead gas produced from the dry gas that would be allocated to the well if it produced dry gas and may restrict the dry gas production accordingly.

[Acts 1977, 65th Leg., p. 2536, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.094. Authority to Increase Take Above Allowable

If unforeseen contingencies increase the demand for gas required by a distributor, transporter, or purchaser to an amount in excess of the total allowable production of the wells to which he is connected, the distributor, transporter, or purchaser may increase his take ratably from all these wells in order to supply his demand for gas, provided that notice of the increase and the amount of the increase are given to the commission within five days; and provided further, the commission, at its next hearing, shall adjust the inequality of withdrawals caused by the increase in fixing the allowable production of the various wells in the common reservoir or zone.

[Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.095. Zoning Common Reservoirs

(a) The commission shall zone a common reservoir if, on consideration of the evidence introduced at a hearing, it finds that either the prevention of waste or adjustment of correlative rights and opportunities, or both, as designated in Section 86.081 of this code, may be accomplished more adequately by zoning the common reservoir.

(b) If the commission zones a common reservoir, each zone shall be regarded as a separate common reservoir in making allocations of daily allowable production as provided in this chapter.

(c) If the commission zones a common reservoir, the commission:

(1) shall allocate to each zone its just proportion of the market demand for gas from the common reservoir;

(2) shall establish appropriate rules applicable to each zone;

(3) may adjust its orders to the practicable conditions that exist; and

(4) may enter any reasonable order necessary to effectuate the purposes of this chapter.

(d) The commission may segregate a sour gas area from a sweet gas area and is not required to restrict the allowable production of the sour gas zone to the same percentages that may be produced from the sweet gas zone.

[Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.096. Failure to Use or Sell Allowable Production

If the commission finds that the owner of a gas well failed or refused to use or sell the allowable production from his well when the owner was offered a connection or market for the gas at a reasonable price, the well shall be excluded from consideration in allocating the daily allowable production from the reservoir or zone in which it is located until the owner of the well signifies to the commission his desire to use or sell the gas. In all other cases, all gas wells shall be taken into account in allocating the allowable production among wells producing the same type of gas.

[Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.097. Production of Gas From Oil Well

No person in possession of or operating an oil well may produce from the oil well gas found in a horizon productive of gas only.

[Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 86.098 to 86.140 reserved for expansion]

SUBCHAPTER E. METER AND PRESSURE TESTS

§ 86.141. Duty to Test Pressure

All persons producing gas from any gas well shall determine through appropriate tests during the months of January and July of each year the open flow and rock pressure of each gas well from which gas is produced.

[Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.142. Pressure Test Requirements

The test to determine pressure of a gas well shall be made:

(1) under uniform and generally recognized methods;

(2) in the presence of and under the supervision of a representative of the commission; and

(3) under rules prescribed by the commission.

[Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.143. Pressure Test Reports

(a) Verified reports of the tests to determine pressure shall be filed with the commission on or before the 10th day of each January and July.

(b) The reports shall disclose the name of the representative of the commission who was actually present when the tests were made.

(c) The reports are a permanent public record. They shall be kept on file with the commission and shall be open to the inspection and examination of the public.

[Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.144. Demanding Second Test

A person producing gas from the same common reservoir who is dissatisfied with the test as made and reported may demand that a second test be made in the manner provided in this subchapter and in the presence of the person making the demand or his representative.

[Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.145. Duty to Test Meter

The commission shall require one of its duly authorized agents to inspect, read, or test any meter or meters through which gas is being measured or gauged on the request of a lessor, lessee, operator, or royalty owner from whose land, lease, or royalty interest gas is being produced.

[Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 86.146 to 86.180 reserved for expansion]

SUBCHAPTER F. USE OF GAS

§ 86.181. Use of Sweet Gas Produced From Gas Well

No sweet gas produced from a gas well may be used for any purpose except:

(1) light or fuel;

(2) efficient chemical manufacture, other than the manufacture of carbon black, provided that sweet gas produced from wells located in a common reservoir producing both sweet and sour gas may be used for the manufacture of carbon black if it is used in a plant producing an average recovery of not less than five pounds of carbon black to each 1,000 cubic feet of gas;

(3) bona fide introduction of gas into oil or gas bearing horizon in order to maintain or increase the rock pressure, or otherwise increase the ultimate recovery of oil or gas from the horizon; and

(4) the extraction of natural gasoline when the residue is returned to the horizon from which it is produced.

[Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.182. Use of Sour Gas

In addition to the purposes for which sweet gas produced from a gas well may be used, sour gas may be used for efficient chemical manufacturing purposes including the manufacture of carbon black provided:

(1) it is utilized in a plant producing a recovery of not less than one pound of carbon black to each 1,000 cubic feet of gas; and

(2) the gasoline content is removed and saved from the sour gas before the gas is used for carbon black.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.183. Use of Casinghead Gas

Casinghead gas may be used for any beneficial purpose, which includes the manufacture of natural gasoline.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.184. Use as Gas Lift

(a) A producer of either sweet or sour gas or casinghead gas may use the gas as gas lift in the bona fide production of oil if the gas is not used in excess of 10,000 cubic feet per barrel of oil produced.

(b) To prevent waste in a case where the facts in the case warrant it, the commission may permit the use of additional quantities of gas to lift oil provided:

(1) all the gas used in excess of 10,000 cubic feet for each barrel of oil is processed for natural gasoline; and

(2) the residue is burned for carbon black when it is reproduced.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.185. Prohibition Against Gas in Air

No gas from a gas well may be permitted to escape into the air after the expiration of 10 days from the time the gas is encountered in the gas well, or from the time of perforating the casing opposite a gas-bearing zone if casing is set through the zone, whichever is later, but the commission may permit the escape of gas into the air for an additional time if the operator of a well or other facility presents information to show the necessity for the escape; provided that the amount of gas which is flared under that authority is charged to the operator's allowable production. A necessity includes but is not limited to the following situations:

(1) cleaning a well of sand or acid or both following stimulation treatment of a well; and

(2) repairing or modifying a gas-gathering system.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2696, ch. 871, art. II, § 9, eff. Sept. 1, 1977.]

[Sections 86.186 to 86.220 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT; JUDICIAL REVIEW

§ 86.221. Unauthorized Production Prohibited

No person may produce gas from a gas well in violation of the valid orders of the commission.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.222. Penalty

Any person who violates a provision of this chapter is liable for a penalty of not more than $1,000 for each offense. Each day a violation occurs constitutes a separate offense.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.223. Suit for Penalty

The penalty may be recovered with the cost of suit by the State of Texas through the attorney general or the county or district attorney when joined by the attorney general in a civil action instituted in Travis County or in the county in which the violation occurred.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.224. Suit for Injunction

A violation or threatened violation of this chapter may be enjoined by any court of competent jurisdiction in which the suit for penalty may be brought. The court may issue mandatory or prohibitory writs of injunction that the facts justify.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.225. Judicial Review

Any person affected by an order of the commission adopted under the authority of this chapter is entitled to judicial review of that order in a manner other than trial de novo.

[Acts 1977, 65th Leg., p. 2540, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 87. REGULATION OF SOUR NATURAL GAS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 87.001. Definitions

In this chapter, the words "oil," "gas," "commission," "common reservoir," "gas well," "oil well," "sour gas," "sweet gas," "natural gasoline," "cubic foot of gas," and "casinghead gas" are defined as provided in Section 86.002 of this code.

[Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 87.002 to 87.010 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

§ 87.011. Rules and Orders

(a) In administering the provisions of this chapter, the commission shall hold hearings, make determinations, and promulgate rules and orders as provided in Sections 86.084–86.090 of this code and other laws of this state.

(b) After notice and hearing as provided by law, the commission shall promulgate any other rule or order it finds necessary to carry out the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.012. Validity

(a) Rules and orders adopted by the commission under the terms of this chapter are considered prima facie valid.

(b) A person affected by an order may sue to test the validity of the order adopted by the commission under this chapter in the same manner, on the same conditions, and in the same court or courts as prescribed for suits testing the validity of orders of the commission promulgated under the general oil conservation statutes of this state.

[Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.013. Hearings

From time to time, the commission shall hold hearings, after proper notice, to hear evidence and to adopt rules and orders to enforce the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.014. Inspection of Records; Reports

In addition to authority given by existing law, the commission or its agents may:

(1) inspect the books and records of any person who is affected by the provisions of this chapter; and

(2) require sworn reports to be filed from time to time as the commission finds necessary.

[Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 87.015 to 87.050 reserved for expansion]

SUBCHAPTER C. PRODUCTION OF SOUR GAS

§ 87.051. Limitation of Sour Gas Production

No person may produce sour gas from any sour gas well in a reservoir producing both sweet and sour gas in excess of the daily allowable production for the gas well as fixed by the orders and schedules

of the commission. The rate of production from a sour gas well is considered to be the daily average rate of production for the calendar month.
[Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.052. Maximum Production of Sour Gas for Carbon Black Manufacture

(a) In any common reservoir in the state producing both sweet and sour gas, there shall never be produced from the common reservoir for use in carbon black manufacture a maximum daily volume of sour gas from the gas wells in excess of 750 million cubic feet.

(b) The commission shall prorate the daily volume of sour gas from gas wells among all the sour gas wells in the reservoir to prevent cognizable and preventable drainage of gas from tracts of land in the sour gas producing area segregated as to surface position and common ownership on which the sour gas wells are located.
[Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.053. Effect of Demand Below Maximum Allowable Production

(a) If the daily demand for sour gas from gas wells for use in carbon black manufacture is less than the daily maximum allowable permitted in Section 87.052 of this code, the total daily volume of gas from gas wells from the sour gas area for use in carbon black manufacture shall be equal to the daily demand.

(b) The commission shall determine the daily demand and prorate it among all the sour gas wells in the area as provided in Section 87.052 of this code.
[Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.054. Effect of Demand for Other Purposes Than Carbon Black Manufacture

(a) If a lawful daily demand exists for sour gas from gas wells for purposes of utilization permitted by law, other than the manufacture of carbon black, the additional demand shall be added to the daily demand for carbon black manufacture, and that sum shall constitute the daily volume of sour gas from gas wells that may be withdrawn from the common reservoir for utilization.

(b) The commission shall prorate the daily volume provided for in Subsection (a) of this section among the sour gas wells in the area on the basis set forth in Section 87.052 of this code.
[Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 87.055 to 87.090 reserved for expansion]

SUBCHAPTER D. PLANTS EXTRACTING NATURAL GASOLINE

§ 87.091. Prohibited Commingling of Gas

In a plant for the extraction of natural gasoline content of gas, no sweet gas may be commingled with sour gas and no casinghead gas may be commingled with sweet gas or sour gas or both, except on the conditions and requirements stated in this subchapter.
[Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.092. Permit Required

In any common reservoir in this state producing both sweet and sour gas, no person may operate a plant for the extraction of the natural gasoline content of gas in which sweet gas and sour gas are commingled, or plant casinghead gas is commingled with either sweet gas or sour gas or both, until the person secures from the commission a permit authorizing the operation of the plant.
[Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.093. Issuance of Permit

The commission shall issue a permit if it appears that the plant is being operated and the residue gas from the plant is and will be disposed of in accordance with the provisions of this subchapter.
[Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.094. Cancellation of Permit

(a) If it appears to the commission that a plant is operating in violation of any of the provisions of this subchapter, the commission shall cancel the permit issued to the plant.

(b) After the cancellation of the permit, no operator of the plant may commingle either sweet gas and sour gas or casinghead gas with sweet gas or sour gas in the plant for the purpose of extracting the natural gasoline content.
[Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.095. Residue Gas Allowed in Air

(a) Except as provided in Subsection (b) of this section, if a plant operating under this subchapter commingles casinghead gas with sweet gas or sour gas or both, the operator of the plant shall not blow, or permit to be blown, in the air any of the residue gas remaining after the gasoline content of the gas is extracted.

(b) The operator of a plant may blow in the air an amount of residue gas from the plant that is determined by the commission to be necessary to accomplish uninterrupted deliveries in required amounts to carbon black plants for carbon black manufacture.
[Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.096. Residue Gas: Determination by Commission

If a plant operating under this subchapter commingles casinghead gas with sweet gas or sweet gas with sour gas, the commission shall ascertain:

(1) the quantity of residue gas required to be used for fuel purposes in the efficient operation of the plant; and

(2) the quantity of residue gas required to be returned by the operator of the plant to the leases to which the plant is connected for use as fuel in the operation of the leases.

[Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.097. Use of Residue Gas for Other Purposes

(a) The operator of the plant is required to use, or cause to be used, for one or more of the uses provided for sweet gas by law a quantity of the residue gas from the plant equal to the quantity of sweet gas taken into the plant for processing, less the extraction loss from the processing.

(b) The operator shall not be credited with use of residue for plant-fuel or lease-fuel operations in an amount in excess of the quantity of the residue gas found by the commission to be necessary for the efficient operation of the plant and return to the leases for fuel for lease operations.

[Acts 1977, 65th Leg., p. 2544, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 87.098 to 87.130 reserved for expansion]

SUBCHAPTER E. USE OF GAS WITHOUT EXTRACTION OF NATURAL GASOLINE

§ 87.131. Use of Sweet Gas for Carbon Black Manufacture

Sweet gas produced from any gas well in this state may be used without the prior extraction of its gasoline content for the manufacture of carbon black if it is used in a plant producing an average recovery of not less than five pounds of carbon black for each 1,000 cubic feet of gas.

[Acts 1977, 65th Leg., p. 2544, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.132. Use of Gas From Certain Wells for Carbon Black Manufacture

(a) Gas from any gas well completed on or before September 5, 1947, within a common reservoir producing both sweet and sour gas from which the gas was not sold off the leased premises to an interstate pipeline company during the year immediately preceding September 5, 1947, or gas from any gas well completed after September 5, 1947, within a common reservoir producing both sweet and sour gas, may be used for the manufacture of carbon black without the prior extraction of its natural gasoline content if:

(1) it is used in a plant producing an average recovery of not less than one and one-half pounds of carbon black for each 1,000 cubic feet of gas; and

(2) the royalty rate and market price paid for the gas at the wellhead at least equals the royalty rate and market price paid at the wellhead in the immediate area for gas used for light and fuel purposes.

(b) In arriving at the market price of sour gas, a reduction of not more than one-half cent per 1,000 cubic feet shall be allowed for purifying the gas to render it suitable for light and fuel purposes.

(c) If the gas is used by a producer, any royalty rate paid shall be paid on the same basis.

[Acts 1977, 65th Leg., p. 2544, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.133. Determining Market Price

(a) After due notice of hearing, the commission shall hold annual or semiannual hearings, as it considers necessary, for the purpose of determining the market price that is being paid at the wellhead for gas being used and sold for light and fuel purposes.

(b) After the hearing and determination of the market price, the commission shall post and publish the price in its main office in Austin, and its branch office, if any, in the area affected.

(c) All parties contracting for gas under the provisions of this subchapter may accept the posted and published price as the market price to be paid for the gas.

[Acts 1977, 65th Leg., p. 2544, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.134. Effect of Subchapter

The provisions of this subchapter are cumulative of existing laws relating to the uses of gas and do not restrict or affect the manufacture of carbon black from processed sour gas as authorized by Section 86.182 of this code.

[Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 87.135 to 87.170 reserved for expansion]

SUBCHAPTER F. USE OF GAS DETERMINED BY HYDROCARBON CONTENT

§ 87.171. Gas Containing Low Hydrocarbon Content

Any natural gas, including casinghead gas, produced from any gas well or oil well in this state, containing less than one and one-half gallons of propane and heavier hydrocarbons per 1,000 cubic feet, as determined by fractional analysis made of

the gas, may be used for the manufacture of carbon black in a plant producing an average recovery of at least one and one-half pounds of carbon black for each 1,000 cubic feet of gas consumed.
[Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.172. Gas Containing High Hydrocarbon Content

(a) Except as provided in Subsection (b) of this section, no natural gas, including casinghead gas, produced from any gas well or oil well in this state, containing one and one-half gallons or more of propane and heavier hydrocarbons per 1,000 cubic feet, as determined by fractional analysis made of the gas, may be used for the manufacture of carbon black in a plant producing an average recovery of at least one and one-half pounds of carbon black for each 1,000 cubic feet of gas consumed without the prior extraction of its natural gasoline content.

(b) On the filing of an application and after proper notice and hearing as provided by law, the commission may authorize the use of any natural gas, including casinghead gas, containing one and one-half gallons or more of propane and heavier hydrocarbons per 1,000 cubic feet, as determined by fractional analysis made of the gas, in the manufacture of carbon black in a plant producing an average recovery of at least one and one-half pounds of carbon black for each 1,000 cubic feet of gas consumed if the commission finds it is unprofitable to first extract the natural gasoline content of the gas.
[Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.173. Additional Extraction to Alleviate Shortage

If a general shortage of propane or heavier liquid hydrocarbons occurs, the commission, after notice and hearing, may require additional extraction of hydrocarbons from the gas to alleviate the shortage, but additional extraction shall not be required if it is not economically feasible to do so.
[Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.174. Applicability of This Subchapter

The provisions of this subchapter shall not apply to:

(1) gas produced from a common reservoir that contains both sweet and sour gas which was being lawfully used for the manufacture of carbon black under the provisions of the source law codified in Subchapters D and E of this chapter at the time of the passage of the source law for this section; or

(2) gas from gas wells located in these reservoirs which were entitled to be so used under the provisions of the source law codified in Subchapters D and E of this chapter at the time of the passage of the source law for this section.
[Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 87.175 to 87.210 reserved for expansion]

SUBCHAPTER G. CARBON BLACK PLANTS

§ 87.211. Prohibited Location

Unless adequate precaution is taken to minimize the emission of smoke from the plant, no channel-type carbon black plant shall be erected or constructed closer than five miles to:

(1) the limits of a city, town, or village incorporated at or before the time the erection or construction of the plant is begun; or

(2) a commercially operated citrus fruit orchard planted not less than one year before the time the erection or construction of the plant is commenced.
[Acts 1977, 65th Leg., p. 2546, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 87.212 to 87.240 reserved for expansion]

SUBCHAPTER H. ENFORCEMENT

§ 87.241. Penalty

(a) A person who violates a provision of this chapter is liable to a penalty of not more than $1,000 for each offense.

(b) Each day a violation occurs constitutes a separate offense.

(c) The penalty may be recovered by the State of Texas, with costs of suit, in a civil action instituted by the attorney general in Travis County or in the county in which the violation occurred.
[Acts 1977, 65th Leg., p. 2546, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.242. Injunctive Relief

(a) A violation or threatened violation of this chapter may be enjoined by any court of competent jurisdiction in which suit for penalty may be brought.

(b) The court shall issue the writs or prohibitory or mandatory injunctions that the facts justify.
[Acts 1977, 65th Leg., p. 2546, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 88. CONTROL OF OIL PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Section
88.001. Definitions.

SUBCHAPTER B. RULES

88.011. Adoption of Rules.
88.012. Rules and Orders Relating to Records and Reports.
88.013. Notice by Publication.

SUBCHAPTER C. PRACTICES PROHIBITED IN THE PRODUCTION OF OIL AND GAS

88.051. Production Prohibited in Excess of Allowable Amount.
88.052. Prohibited Passage From Control of Producer Without Measurement and Record of Amount.
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88.054. Passage From Control of Producer Prohibited If Tank Not Under His Control.
88.055. Production Prohibited Without Flare.
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SUBCHAPTER D. INSPECTION AND EXAMINATION OF OIL PROPERTY

88.091. Access to Property and Records.
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SUBCHAPTER E. ENFORCEMENT; PENALTIES

88.131. Venue.
88.132. Service of Process.
88.133. Responsibility for Compliance and Liability to Prosecution.
88.134. Penalties.

SUBCHAPTER A. GENERAL PROVISIONS

§ 88.001. Definitions

In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Governmental agent" or "governmental agency" means the Railroad Commission of Texas and any other administrative governmental board and governmental agent to which the legislature delegates the duty of supervising the production of oil and gas in the State of Texas.

(3) "Oil property" means a well producing oil, gas, or oil and gas, and any group of such contiguous wells of any number owned, operated, or controlled as a producing unit by the same person in the same locality, and any leasehold estate to the extent that it is owned, operated, and controlled by the same person.

[Acts 1977, 65th Leg., p. 2547, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 88.002 to 88.010 reserved for expansion]

SUBCHAPTER B. RULES

§ 88.011. Adoption of Rules

(a) The governmental agency may promulgate and adopt rules:

(1) to provide for the method of measuring oil and gas produced from any well in this state and to provide for the type of measuring devices to be used in obtaining the measurement;

(2) for the inspection of all oil properties to ascertain that the prescribed measuring devices are installed, are in accurate working condition, and are being accurately used;

(3) to provide that no oil or gas is being permitted to leave the possession of the producer without first being accurately measured and an accurate record of production made and preserved;

(4) to provide that no oil is being produced from a well producing both oil and gas without burning a flare or flares if the installation and use of a flare or flares is required by the terms of this chapter;

(5) for the keeping of complete and accurate records correctly reflecting the amount of oil or gas or both produced from each oil property each calendar day and the disposition and method of disposition of all the oil and gas produced, and for the monthly filing with the governmental agency of monthly reports accurately reflecting the true facts with respect to all such matters; and

(6) for the inspection and examination by the governmental agency, or its agents, servants, and employees, of all oil properties and the records provided for in this chapter.

(b) The rules shall be adopted in the manner provided by law for adoption of rules of the commission.

[Acts 1977, 65th Leg., p. 2547, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.012. Rules and Orders Relating to Records and Reports

The rules and orders of the governmental agency relating to records and reports shall prescribe the form in which the records and reports will be made and kept, but the records and reports shall contain the data and information provided for in this chapter.

[Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.013. Notice by Publication

(a) When the governmental agency adopts a rule under this chapter, the governmental agency shall publish a complete copy of the rule once each day for three consecutive days in three newspapers of gener-

al circulation in the state, to be selected by the governmental agency.

(b) Notice of any amendment, repeal, alteration, or modification of the order may be similarly adopted and will become effective after similar notice.

[Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 88.014 to 88.050 reserved for expansion]

SUBCHAPTER C. PRACTICES PROHIBITED IN THE PRODUCTION OF OIL AND GAS

§ 88.051. Production Prohibited in Excess of Allowable Amount

No person owning, leasing, operating, producing, or controlling an oil property or any oil well in this state may produce or cause to be produced on any day from any oil property or oil well any oil in excess of the amount allowed to be produced each day from the oil property or oil well under an order previously adopted by the governmental agency and in force at the time.

[Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.052. Prohibited Passage From Control of Producer Without Measurement and Record of Amount

No person owning, leasing, operating, or controlling an oil property in this state may permit the oil or gas produced to pass beyond the possession or control of that person to the possession or control of any other person without first accurately measuring the amount of the oil or gas and making and preserving an accurate record of the amount.

[Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.053. Prohibited Evasion or Prevention of Accurate Measurement

No person owning, leasing, operating, or controlling an oil property in this state may use a method or device to evade or prevent obtaining the accurate measurement as provided in Section 88.052 of this code.

[Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.054. Passage From Control of Producer Prohibited If Tank Not Under His Control

No person owning, leasing, operating, or controlling an oil property may permit oil produced by him in this state to pass from his possession or control to the possession or control of any other person except from a tank or tanks under the control of the person producing the oil.

[Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.055. Production Prohibited Without Flare

If the gas from a well producing both oil and gas is not trapped and used and the gas is capable of being burned in a flare, no person owning, leasing, operating, or controlling an oil property in this state may produce oil from the well at any time without simultaneously and continuously burning a flare to consume all gas that otherwise would be permitted to escape into the open air.

[Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.056. Identifying Signs

Each oil property in this state, each tank owned or controlled by such person to which the property is connected, and each flare to which the property is connected shall be posted at all times with a sign written in the English language with letters at least one inch in height, stating:

(1) the name of the owner of the property;

(2) the operator of the property;

(3) the number of acres contained in the property; and

(4) the name by which the property is commonly known and identified.

[Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 88.057 to 88.090 reserved for expansion]

SUBCHAPTER D. INSPECTION AND EXAMINATION OF OIL PROPERTY

§ 88.091. Access to Property and Records

The governmental agency shall have access at all times to:

(1) the oil property of all persons for inspection and examination; and

(2) the records of all these persons for inspection, examination, and audit.

[Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.092. Prohibited Interference With Access and Inspection

No person may:

(1) refuse to permit the governmental agency, or an agent, servant, representative, or employee of the governmental agency, to have access to an oil property for inspection and examination;

(2) interfere with the inspection and examination;

(3) remove, tamper with, mutilate, or destroy a device, seal, or meter on an oil property placed there or used in the inspection and examination; or

(4) refuse to permit the governmental agency, or an agent, servant, representative, or employee of the governmental agency, to have access, for inspection, examination, and audit, to the books, documents, and records pertaining to, used in connection with, or required to be used in connection with an oil property.

[Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.093. Prohibited Equipment or Enclosure

No person owning, leasing, operating, or controlling an oil property in this state may equip or enclose his oil property, or any part of his oil property, in a manner that:

(1) prevents inspection and examination; or

(2) prevents an inspection and examination from revealing the true facts with respect to:

(A) the amount of oil or oil and gas being produced from the oil property;

(B) the manner in which the oil property is being operated; or

(C) the manner and method by which the production from the oil property is produced, stored, or delivered from the possession or control of that person.

[Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.094. Prohibited Gift or Gratuity

No person may corruptly give, offer, or promise to give a member of the governmental agency, chief supervisor, deputy supervisor, or any agent or employee of the governmental agency a gift or gratuity with intent to influence the officer or person in his acts or conduct with respect to:

(1) enforcing any provision of the law applicable to oil and gas in force at the time in this state;

(2) enforcing any order or rule of the governmental agency adopted under the power and authority given to it; or

(3) the discharge of any duty imposed on him by the oil and gas laws, orders, and rules duly promulgated and in force at the time in this state.

[Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 88.095 to 88.130 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT; PENALTIES

§ 88.131. Venue

The courts of the county in which the oil property or any part of the oil property is located and with respect to which a violation of the provisions of this chapter is charged have jurisdiction of all prosecutions for violations of the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.132. Service of Process

(a) In a suit or action involving the enforcement of the conservation laws of this state or the orders of the commission affecting the conservation of the natural resources of this state, a Texas Ranger or an agent of the commission may serve civil or judicial process, citation, notice, warrant, subpoena, or writ, including process of every character in contempt proceedings, the same and as fully as a sheriff or constable of a county to whom the process, writ, notice, citation, subpoena, or warrant might be directed could within the limits of his own county.

(b) A ranger or an agent of the commission may serve the process anywhere in the State of Texas although it may be directed to "any sheriff or constable" of a particular county. He shall make the same return as any other officer, sign his name, and add under his name the title of "State Ranger" or "Agent, Railroad Commission of Texas," as the case may be, which is sufficient to make it valid if the writ otherwise is properly prepared.

(c) No fees are allowed the rangers or agents of the commission other than their regular salary or compensation.

[Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.133. Responsibility for Compliance and Liability to Prosecution

The president of each corporation, the chief managing executive of each association, all active members of each firm and partnership, and all trustees of each trust subject to the provisions of this chapter shall be responsible for the compliance with the terms of this chapter by the corporation, association, firm, partnership, or trust of which he is, respectively, president, chief managing executive, member, or trustee, and he shall be liable to prosecution under and subject to the criminal penalties provided in this chapter for violations of this chapter by the respective corporation, association, firm, partnership, or trust of which he has actual knowledge or to which he assents.

[Acts 1977, 65th Leg., p. 2551, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.134. Penalties

(a) A person who violates any of the provisions of Sections 88.091 through 88.093 of this code, or any person who fails to comply with any of the provisions of those sections, is guilty of a misdemeanor and on conviction shall be subject to a fine of not more than $500, or by confinement in the county jail for not more than six months, or by both.

(b) A person who violates any other provision of this chapter other than those covered by Subsection (a) of this section, a person who fails to comply with any of the other terms of this chapter, a person who fails to comply with the terms of a rule or order adopted by the governmental agency under the terms of this chapter, or a person who violates any of the rules or orders of the governmental agency adopted under the provisions of this chapter on conviction is considered guilty of a felony and on conviction shall be punished by imprisonment in the state penitentiary for a term of not less than two nor more than four years.

[Acts 1977, 65th Leg., p. 2551, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 89. ABANDONED WELLS

SUBCHAPTER A. GENERAL PROVISIONS

Section
89.001. Policy.
89.002. Definitions.
89.003. Applicability.

SUBCHAPTER B. DUTY TO PLUG WELLS

89.011. Duty of Operator.
89.012. Duty of Nonoperator.
89.013. Duty of Landowner.

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSION

89.041. Determining Proper Plugging.
89.042. Commission Order to Plug.
89.043. Plugging by Commission.
89.044. Right to Enter on Land.
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SUBCHAPTER D. COSTS OF PLUGGING WELLS

89.081. Cause of Action for Disproportionate Share of Cost.
89.082. Cause of Action If Landowner Plugs.
89.083. Cause of Action If Commission Plugs.
89.084. Money Paid Commission by Private Person.

SUBCHAPTER E. ENFORCEMENT; JUDICIAL REVIEW

89.121. Enforcement by Commission.
89.122. Appeal to Courts.

SUBCHAPTER A. GENERAL PROVISIONS

§ 89.001. Policy

The conservation and development of all the natural resources of this state are declared to be a public right and duty. It is also declared that the protection of water and land of the state against pollution or the escape of oil or gas is in the public interest. In the exercise of the police power of the state, it is necessary and desirable to provide additional means so that wells that are drilled for the exploration, development, or production of oil or gas, or as injection or salt water disposal wells, and that have been abandoned and are leaking salt water, oil, gas, or other deleterious substances into freshwater formations or on the surface of the land, may be plugged, replugged, or repaired by or under the authority and direction of the commission.

[Acts 1977, 65th Leg., p. 2552, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.002. Definitions

(a) In this chapter:

(1) "Well" means a hole drilled for the purpose of:

(A) producing oil or gas;

(B) injecting fluid or gas in the ground in connection with the exploration or production of oil or gas; or

(C) obtaining geological information by taking cores or through seismic operations.

(2) "Operator" means a person who is responsible for the physical operation and control of a well at the time the well is about to be abandoned or ceases operation.

(3) "Nonoperator" means a person who owns a working interest in a well at the time the well is about to be abandoned or ceases operation and is not an operator as defined in Subdivision (2) of this subsection.

(4) "Landowner" means the owner of the land on which the well is located at the time the well is abandoned and one who holds a mineral interest therein.

(5) "Commission" means the Railroad Commission of Texas.

(b) The terms operator and nonoperator as defined in this section do not mean a royalty interest owner or an overriding royalty interest owner.

[Acts 1977, 65th Leg., p. 2552, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.003. Applicability

The provisions of this chapter do not alter causes of action arising before August 30, 1965.

[Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 89.004 to 89.010 reserved for expansion]

SUBCHAPTER B. DUTY TO PLUG WELLS

§ 89.011. Duty of Operator

The operator of a well shall properly plug the well when required and in accordance with the commission's rules that are in effect at the time of plugging.

[Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.012. Duty of Nonoperator

If the operator of a well fails to comply with Section 89.011 of this code, each nonoperator is responsible for his proportionate share of the cost of the proper plugging of the well within a reasonable time, according to the rules of the commission in effect at the time the responsibility attaches.

[Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.013. Duty of Landowner

If the operator and the nonoperator fail to comply with Sections 89.011 and 89.012 of this code, respectively, each landowner is responsible for his proportionate share of the cost of proper plugging of the well within a reasonable time, according to the rules of the commission in effect at the time the responsibility attaches.

[Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 89.014 to 89.040 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSION

§ 89.041. Determining Proper Plugging

If it comes to the attention of the commission that a well that has been abandoned or is not being operated is causing or is likely to cause pollution of fresh water above or below the ground or if gas or oil is escaping from the well, the commission shall determine at a hearing, after due notice, whether or not the well was properly plugged as provided in Section 89.011, Section 89.012, or Section 89.013 of this code.

[Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.042. Commission Order to Plug

(a) If the commission finds that the well was not properly plugged, it shall order the operator to plug the well according to the rules of the commission in effect at the time the order is issued.

(b) If the operator cannot be found or is no longer in existence or has no assets with which to properly plug the well, the commission shall order the nonoperators to plug the well according to the rules of the commission in effect at the time the order is issued.

(c) If the nonoperators cannot be found or are no longer in existence or have no assets with which to properly plug the well, the commission shall order the landowners to properly plug the well according to the rules of the commission in effect at the time the order is issued.

[Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.043. Plugging by Commission

If the commission determines at a hearing under Section 89.041 of this code that a well has not been properly plugged or needs replugging, the commission, through its employees or through a person acting as agent for the commission, may plug or replug the well if:

(1) the well was properly plugged according to rules in effect at the time the well was abandoned or ceased to be operated; or

(2) neither the operator, nonoperator, nor the landowner properly plugged the well, and

(A) neither the operator, nonoperator, nor the landowner can be found; or

(B) neither the operator, nonoperator, nor the landowner has assets with which to properly plug the well.

[Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.044. Right to Enter on Land

The commission or its employees or agents, the operator, the nonoperator, or the landowner may enter the land of another for the purpose of plugging or replugging a well that the commission has determined, under the provisions of Section 89.041 of this code, has not been properly plugged.

[Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.045. Liability for Damages

The commission and its employees and agents, the operator, the nonoperator, and the landowner are not liable for any damages that may occur as a result of acts done or omitted to be done by them or each of them in a good-faith effort to carry out the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 89.046 to 89.080 reserved for expansion]

SUBCHAPTER D. COSTS OF PLUGGING WELLS

§ 89.081. Cause of Action for Disproportionate Share of Cost

If an operator, nonoperator, or landowner owns only a partial interest in the well, oil and gas, or land and the operator, nonoperator, or landowner pays a larger proportion of the cost of plugging the well than his proportionate interest in the well, oil and gas, or land, he has a cause of action against the other operators, nonoperators, or landowners for their proportionate shares of the cost of plugging.

[Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.082. Cause of Action If Landowner Plugs

(a) If a landowner plugs or replugs a well under Section 89.013 of this code, the landowner has a cause of action against the operator and nonoperator or either of them in any court of competent jurisdiction for all reasonable costs and expenses incurred in the plugging or replugging of the well, to be secured by a lien on the interest of the operator and the nonoperator or either of them in:

(1) the oil and gas underlying the lease on which the well is located; and

(2) the fixtures, machinery, and equipment found or used on the lease.

(b) Notwithstanding the provisions of Subsection (a) of this section, if the landowner is responsible for the well not being plugged properly, the landowner does not have a cause of action under this chapter.

[Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.083. Cause of Action If Commission Plugs

If the commission plugs a well under the provisions of Sections 89.043 through 89.044 of this code, the state has a cause of action for all reasonable expenses incurred in plugging or replugging the well according to the rules of the commission in effect at the time the well is plugged or replugged. The cause of action is:

(1) first, against the operator, to be secured by a lien on his interest in the oil and gas in the land and his fixtures, machinery, and equipment found or used on the land where the well is located;

(2) second, against the nonoperator at the time the well should have been plugged, to be secured by a lien on his interest in the oil and gas in the land; and

(3) third, against the landowner, to be secured by a lien on his interest in the land.

[Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.084. Money Paid Commission by Private Person

(a) The commission may accept money from private persons and use the money to plug or replug a well.

(b) Paying money to the commission is not an admission that the person paying the money is obligated to plug or replug the well. Evidence that a person has paid money to the commission is not admissible against the person in a suit in which the person's obligation to plug a well is an issue and introducing the evidence is a compulsory ground for mistrial.

[Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 89.085 to 89.120 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT; JUDICIAL REVIEW

§ 89.121. Enforcement by Commission

In addition to the powers specifically granted to the commission under the provisions of this chapter, the commission may enforce the provisions of this chapter or any rule or order of the commission adopted under the provisions of this chapter in the same manner and on the same conditions as provided in the other chapters of Title 3 of this code.

[Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.122. Appeal to Courts

Any person affected by the provisions of this chapter may sue to test the validity of any order adopted by the commission under this chapter in the same manner, on the same conditions, and to the same court or courts as prescribed for suits testing the validity of orders of the commission adopted under the general oil conservation statutes of this state.

[Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 90. INTERSTATE COMPACT TO CONSERVE OIL AND GAS

Section
90.001. Ratification.
90.002. Original Copy.
90.003. Representative.
90.004. Extension.
90.005. Form of Agreement.
90.006. Withdrawal From Compact.
90.007. Text of Compact.

§ 90.001.. Ratification

The Interstate Compact to Conserve Oil and Gas, executed in the City of Dallas, on February 16, 1935, by the Governor of Texas, the text of which is set out in Section 90.007 of this code, was ratified by the legislature of this state in Chapter 81, General Laws, Acts of the 44th Legislature, Regular Session, 1935.

[Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 90.002. Original Copy

The original copy of the compact is on deposit with the Department of State of the United States.

[Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 90.003. Representative

(a) The governor is the official representative of the State of Texas on the Interstate Oil Compact Commission, provided for in the Interstate Compact to Conserve Oil and Gas. He shall exercise and

perform for the state all the powers and duties as a member of the Interstate Oil Compact Commission.

(b) The governor may appoint an assistant representative who shall act in his stead as the official representative of the State of Texas as a member of the commission.

(c) The representative shall take the oath of office prescribed by the constitution, which shall be filed with the Secretary of State.

[Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.062, purports to add § 5a to Civil Statutes, art. 6008–1, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(2). As so added, § 5a reads:

"The office of Interstate Oil Compact Commissioner for Texas is subject to the Texas Sunset Act [Civil Statutes, art. 5429k]; and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 90.004. Extension

(a) The continuous extension of the Interstate Compact to Conserve Oil and Gas until September 1, 1951, by an agreement executed by the governor in the name of the State of Texas with other states currently members of the Interstate Oil Compact Commission was authorized by the legislature, subject to the approval of Congress, in:

(1) Chapter 217, Acts of the 45th Legislature, Regular Session, 1937;

(2) Chapter 2, Special Laws, page 527, Acts of the 46th Legislature, Regular Session, 1939;

(3) Chapter 63, Acts of the 47th Legislature, Regular Session, 1941;

(4) Chapter 15, Acts of the 48th Legislature, Regular Session, 1943; and

(5) Chapter 52, Acts of the 50th Legislature, Regular Session, 1947.

(b) The governor may execute agreements in the name of the State of Texas for the further extension of the expiration date of the Interstate Compact to Conserve Oil and Gas.

[Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 90.005. Form of Agreement

The agreement to extend the Interstate Compact to Conserve Oil and Gas, which the governor is authorized to execute for the state, shall be in substance as follows:

"It is hereby agreed that the Interstate Compact to Conserve Oil and Gas executed in the City of Dallas, Texas, on the 16th day of February, 1935, and now on deposit with the Department of State of the United States, be and the same is hereby extended for a period of four (4) years from its date of expiration (September 1, 1947), this agreement to become effective when executed by any three (3) of the States of Texas, Oklahoma, California, Kansas and New Mexico, and consent thereto is given by Congress."

[Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 90.006. Withdrawal From Compact

(a) The governor may determine if and when it is in the best interest of the state to withdraw from the compact as provided by its terms on 60 days' notice.

(b) If the governor determines that the state should withdraw from the compact, he has full authority to give necessary notice and take any steps necessary and proper to effect the withdrawal of the State of Texas from the compact.

[Acts 1977, 65th Leg., p. 2557, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 90.007. Text of Compact

The Interstate Compact to Conserve Oil and Gas reads as follows:

AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS

ARTICLE I

This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three (3) of the States of Texas, Oklahoma, California, Kansas and New Mexico have ratified, and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

ARTICLE II

The purpose of this Compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

ARTICLE III

Each state bound hereby agrees that within a reasonable time it will enact laws, or if laws have

been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

(a) The operation of any oil well with an inefficient gas-oil ratio;

(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas, in paying quantities;

(c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well;

(d) The creation of unnecessary fire hazards;

(e) The drilling, equipping, locating, spacing, or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof;

(f) The inefficient, excessive, or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

ARTICLE IV

Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid order and/or gas conservation statutes or any valid rule, order, or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

ARTICLE V

It is not the purpose of this Compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

ARTICLE VI

Each state joining herein shall appoint a representative to a Commission hereby constituted and designated as The Interstate Oil Compact Commission, the duty of which said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas; and at such intervals as said Commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states, and to recommend measures for the maximum ultimate recovery of oil and gas. Said Commission shall organize and adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the Commission, except: (1) by the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting; and (2) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

ARTICLE VII

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

ARTICLE VIII

This Compact shall expire September 1, 1937. But any state joining herein may, upon sixty (60) days notice, withdraw herefrom.

The representatives of the signatory states have signed this agreement in a single original, which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the Governor of each of the signatory states.

This Compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified.

[Acts 1977, 65th Leg., p. 2557, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 91. PROVISIONS GENERALLY APPLICABLE

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SUBCHAPTER A. GENERAL PROVISIONS

§ 91.001. Definitions

In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Gas" means natural gas.

(3) "Oil" means crude oil and crude petroleum oil.

[Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 91.002 to 91.010 reserved for expansion]

SUBCHAPTER B. DUTIES RELATING TO OIL AND GAS WELLS

§ 91.011. Casing

Before drilling into the oil or gas bearing rock, the owner or operator of a well being drilled for oil or gas shall encase the well with good and sufficient wrought iron or steel casing in a manner that will exclude surface or fresh water from the lower part of the well from penetrating the oil or gas bearing rock, and if the well is drilled through the first into the lower oil or gas bearing rock, the well shall be cased in a manner that will exclude fresh water above the last oil or gas bearing rock penetrated.

[Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.012. Water in Wells

(a) In boring any well for oil or gas, if a person pierces any cap rock or other geological formation in a manner that will cause a flow of salt water or fresh water injurious to an already bored oil well or any oil or gas deposits and that will probably result in the injury of the oil or gas field or already bored oil or gas well, the person shall abandon immediately all work on the well if the flow of water cannot be cased off and shall plug and fill the well in a manner and with materials that will stop the flow of the water.

(b) No well owner or person boring a well described under Subsection (a) of this section may remove the casing from the drilled well until the flow of water is stopped either by casing off or plugging the well.

(c) The provisions of this section apply only if the cap rock or other formation is pierced at a depth below the horizon at which oil or gas has been discovered already.

[Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.013. Plugging and Shutting in Wells by Others

(a) If the owner of a well described in Subsection (a) of Section 91.012 of this code neglects or refuses to have the well plugged or shut in for more than 20 days after written notice is given to him, the owner or operator of adjacent or neighboring land may enter the premises on which the well is located and have the well plugged if it is an abandoned well or shut in if it is not abandoned, in the manner provided by law.

(b) Notice may be given to the owner of the well either by personal service on the owner or by posting the notice at a conspicuous place at or near the well.

(c) The reasonable cost and expense incurred in plugging or shutting in the well shall be paid by the owner of the well and may be recovered as debts of like amount are recovered under the law.

[Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.014. Petition to Restrain Waste

(a) In addition to any other penalties, a district judge, in term time or vacation time, shall hear and determine any petition that is filed to restrain the waste of gas in violation of this subchapter and may issue mandatory or restraining orders that in his judgment are necessary.

(b) The petition may be filed by any citizen of this state and does not have to allege further financial interest of the petitioner in the state's natural resources than that possessed in common with all citizens of the state.

[Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.015. Prevention of Waste

Operators, contractors, drillers, pipeline companies, and gas distributing companies that drill for or produce oil or gas or pipe oil or gas for any purpose shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil, gas, or both oil and gas in drilling and producing operations, storage, piping, and distribution and shall not wastefully use oil or gas or allow oil or gas to leak or escape from natural reservoirs, wells, tanks, containers, or pipes.

[Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.016. Confining Gas to Original Stratum

(a) If gas located in a gas-bearing stratum known to contain gas in paying quantities is encountered in a well drilled for oil or gas in this state, the gas shall be confined to its original stratum until it can be produced and used without waste.

(b) Gas-bearing strata shall be adequately protected from infiltrating water.

[Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.017. Using Gas in the Open Air

(a) Any person who uses gas in lights in the open air or in or around derricks shall turn off the gas not later than 8 a. m. of each day the lights are burning or are used and shall not turn the lights on or relight them between 8 a. m. and 5 p. m.

(b) The person consuming the gas and using the burners in the open air shall enclose them in glass globes or lamps.

[Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.018. Illumination

No person, copartnership, or corporation may use gas for illuminating purposes in flambeau lights. The use of "jumbo" burners or other burners consuming no more gas than the "jumbo" burners is not prohibited.

[Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 91.019 to 91.050 reserved for expansion]

SUBCHAPTER C. STANDARD GAS MEASUREMENT

§ 91.051. Title

This subchapter may be cited as the Standard Gas Measurement Law.

[Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.052. Definition

(a) The term "cubic foot of gas" or "standard cubic foot of gas" means the volume of gas contained in one cubic foot of space at a standard pressure base and at a standard temperature base.

(b) The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit. If the conditions of pressure and temperature differ from this standard, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the ideal gas laws, corrected for deviation.

[Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.053. Commission Determination

The commission shall determine the average temperature of gas as produced in each oil and gas field in Texas, other variable factors necessary to calculate the metered volumes in accordance with the ideal gas laws, and the variable factors to correct for deviation from the ideal gas laws in each of the oil and gas fields in the state.

[Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.054. Notice and Hearing

On request of any interested person, the commission shall give proper notice and hold a public hearing before making a determination under Section 91.053 of this code.

[Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.055. Findings and Rules

On making the determination, the commission promptly shall make its findings and shall adopt reasonable field rules that may be necessary to effectuate the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.056. Use of Findings and Field Rules

(a) Any person may use the findings and field rules of the commission for any purposes under this subchapter.

(b) If the findings or field rules are not used as provided in Subsection (a) of this section in deter-

mining volumes under this subchapter, the volumes otherwise determined shall be corrected to the basis of the standard cubic foot of gas as defined in Section 91.052 of this code.

[Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.057. Method of Reporting

A person required to report volumes of gas under the laws of this state shall report the volumes in number of standard cubic feet calculated and determined under the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.058. Sale, Purchase, Delivery, and Receipt of Gas

(a) Each sale, purchase, delivery, and receipt of gas by volume made in this state by, for, or on behalf of an oil and gas lease owner, royalty owner under a lease, or other mineral interest owner shall be made and the gas shall be measured, calculated, purchased, delivered, and accounted for on the basis of a standard cubic foot of gas as defined in this subchapter and determined under this subchapter.

(b) If the provisions of this subchapter operate to change the basis of measurement provided in existing contracts, the price for gas, including royalty gas, provided for in the contracts shall be adjusted to compensate for the change in the method of measuring the volume of gas delivered under the contracts if either the purchaser or seller so desires.

(c) This section is intended to protect parties to contracts in existence on October 4, 1949, so that the total amount of money paid for a volume of gas purchased or required to be accounted for under these contracts shall remain unaffected by this subchapter.

[Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.059. Constitutionality

If the provisions of Section 91.058 of this code or any part of that section are held to be invalid or unconstitutional by the courts, the remaining portions of this subchapter shall become ineffective and inoperative.

[Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.060. Penalty

(a) Any person who, as purchaser, shall knowingly fail or refuse to measure, calculate, or account in the manner required in this subchapter for any gas purchased is subject to a penalty of not less than $10 nor more than $500 for each offense.

(b) The penalty is recoverable in the name of the state in a district court in Travis County.

(c) Each day a violation is committed constitutes a separate offense.

(d) It is a defense to a claim for the penalty that the commission has not made the findings under Section 91.055 of this code with regard to the particular field in question.

[Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.061. Civil Suit

None of these provisions shall prevent an aggrieved person from maintaining a civil suit for damages in the county or counties in which the gas is produced.

[Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.062. Applicability of Certain Provisions

None of the provisions of Sections 91.058 through 91.061 of this code affect or apply to purchases or sales made on any basis other than a volume basis.

[Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 91.063 to 91.100 reserved for expansion]

SUBCHAPTER D. PREVENTION OF POLLUTION

§ 91.101. Rules and Orders

To prevent pollution of streams and public bodies of surface water of the state, including subsurface water strata capable of producing water suitable for domestic or livestock use, irrigation of crops, or industrial use, that would or might result from the escape or release of oil, salt water, or other mineralized water from any well or operations in connection with any well, the commission shall adopt and enforce rules and orders relating to:

(1) the drilling of exploratory wells and oil and gas wells or any purpose in connection with them;

(2) the production of oil and gas;

(3) the operation, abandonment, and proper plugging of these wells.

[Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.102. Additional Personnel

The commission is directed to employ additional personnel necessary to administer this subchapter and related laws and rules and orders adopted by the commission.

[Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.103. Persons Required to Execute Bond

Before approval of an application, the commission may require the following persons to execute and file with the commission a bond:

(1) an applicant to drill a new well or redrill or deepen an old well;

(2) an operator who has acquired a producing well and who is requesting authorization to connect a producing well or wells to a pipeline or other outlet; and

(3) an operator filing a well potential form who has reworked and brought into production a previously nonproducing well, resulting in making an application for an allowable for production of oil and gas from the well.

[Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.104. No Appeal From Commission Decision

The discretion of the commission in requiring a bond under this subchapter is final and may not be appealed.

[Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.105. Amount of Bond

The bond shall be in the penal sum of $5,000 for each well to be drilled or operated or, in lieu of a separate bond for each well, a blanket bond in the penal sum of $10,000 to cover all wells drilled, to be drilled, and to be operated in the state.

[Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.106. Bond Conditions

Each bond shall be conditioned that the operator will plug and abandon the well in accordance with the law of the state and the rules and orders of the commission.

[Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.107. Execution of Bond

Each bond shall be executed by a corporate surety authorized to do business in this state and shall be renewed and be continued in effect until the conditions have been met or release is authorized by the commission.

[Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.108. New Bond

If a well covered by a bond is transferred, sold, or assigned by its operator, the commission may require the party acquiring the well to execute a new bond, and the bond of the prior operator shall remain in effect until the new bond is provided or filing of the bond is waived.

[Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 91.109 to 91.140 reserved for expansion]

SUBCHAPTER E. BOOKS, RECORDS, AND REPORTS

§ 91.141. Books and Records

(a) Owners and operators of oil and gas wells shall keep books that show accurately:

(1) the amount of sold and unsold stock;

(2) the amount of promotion money paid;

(3) the amount of oil and gas produced and disposed of and the price for which the oil and gas was sold;

(4) the receipts from the sale or transfer of leases or other property; and

(5) disbursements made in connection with or for the benefit of the business.

(b) The books shall be kept open for the inspection of the commission or any accredited representative of the commission and any stockholder or shareholder or royalty owner in the business.

(c) The owners and operators of oil and gas wells shall report the information to the commission for its information if required by the commission to do so.

[Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.142. Report to Commission

A person, firm, partnership, joint stock association, corporation, or other domestic or foreign organization operating wholly or partially in this state and acting as principal or agent for another for the purpose of drilling, owning, or operating an oil or gas well or owning or controlling leases of oil and mineral rights or the transportation of oil or gas by pipeline shall file immediately with the commission:

(1) the name of the company or organization;

(2) the post-office address of the company or organization;

(3) the plan under which the company or organization was organized;

(4) the names and post-office addresses of the trustee or trustees of the company or organization; and

(5) the names and post-office addresses of the officers and directors.

[Acts 1977, 65th Leg., p. 2565, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.143. False Applications, Reports, and Documents

(a) A person is guilty of a felony and on conviction shall be punished by imprisonment in the state

penitentiary for not less than two years but not more than five years or by a fine of not more than $1,000 or by both if:

(1) he makes or subscribes any application, report, or other document required or permitted to be filed with the commission by the provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, knowing that the application, report, or other document is false or untrue in a material fact;

(2) he aids or assists in, or procures, counsels, or advises the preparation or presentation of any of these applications, reports, or other documents that are fraudulent, false, or incorrect in any material matter, knowing them to be fraudulent, false, or incorrect in any material matter;

(3) he knowingly simulates or falsely or fraudulently executes or signs such an application, report, or other document; or

(4) he knowingly procures these applications, reports, or other documents to be falsely or fraudulently executed, or advises, aids in, or connives at this execution.

(b) If other penalties prescribed in Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, overlap offenses that are also punishable under this section, the penalties prescribed in this section shall be in addition to other penalties.

(c) No application, report, or other document required or permitted to be filed with the commission under Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, may be required to be under oath, verification, acknowledgment, or affirmation.

[Acts 1977, 65th Leg., p. 2565, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

SUBCHAPTER F. UNDERGROUND NATURAL GAS STORAGE AND CONSERVATION

§ 91.171. Short Title

This subchapter may be cited as the Underground Natural Gas Storage and Conservation Act of 1977.

[Added by Acts 1979, 66th Leg., p. 1997, ch. 785, § 3, eff. June 13, 1979.]

§ 91.172. Declaration of Policy

The underground storage of natural gas promotes the conservation of natural gas, permits the building of reserves for orderly withdrawal in periods of peak demand, makes more readily available natural gas resources to residential, commercial, and industrial customers of this state, provides a better year-round market to the various gas fields, and promotes the public interest and welfare of this state.

[Added by Acts 1979, 66th Leg., p. 1997, ch. 785, § 3, eff. June 13, 1979.]

§ 91.173. Definitions

In this subchapter:

(1) "Person" means any natural person, partnership or other combination of natural persons, corporation, group of corporations, trust, or governmental entity.

(2) "Gas utility" means a gas utility as defined in Section 3, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), or Article 6050, Revised Civil Statutes of Texas, 1925, as amended.

(3) "Natural gas" means any gaseous material composed predominantly of the following hydrocarbons or mixtures thereof: methane, ethane, propane, butane (normal or isobutane), in either its original or manufactured state, or gas which has been processed to separate it into one or more of its component parts after its withdrawal from the earth.

(4) "Native gas" means:

(A) natural gas which has not previously been withdrawn from the earth; or

(B) natural gas which has been withdrawn from the storage facility, processed, and reinjected into the storage facility.

(5) "Storage facility" means any subsurface sand, stratum, or formation used or to be used for the underground storage of natural gas and all surface and subsurface rights and appurtenances necessary to the operation of a facility for the underground storage of natural gas.

(6) "Storer" means (A) a gas utility, (B) a wholly owned subsidiary of a gas utility, (C) the parent corporation of a gas utility, or (D) a wholly owned subsidiary of a parent corporation which also wholly owns a subsidiary gas utility, but a nonutility storer included in category (B), (C), or (D) must operate the storage facility pursuant to a contract with its affiliated gas utility that provides that all withdrawals of natural gas from the storage facility must be delivered to the affiliated gas utility.

(7) "Substantially depleted" means that at least 75 percent of the estimated volume of recoverable native gas reserves originally in place in any gas-bearing sand, formation, or stratum have been withdrawn from the sand, formation, or stratum.

(8) "Interested person" means any person who enters an appearance at the commission hearing required by Section 91.174 of this code.

(9) "Commission" means the Railroad Commission of Texas.

[Added by Acts 1979, 66th Leg., p. 1997, ch. 785, § 3, eff. June 13, 1979.]

§ 91.174. Findings of Commission

(a) Any storer desiring to exercise the right of eminent domain for the acquisition of a storage facility shall, as a condition precedent to the filing of its petition in the appropriate court, obtain from the commission an order finding:

(1) that the underground formation or stratum sought to be acquired is classified by the commission as a gas reservoir and is suitable for the underground storage of natural gas and that the storage of natural gas is necessary for the gas utility to provide adequate service to the public and is in the public interest;

(2) that the use of the formation or stratum as a storage facility will cause no injury to surface or underground water resources;

(3) that the formation or stratum does not contain native gas producible in paying quantities unless the the recoverable volumes of native gas originally in place are substantially depleted and unless the formation or stratum has a greater value of ultimate use to the consuming public as a storage facility to ensure an adequate supply of natural gas or for the conservation of natural gas than the production of native gas which remains;

(4) the extent of the horizontal limits of the reservoir expected to be penetrated by displaced or injected gas; and

(5) that no portion of the formation or stratum sought to be acquired has been condemned or is being utilized for the injection, storage, and withdrawal of gas by others.

(b) The designation of a storage facility does not prevent any storer from instituting additional proceedings in the event it is later determined that the underground reservoir should be extended to prevent the escape, displacement, or withdrawal by others of injected gas.

[Added by Acts 1979, 66th Leg., p. 1997, ch. 785, § 3, eff. June 13, 1979.]

§ 91.175. Commission Jurisdiction

The commission shall have jurisdiction to supervise the construction and operation of all storage facilities formed pursuant to this subchapter, and in addition to the findings required by Section 91.174 of this code, the commission shall include in any order of approval a requirement that the storer file a report each month, including each month prior to the time the storage facility is in operation, with the commission showing, for that month, the volume of gas injected and stored gas withdrawn from storage.

[Added by Acts 1979, 66th Leg., p. 1997, ch. 785, § 3, eff. June 13, 1979.]

§ 91.176. Withdrawal of Native Gas

A storer may withdraw from storage injected and stored gas as market demand dictates. However, any time a storer's withdrawals from a storage facility equal the volume of gas injected for storage, the storer shall not withdraw additional gas from the storage facility without first obtaining specific authority from the commission.

[Added by Acts 1979, 66th Leg., p. 1997, ch. 785, § 3, eff. June 13, 1979.]

§ 91.177. Storage Operations Must be Bona Fide

(a) A storer must initiate injection operations for gas storage within 12 months after the condemnation order of the court becomes final and storage operations must continue with reasonable diligence after that time.

(b) Should the monthly reports to the commission indicate that bona fide underground gas storage operations are not being conducted, the commission may, on its own motion or on motion of any interested person, schedule a public hearing, giving the storer the opportunity to show cause why the commission approval of the project should not be withdrawn.

(c) If the commission finds that the storage project is not being conducted in a bona fide manner, it shall issue an order withdrawing approval of the storage facility, and all property, both mineral and surface, that was condemned by the storer shall revert to those who owned the property at the time of condemnation or their successors.

[Added by Acts 1979, 66th Leg., p. 1997, ch. 785, § 3, eff. June 13, 1979.]

§ 91.178. Relocation of Facilities

In the event the acquisition or operation of a storage facility acquired through the exercise of the power of eminent domain requires the relocation or alteration of any railroad, electric, telegraph, telephone, or pipeline lines or facilities, the expense of the relocation or alteration shall be borne by the storer. The expense of relocation means the actual cost incurred in providing a comparable replacement line or facility, less net salvage value from the sale or other disposition of the old facility.

[Added by Acts 1979, 66th Leg., p. 1997, ch. 785, § 3, eff. June 13, 1979.]

§ 91.179. Appropriation of Storage Facilities; Limitations

After an order of the commission is issued approving a storage facility, a storer may condemn without further attack as to its right to condemn, any subsurface sand, stratum, or formation for the underground storage of natural gas, condemning all mineral and royalty rights as are reasonably necessary for the operation of the storage facility, subject to

the limitations of this subchapter, and the storer may condemn any other interests in property that may be required, including interests in the surface estate in the sand, stratum, or formation reasonably necessary to the operation of the storage facility, provided that:

(1) no part of a reservoir is subject to condemnation unless the storer has acquired by option, lease, conveyance, or other negotiated means at least 66-⅔ percent of the ownership of minerals, including working interests, and 66-⅔ percent of the ownership of the royalty interests, computed in relation to the surface area overlying the part of the reservoir which as found by the commission to be expected to be penetrated by displaced or injected gas;

(2) no dwelling, barn, store, or other building is subject to condemnation; and

(3) the right of condemnation is without prejudice to the rights of the owners or holders of other rights or interests of land to drill through the storage facility under such terms and conditions as the commission may prescribe for the purpose of protecting the storage facility against pollution or escape of natural gas and is without prejudice to the rights of the owners or holders of other rights or interests of the land to all other uses so long as those uses do not interfere with the operation of the storage facility.

[Added by Acts 1979, 66th Leg., p. 1997, ch. 785, § 3, eff. June 13, 1979.]

§ 91.180. Institution of Condemnation Proceedings

(a) The finding by the commission that underground storage is in the public interest is binding on all persons whose property the storer has the right to condemn. After that finding of the commission, the storer has the right to condemn all of the underground storage area and any surface area required for the use and enjoyment of the storage facility.

(b) The storer shall initiate eminent domain proceedings in the court having jurisdiction in the area in which a portion of the land is situated. The petition shall set forth the purpose for which the property is sought to be acquired, a description of the sand, stratum, or formation and of the land under which it is alleged to be contained, the names of the owners as shown by the deed records of the county, and a description of all other property and rights sought to be appropriated for use in connection with the storage facility, including any parts of the surface necessary for any facilities incidental to the operation of the storage facility.

(c) The petition shall state facts showing that the storer has obtained the findings of the commission required by Section 91.174 of this code, that the storer in good faith has been unable to acquire the rights sought to be appropriated, that the storer has acquired, prior to the filing of the petition, by any means other than condemnation, at least 66-⅔ percent of the ownership of the minerals, including working interests, and 66-⅔ percent of the royalty interests of the property rights in the storage facility required for that purpose, and shall describe the surface area overlying the storage facility the storer seeks to acquire and the names of the owners of those rights and interests.

(d) Where more than one tract of land is involved, all or any tracts may be joined in one proceeding, without prejudice to the right of the storer to institute additional proceedings; provided, that the failure to make service upon a defendant does not affect the right of the storer to proceed against any or all other of the defendants upon whom service has been made.

[Added by Acts 1979, 66th Leg., p. 1997, ch. 785, § 3, eff. June 13, 1979.]

§ 91.181. Exercise of Right of Eminent Domain

All proceedings in connection with the condemnation and acquisition of storage facilities shall be in accordance with Articles 3264 through 3271, Revised Civil Statutes of Texas, 1925, as amended, and to the extent of any conflict between those articles and this subchapter, the provisions of this subchapter prevail.

[Added by Acts 1979, 66th Leg., p. 1997, ch. 785, § 3, eff. June 13, 1979.]

§ 91.182. Ownership of Stored Gas

All natural gas in the stratum condemned which is not native gas, and which is subsequently injected into storage facilities is personal property and is the property of the injector or its assigns, and in no event is the gas subject to the right of the owner of the surface of the land or of any mineral or royalty owner's interest under which the storage facilities lie, or of any person other than the injector to produce, take, reduce to possession, either by means of the law of capture or otherwise, waste, or otherwise interfere with or exercise any control over a storage facility. Upon failure, neglect, or refusal of the person to comply with this section, the storer has the right to compel compliance by injunction or by other appropriate relief by application to a court of competent jurisdiction.

[Added by Acts 1979, 66th Leg., p. 1997, ch. 785, § 3, eff. June 13, 1979.]

§ 91.183. Rights of Purchasers of Native Gas

(a) In the event there are remaining reserves of native gas in the storage facility which are dedicated to a purchaser and the purchaser and storer are unable to agree on an equitable settlement of rights with respect to the remaining native gas within a period of time that will prevent interference with

the operation of the storage facility, the storer or purchaser may apply to the commission for an adjudication concerning remaining reserves of native gas.

(b) Upon application, the commission shall direct a settlement of remaining reserves of native gas that is equitable to all parties, but which does not interfere with the public benefits arising from the operation of the storage facility.

(c) In addition to any other disposition that is equitable to all parties, the commission may make a finding of the quantity of remaining recoverable native gas and an allocation of future production on a reasonable production schedule and order delivery to the purchaser by the storer of the amounts of native gas that the commission finds would have been taken by the purchaser during the term of the purchase agreement.

[Added by Acts 1979, 66th Leg., p. 1997, ch. 785, § 3, eff. June 13, 1979.]

§ 91.184. Abandonment

(a) When a storer has permanently abandoned the storage facility, the storer shall file with the commission a notice of abandonment, and shall file an instrument in the deed records in the appropriate county or counties, stating that the storage has ceased, and that all property, both mineral and surface, condemned by the storer has reverted to those who owned the property at the time of condemnation, or their heirs, successors, or assigns.

(b) The storer shall also file in the deed records in the appropriate county or counties a list of the owners of the mineral, royalty, and surface owners to whom the various interests have reverted, together with an affidavit that the storer has compiled the list from a current examination of title records and that the list is true and correct to the best of the knowledge of the affiant.

[Added by Acts 1979, 66th Leg., p. 1997, ch. 785, § 3, eff. June 13, 1979.]

SUBTITLE C. POOLING AND COOPERATIVE AGREEMENTS

CHAPTER 101. COOPERATIVE DEVELOPMENT

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SUBCHAPTER A. GENERAL PROVISIONS

§ 101.001. Definition

In this chapter, "commission" means the Railroad Commission of Texas.

[Acts 1977, 65th Leg., p. 2566, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.002. Existing Agreement Rights

None of the provisions in this chapter restrict any of the rights that a person now may have to make and enter into unitization and pooling agreements.

[Acts 1977, 65th Leg., p. 2566, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.003. Applicability

None of the provisions in this chapter impair the power of the commission to prevent waste under the oil and gas conservation laws of the state except as provided in Section 101.004 of this code or repeal, modify, or impair any of the provisions of Sections 85.002 through 85.003, 85.041 through 85.055, 85.056 through 85.064, 85.125, 85.201 through 85.207, 85.241 through 85.243, 85.249 through 85.252, or 85.381 through 85.385 of this code or Subchapters E and J of Chapter 85 of this code, relating to oil and gas conservation.

[Acts 1977, 65th Leg., p. 2566, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.004. Conflict With Antitrust Acts

(a) Agreements and operations under agreements which are in accordance with the provisions in this chapter, being necessary to prevent waste and conserve the natural resources of this state, shall not be construed to be in violation of the provisions of Chapter 15, Business & Commerce Code, as amended.

(b) If a court finds a conflict between the provisions in this chapter and Chapter 15, Business & Commerce Code, as amended, the provisions in this chapter are intended as a reasonable exception to that law, necessary for the public interests stated in Subsection (a) of this section.

(c) If a court finds that a conflict exists between the provisions in this chapter and Chapter 15, Business & Commerce Code, as amended, and finds that the provisions in this chapter are not a reasonable

exception to said Chapter 15, it is the intent of the legislature that the provisions in this chapter, or any conflicting portion of them, shall be declared invalid rather than declaring Chapter 15, Business & Commerce Code, as amended, or any portion of it, invalid.

[Acts 1977, 65th Leg., p. 2567, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 101.005 to 101.010 reserved for expansion]

SUBCHAPTER B. COOPERATIVE AGREEMENTS IN SECONDARY RECOVERY OPERATIONS

§ 101.011. Authorized Agreements for Separately Owned Properties

Subject to the approval of the commission, as provided in this chapter, persons owning or controlling production, leases, royalties, or other interests in separate property in the same oil field, gas field, or oil and gas field may voluntarily enter into and perform agreements for either or both of the following purposes:

(1) to establish pooled units, necessary to effect secondary recovery operations for oil or gas, including those known as cycling, recycling, repressuring, water flooding, and pressure maintenance and to establish and operate cooperative facilities necessary for the secondary recovery operations;

(2) to establish pooled units and cooperative facilities necessary for the conservation and use of gas, including those for extracting and separating the hydrocarbons from the natural gas or casinghead gas and returning the dry gas to a formation underlying any land or leases committed to the agreement.

[Acts 1977, 65th Leg., p. 2567, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.012. Persons Bound by Agreements

Agreements for pooled units and cooperative facilities do not bind a landowner, royalty owner, lessor, lessee, overriding royalty owner, or any other person who does not execute them. The agreements bind only the persons who execute them, their heirs, successors, assigns, and legal representatives. No person shall be compelled or required to enter into such an agreement.

[Acts 1977, 65th Leg., p. 2567, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.013. Commission Approval

(a) Agreements for pooled units and cooperative facilities are not legal or effective until the commission finds, after application, notice, and hearing:

(1) that the agreement is necessary to accomplish the purposes specified in Section 101.011 of this code;

(2) that it is in the interest of the public welfare as being reasonably necessary to prevent waste and to promote the conservation of oil or gas or both;

(3) that the rights of the owners of all the interests in the field, whether signers of the unit agreement or not, would be protected under its operation;

(4) that the estimated additional cost, if any, of conducting the operation will not exceed the value of additional oil and gas so recovered, by or on behalf of the several persons affected, including royalty owners, owners of overriding royalties, oil and gas payments, carried interests, lien claimants, and others as well as the lessees;

(5) that other available or existing methods or facilities for secondary recovery operations or for the conservation and utilization of gas in the particular area or field concerned or for both are inadequate for the purposes; and

(6) that the area covered by the unit agreement contains only that part of the field that has reasonably been defined by development, and that the owners of interests in the oil and gas under each tract of land in the area reasonably defined by development are given an opportunity to enter into the unit on the same yardstick basis as the owners of interests in the oil and gas under the other tracts in the unit.

(b) A finding by the commission that the area described in the unit agreement is insufficient or covers more acreage than is necessary to accomplish the purposes of this chapter is grounds for the disapproval of the agreement.

[Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.014. Jointly Owned Properties

None of the provisions in this chapter shall be construed to require the approval of the commission of voluntary agreements for the joint development and operation of jointly owned property.

[Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.015. Commission Regulation

An agreement executed under the provisions of this chapter is subject to any valid order or rule of the commission relating to location, spacing, proration, conservation, or other matters within the authority of the commission, whether adopted prior to or subsequent to the execution of the agreement.

[Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.016. Permissible Provisions

(a) An agreement authorized by this chapter may provide for the location and spacing of input wells and for the extension of leases covering any part of land committed to the unit as long as operations for drilling or reworking are conducted on the unit or as long as production of oil or gas in paying quantities is had from any part of the land or leases committed to the unit. However, no agreement may relieve an operator from the obligation to develop reasonably the land and leases as a whole committed to the unit.

(b) An agreement authorized by this chapter may provide that the dry gas after extraction of hydrocarbons may be returned to a formation underlying any land or leases committed to the agreement and may provide that no royalties are required to be paid on the gas so returned.

[Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.017. Prohibited Provisions

(a) No agreement authorized by this chapter may attempt to contain the field rules for the area or field, or provide for or limit the amount of production of oil or gas from the unit properties, those provisions being solely the province of the commission.

(b) No agreement authorized by this chapter may provide directly or indirectly for the cooperative refining of crude petroleum, distillate, condensate, or gas, or any by-product of crude petroleum, distillate, condensate, or gas. The extraction of liquid hydrocarbons from gas, and the separation of the liquid hydrocarbons into propanes, butanes, ethanes, distillate, condensate, and natural gasoline, without any additional processing of any of them, is not considered to be refining.

(c) No agreement authorized by this chapter may provide for the cooperative marketing of crude petroleum, condensate, distillate, or gas, or any by-products of them.

[Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.018. Effect of Approval Outside of Unit

The approval of an agreement authorized by this chapter shall not of itself be construed as a finding that operations of a different kind or character in the portion of the field outside of the unit are wasteful or not in the interest of conservation.

[Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 101.019 to 101.050 reserved for expansion]

SUBCHAPTER C. PUBLIC LAND

§ 101.051. Authority of Commissioner of General Land Office

Subject to the approval specified in Section 101.052 of this code, the Commissioner of the General Land Office, in behalf of the State of Texas or of any fund belonging to the state, may execute contracts committing to the agreements declared lawful by the provisions of this chapter the royalty interests in oil or gas or both reserved to the state, or any fund of the state, by law, in any patent, in any contract of sale, or under the terms of any oil and gas lease lawfully issued by an official, board, agent, agency, or authority of the state.

[Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.052. Necessary Approval by Other Persons and State Agencies

(a) An agreement that commits the royalty interests in land set apart by the constitution and laws of this state for the permanent free school fund and the several asylum funds, in river beds, inland lakes, and channels, and the area within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea, must be approved by the School Land Board.

(b) An agreement that covers land leased for oil and gas under the Relinquishment Act, codified as Subchapter F in Chapter 52 of this code, must be executed by the owners of the soil.

(c) An agreement that commits the royalty interests in land or areas other than those covered by Subsections (a) and (b) of this section must be approved by the board, official, agent, agency, or authority of the state vested with authority to lease or to approve the leasing of the land or areas for oil and gas.

[Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 102. POOLING

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SUBCHAPTER B. REQUIREMENTS AND PROCEDURE FOR POOLING

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SUBCHAPTER C. RIGHTS IN A POOLED UNIT
102.051. Ownership of Production.
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SUBCHAPTER D. DISSOLUTION OF UNIT
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102.082. Automatic Dissolution.
102.083. Termination of Pooled Lease.

SUBCHAPTER E. JUDICIAL REVIEW
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SUBCHAPTER A. GENERAL PROVISIONS

§ 102.001. Title

This chapter may be cited as the Mineral Interest Pooling Act.

[Acts 1977, 65th Leg., p. 2570, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.002. Definitions

In this chapter:

(1) "Mineral" means and is limited to oil and gas.

(2) "Commission" means the Railroad Commission of Texas.

[Acts 1977, 65th Leg., p. 2570, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.003. Application to Certain Reservoirs

The provisions of this chapter do not apply to any reservoir discovered and produced before March 8, 1961.

[Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.004. Application to Public Land

(a) The provisions of this chapter do not apply to land owned by the State of Texas nor to land in which the State of Texas has an interest directly or indirectly.

(b) The provisions of this chapter do not amend, repeal, change, alter, or affect in any manner the authority or jurisdiction of the Commissioner of the General Land Office or the State of Texas with respect to any land or interest in land in which the Commissioner of the General Land Office has jurisdiction.

(c) The provisions of this chapter do not amend, repeal, change, alter, or affect in any manner the authority, jurisdiction, or consent of the Commissioner of the General Land Office on the pooling of any interest now subject to the jurisdiction, authority, or consent of the Commissioner of the General Land Office.

(d) With the approval or consent first obtained, or at the instance of the Commissioner of the General Land Office, or any board or agency having jurisdiction, the land in which the State of Texas has an interest as described in this chapter may be pooled under the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 102.005 to 102.010 reserved for expansion]

SUBCHAPTER B. REQUIREMENTS AND PROCEDURE FOR POOLING

§ 102.011. Authority of Commission

When two or more separately owned tracts of land are embraced in a common reservoir of oil or gas for which the commission has established the size and shape of proration units, whether by temporary or permanent field rules, and where there are separately owned interests in oil and gas within an existing or proposed proration unit in the common reservoir and the owners have not agreed to pool their interests, and where at least one of the owners of the right to drill has drilled or has proposed to drill a well on the existing or proposed proration unit to the common reservoir, the commission, on the application of an owner specified in Section 102.012 of this code and for the purpose of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing waste, shall establish a unit and pool all of the interests in the unit within an area containing the approximate acreage of the proration unit, which unit shall in no event exceed 160 acres for an oil well or 640 acres for a gas well plus 10 percent tolerance.

[Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.012. Owners Authorized to Apply for Pooling

The following interested owners may apply to the commission for the pooling of mineral interests:

(1) the owner of any interest in oil and gas in an existing proration unit or with respect to a proposed unit;

(2) the owner of any working interest; or

(3) any owner of an unleased tract other than a royalty owner.

[Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.013. Required Voluntary Pooling Offer

(a) The applicant shall set forth in detail the nature of voluntary pooling offers made to the owners of the other interests in the proposed unit.

(b) The commission shall dismiss the application if it finds that a fair and reasonable offer to pool voluntarily has not been made by the applicant.

(c) An offer by an owner of a royalty or any other interest in oil or gas within an existing proration unit to share on the same yardstick basis as the other owners within the existing proration unit are then sharing shall be considered a fair and reasonable offer.

[Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.014. Productive Acreage Equal to Standard Proration Unit

(a) The commission shall not require the owner of a mineral interest, the productive acreage of which is equal to or in excess of the standard proration unit for the reservoir, to pool his interest with others unless requested by the holder of an adjoining mineral interest, the productive acreage of which is smaller than such pattern, who has not been provided a reasonable opportunity to pool voluntarily.

(b) If the conditions specified in Subsection (a) of this section exist, the commission shall pool the smaller tract with adjacent acreage on a fair and reasonable basis and may authorize a larger allowable for the unit if it exceeds the size of the standard proration unit for the reservoir.

[Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.015. Prohibited Provisions in Operating Agreement

A pooling agreement, offer to pool, or pooling order is not considered fair and reasonable if it provides for an operating agreement containing any of the following provisions:

(1) preferential right of the operator to purchase mineral interests in the unit;

(2) a call on or option to purchase production from the unit;

(3) operating charges that include any part of district or central office expense other than reasonable overhead charges; or

(4) prohibition against nonoperators questioning the operation of the unit.

[Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.016. Notice of Hearing

On the filing of an application for pooling of interests into a unit under the provisions of this chapter, at least 30 days notice before hearing on the application shall be given to all interested parties, including notice by publication if there are unknown owners or owners whose whereabouts are unknown. The notice shall be given in the manner and form prescribed by the commission.

[Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.017. Pooling Order

(a) After notice and hearing, all orders effecting the pooling shall be made on terms and conditions that are fair and reasonable and will afford the owner or owners of each tract or interest in the unit the opportunity to produce or receive his fair share.

(b) Each order shall:

(1) describe the land included in the unit, identifying the reservoir to which it applies;

(2) designate the location of the well; and

(3) appoint an operator for the unit.

[Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.018. Acreage Subject to Pooling

The commission shall pool only the acreage which at the time of its order reasonably appears to lie within the productive limits of the reservoir.

[Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 102.019 to 102.050 reserved for expansion]

SUBCHAPTER C. RIGHTS IN A POOLED UNIT

§ 102.051. Ownership of Production

(a) For the purpose of determining the portions of production owned by the persons owning interests in the pooled unit, the production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit.

(b) Notwithstanding the provisions in Subsection (a) of this section, if the commission finds that allocation on a surface-acreage basis does not allocate to each tract its fair share, the commission shall allocate the production so that each tract will receive its fair share, which for any nonconsenting owner shall be no less than he would receive under a surface-acreage allocation.

[Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.052. Drilling and Completion Costs

(a) As to an owner who elects not to pay his proportionate share of the drilling and completion costs in advance, the commission shall make provision in the pooling order for reimbursement solely out of production, to the parties advancing the costs, of all actual and reasonable drilling, completion, and operating costs plus a charge for risk not to exceed 100 percent of the drilling and completion costs.

(b) If there is a dispute relative to the costs, the commission shall determine the proper costs and their allocation among working interest owners af-

ter due notice to interested parties and a hearing on the costs.
[Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.053. Effect of Operations

(a) The operations on and production from any portion of a unit for which a pooling order has been entered shall be considered for all purposes the conduct of the operations on and production from each separately owned tract in the pooled unit. If a gas well on a pooled unit is shut-in, it shall be considered that the shut-in gas well is on each separately owned tract in the pooled unit.

(b) If only part of a tract is included in the unit, operations on, production from, or a shut-in gas well on the unit shall maintain an oil and gas lease on the tract as to the part excluded from the unit only if the lease would be maintained had the unit been created voluntarily under the provisions of the lease.
[Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 102.054 to 102.080 reserved for expansion]

SUBCHAPTER D. DISSOLUTION OF UNIT

§ 102.081. Dissolved With Consent of Owners

A unit established by order of the commission under this chapter may not be modified or dissolved subsequently without the consent of all mineral owners affected, except as necessary to permit its enlargement as provided in Subchapter B of this chapter.
[Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.082. Automatic Dissolution

A unit is automatically dissolved:

(1) one year after its effective date if no production or drilling operations have been had on the unit;

(2) six months after the completion of a dry hole on the unit; or

(3) six months after cessation of production from the unit.

[Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.083. Termination of Pooled Lease

On termination of a lease pooled by order of the commission under authority granted by this chapter, interests covered by the lease are considered pooled as unleased mineral interests.
[Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 102.084 to 102.110 reserved for expansion]

SUBCHAPTER E. JUDICIAL REVIEW

§ 102.111. Right to Appeal

A person affected by an order of the commission adopted under the authority of this chapter is entitled to judicial review of that order in a manner other than by trial de novo.
[Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.112. Venue

Appeal shall be to the district court of the county in which the land or any part of the land covered by the order is located and not elsewhere, notwithstanding the provisions of Sections 85.241 through 85.243 of this code.
[Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 103. COOPERATIVE FACILITIES FOR CONSERVATION AND UTILIZATION OF GAS

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SUBCHAPTER B. FACILITIES FOR CONSERVATION AND UTILIZATION OF GAS

103.041. Authorized Cooperative Facilities for Separately Owned Property.
103.042. Commission Approval.
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103.044. Cooperative Marketing.
103.045. Effect of Approval on Operations in Other Fields.
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SUBCHAPTER A. GENERAL PROVISIONS

§ 103.001. Definition

In this chapter, "commission" means the Railroad Commission of Texas.
[Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 103.002. Rights Existing on May 12, 1953

None of the provisions in this chapter restrict any of the rights that persons had on May 12, 1953, to make and enter into contracts for the construction and operation of cooperative facilities as provided in this chapter.
[Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 103.003. Conflict With Antitrust Laws

(a) Agreements and operations under agreements that are in accordance with the provisions in this chapter, being necessary to prevent waste and conserve the natural resources of this state, shall not be

construed to be in violation of the provisions of Chapter 15, Business & Commerce Code, as amended.

(b) If a court finds a conflict between the provisions in this chapter and Chapter 15, Business & Commerce Code, as amended, the provisions in this chapter are intended as a reasonable exception necessary for the public interest stated in Subsection (a) of this section.

(c) If a court finds that a conflict exists between the provisions in this chapter and the laws cited in Subsections (a) and (b) of this section and finds that the provisions in this chapter are not a reasonable exception, it is the intent of the legislature that the provisions in this chapter, or any conflicting portion of them, shall be declared invalid rather than declaring the cited laws, or any portion of them, invalid.
[Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 103.004 to 103.040 reserved for expansion]

SUBCHAPTER B. FACILITIES FOR CONSERVATION AND UTILIZATION OF GAS

§ 103.041. Authorized Cooperative Facilities for Separately Owned Property

The commission may approve agreements by persons owning or controlling leases or other interests in separate property in oil fields, gas fields, or oil and gas fields for the construction and operation of cooperative facilities necessary for the conservation and utilization of gas, including facilities for extracting and separating hydrocarbons from gas or casinghead gas.
[Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 103.042. Commission Approval

Agreements for the construction and operation of cooperative facilities shall be approved by the commission only after application, notice, and hearing, and a finding by the commission that the cooperative facilities are in the interest of conservation and that secondary recovery operations are not feasible or necessary.
[Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 103.043. Cooperative Refining

(a) No agreement for the construction or operation of cooperative facilities may provide directly or indirectly for the cooperative refining of oil, distillate, condensate, or gas, or any by-product of oil, distillate, condensate, or gas.

(b) The extraction of liquid hydrocarbons from gas and the separation of liquid hydrocarbons into butanes, propanes, ethanes, distillate, condensate, and natural gasoline without any additional processing of any of them is not considered to be refining.
[Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 103.044. Cooperative Marketing

No agreement for the construction or operation of cooperative facilities may provide for the cooperative marketing of oil, condensate, distillate, or gas, or any by-product of oil, condensate, distillate, or gas.
[Acts 1977, 65th Leg., p. 2576, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 103.045. Effect of Approval on Operations in Other Fields

The approval of an agreement authorized by this chapter is not of itself a finding that similar operations in other fields are wasteful or not in the interest of conservation.
[Acts 1977, 65th Leg., p. 2576, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 103.046. Jointly Owned Property

None of the provisions in this chapter require the approval of the commission of voluntary agreements for the joint development and operation of jointly owned property.
[Acts 1977, 65th Leg., p. 2576, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

SUBTITLE D. REGULATION OF SPECIFIC BUSINESSES AND OCCUPATIONS

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SUBCHAPTER I. COMMON CARRIER COAL PIPELINES

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111.302. Commission Authority to Issue Certificates.
111.303. Certification Procedure.
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SUBCHAPTER A. GENERAL PROVISIONS

§ 111.001. Definitions

In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Public utility" means a person, association of persons, or corporation that owns, operates, or manages crude petroleum storage tanks or storage facilities for the public for hire, either in connection with a pipeline, pipelines, or otherwise.

[Acts 1977, 65th Leg., p. 2578, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.002. Common Carriers Under Chapter

A person is a common carrier subject to the provisions of this chapter if it:

(1) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire, or engages in the business of transporting crude petroleum by pipeline;

(2) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire and the pipeline is constructed or maintained on, over, or under a public road or highway, or is an entity in favor of whom the right of eminent domain exists;

(3) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire which is or may be constructed, operated, or maintained across, on, along, over, or under the right-of-way of a railroad, corporation, or other common carrier required by law to transport crude petroleum as a common carrier;

(4) under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind, owns, operates, manages, or participates in ownership, operation, or management of a pipeline or part of a pipeline in the State of Texas for the transportation of crude petroleum, bought of others, from an oil

field or place of production within this state to any distributing, refining, or marketing center or reshipping point within this state; or

(5) owns, operates, or manages, wholly or partially, pipelines for the transportation for hire of coal in whatever form or of any mixture of substances including coal in whatever form.

[Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2692, ch. 871, art. II, § 2, eff. Sept. 1, 1977.]

§ 111.003. Applicability of Chapter

(a) The provisions of this chapter do not apply to pipelines that are limited in their use to the wells, stations, plants, and refineries of the owner and that are not a part of the pipeline transportation system of a common carrier as defined in Section 111.002 of this code.

(b) The provisions of this chapter do not apply to any property of a common carrier, as defined in Section 111.002 of this code, that is not a part of or necessarily incident to its pipeline transportation system.

[Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.004. General Restriction on Transportation of Oil

No person, including a common carrier, may transport crude oil or petroleum in this state unless the crude oil or petroleum has been produced or purchased or both in accordance with the laws of this state or a rule of the commission made under those laws, or both.

[Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 111.005 to 111.010 reserved for expansion]

SUBCHAPTER B. COMMON CARRIERS

§ 111.011. Regulation in Public Interest

The operation of common carriers covered by this chapter is a business in which the public is interested and is subject to regulation by law.

[Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.012. General Jurisdiction of Commission

Particular powers granted to the commission by the provisions of this chapter do not limit the general powers conferred by other laws.

[Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.013. Control of Pipelines

A pipeline subject to the provisions of this chapter not exempt under Section 111.003 of this code, which is used in connection with the business of purchasing or purchasing and selling crude petroleum, or in the business of transporting coal in whatever form by pipeline for hire in Texas, shall be operated as a common carrier and shall be subject to the jurisdiction of the commission.

[Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2692, ch. 871, art. II, § 2, eff. Sept. 1, 1977.]

§ 111.014. Publication of Tariffs

Common carriers shall make and publish their tariffs under rules prescribed by the commission.

[Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.015. Transportation Without Discrimination

Subject to the law and the rules prescribed by the commission, a common carrier shall receive and transport crude petroleum delivered to it for transportation and perform its other related duties without discrimination.

[Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.016. Discrimination Between Shippers

(a) A common carrier in its operations as a common carrier shall not discriminate between or against shippers with regard to facilities furnished, services rendered, or rates charged under the same or similar circumstances in the transportation of crude petroleum.

(b) A common carrier shall not discriminate in the transportation of crude petroleum produced or purchased by itself directly or indirectly.

(c) In this connection, a pipeline is a shipper of the crude petroleum produced or purchased by itself directly or indirectly and handled through its facilities.

[Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.017. Equal Compensation for Like Service

(a) No common carrier in its operations as a common carrier may charge, demand, collect, or receive either directly or indirectly from anyone a greater or lesser compensation for a service rendered than from another for a like and contemporaneous service.

(b) The provisions of Subsection (a) of this section do not limit the right of the commission to prescribe rules and rates from or to some places that are different from rules or rates for transportation from or to other places.

[Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.018. Effect of Commission Order

A common carrier is not guilty of discrimination when obeying an order of the commission.

[Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.019. Right of Eminent Domain

(a) Common carriers have the right and power of eminent domain.

(b) In the exercise of the power of eminent domain granted under the provisions of Subsection (a) of this section, a common carrier may enter on and condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintenance, or operation of the common carrier pipeline.

[Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.0191. Costs of Relocation of Property

In the event a common carrier pipeline in the exercise of the power of eminent domain or police power or any other power granted under this chapter makes necessary the relocation, raising, lowering, rerouting, or changing the grade of, or altering the construction of any railroad, electric transmission, telegraph or telephone lines, properties and facilities, or pipeline, all such relocation, raising, lowering, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of such common carrier pipeline. The term "sole expense" means the actual cost of the relocation, raising, lowering, rerouting, or change in grade or alteration of construction in providing comparable replacement without enhancement of the facilities, after deducting therefrom the net salvage value derived from the old facility.

[Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, § 4, eff. Sept. 1, 1977.]

§ 111.0192. Limitations on the Powers of Eminent Domain in Certain Situations

(a) The right of eminent domain granted under this chapter to any pipelines transporting coal in whatever form shall not include and cannot be used to condemn water or water rights for use in the transportation of coal by pipeline, and no Texas water from any source shall be used in connection with the transportation, maintenance, or operation of a coal slurry pipeline (except water used for drinking, toilet, bath, or other personal uses at pumping stations or offices) within the State of Texas unless the Texas Water Commission shall determine, after public hearing, that the use will not be detrimental to the water supply of the area from which the water is sought to be extracted.

(b) The right of eminent domain granted under this chapter to any pipeline transporting coal in whatever form shall not include the power to take land or any interest in land, by exercise of the power of eminent domain, for the purpose of drilling for, mining, or producing any oil, gas, geothermal, geothermal/geopressured, lignite, coal, sulphur, uranium, plutonium, or other mineral, but this provision does not impair the right of any such entity to acquire title to real property for pipelines, including cooling ponds and related surface installations and equipment.

[Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, § 6, eff. Sept. 1, 1977.]

§ 111.0193. Restoration of Property

Every condemnation award granted under this chapter shall require that the condemnor restore the property which is the subject of the award to its former condition as near as reasonably practicable.

[Acts 1977, 65th Leg., p. 2695, ch. 871, art. II, § 7, eff. Sept. 1, 1977.]

§ 111.020. Pipeline on Public Stream or Highway

(a) Subject to the provisions of Subsection (b) of this section, all common carriers are entitled to lay, maintain, and operate along, across, or under a public stream or highway in this state pipelines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of the pipelines.

(b) The right to run a pipeline or telegraph or telephone line along, across, or over a public road or highway may be exercised only on condition that:

(1) it does not interfere with traffic on the road or highway;

(2) the road or highway is promptly restored to its former condition of usefulness;

(3) the restoration of the road or highway is subject also to the supervision of the commissioners court or other proper local authority; and

(4) no pipes or pipelines are laid parallel with and on a public highway closer than 15 feet from the improved section of the highway except with the approval and under the direction of the commissioners court of the county in which the public highway is located.

(c) The common carrier shall compensate the county or road district, respectively, for any damage done to the public road in the exercise of the privileges conferred.

(d) A person may acquire the right conferred in this section by filing with the commission a written acceptance of the provisions of this chapter expressly agreeing that, in consideration of the rights acquired, it becomes a common carrier subject to the duties and obligations conferred or imposed by this chapter.

[Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.021. Pipeline Under Railroad, Street Railroad, or Canal

A common carrier is entitled to lay its pipe or pipeline under any railroad, railroad right-of-way, street railroad, or canal in this state.

[Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.022. Right to Use Street or Alley in City or Town

The provisions of this chapter do not grant a pipeline company the right to use a public street or alley in an incorporated or unincorporated city or town except with express permission of the governing body of the city or town or the right to lay its pipes or pipelines along and under a street or alley in an incorporated city or town except with the consent and under the direction of the governing body of the city or town.

[Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.023. Exchange of Facilities

(a) A common carrier shall exchange crude petroleum tonnage with each like common carrier.

(b) When a necessity exists, the commission may require connections and facilities for the interchange of crude petroleum tonnage to be made at every locality reached by both pipelines, subject to the rules and rates made by the commission.

(c) A common carrier pipeline under like rules shall be required to install and maintain facilities for the receipt and delivery of crude petroleum of patrons at all points on the pipeline.

[Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.024. Limit on Amount of Oil Carried

No common carrier may be required at any time to receive for shipment from any person more than 3,000 barrels of petroleum in any one day.

[Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.025. Abandoning Connections

(a) No common carrier may abandon any of its connections or lines except under authority of a permit granted by the commission or with written consent of the owner or duly authorized agent of the wells to which connections are made.

(b) Before granting a permit to abandon any connection, the commission shall issue proper notice and hold a hearing as provided by law.

[Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 111.026 to 111.050 reserved for expansion]

SUBCHAPTER C. PUBLIC UTILITIES

§ 111.051. Applicability of Statute to Public Utilities

A public utility is subject to the provisions of this subchapter and other provisions of this chapter relating to public utilities.

[Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.052. Discrimination by Public Utility

No public utility in its operations as a public utility may discriminate between or against its patrons in regard to facilities furnished or services rendered, or rates charged under the same or similar circumstances, in the storage of crude oil.

[Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.053. Bond of Public Utility

(a) Before engaging in business as a public utility, a person, association, or corporation that is to engage in business as a public utility shall file a bond in an amount not to exceed $25,000 that is properly executed and made payable to the State of Texas with the amount of the bond and the sureties on the bond subject to the approval of the commission.

(b) The bond or securities in lieu of the bond as provided in Article 836, Revised Civil Statutes of Texas, 1925, as amended, shall be approved by the commission before it is filed.

(c) After proper notice and hearing as provided by law, the amount of the bond may be changed from time to time by order of the commission, according to the volume of business done or to be done by the public utility.

(d) The bond shall be conditioned that the public utility will observe the applicable provisions of this subchapter and chapter and the rules of the commission insofar as its business is regulated and controlled by the commission and that the public utility will exercise ordinary care in the storage, preservation, handling, and delivery of petroleum products entrusted to it and shall guarantee the classification, measurements, and grades made by it under its authority and in conformity herewith.

(e) The bond shall be for the benefit of the patrons of the public utility and their assignees as though they were named obligees in the bond and they shall severally have the right of suit on the bond.

[Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.054. Lien for Storage Charges

A public utility shall have a lien on the commodity in its possession to secure it in the payment of all proper storage charges against the commodity or the

transportation charges accrued to or paid or advanced by it or both and the lien is superior to all other liens on the commodity except a lien for taxes.
[Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 111.055 to 111.080 reserved for expansion]

SUBCHAPTER D. COMMON PURCHASERS

§ 111.081. Definition of Common Purchaser

(a) In this subchapter, "common purchaser" means:

(1) every person that purchases crude oil or petroleum produced within the limits of this state and that is affiliated through stock ownership, common control, contract, or in any other manner with a common carrier by pipeline or is itself a common carrier;

(2) every person, gas pipeline company, or gas purchaser that claims or exercises the right to carry or transport natural gas by pipeline or pipelines for hire, compensation, or otherwise within the limits of this state or that engages in the business of purchasing or taking natural gas, residue gas, or casinghead gas thereof;

(3) every person that operates a crude oil gathering system, whether by pipeline or truck, that may purchase crude oil or petroleum in this state, whether or not it is a common carrier or affiliated with a common carrier; and

(4) the business of purchasing or of purchasing and selling crude petroleum by the use of a gathering system for crude petroleum, whether by pipeline or by truck.

(b) The persons covered by Subdivision (3), Subsection (a) of this section do not include persons transporting only crude oil from property in which they own an operating interest.

(c) The operation of a crude oil gathering system by a person, association of persons, or corporation transporting only crude oil from property in which it owns an operating interest shall not be considered to be included in Subdivision (4) of Subsection (a) of this section.

[Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.082. Purpose for Including Certain Entities Under Regulation as Common Purchasers

Persons, gas pipeline companies, and gas purchasers claiming or exercising the right to carry or transport natural gas by pipeline or pipelines for hire, compensation, or otherwise within the limits of this state are regulated as common purchasers under this subchapter for the purpose of further conserving the natural gas resources of this state.

[Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.083. Duty of Certain Common Purchasers

A common purchaser as defined in Subdivision (2), Subsection (a), Section 111.081 of this code shall purchase or take the natural gas purchased or taken by it as a common purchaser under rules prescribed by the commission in the manner, under the inhibitions against discriminations, and subject to the provisions applicable under this chapter to common purchasers of oil.

[Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.084. Operation of Gathering Systems for Crude Petroleum

The operation of gathering systems for crude petroleum by pipeline or by truck in connection with the purchase or purchase and sale of crude petroleum is a business in the mode of the conduct of which the public is interested, and as such is subject to regulation by law. Therefore, it is provided that the business of purchasing or of purchasing and selling crude petroleum by the use of a gathering system for crude petroleum, whether by pipeline or by truck, shall not be conducted unless the person operating the gathering system being used in this manner in connection with this business is a common purchaser under this law and subject to the jurisdiction conferred on the commission over common purchasers.

[Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.085. Applicability of Rate Provisions to Certain Common Purchasers

Common purchasers as defined in Subdivision (3), Subsection (a), Section 111.081 of this code are subject to the same regulation concerning rates and charges for gathering, transporting, loading, and delivering crude petroleum as set out in Subchapter F of this chapter.

[Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.086. Discrimination Between Persons and Fields

(a) A common purchaser shall purchase oil offered to it for purchase without discrimination in favor of one producer or person against another producer or person in the same field and without unjust or unreasonable discrimination between fields in this state.

(b) A question of justice or reasonableness under this section shall be determined by the commission taking into consideration the production and age of wells in respective fields and all other proper factors.

[Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.087. Conditions in Taking Production

(a) No common purchaser may discriminate between or against crude oil or petroleum of a similar kind or quality in favor of its own production, or production in which the common carrier may be directly or indirectly interested in whole or part.

(b) For the purpose of prorating the purchase of crude oil or petroleum to be marketed, the production shall be taken in like manner as that of any other person or producer and shall be taken in the ratable proportion that the production bears to the total production offered for market in the field.

[Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.088. Commission Relief

After proper notice and hearing as provided by law, the commission may relieve any common purchaser from the duty of purchasing petroleum of inferior quality or grade.

[Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.089. Discrimination as to Royalty Oil

(a) In making purchases of royalty oil, a common purchaser shall comply with the provisions of this subchapter, Subchapters C, F, and G of this chapter, and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code, and shall not discriminate between royalty owners or landowners or both in making those purchases.

(b) No common purchaser may unreasonably delay payments to a royalty owner or landowner or both in purchases of said oil or gas.

(c) In addition to other penalties, the royalty owner or landowner or both have a cause of action for violation of this section against the common purchaser for damages and may file suit for damages in any court of competent jurisdiction in the county in which the royalty lies.

[Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.090. Compliance by Common Purchasers

The commission shall enforce compliance with this subchapter, Subchapters C, F, and G of this chapter, and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code and after notice and hearing, may make rules and orders defining the distance that extensions or gathering lines shall be made to all oil or gas wells and other rules or orders that may be necessary to carry out those provisions cited in this section and to prevent discrimination.

[Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.091. Prevention of Discrimination

(a) The commission shall make inquiry in each field concerning the connection of various producers, and if discrimination is found to be practiced by a common purchaser, the commission shall issue an order to the common purchaser to make any reasonable extensions of its lines, reasonable connections, and ratable purchases that will prevent the discrimination.

(b) The commission may issue a show cause order to any common purchaser requesting it to appear and show cause why it should not purchase the allowable production of any producer discriminated against under Subsection (a) of this section.

[Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.092. Injunction to Prevent Discrimination

On information that discrimination is practiced in its purchases by a common purchaser, the commission shall request the attorney general to bring a mandatory injunction suit against the common purchaser to compel the reasonable extensions that are necessary to prevent discrimination.

[Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.093. Forfeiture of Charter of Domestic Corporation

(a) If a domestic corporation that is a common purchaser violates any provision of this subchapter, Subchapter C, F, or G of this chapter, or Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, or 111.140 of this code or any valid rule promulgated by the commission under those provisions, the attorney general may bring suit in a district court in Travis County against the corporation to forfeit the charter of the corporation and enjoin and forever prohibit the corporation from doing business in this state.

(b) If the corporation is found guilty by the court before whom the action is brought under this section, the charter of the corporation may be forfeited and the injunction may be granted, provided that the forfeiture and injunction are in addition to all other penalties.

[Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.094. Forfeiture of Charter of Foreign Corporation

(a) If a foreign corporation that is a common purchaser violates a provision of this subchapter, Subchapter C, F, or G of this chapter, or Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, or 111.140 of this code or a valid rule promulgated by the commission under these provisions, the attorney general may bring suit in a district

court of Travis County to cancel the permit of the corporation and enjoin and forever prohibit the corporation from doing business in this state.

(b) If the corporation is found guilty by the court before whom the action is brought, the permit may be cancelled and the injunction may be granted, provided the cancellation and injunction are in addition to all other penalties.

[Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.095. Action for Damages

(a) If a person is discriminated against by a common purchaser in favor of the production of the common purchaser, the person may bring an action for damages against the common purchaser.

(b) An action for damages under this section may be brought in any court of competent jurisdiction in the county in which the damage occurred.

[Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.096. Duties and Responsibilities of Common Purchasers, Purchasers, Gatherers, and Transporters

Notwithstanding the provisions of any statute or law including the provisions of this subchapter, Subchapters C, F, and G of this chapter, and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code, none of the provisions of Sections 111.081, 111.084, 111.085, and 111.091 of this code shall increase or decrease the duties or responsibilities of any common purchaser, purchaser, gatherer, or transporter of natural gas, residue gas, or casinghead gas.

[Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.097. Antitrust Laws Unaffected

(a) No provision of this subchapter may be construed as modifying, limiting, changing, repealing, or affecting in any manner any part of the present law of this state defining and regulating trusts, monopolies, and conspiracies in restraint of trade.

(b) No provision of this subchapter may be construed as authorizing any agreement or combination or both of capital, skill, and acts or any of these and any combination or consolidation now prohibited by the antitrust laws of this state or laws of this state prohibiting trusts, monopolies, and conspiracies in restraint of trade or both.

(c) No provision of this subchapter is intended or may be construed as authorizing any agreement, act, combination, consolidation, or other arrangement that is now prohibited under the antitrust laws of this state or the laws prohibiting and defining trusts, monopolies, and conspiracies in restraint of trade or both.

[Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 111.098 to 111.130 reserved for expansion]

SUBCHAPTER E. POWERS AND DUTIES OF THE COMMISSION

§ 111.131. Commission Rules for Common Carriers

The commission shall establish and promulgate rules for gathering, transporting, loading, and delivering crude petroleum by common carriers in this state and for use of storage facilities necessarily incident to this transportation and shall prescribe and enforce rules, in the manner provided by law, for the government and control of common carriers with respect to their pipelines and receiving, transferring, and loading facilities.

[Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.132. Commission Rules for Public Utilities

(a) The commission shall establish and enforce rules governing:

(1) the character of facilities to be furnished by public utilities;

(2) the forms of receipts to be issued by public utilities; and

(3) the rates, charges, and rules for the storage of crude petroleum by public utilities in respect to their storage facilities and for the inspection, grading, measurement, deductions for waste or deterioration, and the delivery of their products.

(b) The commission also shall exercise its authority to establish and enforce rules governing public utilities on petition of an interested person.

[Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.133. Enforcement by Commission

The commission may make rules for the enforcement of the provisions of Subchapters C, D, and F of this chapter and Sections 111.004, 111.025, 111.131 through 111.132, 111.136, 111.137, and 111.140 of this code.

[Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.134. Notice and Hearing

No order of the commission establishing, prescribing, or modifying rules or rates may be made except after a hearing and after not less than 10 days nor more than 30 days notice to the person,

firm, corporation, partnership, joint stock association, or association owning or controlling and operating the pipeline or pipelines affected.
[Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.135. Validity of Commission Orders

Until set aside or vacated by an order or decree of a court of competent jurisdiction, all orders of the commission relating to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.
[Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.136. Review of Orders

A person affected by an order of the commission adopted under the authority of this chapter is entitled to judicial review of that order in a manner other than by trial de novo.
[Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.137. Enlargement and Extension of Facilities

On its own initiative without complaint, and after proper notice and hearing, as provided by law the commission may authorize or require by order any common carrier owning or operating pipelines in this state or owning, operating, or managing crude petroleum storage tanks or facilities for the public for hire, to extend or enlarge those pipelines or storage facilities if the extension or enlargement is found to be reasonable and required in the public interest and the expense involved will not impair the ability of the common carrier or public utility to perform its duty to the public.
[Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.138. Books and Records

The commission may investigate the books and records kept by any common carrier in connection with its business.
[Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.139. Reports

(a) The commission shall require each common carrier to make reports including duly verified monthly reports of:

(1) the total quantities of crude petroleum owned by the common carrier in the state;

(2) the total quantities of crude petroleum held by the common carrier in storage for others in the state; and

(3) the common carrier's unfilled storage capacity.

(b) The commission shall give no publicity to the stock of crude petroleum on hand of any particular common carrier, but the commission may, in its discretion, make public the aggregate amounts held by all common carriers making reports and their aggregate storage capacity.
[Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.140. Filing Monthly Statements

(a) On or before the 20th day of each calendar month, every common carrier in this state and every public utility shall file with the commission and shall post in a conspicuous place accessible to the general public in its principal office and each of its division offices in this state a statement, duly verified, containing information concerning its business during the preceding calendar month as follows:

(1) the amount of crude or refined petroleum in the actual and immediate custody of the common carrier or public utility at the beginning and close of the month and the location or holding point of this petroleum, including the location and designation of each plant or place of deposit and the name of its owner;

(2) the amount of crude or refined petroleum received by the common carrier or public utility during the month;

(3) the amount of crude or refined petroleum that was delivered by the common carrier or public utility during the month;

(4) the amount of crude or refined petroleum held by the common carrier or public utility for itself or parent or affiliated organizations; and

(5) the available empty storage owned or controlled by the common carrier or public utility and its location.

(b) The information to be provided under Subsection (a) of this section shall be set out separately as to crude petroleum and each refined product of crude petroleum in each statement.
[Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.141. Grades of Oil

(a) The commission shall make rules for:

(1) the ascertainment of the amount of water and other foreign matter in oil tendered for transportation;

(2) deduction for water and other foreign matter; and

(3) the amount of deduction to be made for temperature, leakage, and evaporation.

(b) No common carrier may be required to receive or transport any crude petroleum except that which is marketable under rules prescribed by the commission.
[Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.142. Equitable Apportionment of Excessive Amount of Crude Petroleum

If more crude petroleum is offered for transportation by a common carrier than can be transported immediately, it shall be apportioned equitably, and the commission may make and enforce general or specific rules for equitable apportionment.

[Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 111.143 to 111.180 reserved for expansion]

SUBCHAPTER F. RATES

§ 111.181. Establishing and Promulgating Rates

The commission shall establish and promulgate rates of charges for gathering, transporting, loading, and delivering crude petroleum by common carriers in this state and for use of storage facilities necessarily incident to this transportation.

[Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.182. Items Included in Rates

The rates established and promulgated by the commission shall include both single- and joint-line transportation, deduction for evaporation and shrinkage, demurrage, storage, and overage charges and all other similar items.

[Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.183. Basis for Rate

The basis of the rates shall be an amount that will provide a fair return on the aggregate value of the property of a common carrier used and useful in the services performed after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management.

[Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.184. Discretion of Commission

The commission has reasonable latitude in establishing and adjusting competitive rates.

[Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.185. Temporary Rates

If a common carrier makes application or files a tariff to establish a new rate on either a new or old line, a temporary rate may be placed into effect immediately on filing the tariff with the commission.

[Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.186. Reparation and Reimbursement

If rates have been filed, each shipper who pays these filed rates is entitled to reparation or reimbursement of all excess rates or transportation charges paid over and above the rate that is finally determined on the shipments.

[Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.187. Reimbursement of Excess Charges

If a rate is filed by a common carrier and complaint against the rate or petition to reduce the rate is filed by a shipper, and the complaint is sustained in whole or part, all shippers who have paid the rates filed by the common carrier are entitled to reparation or reimbursement of all excess transportation charges paid over and above the proper rate as finally determined on all shipments made after the date of the filing of the complaint.

[Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.188. Annual Rate Hearing

The commission shall hold a general hearing once each year for the purpose of adjusting rates to conform to the basis of rates and charges provided in this subchapter.

[Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.189. Hearing and Determination of Rates

If a person at interest files an application for a change in a rate or rates, the commission shall call a hearing and immediately after the hearing shall establish and promulgate a rate or rates in accordance with the basis provided in this subchapter.

[Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.190. Hearings to Adjust Rates

On its own motion or on motion of any interested person, the commission shall hold a hearing to adjust, establish, and promulgate a proper rate or rates if it has reason to believe that any rate or rates do not conform to the basis provided in this subchapter.

[Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 111.191 to 111.220 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT

§ 111.221. Complaints; Jurisdiction to Hear Complaints

Any person or the attorney general on behalf of the state may institute proceedings before the commission or apply for a hearing before the commission

on any question relating to the enforcement of Subchapters C, D, and F of this chapter and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code, and the commission has jurisdiction to hear and determine these questions after giving proper notice as provided by law.
[Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.222. Application for Receivership

If a rule or order promulgated by the commission under Subchapter C, D, or F of this chapter or Section 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, or 111.140 of this code is found by a court to be valid in whole or part in a suit to which the commission is a party, and if another party to the suit or other proceedings violates the rule, order, or judgment or allows any property owned or controlled by him to be used in violation of the rule, order, or judgment, the commission shall make application to the judge of the trial court setting out the rule, order, or judgment and that the party subsequent to the date of the judgment violated or is violating the rule, order, or judgment and requesting a receiver be appointed as provided in Section 111.223 of this code.
[Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.223. Appointment of Receiver

On application by the commission and after notice and hearing, the judge of the trial court may appoint a receiver of the property involved in violating the rule, order, or judgment and shall set a proper bond for the receiver.
[Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.224. Duties and Responsibilities of Receiver

As soon as the receiver has qualified, he shall take possession of the property and shall perform his duties as receiver of the property under the orders of the court, strictly observing the rule, order, or judgment.
[Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.225. Motion to Dissolve Receivership

A party whose property has been placed in the hands of a receiver may move to dissolve the receivership and discharge the receiver only on showing that the party has not wilfully violated nor allowed property owned or controlled by him to be used in violating the rule, order, or judgment or on other good cause shown.
[Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.226. Bond

(a) Before dissolving the receivership or discharging the receiver, the court, in its discretion, may require the party applying for the dissolution or discharge to give bond with good and sufficient sureties in an amount to be fixed by the court, sufficient reasonably to indemnify all persons who may suffer damage by reason of the violation of the rule or order judged to be valid.

(b) In determining the amount of the bond, the judge shall take into consideration all the facts and circumstances surrounding the parties that he considers necessary to determine the reasonableness of the amount of the bond.

(c) If the bond is made by a bonding or surety company, it shall be made by a company authorized to do business in this state.

(d) The bond shall be made payable to and be approved by the judge of the court and shall be for the use and benefit of and may be sued on by all persons who suffer damage by reason of any further violation by the party giving the bond and who brings suit on the bond.

(e) From time to time on motion, the court may increase or decrease the amount of the bond and may require new or additional sureties as the facts may warrant or justify.
[Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.227. Provisions Applicable to Enforcement

The provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, apply in the enforcement of Subchapters C, D, and F of this chapter and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code.
[Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 111.228 to 111.260 reserved for expansion]

SUBCHAPTER H. PENALTIES

§ 111.261. Penalty Recoverable by State

A common carrier under this chapter is subject to a penalty of not less than $100 nor more than $1,000 for each offense, recoverable in the name of the state, if the common carrier:

(1) violates Section 111.013 through 111.024, 111.134, 111.135, 111.138, 111.139, 111.141, or 111.142 of this code or a valid order of the commission; or

(2) fails to perform a duty imposed by Section 111.013 through 111.024, 111.134, 111.135, 111.138, 111.139, 111.141, or 111.142 of this code.

[Acts 1977, 65th Leg., p. 2591, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.262. Penalty Recoverable by Aggrieved Party

A common carrier is subject to a penalty of not less than $100 nor more than $1,000 for each offense of unlawful discrimination as defined in Sections 111.015 through 111.017 of this code. The suit shall be brought in the name of and for the use of the aggrieved person, corporation, or association of persons.

[Acts 1977, 65th Leg., p. 2591, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.263. Penalty Recoverable by State and Aggrieved Party

(a) Any person who violates a provision of Subchapter C, D, F, or G of this chapter or Section 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, or 111.140 of this code, a rule promulgated under these subchapters or sections, or an order passed by the commission under these subchapters or sections or one of these rules, on violation, is subject to a penalty of not less than $100 nor more than $1,000 for each offense recoverable in the name of the state in a district court in Travis County. Each day a violation continues constitutes a separate offense.

(b) One-half of the penalty may be recovered by and for the use of any person against whom there is an unlawful discrimination as defined in Subchapter D of this chapter, and this suit shall be brought in the name of and for the use of the party or parties aggrieved.

[Acts 1977, 65th Leg., p. 2591, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

SUBCHAPTER I. COMMON CARRIER COAL PIPELINES

§ 111.301. Certificate Required

A person that is a common carrier under Subsection (5), Section 111.002 of this code must apply for and be issued a certificate of public convenience and necessity from the commission pursuant to the commission's authority to issue certificates under Section 111.302 of this code if the commission finds after a hearing that the public convenience and necessity will be served by the construction and operation of the pipeline.

[Acts 1977, 65th Leg., p. 2692, ch. 871, art. II, § 3, eff. Sept. 1, 1977.]

§ 111.302. Commission Authority to Issue Certificates

(a) The commission is further authorized, empowered, and directed to issue certificates of public convenience and necessity to pipelines transporting coal in whatever form or mixture for hire in Texas if the commission finds that the public convenience and necessity will be served in that existing facilities will not be able to provide the transportation as economically or efficiently as the proposed pipeline.

(b) In exercising its powers and duties under this section, the commission may not issue a permit for or attempt to regulate in any manner the condemnation, appropriation, or acquisition of surface or ground water in Texas.

(c) The commission shall not issue a permit, certificate, or any authority to any applicant whose rates and charges are not regulated by government authority, either state or federal, and that state or federal regulations insure to the public and to the ultimate electric consumer that the contracts, rates, and charges shall be just and reasonable, nondiscriminatory, and offering no preference or advantage to any person, corporation, entity, or group.

(d) The commission shall not issue a permit, certificate, or any authority to any applicant whose pipeline transporting coal in whatever form unless the pipeline transporting coal in whatever form is to be buried at least 36 inches below the surface, except in such instances in which the commission specifically exempts the 36-inch depth requirement and unless the pipeline transporting coal in whatever form conforms to all applicable state or federal regulations concerning the operation, maintenance, and construction of that same pipeline.

(e) The commission shall condition the issuance of a certification upon the requirement that the pipeline company shall take no more than 50 feet in width of right-of-way under the power of eminent domain, except for temporary work areas adjacent to the right-of-way and then not to exceed 100 feet in width for the duration of the construction period only; and provided that any condemnation award granted under this chapter shall take into account the damages to the remainder caused by the exercise of eminent domain for the temporary work areas.

[Acts 1977, 65th Leg., p. 2693, ch. 871, art. II, § 3, eff. Sept. 1, 1977.]

§ 111.303. Certification Procedure

(a) The coal pipeline applicant shall publish, in accordance with regulations promulgated by the commission and existing law, a notice that it has filed an application for a certificate of public convenience and necessity under this Act in a newspaper of general circulation in each county in which the project will be located. The notice shall, among other things, specify to the extent practicable the land which would be subject to the power of eminent domain.

(b) The commission shall then conduct public hearings in areas of the state along the prospective pipeline right-of-way as it shall determine shall be necessary to give property owners an opportunity to be heard. The commission is vested with authority

to alter the right-of-way to meet with local objections.

[Acts 1977, 65th Leg., p. 2693, ch. 871, art. II, § 3, eff. Sept. 1, 1977.]

§ 111.304. Transportation Contract

No common carrier pipeline transporting coal in whatever form shall contract or otherwise agree to transport coal for a term in excess of three years without prior approval of that contract or agreement by the commission which approval shall be given on determination that the contract or agreement is in the public interest in which case the contract or agreement shall be enforceable.

[Acts 1977, 65th Leg., p. 3693, ch. 871, art. II, § 3, eff. Sept. 1, 1977.]

§ 111.305. Other Agencies

(a) The commission shall seek and act on the recommendations of the Texas Air Control Board, the Texas Water Quality Board, the Governor's Energy Advisory Council, or their successors responsible for environmental determinations and shall specify the proper use and disposal of nondischargeable water.

(b) Neither the authority conveyed to the commission by this subchapter to issue certificates and to promulgate rules governing pipelines transporting coal in whatever form nor the powers and duties conveyed on those pipelines by this chapter shall affect, diminish, or otherwise limit the jurisdiction and authority of the Texas Water Commission and the Texas Water Quality Board, or their successors, to regulate by applicable rules the acquisition, use, control, disposition, and discharge of water or water rights in Texas.

[Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, § 3, eff. Sept. 1, 1977.]

CHAPTER 112. USED OIL FIELD EQUIPMENT DEALERS

SUBCHAPTER A. GENERAL PROVISIONS

Section
112.001. Definitions.
112.002. Applicability.

SUBCHAPTER B. SALE OF USED EQUIPMENT

112.011. Bill of Sale.
112.012. Required Information.

SUBCHAPTER C. ENFORCEMENT; PENALTY

112.031. Injunctive Relief.
112.032. Criminal Penalty.

SUBCHAPTER A. GENERAL PROVISIONS

§ 112.001. Definitions

In this chapter:

(1) "Pipeline equipment" means all pipe, fittings, pumps, telephone and telegraph lines, and all other material and equipment used as part of or incident to the construction, maintenance, and operation of a pipeline for the transportation of oil, gas, water, or other liquid or gaseous substance.

(2) "Oil and gas equipment" means equipment and materials that are part of or incident to the development, maintenance, and operation of oil and gas properties and includes equipment and materials that are part of or incident to the construction, maintenance, and operation of oil and gas wells, oil and gas leases, gasoline plants, and refineries.

(3) "Used materials" means pipeline equipment or oil and gas equipment after the equipment has once been placed in the use for which it first was manufactured and intended.

(4) "Dealer" means every person engaged in buying, selling, or otherwise dealing in used materials and who has a fixed, designated place or places of business within the state.

(5) "Broker" means every person engaged in buying, selling, or otherwise dealing in used materials as agent for the seller of the used materials, or as agent for the buyer of the used materials, or as agent for both.

(6) "Peddler" means every person who is not a dealer or broker and who is engaged in buying, selling, or otherwise dealing in used materials.

[Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 112.002. Applicability

The provisions of this chapter shall not apply if the reasonable market value of the purchase made is less than $25.

[Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 112.003 to 112.010 reserved for expansion]

SUBCHAPTER B. SALE OF USED EQUIPMENT

§ 112.011. Bill of Sale

Before purchasing used materials, a dealer, broker, or peddler shall require that a bill of sale for the used materials be executed and acknowledged by the seller in the manner required by law for registration.

[Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 112.012. Required Information

The bill of sale shall include:

(1) the name and address of the dealer, broker, or peddler;

(2) the serial number, if any;

(3) the kind, make, size, weight, length, and quantity of the used materials purchased;

(4) the date of the purchase, if different from the date of the bill of sale;

(5) the name and address of the seller; and

(6) the place of location of the property at the time purchased or acquired.

[Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 112.013 to 112.030 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT; PENALTY

§ 112.031. Injunctive Relief

In the name and on behalf of the State of Texas, the attorney general or any district attorney or county attorney in this state may enjoin a dealer, peddler, or broker from continuing in business in this state as a dealer, peddler, or broker on violation of any of the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2593, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 112.032. Criminal Penalty

A person, dealer, peddler, or broker who violates any of the provisions of this chapter is guilty of a misdemeanor and on conviction is subject to a fine of not less than $10 nor more than $50.

[Acts 1977, 65th Leg., p. 2593, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 113. LIQUEFIED PETROLEUM GAS INDUSTRY

SUBCHAPTER A. GENERAL PROVISIONS

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113.001. Title.
113.002. Definitions.
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SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

113.011. Liquefied Petroleum Gas Division.
113.012. General Duties.
113.013. Director of LPG Division.
113.014. Employees.
113.015. Funds for Financing LPG Division.

SUBCHAPTER C. RULES AND STANDARDS

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SUBCHAPTER G. FEES AND FUNDS

113.201. Fees.
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SUBCHAPTER H. INJUNCTIONS AND PENALTIES

113.231. Injunctions.
113.232. General Penalty.
113.233. Supplying LPG After Warning Tag Attached.
113.234. Penalty for Unauthorized Removal of Tag.

Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, amended Chapter 113, Liquefied Petroleum Gas Industry, §§ 113.001 to 113.234, as Chapter 113, Liquefied Petroleum Gas, §§ 113.001 to 113.236, effective September 1, 1980. For text effective September 1, 1980, see Chapter 113, post.

SUBCHAPTER A. GENERAL PROVISIONS

§ 113.001. Title

Text of section effective until September 1, 1980

This chapter may be cited as the Liquefied Petroleum Gas Code or LPG Code.

[Acts 1977, 65th Leg., p. 2594, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.002. Definitions

Text of section effective until September 1, 1980

In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Employee" means any individual who renders or performs any services or labor for another person for compensation and includes individuals hired on a part-time or temporary basis or on a full-time or permanent basis.

(3) "Liquefied petroleum gas" or "LPG" means any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.

(4) "Container" means any receptacle in which LPG is transported, delivered, or stored or in which LPG is injected for use or consumption by or through an LPG system.

(5) "Appliance" means any apparatus or fixture that uses or consumes LPG furnished or supplied by an LPG system to which it is connected or attached.

(6) "LPG system" or "system" means all piping, fittings, and valves exclusive of containers and appliances that connect one or more containers to one or more appliances that use or consume LPG.

[Acts 1977, 65th Leg., p. 2594, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.003. Exceptions

Text of section effective until September 1, 1980

None of the provisions of this chapter apply to:

(1) the production, refining, or manufacture of LPG;

(2) the storage, sale, or transportation of LPG by pipeline or railroad tank car by a pipeline company, producer, refiner, or manufacturer;

(3) equipment used by a pipeline company, producer, refiner, or manufacturer in a producing, refining, or manufacturing process or in the storage, sale, or transportation by pipeline or railroad tank car; or

(4) any deliveries of LPG to another person at the place of production, refining, or manufacturing.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 113.004 to 113.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 113.011. Liquefied Petroleum Gas Division

Text of section effective until September 1, 1980

There is created and organized a separate and distinct division of the commission known as the Liquefied Petroleum Gas Division or the LPG Division.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.012. General Duties

Text of section effective until September 1, 1980

The LPG Division shall administer and enforce the laws of the state and the rules and standards of the commission relating to liquefied petroleum gas.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.013. Director of LPG Division

Text of section effective until September 1, 1980

The commission shall appoint and employ a director of the LPG Division who shall serve at the pleasure of the commission and who shall devote his full time and attention to administering the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.014. Employees

Text of section effective until September 1, 1980

Sufficient employees shall be provided to the LPG Division for the enforcement of this chapter.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.015. Funds for Financing LPG Division

Text of section effective until September 1, 1980

The commission shall look alone to the revenue derived from the operation of this chapter and appropriated by the legislature for expenses of conducting the Liquefied Petroleum Gas Division and administering this chapter.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 113.016 to 113.050 reserved for expansion]

SUBCHAPTER C. RULES AND STANDARDS

§ 113.051. Adoption of Rules and Standards

Text of section effective until September 1, 1980

Except as provided in Section 113.003 of this code, the commission shall promulgate and adopt adequate rules or standards or both relating to any and all aspects or phases of the LPG industry that will

protect or tend to protect the health, welfare, and safety of the general public.
[Acts 1977, 65th Leg., p. 2596, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.052. Adoption of National Codes

Text of section effective until September 1, 1980

The commission may adopt by reference, in whole or in part, the published codes of the National Board of Fire Underwriters, the National Fire Protection Association, the American Society for Mechanical Engineers, and other nationally recognized societies or any one or more of these codes as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LPG or any one or more of these purposes.
[Acts 1977, 65th Leg., p. 2596, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.053. Effect on Certain Containers

Text of section effective until September 1, 1980

Rules, standards, and codes adopted pursuant to Sections 113.051 through 113.052 of this code do not apply to containers used in accordance with and subject to the regulations of the Department of Transportation or to containers that are owned or used by the United States government.
[Acts 1977, 65th Leg., p. 2596, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 113.054 to 113.080 reserved for expansion]

SUBCHAPTER D. LICENSE OF DEALERS IN LPG

§ 113.081. License Requirement

Text of section effective until September 1, 1980

(a) Unless a license is obtained from the commission under the provisions of this chapter, no person may engage in this state in:

(1) the manufacture, assembly, repair, sale, and installation of containers or any one or more of these activities;

(2) laying or connecting pipes or piping, including all types of fittings, either in connecting with or to liquefied petroleum gas systems or with or to house service lines or house pipes;

(3) laying or connecting in any manner pipes or piping, including all types of fittings, to serve a system or appliances to be used with liquefied petroleum gas as fuel;

(4) the service, installation, and repair of appliances using or to be used in connection with systems using liquefied petroleum gas as fuel or any one or more of these activities; or

(5) the sale, transportation, dispensing or storage of liquefied petroleum gas, except where stored by the ultimate consumer for consumption only.

(b) The provisions of Subsection (a) of this section do not apply to LPG handled in quantities of less than one gallon United States water capacity that is an integral part of a device for its use or if the person is not engaged in business as a dealer in LPG as provided in Section 113.082 of this code.
[Acts 1977, 65th Leg., p. 2596, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.082. Categories of Dealers; Fees

Text of section effective until September 1, 1980

A prospective dealer in LPG may apply to the LPG Division for a license to engage as a dealer in any one or more of the following categories for the following fees:

(1) Manufacturers or fabricators. The manufacture, fabrication, assembly, and sale of LPG containers, tanks, and equipment or any one or more of these activities. Application and first year license fee of $500. Annual renewal license fee of $300.

(2) Limited installers or repairmen. The installation, service, and repair of cooking and space heating appliances excluding water heaters, floor furnaces, central heating units, and the installation of LPG systems of equipment other than an appliance connector approved by the LPG Division or any one or more of these activities. Application and first year license fee of $50. Annual renewal license fee of $25.

(3) Wholesalers or jobbers. Any person other than a producer or refiner who sells LPG to transporters, industrial consumers, processors, distributors, and retail dealers or any one or more of these individuals or entities. Application and first year license fee of $500. Annual renewal license fee of $150.

(4) Carriers. The transportation only of LPG by carriers for hire or contract. Application and first year license fee of $500. Annual renewal license fee of $150.

(5) General installers and repairmen. The sale, service, installation, and repair of containers, tanks, systems, piping, and equipment that use LPG or any one or more of these activities and the service, installation, and repair of appliances that use LPG or any one or more of these activities. Application and first year license fee of $50. Annual renewal license fee of $35.

(6) Retail and wholesale dealers. The transportation, storage, sale, distribution, and/or delivery of LPG at retail or wholesale or any one or more of these activities, including the sale,

service, installation, and/or repair of LPG containers, tanks, piping, and/or equipment, and the service, installation, and/or repair of LPG appliances or any one or more of these activities. Application and first year license fee of $500. Annual renewal license fee of $150.

(7) Carburetors. The installation, service, and repair of LPG motor fuel carburetion systems and equipment or any one or more of these activities. Application and first year license fee of $50. Annual renewal license fee of $25.

(8) Bottle exchanges. The operation of a Department of Transportation bottle, filling, and container exchange or a Department of Transportation bottle, filling, or container exchange including the buying and selling, but not delivery, pickup, or other transportation, of Department of Transportation bottles or containers. Application and first year license fee of $100. Annual renewal license fee of $50.

(9) Service station. The operation of an LPG motor fuel service station only. Application and first year license fee of $50. Annual renewal license fee of $25.

(10) Municipal corporations. The operation of an LPG system through mains, meters, or pipes by an incorporated city, village, or town. Application and first year license fee of $150. Annual renewal license fee of $150.

(11) Bottle dealers. The transportation, delivery, and pickup of Department of Transportation bottles and containers or any one or more of these activities. Application and first year license fee of $500. Annual renewal license fee of $150.

(12) Bottle installers. The installation or connection or both of Department of Transportation bottles or containers or both. Application and first year license fee of $100. Annual renewal license fee of $50.

[Acts 1977, 65th Leg., p. 2597, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.083. Qualification in More Than One Category

Text of section effective until September 1, 1980

(a) No dealer in LPG who has authorization under one or more categories under Section 113.082 of this code may do or perform activities provided in another category for which he has not qualified unless he becomes qualified.

(b) Except as provided in Subsection (c) of this section, if a dealer in LPG elects and qualifies for a license under more than one category in Section 113.082 of this code, he shall pay the required application and first year license fee and the subsequent renewal license fees for each category.

(c) No dealer other than one qualifying under Subdivision (1) of Section 113.082 of this code may be required to pay renewal license fees totaling more than $150 a year regardless of the number of categories for which he is licensed, and no dealer licensed under Subdivision (1) of Section 113.082 of this code may be required to pay renewal license fees totaling more than $300 a year regardless of the number of categories for which he is licensed.

[Acts 1977, 65th Leg., p. 2598, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.084. Application

Text of section effective until September 1, 1980

(a) An application for license as a dealer in LPG shall be submitted to the LPG Division on printed forms furnished by the LPG Division and shall include any pertinent information the LPG Division may require.

(b) The application and first year license fee required by Section 113.082 of this code together with proof of satisfactory completion of any required examinations shall accompany each original application.

[Acts 1977, 65th Leg., p. 2598, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§§ 113.085, 113.086. Repealed by Acts 1979, 66th Leg., p. 2042, ch. 799, § 3, eff. Aug. 27, 1979

§ 113.087. Examination

Text of section effective until September 1, 1980

(a) The commission shall have prepared for each category under Section 113.082 of this code an examination based on recognized standard codes and practices promulgated by the commission that affect each category.

(b) The commission shall require the applicant or if the applicant is a partnership, firm, corporation, unincorporated association, or other business entity, or if the applicant is not actively engaged in LPG operations, the individual who is directly responsible for and actively supervising the operations of the dealership at each outlet or location, to provide good and sufficient proof that he can and will meet the safety requirements required by this chapter and the rules of the commission.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.088. Examination Fees

Text of section effective until September 1, 1980

Each applicant shall pay to the commission in advance a nonrefundable examination fee for each required examination in the following amounts:

(1) categories (3) and (4) in Section 113.082 of this code: $25;

(2) category (6) in Section 113.082 of this code: $50; and

(3) other categories in Section 113.082 of this code for which an examination is required: $5.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.089. Special Requirements for Retail and Wholesale Dealers

Text of section effective until September 1, 1980

(a) If a person applies for a license as a retail and wholesale dealer under category (6) of Section 113.082 of this code, the commission, in addition to other requirements, shall have an actual inspection conducted of the facilities, bulk storage equipment, transportation equipment, and dispensing equipment of the applicant to verify satisfactory compliance with all current safety laws, rules, and practices.

(b) The inspection shall be performed within 30 days following receipt by the commission of the application and proof of compliance with the examination and other requirements of this chapter.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.090. Repealed by Acts 1979, 66th Leg., p. 2042, ch. 799, § 3, eff. Aug. 27, 1977

§ 113.091. Procedure for Refusal or Denial of License

Text of section effective until September 1, 1980

The procedure in Subchapter F of this chapter for suspension or revocation of a license or registration is applicable to the refusal or denial of the commission to grant a person a license as a dealer in LPG after proper application.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.092. Issuance of License

Text of section effective until September 1, 1980

(a) The commission shall issue a license to the applicant in the name under or by which he conducts or proposes to conduct his business as a dealer.

(b) The license shall run to the dealership to or in connection with which it is issued and it shall confer no rights or privileges separate and apart from that dealership.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.093. Renewal

Text of section effective until September 1, 1980

On the timely payment or tender of the renewal license fee and on furnishing the commission with the bond required in Section 113.096 of this code, a certificate of insurance evidencing that insurance required under Section 113.097 of this code is in full force and effect, and other information and data reasonably required by the commission, the license of a dealer in LPG is renewable.

[Acts 1977, 65th Leg., p. 2600, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.094. Examination of Employees

Text of section effective until September 1, 1980

(a) No dealer in LPG may employ any person as a service or installation man or as both or as a delivery or transport truck driver unless the person has submitted to and passed an examination as prescribed by the commission to determine his competency to perform safely the duties required of him in handling or dealing with LPG in the capacity in which he is to be employed.

(b) Notwithstanding the provisions of Subsection (a) of this section, a trainee employee is exempt from the examination for 45 days and until examined by a representative of the commission.

(c) An LPG dealer who employs a trainee employee shall notify the commission of the employment within 45 days of the commencement of the employment so that an examination may be scheduled.

(d) The examination shall be given in the field, and if the employee passes the examination, this fact shall be reported to the LPG Division and shall be noted in its records.

[Acts 1977, 65th Leg., p. 2600, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.095. Qualified Employees Required

Text of section effective until September 1, 1980

No person may be granted or issued a license under Section 113.082 of this code as an authorized dealer in LPG nor may an existing or present license as an authorized dealer in LPG be renewed unless the person employs only qualified employees in accordance with Section 113.094 of this code.

[Acts 1977, 65th Leg., p. 2600, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.096. Surety Bond

Text of section effective until September 1, 1980

(a) No person may be issued a license as an authorized dealer in LPG under Section 113.082 of this code nor may an existing license be continued or renewed unless the person furnishes the commission with a surety bond in the face amount of $2,000 with a bonding company authorized to do business in this state.

(b) Each bond shall include a provision that the obligor on the bond will indemnify and pay to the state, to the extent of the face amount of the bond, all judgments that may be recovered in the name of the state against the person during the term of the

bond and proximately caused by the person's violation of or failure to comply with this chapter and rules or standards or both promulgated and adopted under this chapter.

(c) All surety bonds issued under the provisions of this section shall be continuous in duration. Cancellation of such a bond becomes effective 30 days after the LPG Division receives written notice of intent to cancel or upon physical delivery to the LPG Division of an acceptable replacement bond and not before.

[Acts 1977, 65th Leg., p. 2600, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2696, ch. 871, art. II, § 11, eff. Sept. 11, 1977.]

§ 113.097. Insurance

Text of section effective until September 1, 1980

(a) No person may be issued a license as an authorized dealer in LPG under Section 113.082 of this code nor may an existing license be continued or renewed unless the person for as long as he continues in business as a dealer takes out and maintains with a reliable insurance carrier qualified to do business in this state the following types and amounts of insurance to guarantee payment of damages proximately resulting from the negligent acts of the person while engaged in any of the activities hereinafter set forth:

(1) automobile bodily injury and property damage coverage on each motor vehicle, including trailers and semitrailers used to transport LPG, in an amount to be determined by the commission under reasonable rules adopted by it; but the minimum amount of the coverages shall not be less than the amounts required as proof of financial responsibility under the Texas Motor Vehicle Safety-Responsibility Act, as amended;

(2) manufacturers and contractors liability policy in an amount to be determined by the commission under reasonable rules adopted by it; and

(3) workmen's compensation or employer's liability coverage.

(b) As evidence that required insurance has been secured and is in force, certificates of insurance shall be filed with the division prior to licensing and license renewal. All certificates filed under the provision of this section shall be continuous in duration. Cancellation of a certificate of insurance becomes effective upon the occurrence of any of the following events and not before:

(1) division receipt of written notice stating the insurer's intent to cancel a policy of insurance and the passage of time thereafter equivalent to the notice period required by law to be given the insured prior to such insurance cancellation. Cancellation of certificate under this subsection is effected only when insurance evidenced by such certificate is legally cancelled;

(2) physical delivery to the LPG Division of an acceptable replacement insurance certificate;

(3) a dealer's voluntary surrender of the dealership's LPG license and the rights and privileges conferred thereby; or

(4) division receipt of an affidavit made by an authorized representative of an LPG licensee stating that such licensee is not actively engaging in any operations as an LPG dealership and will not engage in such operations unless and until certificates of required insurance are filed with the division.

[Acts 1977, 65th Leg., p. 2600, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2696, ch. 871, art. II, § 12, eff. Sept. 1, 1977.]

§ 113.098. Entry for Inspection

Text of section effective until September 1, 1980

An inspector, employee, or agent of the commission may enter at any reasonable time the premises of a licensee under this chapter to inspect any container, tank, apparatus, system, or equipment in which LPG is stored or by or through which LPG is used or consumed.

[Acts 1977, 65th Leg., p. 2601, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.099. Warning Tag

Text of section effective until September 1, 1980

The inspector, employee, or agent may declare as unsafe or dangerous any container, tank, apparatus, system, or equipment that does not conform to the safety requirements of this chapter or rules or specifications or both adopted or promulgated under this chapter or is otherwise defective and shall have a warning tag attached to the container, tank, apparatus, system, or equipment in a conspicuous location.

[Acts 1977, 65th Leg., p. 2601, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 113.100 to 113.130 reserved for expansion]

SUBCHAPTER E. MOTOR VEHICLES

§ 113.131. Transport and Delivery Trucks and Transport Trailers

Text of section effective until September 1, 1980

(a) Each transport truck, transport trailer, or other motor vehicle equipped with an LPG cargo tank and each truck used principally for transporting or delivering LPG in portable containers shall be registered under this chapter.

(b) Forms for registration of these trucks and motor vehicles shall be furnished by the commission and shall include any information that the commission may require.

(c) The registration fee for these trucks and motor vehicles is $20 a truck or motor vehicle a year.
[Acts 1977, 65th Leg., p. 2601, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.132. Rules and Orders Relating to Trucks, Trailers, and Other Motor Vehicles

Text of section effective until September 1, 1980

(a) The commission shall prescribe rules or standards or both relating to trucks, trailers, and other motor vehicles on which containers, tanks, or vessels are mounted or located with facilities for dispensing LPG.

(b) The rules or standards or both shall require all rigid pipes and valves on those trucks, trailers, and other motor vehicles to be recessed or otherwise protected by heavy guardrails to afford maximum protection against damage if an accident should occur.

(c) The commission shall prescribe other rules or standards, or both relating to trucks, trailers, or other motor vehicles used or to be used in the transportation, delivery, or distribution of LPG that it considers proper or advisable.
[Acts 1977, 65th Leg., p. 2601, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.133. Motor Carrier Laws; Department of Public Safety

Text of section effective until September 1, 1980

(a) None of the provisions of this chapter may be construed to alter, modify, amend, or revoke all or part of the motor carrier laws of this state.

(b) The Department of Public Safety shall cooperate with the commission in the administration and enforcement of this chapter and the rules or standards or both promulgated under this chapter as far as they are applicable to motor vehicles.
[Acts 1977, 65th Leg., p. 2602, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 113.134 to 113.160 reserved for expansion]

SUBCHAPTER F. SUSPENSION AND REVOCATION OF LICENSES AND REGISTRATIONS

§ 113.161. Suspension and Revocation

Text of section effective until September 1, 1980

If it appears at a public hearing that the holder of a license, registration, or permit has violated or has failed to comply with or is violating or failing to comply with any of the provisions of this chapter or rules, standards, and specifications or any rule, standard, or specification prescribed, promulgated, or adopted by the commission under this chapter, the commission may suspend or revoke the license, registration, or permit.
[Acts 1977, 65th Leg., p. 2602, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.162. Violations of Chapter

Text of section effective until September 1, 1980

(a) The commission shall notify any person in writing of acts, omissions, or conduct on his part that the commission considers to be in violation of or not in compliance with any provisions of this chapter or rules or standards or both promulgated and adopted under this chapter.

(b) The complaint shall specify the particular acts, omissions, or conduct complained of and shall designate a date by which the acts, omissions, or conduct must be corrected or discontinued.

(c) If a person has not corrected or discontinued the acts, omissions, or conduct complained of on or before the designated date, the commission shall hold a public hearing after proper notice.
[Acts 1977, 65th Leg., p. 2602, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.163. Investigation, Witnesses, Books, Records, Documents, Depositions, and Interrogatories

Text of section effective until September 1, 1980

The commission may:

(1) conduct any investigation related to the subject matter of the hearing;

(2) summon and compel the attendance at the hearing of any witness;

(3) require the production of books, records, and documents related to the subject matter of an investigation or hearing; and

(4) provide for taking depositions of witnesses and the use of interrogatories and admissions as provided in the Texas Rules of Civil Procedure.
[Acts 1977, 65th Leg., p. 2602, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.164. Rights of Person Complained Against

Text of section effective until September 1, 1980

A person against whom a complaint is filed shall be notified of the filing of the complaint as provided by law and is entitled to appear at the hearing, file an answer to the complaint, introduce evidence, and be heard either in person or by counsel or both.
[Acts 1977, 65th Leg., p. 2602, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.165. Findings and Judgment

Text of section effective until September 1, 1980

(a) At the conclusion of a public hearing, the commission shall enter its findings and judgment in writing and they shall be filed in a permanent public record book maintained by the LPG Division. A copy of the findings and judgment shall be furnished to the person charged in the complaint.

(b) If the commission finds that the party charged in the complaint has violated or failed to comply with or is violating or failing to comply with this chapter or a rule or standard or both promulgated and adopted under this chapter, the commission may suspend the license or registration for a definite period not to exceed 90 days or may revoke the license or registration.

[Acts 1977, 65th Leg., p. 2603, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.166. Action for Reinstatement

Text of section effective until September 1, 1980

(a) Not later than 30 days from the date the commission renders its order suspending or revoking a license or registration, the person who has had a license or registration suspended or revoked may file an action in the district court of the county or district in which he resides or maintains his principal place of business for reinstatement of the license or registration.

(b) The appeal in the district court shall be by trial de novo and shall be the same as if the action had been originally filed in the court.

(c) If a person who has a license or registration suspended or revoked should within 10 days after receipt of notice of the suspension or revocation give written notice to the commission of his intention to appeal from the order of the commission, the action of the commission suspending or revoking the license or registration is stayed for a period of 30 days from the expiration of the 10-day period.

(d) If no action is filed within this period, the order of the commission suspending or revoking the license or registration is final.

(e) If an action for reinstatement is timely filed, the order of the commission suspending or revoking the license or registration shall continue to be stayed until the action is heard and disposed of by the district court.

[Acts 1977, 65th Leg., p. 2603, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 113.167 to 113.200 reserved for expansion]

SUBCHAPTER G. FEES AND FUNDS

§ 113.201. Fees

Text of section effective until September 1, 1980

(a) Renewal registration and license fees established and assessed under this chapter are payable by midnight, August 31, of each year.

(b) Application, first year examination, and other nonrecurring fees are payable in advance.

[Acts 1977, 65th Leg., p. 2603, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2696, ch. 871, art. II, § 10, eff. Sept. 1, 1977.]

§ 113.202. Use of Fees

Text of section effective until September 1, 1980

Funds realized from fees shall be applied first to pay necessary expenses of the Liquefied Petroleum Gas Division in enforcing and administering this chapter.

[Acts 1977, 65th Leg., p. 2603, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.203. Deposit and Expenditure of Funds and Fees

Text of section effective until September 1, 1980

Funds held or controlled by the commission, fees received from licenses issued by the commission under this chapter, and funds subsequently received by the commission under this chapter shall be deposited in the State Treasury, as received, to the credit of the Liquefied Petroleum Gas Division and spent in accordance with appropriations made by law.

[Acts 1977, 65th Leg., p. 2603, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 113.204 to 113.230 reserved for expansion]

SUBCHAPTER H. INJUNCTIONS AND PENALTIES

§ 113.231. Injunctions

Text of section effective until September 1, 1980

(a) On complaint or otherwise, if it appears to the commission that a person holding a license or registration under this chapter is engaged in or is about to engage in acts that are in violation of or not in compliance with the provisions of this chapter, the attorney general, on request of the commission, may bring an action in the name and on behalf of the state against the person to enjoin him from commencing or continuing to engage in the acts. This action shall be in addition to other actions.

(b) The district court of any county in which it is shown that all or part of the acts have been or are about to be committed has jurisdiction of an action brought under this section and this subdivision is superior to any other statutory provision fixing the jurisdiction or venue of suits for injunction.

(c) No bond for injunction may be required of the commission or the attorney general in this proceeding.

[Acts 1977, 65th Leg., p. 2604, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.232. General Penalty

Text of section effective until September 1, 1980

(a) In addition to and supplemental of injunctive relief and other penalties provided in this chapter, a violation or failure to comply with this chapter and rules or standards or both promulgated and adopted

under this chapter constitutes a misdemeanor and is punishable in a court of competent jurisdiction by a fine of not less than $5 and not more than $200.

(b) Each day the violation or failure to comply continues constitutes and is punishable as a separate violation.

[Acts 1977, 65th Leg., p. 2604, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.233. Supplying LPG After Warning Tag Attached

Text of section effective until September 1, 1980

Any person who knowingly sells, furnishes, delivers, or supplies LPG for storage in or use or consumption by or through a container, tank, apparatus, system, or equipment to which a warning tag is attached is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 and not more than $500 in a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 2604, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.234. Penalty for Unauthorized Removal of Tag

Text of section effective until September 1, 1980

An unauthorized person who removes, destroys, or in any way obliterates a warning tag attached to a tank, apparatus, system, or equipment is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 and not more than $500 in a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 2604, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 113. LIQUEFIED PETROLEUM GAS

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Chapter 113, including the chapter heading, was revised by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, effective September 1, 1980. For text effective until September 1, 1980 see Chapter 113, ante.

Disposition Table

Showing where provisions of former Chapter 113 (§§ 113.001 to 113.234) are covered in §§ 113.001 to 113.236, effective September 1, 1980.

Former Section	New Section
113.001	113.001
113.002	113.002
113.003	113.003
113.011	113.011
113.012	113.012
113.013	113.013
113.014	113.014
113.015	113.015
113.051	113.051

Former Section	New Section
113.052	113.052
113.053	113.053
113.081	113.081
113.082	113.082
113.083	—
113.084	113.084
113.085	Repealed
113.086	Repealed
113.087	113.087
113.088	113.088
113.089	113.089
113.090	Repealed
113.091	113.091
113.092	113.092
113.093	113.093
113.094	—
113.095	—
113.096	—
113.097	113.097, 113.098
113.098	113.233
113.099	113.234
113.131	113.131
113.132	—
113.133	113.133, 113.134
113.161	—
113.162	113.161
113.163	113.162
113.164	113.162
113.165	113.163
113.166	113.164
113.201	—
113.202	113.201
113.203	113.201
113.231	113.231
113.232	113.232
113.233	113.235
113.234	113.236

SUBCHAPTER A. GENERAL PROVISIONS

§ 113.001. Title

Text of section effective September 1, 1980

This chapter may be cited as the Liquefied Petroleum Gas Code or LPG Code.

[Acts 1977, 65th Leg., p. 2594, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

Acts 1979, 66th Leg., p. 2043, ch. 799, revising this chapter, provided in § 4(b) of the Act:

"Sections 1 and 2 of this Act shall become effective for all purposes on September 1, 1980; provided, from and after enactment, this entire Act shall be effective for planning purposes as necessary to permit development by the railroad commission of rules and procedures for handling original and renewal license and registration applications, examinations, forms, and other requirements, and for collection of license and registration fees as provided in this Act for original licenses and registrations to be issued and for licenses and registrations to be renewed on and after September 1, 1980."

§ 113.002. Definitions

Text of section effective September 1, 1980

In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Division" means the liquefied petroleum gas division of the commission.

(3) "Employee" means any individual who renders or performs any services or labor for compensation and includes individuals hired on a part-time or temporary basis or a full-time or permanent basis including an owner-employee.

(4) "Liquefied petroleum gas," "LPG," or "LP-gas" means any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.

(5) "Container" means any receptacle designed for the transportation or storage of LPG or any receptacle designed for the purpose of receiving injections of LPG for use or consumption by or through an LPG system.

(6) "Appliance" means any apparatus or fixture that uses or consumes LPG furnished or supplied by an LPG system to which it is connected or attached.

(7) "LPG system" means all piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LPG.

(8) "Transport system" means any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(9) "Transfer system" means all piping, fittings, valves, and equipment utilized in dispensing LPG between containers.

(10) "Transport" means any bobtail or semitrailer equipped with one or more containers.

(11) "Subframing" means the attachment of supporting structural members to the pads of a container but does not include welding directly to or on the container.

(12) "Representative" means the individual designated to the commission by a license applicant or licensee as the principal person in authority and responsibility actively supervising the conduct of the licensee's LPG activities.

[Acts 1977, 65th Leg., p. 2594, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.003. Exceptions

Text of section effective September 1, 1980

None of the provisions of this chapter apply to:

(1) the production, refining, or manufacture of LPG;

(2) the storage, sale, or transportation of LPG by pipeline or railroad tank car by a pipeline company, producer, refiner, or manufacturer;

(3) equipment used by a pipeline company, producer, refiner, or manufacturer in a producing, refining, or manufacturing process or in the storage, sale, or transportation by pipeline or railroad tank car;

(4) any deliveries of LPG to another person at the place of production, refining, or manufacturing; or

(5) underground storage facilities other than LP-gas containers designed for underground use.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

[Sections 113.004 to 113.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 113.011. Liquefied Petroleum Gas Division

Text of section effective September 1, 1980

There is created and organized a separate and distinct division of the commission known as the liquefied petroleum gas division or the LPG division.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.012. General Duties

Text of section effective September 1, 1980

The LPG division shall administer and enforce the laws of this state and the rules and standards of the commission relating to liquefied petroleum gas.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.013. Director of LPG Division

Text of section effective September 1, 1980

The commission shall appoint and employ a director of the LPG division, who shall serve at the pleasure of the commission and who shall devote full time and attention to administering the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.014. Employees

Text of section effective September 1, 1980

Sufficient employees shall be provided to the LPG division for the enforcement of this chapter.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.015. Funds for Financing LPG Division

Text of section effective September 1, 1980

The commission shall look only to the revenue derived from the operation of this chapter and appropriated by the legislature for expenses of conducting the liquefied petroleum gas division and administering this chapter.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

[Sections 113.016 to 113.050 reserved for expansion]

SUBCHAPTER C. RULES AND STANDARDS

§ 113.051. Adoption of Rules and Standards

Text of section effective September 1, 1980

Except as provided in Section 113.003 of this code, the commission shall promulgate and adopt rules or standards or both relating to any and all aspects or phases of the LPG industry that will protect or tend to protect the health, welfare, and safety of the general public.

[Acts 1977, 65th Leg., p. 2596, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.052. Adoption of National Codes

Text of section effective September 1, 1980

The commission may adopt by reference, in whole or in part, the published codes of the National Board of Fire Underwriters, the National Fire Protection Association, the American Society for Mechanical Engineers, and other nationally recognized societies or any one or more of these codes as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LPG or any one or more of these purposes.

[Acts 1977, 65th Leg., p. 2596, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.053. Effect on Certain Containers

Text of section effective September 1, 1980

Rules, standards, and codes adopted pursuant to Sections 113.051 through 113.052 of this code do not apply to containers used in accordance with and subject to the regulations of the United States Department of Transportation or to containers that are owned or used by the United States government.

[Acts 1977, 65th Leg., p. 2596, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

[Sections 113.054 to 113.080 reserved for expansion]

SUBCHAPTER D. LICENSING

§ 113.081. License Requirement

Text of section effective September 1, 1980

(a) Unless otherwise stated in this chapter, no person may engage in any of the following activities unless that person has obtained a license from the commission authorizing that activity:

(1) container activities: the manufacture, assembly, repair, sale, installation, or subframing of containers for use in this state, except that no license is required for the sale of a container of 96 pounds water capacity or less;

(2) systems activities: the installation, service, and repair of systems for use in this state, including the laying or connecting of pipes and fittings connecting with or to systems or serving a system and appliances to be used with liquefied petroleum gas as a fuel;

(3) appliance activities: the service, installation, and repair of appliances used or to be used in this state in connection with systems using liquefied petroleum gas as a fuel, except that no license shall be required for installation or connection of unvented type appliances to LPG systems by means of LPG appliance connectors; or

(4) product activities: the sale, transportation, dispensation, or storage of liquefied petroleum gas in this state, except that no license shall be required to sell LPG where the vendor never obtains possessory rights to the product sold or where the product is transported or stored by the ultimate consumer for personal consumption only.

(b) The provisions of Subsection (a) of this section do not apply to LPG handled in a container of less than one gallon water capacity that is an integral part of a device for its use, nor to original and replacement containers for the device, nor to a person who is not engaged in business as provided in Section 113.082 of this code.

[Acts 1977, 65th Leg., p. 2596, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.082. Categories of Licensee; Fees

Text of section effective September 1, 1980

A prospective licensee in LPG may apply to the LPG division for a license to engage in any one or more of the following categories:

(A) manufacturers/fabricators: the manufacture, fabrication, assembly, repair, installation, subframing, and sale of LPG containers, including LPG motor fuel containers and systems, and the repair and installation of transport and transfer systems; the category "A" application and original license fee is $500; the annual renewal license fee is $300;

(B) transport outfitters: the subframing and sale of LPG transport containers, the installation and sale of LPG motor fuel containers, and the installation and repair of transport and motor fuel systems; the category "B" application and original license fee is $100; the annual renewal license fee is $50;

(C) carriers: the transportation of LPG by transport, including the loading and unloading of LPG, and the installation and repair of transport systems; the category "C" application and original license fee is $500; the annual renewal license fee is $150;

(D) general installers and repairmen: the sale, service, and installation of containers, excluding motor fuel containers, and the service, installation, and repair of piping, certain appliances as defined by rule, and LPG systems, excluding motor fuel systems; except that the commission may, by rule, exempt journeymen and/or master plumbers duly licensed by the Texas State Board of Plumbing Examiners from this licensing requirement; the category "D" application and original license fee is $50; the annual renewal license fee is $35;

(E) retail and wholesale dealers: the storage, sale, transportation, and distribution of LPG at retail and wholesale, and all other activities included in this section except the manufacture, fabrication, assembly, repair, and subframing of LPG containers; the category "E" application and original license fee is $500; the annual renewal license fee is $150;

(F) bottle exchanges: the operation of a bottle-filling and container exchange dealership, including bottle filling and the sale of bottled LPG; the category "F" application and original license fee is $50; the annual renewal license fee is $25;

(G) service station: the operation of an LPG service station filling ASME containers designed for motor and mobile fuel; the category "G" application and original license fee is $50; the annual renewal license fee is $25;

(H) bottle dealers: the transportation and sale of bottled LPG; the category "H" application and original license fee is $500; the annual renewal license fee is $150;

(I) service station and bottle exchanges: any service station and bottle activity set out in categories "F" and "G" of this section; the category "I" application and original license fee is $75; the annual renewal license fee is $35;

(J) service station and bottle dealerships: the operation of a bottle-filling and container-ex-

change dealership, including bottle filling and the sale, transportation, installation, and connection of bottled LPG, and the operation of an LPG service station as set out in category "G"; the category "J" application and original license fee is $500; the annual renewal license fee is $150;

(K) distribution system: the sale and distribution of LPG through mains or pipes and the installation and repair of LPG systems; the category "K" application and original license fee is $500; the annual renewal license fee is $150;

(L) carburetion: the sale and installation of LPG motor fuel containers, and the sale and installation of LPG motor fuel systems; application and original license fee is $50; annual renewal license fee is $25.

[Acts 1977, 65th Leg., p. 2597, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

[Section 113.083 reserved for expansion]

§ 113.084. Application

Text of section effective September 1, 1980

(a) An application for a license shall be submitted to the commission on forms furnished by the commission or on a facsimile of those forms.

(b) A prospective licensee shall submit the required application together with the original nonrefundable license fee required by Section 113.082 of this code for each category for which a license application is made. The applicant shall submit additional information and data with each application as the commission may reasonably require.

(c) A licensee shall submit the nonrefundable renewal fee for each category for which license is sought along with information and data the commission may reasonably require.

[Acts 1977, 65th Leg., p. 2598, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

[Sections 113.085 to 113.086 reserved for expansion]

§ 113.087. Examination and Seminar Requirements

Text of section effective September 1, 1980

(a) The satisfactory completion of the requirements of this section is mandatory, and operations requiring an LP-gas license may not commence, continue, or resume unless examination and seminar requirements are fulfilled.

(b) Before license issuance, the commission shall require the individual designated as the licensee's representative to the commission to provide good and sufficient proof through examination prepared and administered by the commission of working knowledge of this chapter and rules of the commission which affect the category of license for which application is made. Thereafter, each licensee shall maintain a qualified representative at all times.

(c) Each individual who will be actively supervising those operations requiring any license under this chapter at any outlet or location, as designated by the commission, shall be required to provide good and sufficient proof through examination prepared and administered by the commission that the supervisor has a working knowledge of the safety requirements and penalties in this chapter and the rules of the commission which apply to that category of license.

(d) As determined by commission rule, each individual who is or will be utilized by a licensee in LPG-related activities shall be required to provide good and sufficient proof through examination prepared and administered by the commission that the employee has a working knowledge of the safety requirements in the rules of the commission relating to the activity or activities.

(e) No licensee may employ or otherwise utilize any person as a representative to the commission, nor as a supervisor or employee in LPG-related activities, unless and until the person has qualified by satisfactory completion of the examination requirements established by this section.

(f) The commission shall promulgate rules relating to changes in representatives, supervisors, and employees, and may permit temporary exemption from the examination requirements for a maximum period of 45 days.

(g) In no event shall an original license be issued to an applicant when the representative's required examination was last taken and passed more than five years before the proposed date of license issuance.

(h) Satisfactory completion of any required examination under this section shall accrue to the individual.

(i) The commission, by appropriate rule, may require, in addition to examination requirements as set out in Subsections (b), (c), and (d) of this section, attendance at approved academic, trade, professional, or commission-sponsored seminars, other continuing education programs, and periodic reexaminations.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.088. Examination; Seminar Fees

Text of section effective September 1, 1980

(a) The commission shall establish reasonable examination and seminar registration fees.

(b) Before seminar attendance or examination of any person, except as provided in Subsection (c) of this section, the commission shall receive a nonrefundable fee for each examination or seminar registration.

(c) The commission may exempt voluntary firemen, or public employees of the State of Texas, federal government, or state or federal subdivisions from seminar fees.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.089. Special Requirements for Licensing

Text of section effective September 1, 1980

(a) If application is made for a license under category "E" of Section 113.082 of this code or any other category specified by commission rule, the commission, in addition to other requirements, shall have an actual inspection conducted of any and all facilities, bulk storage equipment, transportation equipment, and dispensing equipment of the applicant to verify satisfactory compliance with all current safety laws, rules, and practices.

(b) The inspection shall be performed before licensing, but in no event later than 15 days after the inspection is requested in writing by the applicant for license.

(c) A category "E" license and any other license specified by commission rule shall not be issued until the inspection under Subsection (a) of this section verifies the applicant to be in satisfactory compliance with all current safety laws, rules, and practices.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

[Section 113.090 reserved for expansion]

§ 113.091. License Denial

Text of section effective September 1, 1980

(a) Should an applicant fail to meet the requirements for original or renewal licensing set out in this chapter, the commission shall have written notification prepared promptly and mailed to the applicant. The notice shall specify the reason for the applicant's failure to qualify for license and advise the applicant of the right to request a hearing.

(b) Within 30 days of the notice of denial, an applicant for license under this chapter who is denied a license may request a hearing to determine whether or not the applicant has complied in all respects with the licensing procedure applicable to the category or categories of license sought. The applicant's request for hearing must be in writing and delivered to the director of the LP-gas division.

(c) A hearing to determine an applicant's compliance with the licensing procedure applicable to the category or categories of license sought must be scheduled within 30 days following receipt of a request under Subsection (b) of this section.

(d) If the record made at the hearing supports the applicant's claim, the commission shall enter an order in its records to that effect, noting the category or categories for which the applicant is found entitled to be licensed, and the commission shall have the license or licenses issued. If the applicant is found unqualified, the commission shall likewise enter an order in its records to that effect, and no license may be issued to the applicant.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.092. License Issuance

Text of section effective September 1, 1980

(a) The commission shall issue the appropriate license to an applicant who has satisfied the licensing procedures and requirements set out in this chapter and in the rules of the commission.

(b) The license shall be issued in the name under which the applicant proposes to conduct business.

(c) The license shall belong to the applicant to which it is issued and shall be nontransferable.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.093. License Renewal

Text of section effective September 1, 1980

(a) A license issued pursuant to this chapter is renewable on the timely payment or tender of the renewal license fee by 12 midnight, August 31, of each year.

(b) A renewal license will be issued to a licensee as soon as is practicable after compliance with Subsection (a) of this section, and fulfillment of insurance, examination, and seminar requirements established by this chapter, and submission of any information and data the commission may reasonably require.

(c) Renewal license fees shall be nonrefundable.

[Acts 1977, 65th Leg., p. 2600, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

Section 2 of the 1979 amendatory act provided:

"All current LPG licenses and registrations duly issued by the commission before September 1, 1980, shall be deemed valid in all respects and may be renewed on September 1, 1980, as provided in this Act without penalty or other abridgement of rights or privileges."

[Sections 113.094 to 113.096 reserved for expansion]

§ 113.097. Insurance Requirement

Text of section effective September 1, 1980

(a) The commission shall not issue a license authorizing activities under Section 113.082 of this code or renew an existing license unless the applicant for license or license renewal provides proof of required insurance coverage with an insurance carrier authorized to do business in this state.

(b) A licensee shall not perform any licensed activity under Section 113.082 of this code unless the insurance coverage required by this chapter is in effect.

(c) Except as provided in Section 113.099 of this code, the types and amounts of insurance provided in Subsections (d) through (g) of this section are required while engaged in any of the activities set forth in Section 113.082 of this code or any activity incidental thereto.

(d) A category "C," "E," "H," or "J" licensee must carry automobile bodily injury and property damage liability coverage on each motor vehicle, including trailers and semitrailers, used to transport LP-gas. The commission shall establish by rule a reasonable amount of coverage to be maintained, except that coverage shall not be less than the amounts required as proof of financial responsibility under the Texas Motor Vehicle Safety-Responsibility Act, as amended (Article 6701h, Vernon's Texas Civil Statutes).

(e) All licensees must carry general liability coverage in a reasonable amount, based on the type or types of licensed activities, which shall be established by commission rule.

(f) All licensees must carry workers' compensation, including employer's liability coverage.

(g) A category "A," "C," or "E" licensee must carry completed operations and products liability insurance in a reasonable amount, based on the type or types of licensed activities, which shall be established by commission rule.

[Acts 1977, 65th Leg., p. 2600, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2696, ch. 871, art. II, § 12, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.098. Insurance Conditions

Text of section effective September 1, 1980

(a) As evidence that required insurance has been secured and is in force, certificates of insurance shall be filed with the division before licensing and license renewal.

(b) All certificates filed under this section shall be continuous in duration.

(c) Cancellation of a certificate of insurance becomes effective on the occurrence of any of the following events and not before:

(1) division receipt of written notice stating the insurer's intent to cancel a policy of insurance and the passage of time equivalent to the notice period required by law to be given the insured before the insurance cancellation;

(2) receipt by the division of an acceptable replacement insurance certificate;

(3) voluntary surrender of a license and the rights and privileges conferred by the license; or

(4) division receipt of a statement made by a licensee stating that the licensee is not actively engaging in any operations which require a particular type of insurance and will not engage in those operations unless and until all certificates of required insurance applicable to those operations are filed with the division.

(d) Cancellation under Subsection (c) of this section shall not become effective until approved by the commission.

[Acts 1977, 65th Leg., p. 2601, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.099. Statements in Lieu of Insurance Certificates

Text of section effective September 1, 1980

(a) A category "C," "E," "H," or "J" licensee or applicant for license that does not operate or contemplate the operation of a motor vehicle equipped with an LP-gas cargo tank and does not transport or contemplate the transportation of LP-gas by vehicle in any manner, may make and file with the division a statement to that effect in lieu of filing a certificate of automobile bodily injury and property damage insurance.

(b) A licensee or applicant for a license that does not engage in or contemplate engaging in any operations which would be covered by general liability insurance for a period of time may make and file with the division a statement to that effect in lieu of filing a certificate of general liability insurance.

(c) A licensee or applicant for license that does not employ or contemplate the hiring of an employee or employees to be engaged in LPG-related activities may make and file with the division a statement to that effect in lieu of filing a certificate of workers' compensation insurance including employer's liability insurance.

(d) A category "A," "C," or "E" licensee or applicant for a license that does not engage in or contemplate engaging in any LP-gas operations which would be covered by completed operations and products liability for a period of time may make and file with the division a statement to that effect in lieu of filing a certificate of completed operations and products liability insurance.

(e) Any statement filed pursuant to Subsections (a) through (d) of this section must further state that the licensee or applicant agrees to file a certificate of insurance evidencing appropriate coverage

before engaging in any activities that require insurance coverage under this subchapter.

[Acts 1977, 65th Leg., p. 2601, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

[Sections 113.100 and 113.101 reserved for expansion]

§ 113.102. Prior Licenses

Text of section effective September 1, 1980

(a) Except as provided in Subsection (c) of this section, all prior LP-gas licenses authorizing activities previously defined by this chapter as categories 1 through 12 shall, on an applicant's compliance with the renewal procedure set out in this chapter, be converted to a license identified by category letter as specified in Subsection (b) of this section.

(b) A category "1" license shall become a category "A" license, and a category "4" shall become a category "C"; a "5," a "D"; a "6," an "E"; an "8," an "F"; a "9," a "G"; a "10," a "K"; an "11," an "H"; an "8" and "9," an "I"; an "8," "9," "11," and "12," a "J"; and an "8," "9," "11," and "5," a "J"; a "7," an "L", as those letter categories are defined in Section 113.082 of this code.

(c) Previously issued licenses designated as authorizing category "2" or "3" activities shall expire.

[Added by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

[Sections 113.103 to 113.130 reserved for expansion]

SUBCHAPTER E. MOTOR VEHICLES AND TESTING LABORATORIES

§ 113.131. Transport Trucks and Trailers

Text of section effective September 1, 1980

(a) Each transport truck, trailer, or other motor vehicle equipped with an LPG cargo tank and each truck used principally for transporting LPG in portable containers shall be registered with the commission.

(b) A licensee who has purchased, leased, or obtained other rights to use any unit described in Subsection (a) of this section shall register that unit in the name or names under which the licensee conducts business before the transportation of LPG by means of that unit.

(c) An ultimate consumer of LPG who has purchased, leased, or obtained other rights to use any unit described in Subsection (a) of this section shall register that unit in the person's name before the transportation of LPG by means of that unit on public roads or highways.

(d) The registration fee for each unit is $150 a year for any LPG cargo trailer or semitrailer and $100 a year for any bobtail or bottle-delivery unit.

(e) Any unit registered pursuant to this section shall be covered by automobile bodily injury and property damage liability insurance as prescribed by Section 113.097 of this code.

(f) Any delivery or transport driver shall meet the applicable examination and seminar requirements set out in Section 113.087 of this code.

[Acts 1977, 65th Leg., p. 2601, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

[Section 113.132 reserved for expansion]

§ 113.133. Motor Carrier Laws

Text of section effective September 1, 1980

No provision of this chapter shall be construed to modify, amend, or revoke any motor carrier law of this state.

[Acts 1977, 65th Leg., p. 2601, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.134. Department of Public Safety

Text of section effective September 1, 1980

The Department of Public Safety shall cooperate with the commission in the administration and enforcement of this chapter and the rules promulgated under this chapter to the extent that they are applicable to motor vehicles.

[Added by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.135. Testing Laboratories

Text of section effective September 1, 1980

(a) Any person that proposes to test any container for the purpose of determining the safety of the container for LP-gas service shall apply for registration with the commission and provide any information the commission shall reasonably require.

(b) The commission shall determine the sufficiency of the application and shall act on each application by approving or denying the registration pursuant to the standards set out in Subsections (c) and (d) of this section.

(c) Should it appear to the commission that an applicant is unqualified to conduct or continue to conduct container testings with the expertise or thoroughness necessary to accurately determine the safety of a container for LP-gas service, a formal hearing shall be held following notice of the hearing, and a determination of the qualifications of the applicant or registrant shall be made.

(d) Should competent evidence presented at the hearing establish that the applicant or registrant is unqualified to determine the safety of a container for LP-gas service, the registration of that person shall be denied or revoked.

[Added by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

[Sections 113.136 to 113.160 reserved for expansion]

SUBCHAPTER F. SUSPENSION AND REVOCATION OF LICENSES AND REGISTRATIONS

§ 113.161. Violations of Chapter or Rules; Informal Actions

Text of section effective September 1, 1980

(a) The commission shall notify a licensee or registrant in writing when it finds probable violation or noncompliance with this chapter or the safety rules promulgated under this chapter.

(b) The notification shall specify the particular acts, omissions, or conduct comprising the alleged violation and shall designate a date by which the violation must be corrected or discontinued.

(c) The licensee or registrant shall report timely compliance or shall request extension of time for compliance if deemed necessary.

(d) If a licensee or registrant objects to the complaint or requirements under this section, or if the commission determines that the licensee or registrant is not proceeding adequately to compliance, then, on written request of the licensee or registrant or order of the commission, a public hearing shall be conducted as provided in Section 113.162 of this code.

(e) If the commission or division determines that the probable violation or noncompliance constitutes an immediate danger to the public health, safety, and welfare, it shall require the immediate cessation of the probable violation or noncompliance and proceed with a hearing as provided in Section 113.162 of this code.

[Acts 1977, 65th Leg., p. 2602, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.162. Hearings

Text of section effective September 1, 1980

Any hearing or proceeding under this chapter shall be subject to the provisions of the Administrative Procedure and Texas Register Act.[1]

[Acts 1977, 65th Leg., p. 2602, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

[1] Civil Statutes, art. 6252–13a.

§ 113.163. Findings and Judgment

Text of section effective September 1, 1980

If the commission finds that the licensee or registrant has violated or failed to comply with or is violating or failing to comply with this chapter or a rule or standard promulgated and adopted under this chapter, or both, the commission may suspend the license or registration for a definite period not to exceed 90 days or may revoke the license or registration. If the commission determines that no violation has occurred or is occurring, its order shall so state.

[Acts 1977, 65th Leg., p. 2602, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.164. Appeal

Text of section effective September 1, 1980

Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule.

[Acts 1977, 65th Leg., p. 2602, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

[Sections 113.165 to 113.200 reserved for expansion]

SUBCHAPTER G. FEES AND FUNDS

§ 113.201. Deposit and Expenditure of Fees and Funds

Text of section effective September 1, 1980

Money received by the commission under this chapter shall be deposited in the state treasury to the credit of the liquefied petroleum gas division and spent in accordance with the appropriations made by law.

[Acts 1977, 65th Leg., p. 2603, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2696, ch. 871, art. II, § 10, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

[Sections 113.202 to 113.230 reserved for expansion]

SUBCHAPTER H. ENFORCEMENT

§ 113.231. Injunctions

Text of section effective September 1, 1980

(a) On request of the commission, the attorney general may bring an action in the name and on behalf of the state to enjoin a person from committing any act that violates or does not comply with any provision of this chapter or of any rule promulgated under this chapter.

(b) A suit for injunction instituted pursuant to Subsection (a) of this section shall be in addition to any other remedies at law or in equity.

(c) A district court of any county in which it is shown that all or part of the acts have been or are about to be committed has jurisdiction of an action brought under Subsection (a) of this section.

(d) No bond for injunction may be required of the commission or the attorney general in relation to a proceeding instituted pursuant to Subsection (a) of this section.

[Acts 1977, 65th Leg., p. 2604, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.232. General Penalty

Text of section effective September 1, 1980

(a) In addition to injunctive relief and other penalties provided in this chapter, a person who knowingly violates or fails to comply with this chapter or rules adopted under this chapter is guilty of a misdemeanor and is punishable by a fine of not less than $50 nor more than $2,000.

(b) Each day the violation or failure to comply continues constitutes a separate violation.

[Acts 1977, 65th Leg., p. 2604, ch. 871, art. I, § 1, eff. Sept. 1, 1977, Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.233. Entry for Inspection

Text of section effective September 1, 1980

An inspector, employee, or agent of the commission may enter the premises of a licensee under this chapter or any building or other premises open to the public at any reasonable time for the purpose of determining and verifying compliance with this chapter and the safety rules of the commission.

[Acts 1977, 65th Leg., p. 2604, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.234. Warning Tag

Text of section effective September 1, 1980

An inspector, employee, or agent of the commission may declare any container, appliance, equipment, transport, or system that does not conform to the safety requirements of this chapter or rules adopted under this chapter, or which is otherwise defective, as unsafe or dangerous for LP-gas service and shall attach a warning tag in a conspicuous location.

[Acts 1977, 65th Leg., p. 2604, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.235. Supplying or Removing LPG After Warning Tag Attached

Text of section effective September 1, 1980

(a) Any person who knowingly sells, furnishes, delivers, or supplies LPG for storage in or use or consumption by or through a container, appliance, transport, or system to which a warning tag is attached is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 and not more than $2,000.

(b) LP-gas shall be removed from a container to which a warning tag is attached only under the direction of the commission.

[Added by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

§ 113.236. Penalty for Unauthorized Removal of Tag

Text of section effective September 1, 1980

An unauthorized person who knowingly removes, destroys, or in any way obliterates a warning tag attached to a container, appliance, transport, or system is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 and not more than $2,000.

[Added by Acts 1979, 66th Leg., p. 2031, ch. 799, § 1, eff. Sept. 1, 1980.]

TITLE 4. MINES AND MINING

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SUBCHAPTER A. GENERAL PROVISIONS

§ 131.001. Short Title

This chapter may be cited as the Texas Uranium Surface Mining and Reclamation Act.

[Acts 1977, 65th Leg., p. 2607, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 305, ch. 141, § 39, eff. May 9, 1979; Acts 1979, 66th Leg., p. 849, ch. 379, § 1, eff. June 6, 1979.]

§ 131.002. Declaration of Policy

The legislature finds and declares that:

(1) the extraction of minerals by surface mining operations is a basic and essential activity making an important contribution to the economic well-being of the state and nation;

(2) proper reclamation of surface-mined land is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, and property rights of the citizens of this state;

(3) surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that reclamation operations and the specifications for reclamation operations must vary accordingly;

(4) it is not always possible to extract minerals required by our society without disturbing the surface of the earth and producing waste materials, and the very character of certain types of surface mining operations occasionally precludes complete restoration of the affected land to its original condition;

(5) unregulated surface mining may destroy or diminish the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitats, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources, which results are declared to be inimical to the public interest and destructive to the public health, safety, welfare, and economy of the State of Texas;

(6) due to its unique character or location, some land within the state may be unsuitable for all or certain types of surface mining operations;

(7) reclamation of surface-mined land as provided by this chapter will allow the mining of valuable minerals in a manner designed for the protection and subsequent beneficial use of land; and

(8) the requirements of this chapter for reclamation and maintenance of affected land are necessary for the public health and safety and thus constitute a valid application of the police power of this state.

[Acts 1977, 65th Leg., p. 2607, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 849, ch. 379, § 1, eff. June 6, 1979.]

§ 131.003. Purposes

It is declared to be the purpose of this chapter:

(1) to prevent the adverse effects to society and the environment resulting from unregulated surface mining operations as defined in this chapter;

(2) to assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances to the land are protected from unregulated surface mining operations;

(3) to assure that surface mining operations are not conducted where reclamation as required by this chapter is not possible;

(4) to assure that surface mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources; and

(5) to assure that reclamation of all surface-mined land is accomplished as contemporaneously as practicable with the surface mining, recognizing that the extraction of minerals by responsible mining operations is an essential and beneficial economic activity.

[Acts 1977, 65th Leg., p. 2608, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.004. Definitions

In this chapter:

(1) "Minerals" means uranium and uranium ore.

(2) "Surface mining" means the mining of minerals by removing the overburden lying above the natural deposit of minerals and mining directly from the natural deposits that are exposed and those aspects of underground mining having significant effects on the surface; provided, this definition shall not be construed to include in situ mining activities associated with the removal of uranium or uranium ore.

(3) "Exploration activity" means the disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of a mineral deposit, except those exploration activities associated with the drilling of test holes or core holes that are not required by federal law.

(4) "Affected land" or "land affected" means:

(A) the area from which any materials are to be or have been displaced in a surface mining operation;

(B) the area on which any materials that are displaced are to be or have been deposited;

(C) the haul roads and impoundment basins within the surface mining area; and

(D) other land whose natural state has been or will be disturbed as a result of the surface mining operations.

(5) "Surface mining operation" means those activities conducted at or near the mining site and concomitant with the surface mining, including extraction, storage, processing, and shipping of minerals and reclamation of the land affected.

(6) "Operator" means the individual or entity, including any public or governmental agency, that is to engage or that is engaged in a surface mining operation, including any individual or entity whose permit has expired or been suspended or revoked.

(7) "Overburden" means all materials displaced in a mining operation which are not, or will not be, removed from the affected area.

(8) "Reclamation" means the process of restoring an area affected by a surface mining operation to its original or other substantially beneficial condition, considering past and possible future uses of the area and the surrounding topography.

(9) "Topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth which has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and which is necessary for the growth and regeneration of vegetation on the surface of the earth.

(10) "Surface mining permit" means the written certification by the commission that the named operator may conduct the surface mining operations described in the certification during the term of the surface mining permit and in the manner established in the certification.

(11) "Person affected" means any person who is a resident of a county or any county adjacent or contiguous to the county in which a mining operation is or is proposed to be located, including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government and who demonstrates that he has suffered or will suffer actual injury or economic damage.

(12) "Commission" means the Railroad Commission of Texas.

(13) "Fund" means the Land Reclamation Fund.

(14) "Toxic material" means any substance present in sufficient concentration or amount to cause injury or illness to plant, animal, or human life.

(15) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the surface-mined area so that it resembles the surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and depressions eliminated, although the new contour may subsequently be at a moderately lower or higher elevation than existed prior to the surface mining operation.

(16) "Person" means an individual, partnership, society, jointstock company, firm, company, corporation, business organization, governmental agency, or any organization or association of citizens.

(17) "Party to the administrative proceedings" means any person who has participated in a public hearing or filed a valid petition or timely objection pursuant to any provision of this chapter.

(18) "Permit area" means all the area designated as such in the permit application and shall include all land affected by the surface mining operations during the term of the permit and may include any contiguous area that the operator proposes to surface mine after that time.

[Acts 1977, 65th Leg., p. 2608, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 308, ch. 141, § 42, eff. May 9, 1979; Acts 1979, 66th Leg., p. 853, ch. 379, § 3, eff. June 6, 1979; Acts 1979, 66th Leg., p. 1989, ch. 784, § 1, eff. Aug. 27, 1979.]

Acts 1977, 65th Leg., p. 1320, ch. 524, § 1, purported to amend subds. (2) and (5) of § 4 of Civil Statutes, art. 5920–10 [now, subds. (2) and (5) of this section], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5). Said amendment was subsequently repealed by identical provisions of Acts 1979, 66th Leg., p. 308, ch. 141, § 43, and Acts 1979, 66th Leg., p. 854, ch. 379, § 7, which provided in part that the repeal does not affect the continued validity of subds. (2) and (5) of this section or amendments to them made by the 66th Legislature, Regular Session, 1979.

§ 131.005. Reclamation

(a) The basic objective of reclamation is to reestablish on a continuing basis, where required, vegetation and other natural conditions consistent with the anticipated subsequent use of the affected land.

(b) The process of reclamation may require contouring, terracing, grading, backfilling, resoiling, revegetation, compaction and stabilization and settling ponds, water impoundments, diversion ditches, and other water treatment facilities in order to minimize water diminution to existing water sources, pollution, soil and wind erosion, or flooding resulting from mining or any other activity that may be considered necessary to accomplish the reclamation of the land affected to a substantially beneficial condition.

[Acts 1977, 65th Leg., p. 2610, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.006. Exclusions and Exemptions

The provisions of this chapter do not apply to the following:

(1) surface mining operations conducted on public land regulated by the General Land Office if the land is reclaimed in a manner consistent with this chapter; and

(2) land on which the overburden has been removed and minerals have been produced before June 21, 1975.

[Acts 1977, 65th Leg., p. 2610, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Acts 1977, 65th Leg., p. 1323, ch. 524, § 7, purported to amend § 5 of Civil Statutes, art. 5920–10 [now, this section], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5). Said amendment was subsequently repealed by identical provisions of Acts 1979, 66th Leg., p. 308, ch. 141, § 43, and Acts 1979, 66th Leg., p. 854, ch. 379, § 7, which provided in part that the repeal does not affect the continued validity of this section or amendments thereto made by the 66th Legislature, Regular Session, 1979.

[Sections 131.007 to 131.020 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

§ 131.021. General Authority of Commission

In seeking to accomplish the purposes of this chapter, the commission shall have the authority:

(1) to adopt and amend rules pertaining to surface mining and reclamation operations consistent with the general intent and purposes of this chapter;

(2) to issue permits pursuant to the provisions of this chapter;

(3) to conduct hearings pursuant to the provisions of this chapter;

(4) to issue orders requiring an operator to take actions that are necessary to comply with this chapter and with rules adopted under this chapter;

(5) to issue orders modifying previous orders;

(6) to issue a final order revoking the permit of an operator who has failed to comply with an order of the commission to take action required

by this chapter or rules adopted under this chapter;

(7) to order the immediate cessation of an ongoing surface mining operation if the commission finds that the operation creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, and to take other action or make changes in a permit that are reasonably necessary to avoid or alleviate these conditions;

(8) to hire employees, adopt standards for employment of these persons, and hire and authorize the hiring of outside contractors to assist in carrying out the requirements of this chapter;

(9) to enter on and inspect, in person or by its agents, a surface mining operation that is subject to the provisions of this chapter to assure compliance with the terms of this chapter;

(10) to conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise;

(11) to prepare and require permittees to prepare reports;

(12) to collect and disseminate to the public information considered reasonable and necessary for the proper enforcement of this chapter;

(13) to accept, receive, and administer grants, gifts, loans, or other funds made available from any source for the purposes of this chapter;

(14) to enter into contracts with state boards and agencies that have pertinent expertise to obtain professional and technical services necessary to carry out the provisions of this chapter; and

(15) to perform other duties and acts required by and provided for in this chapter.

[Acts 1977, 65th Leg., p. 2610, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.022. Jurisdiction of Commission

The commission is the mining and reclamation authority for the State of Texas and has exclusive jurisdiction for establishing reclamation requirements for mining operations in this state.

[Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.023. Commission Procedure

The commission shall seek the accomplishment of the purposes of this chapter by all practicable methods.

[Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.024. Compliance With Federal Surface Mining Laws

(a) On passage of federal surface mining legislation, the commission shall take actions necessary to establish the exclusive jurisdiction of this state over the regulation of surface mining and reclamation operations.

(b) If the federal administrative agency disapproves the regulatory program of this state as submitted, the commission shall take all necessary and appropriate action, including making recommendations for remedial legislation, to clarify, alter, or amend the program to comply with the requirements of the federal act.

[Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.025. Hearing Procedure

At a hearing under this chapter, the commission may:

(1) administer oaths or affirmations;

(2) subpoena witnesses and compel their attendance;

(3) take evidence; and

(4) require production of books, papers, correspondence, memoranda, agreements, or other documents or records that are considered relevant or material to the administration of this chapter.

[Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§§ 131.026 to 131.032. Repealed by Acts 1979, 66th Leg., p. 1991, ch. 784, § 5, eff. Aug. 27, 1979

The repealed sections, relating to promulgation and filing of rules, requirement of a public hearing, notice of hearing, written comments and evidence, consideration of comments and data, duty to publish rules, and amending and repealing rules, respectively, were derived from Acts 1977, 65th Leg., p. 2612, ch. 871, art. I, § 1.

§ 131.033. Differing Terms and Provisions of Rules

A rule or an amendment of a rule adopted by the commission may differ in its terms and provisions between particular conditions, particular mining techniques, particular areas of the state, or any other conditions that appear relevant and necessary so long as the action taken is consistent with attainment of the general intent and purposes of this chapter.

[Acts 1977, 65th Leg., p. 2612, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 305, ch. 141, § 39, eff. May 9, 1979; Acts 1979, 66th Leg., p. 849, ch. 379, § 1, eff. June 6, 1979.]

§ 131.034. Exploration Activities

The commission shall promulgate rules in the manner provided in Sections 131.026 through 131.031 of this code for the conduct of exploration activities.

[Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.035. Rules Designating Unsuitable Land

(a) The commission shall develop rules that adopt appropriate procedures for identifying and designating land in this state as unsuitable for all or certain types of surface mining in accordance with Sections 131.036 through 131.041 of this code.

(b) The rules shall be in sufficient detail to provide reasonable notice to prospective operators of areas that might be designated as unsuitable for surface mining.

[Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.036. Survey of Land

(a) When application is made to conduct surface mining operations and before a permit is issued, the commission shall immediately have the areas to be included in the proposed permit surveyed in accordance with the requirements of Sections 131.035 and 131.037 through 131.041 of this code.

(b) In conducting the survey and in declaring various areas to be unsuitable for mining, the commission shall employ competent and scientifically sound data and information as the basis for objective decisions with respect to each area surveyed.

[Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.037. Commission Statement

Before designating a land area as unsuitable for surface mining operations, the commission shall prepare a detailed statement on the potential mineral and other resources in the area, the demand for these resources, and the impact of the designation on the environment, the economy, and the supply of the mineral.

[Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.038. Reasons for Unsuitable Designation

After the survey is made, an area may be designated unsuitable for all or certain types of surface mining if:

(1) the commission determines that reclamation under this chapter is not feasible;

(2) the operations will result in significant damage to important areas of historic, cultural, or archaeological value or to important natural systems;

(3) the operations will affect renewable resource land that includes aquifers and aquifer recharge areas, resulting in a substantial loss or reduction of long-range productivity of water supply or food or fiber products;

(4) the operations are located in an area subject to frequent flooding or an area that is geologically unstable and may reasonably be expected to endanger life and property;

(5) the operations will adversely affect any national park, national monument, national historic landmark, property listed on the national register of historic places, national forest, national wilderness area, national wildlife refuge, national wild and scenic river area, state park, state wildlife refuge, state forest, recorded Texas historic landmark, state historic site, state archaeological landmark, or city or county park; or

(6) the operations would endanger any public road, public building, cemetery, school, church, or similar structure or existing dwelling outside the permit area.

[Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.039. Petition and Hearing on Designation

(a) Any person is entitled to petition the commission to have an area designated as unsuitable for surface mining operations or to have the designation terminated.

(b) The petition shall include allegations of facts with supporting evidence that in the opinion of the commission would tend to establish the allegations.

(c) The commission shall make a determination of the validity of the petition, and if the petition is found to be valid, it shall be kept on file by the commission and made available for public inspection.

(d) On application for a surface mining permit for which a valid petition has been filed, the commission shall hold a public hearing as provided in Section 131.163 of this code in the locality of the proposed mining operation.

(e) Any person affected may intervene before the public hearing by filing allegations of facts with supporting evidence that would tend to establish the allegations.

(f) If all the petitioners and the applicant stipulate agreement before the requested hearing, the hearing does not have to be held.

[Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1989, ch. 784, § 2, eff. Aug. 27, 1979.]

§ 131.040. Modifying, Amending, and Terminating Designations

The commission may modify, amend, or terminate a designation pursuant to the requirements of Sections 131.035 through 131.039 of this code.

[Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.041. Applicability of Subchapter

The provisions of Sections 131.035 through 131.040 of this code do not apply to land on which surface mining operations were being conducted on June 21, 1975.

[Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.042. Records, Reports, Monitoring Equipment, and Information

The commission shall require each permittee to:

(1) establish and maintain appropriate records;

(2) make reports as frequently as the commission may prescribe;

(3) install, use, and maintain necessary monitoring equipment for observing and determining relevant surface or subsurface effects of the mining operation and reclamation program; and

(4) provide other information relative to mining and reclamation operations the commission determines to be reasonable and necessary.

[Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.043. Inspection by Commission

Without advance notice and on presentation of appropriate credentials to the operation supervisor, if present, the authorized representatives of the commission are entitled to enter in, on, or through a surface mining operation or premises in which any records required under Section 131.042 of this code are located, and may at reasonable times and without delay have access to and copy any records and inspect monitoring equipment or methods of operation required under this chapter.

[Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.044. Time and Procedures for Inspections

(a) The inspections by the commission shall occur on an irregular basis at a frequency necessary to insure compliance with the intent and purposes of this chapter and the commission's rules for the surface mining and reclamation operations covered by each permit.

(b) The inspections shall occur only during normal operating hours if practicable and without prior notice to the permittee or his agents or employees.

(c) An inspection shall include the filing of an inspection report adequate to enforce the requirements of and to carry out the terms and purposes of this chapter. The commission shall make each report a part of the record and furnish one copy of the report to the operator.

(d) Insofar as practicable, the commission shall establish a system of rotation of inspectors.

[Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.045. Sign

Each permittee shall maintain at the entrances to the surface mining and reclamation operations a clearly visible sign that sets forth the name, business address, and phone number of the permittee and the permit number of the surface mining and reclamation operations.

[Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.046. Procedure on Detection of Violation

On detection of each violation of a requirement of this chapter, each inspector shall inform the operator of the violation orally at the time of the detection and in writing at a later time and shall report the violation in writing to the commission.

[Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.047. Judicial Review

(a) Any party to the administrative proceedings whose interest is or may be adversely affected by a ruling, order, decision, or other act of the commission may appeal by filing a petition in a district court of Travis County or in the county in which the greater portion of the land in question is located.

(b) The plaintiff shall pursue his action with reasonable diligence, and if the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(c) The court shall hear the complaint solely on the record made before the commission. The findings of the commission, if supported by substantial evidence on the record considered as a whole, shall be upheld.

(d) The court may, under conditions it may prescribe, grant temporary relief that it considers appropriate pending final determination of the proceedings.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the commission.

(f) Any action arising under this chapter shall be given precedence by the court over cases of a different nature.

[Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1989, ch. 784, § 2, eff. Aug. 27, 1979.]

§ 131.048. Confidentiality

Information submitted to the commission concerning mineral deposits, test borings, core samplings, or trade secrets or privileged commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, shall not be disclosed by any member, agent, or employee of the commission.

[Acts 1977, 65th Leg., p. 2616, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.049. Temporary Orders Prior to Notice and Hearing

(a) The commission may issue temporary orders relating to a surface mining operation without notice and hearing, or with the notice and hearing as the commission considers practical under the circumstances, when necessary to enable action to be taken more expeditiously than is otherwise provided by this chapter to effectuate the policy and purposes of this chapter.

(b) If the commission issues a temporary order under this authority without a hearing, and if the subject matter of the order is such as to require a public hearing under Section 131.163 of this code or under any rule of the commission, the order shall set a time and place for a public hearing to be held. The hearing shall be held as soon after the temporary order is issued as is practical.

(c) At the hearing, the commission shall affirm, modify, or set aside the temporary order. If the nature of the commission's action requires, further proceedings shall be conducted as appropriate under provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(d) The requirements of Sections 131.159 and 131.160 of this code relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to the hearing, but general notice of the hearing shall be given that the commission considers practical under the circumstances.

[Added by Acts 1979, 66th Leg., p. 853, ch. 379, § 6, eff. June 6, 1979.]

[Sections 131.050 to 131.100 reserved for expansion]

SUBCHAPTER C. PLANS AND STANDARDS

§ 131.101. Reclamation Plan

(a) A reclamation plan shall be developed in a manner consistent with local, physical, environmental, and climatological conditions and current mining and reclamation technologies.

(b) A reclamation plan submitted as part of a permit application shall include:

(1) the identification of the entire area to be mined and affected over the estimated life of the mining operation;

(2) the condition of the land to be covered by the permit prior to any mining, including:

(A) the uses existing at the time of the application, and if the land has a history of previous mining, the uses, if reasonably ascertainable, that immediately preceded any mining; and

(B) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover;

(3) the capacity of the land to support its anticipated use following reclamation, including a discussion of the capacity of the reclaimed land to support alternative uses;

(4) a description of how the proposed postmining land condition is to be achieved and the necessary support activities that may be needed to achieve the condition, including an estimate of the cost per acre of the reclamation;

(5) the steps taken to comply with applicable air and water quality and water rights laws and regulations and any applicable health and safety standards, including copies of any pertinent permit applications;

(6) a general timetable that the operator estimates will be necessary for accomplishing the major events included in the reclamation plan; and

(7) other information the commission, by rule, determines to be reasonably necessary to effectuate the purposes of this chapter.

(c) The operator may revise or amend the reclamation plan at any time in accordance with the requirements of this code.

[Acts 1977, 65th Leg., p. 2616, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.102. Reclamation Standards

(a) A permit issued under this chapter to conduct surface mining operations shall require that the surface mining operations meet all applicable reclamation standards of this chapter and any other requirements that the commission establishes by rule.

(b) Reclamation standards shall apply to all surface mining and reclamation operations that are not exempted or excluded and shall require the operator as a minimum to:

(1) conduct surface mining operations in a manner consistent with prudent mining practice, so as to maximize the utilization and conservation of the resource being recovered so that reaffecting the land in the future through surface mining can be minimized;

(2) restore the land affected to the same or a substantially beneficial condition considering the present and past uses of the land, so long as the condition does not present any actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution, and the permit applicants' declared anticipated land use following reclamation is not considered to be impractical or unreasonable, to involve unreasonable delay in imple-

mentation, or to violate federal, state, or local law, provided that a variety of postmining land conditions that differ from the land condition immediately preceding the surface mining operation, including but not limited to stock ponds, fishing or recreational lakes, school or park sites, industrial, commercial, or residential sites, or open space uses, may be approved by the commission if the proposed condition is determined to be substantially beneficial and complies with the provisions of this section;

(3) reduce all highwalls, spoil piles, and banks to a degree to control erosion effectively and sufficiently to sustain vegetation, where required, consistent with the anticipated subsequent use of the affected land, provided that backfilling, compacting, and grading shall be required to restore the approximate original contour where required by federal law and where the volume of overburden is large in comparison to the volume of mineral deposit and the commission considers the requirement to be practical;

(4) stabilize and protect all surface areas affected by the mining and reclamation operation effectively to control erosion and attendant air and water pollution;

(5) remove the topsoil, if any, from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plants or other means so that the topsoil is preserved from wind and water erosion, remains free of any contamination by toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation and if other strata can be shown to be as suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner the other strata which is best able to support vegetation, provided that the requirements of this provision shall not apply if a mixing of strata can be shown to be equally suitable for revegetation requirements;

(6) replace the topsoil or the best available subsoil, if any, on top of the land to be reclaimed;

(7) fill any auger holes with an impervious material in order to prevent drainage;

(8) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by:

(A) avoiding toxic mine drainage by such measures as:

(i) preventing or removing water from contact with toxic-producing deposits,

(ii) treating drainage to reduce toxic content,

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep toxic drainage from entering ground and surface water;

(B) conducting surface mining operations in a manner to prevent unreasonable additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions;

(C) removing temporary or large siltation structures from drainways consistent with good water conservation practices after disturbed areas are revegetated and stabilized; or

(D) other actions as the commission may prescribe pursuant to its rules;

(9) stabilize any waste piles;

(10) refrain from surface mining in proximity to active and abandoned underground mines in which mining would cause breakthroughs or would endanger the health or safety of miners;

(11) incorporate with respect to the use of impoundments for the disposal of mine wastes, processing wastes, or other liquid or solid wastes current engineering practices for the design and construction of water retention facilities which, at a minimum, shall be compatible with the requirements of Section 6.0731,[1] Water Code, and applicable federal laws, ensure that leachate will not pollute surface or groundwater, and locate impoundments so as not to endanger public health and safety should failure occur;

(12) ensure that all debris, toxic materials, or materials constituting a fire hazard are treated or disposed of in a manner designed to prevent contamination of ground or surface water or combustion;

(13) ensure that any explosives are used only in accordance with existing state and federal law and rules promulgated by the commission;

(14) ensure that all reclamation efforts proceed as contemporaneously as practicable with the surface mining operations;

(15) ensure that construction, maintenance, and postmining conditions of access roads into and across the site of operations will minimize erosion and siltation, pollution of air and water, damage to fish or wildlife or their habitat, or

public or private property, provided that the commission may permit the retention after mining of certain access roads if compatible with the approved reclamation plan;

(16) refrain from the construction of roads or other access ways up a streambed or drainage channel or in proximity to such channel where such construction would seriously alter the normal flow of water;

(17) establish on all affected land, where required in the approved reclamation plan, a diverse vegetative cover native to the affected land where vegetation existed prior to mining and capable of self-regeneration and plant succession equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or necessary to achieve the approved reclamation plan;

(18) assume responsibility for successful revegetation for a period of four years beyond the first year in which the vegetation has been successfully established as evidenced by the land being used as anticipated in the reclamation plan;

(19) ensure with respect to permanent impoundments of water as part of the approved reclamation plan that:

(A) the size of the impoundment and the availability of water are adequate for its intended purpose;

(B) the impoundment dam construction will meet the requirements of Section 6.0731, Water Code, and applicable federal laws;

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and the discharges from the impoundment will not degrade the water quality in the receiving stream;

(D) final grading will provide adequate safety and access for anticipated water users; and

(E) the water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses; and

(20) meet other criteria pursuant to the commission's rules as are necessary to achieve reclamation in accordance with the purposes of this chapter, taking into consideration the physical, climatological, and other characteristics of the site.

(c) The purpose of this section is to have land affected restored to the same condition as the land that existed enjoyed before the mining or some substantially beneficial condition.

(d) A method of reclamation other than that provided in this section may be approved by the commission after public hearing if the commission determines that any method of reclamation required by this section is not practical and that the alternative method will provide for the affected land to be restored to a substantially beneficial condition.

(e) If an alternative method of reclamation is generally applicable to all surface mining operations involving a particular mineral, the commission shall promulgate rules in the manner provided in Section 131.033 of this code.

(f) The operator is entitled to access to the land affected to the extent necessary to carry out the reclamation and maintenance required under this chapter.

[Acts 1977, 65th Leg., p. 2616, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 305, ch. 141, § 40, eff. May 9, 1979; Acts 1979, 66th Leg., p. 850, ch. 379, § 2, eff. June 6, 1979.]

[1] See, now, § 12.052.

[Sections 131.103 to 131.130 reserved for expansion]

SUBCHAPTER D. SURFACE MINING PERMITS

§ 131.131. Permit Required for Operation

(a) No person shall conduct a surface mining operation unless he first obtains a surface mining permit issued by the commission under this subchapter; provided, any operator conducting a surface mining operation in this state before September 20, 1976, who has filed a permit application pursuant to this chapter, may continue to conduct that surface mining operation until the commission approves or denies his application.

(b) An operator who was conducting a surface mining operation in this state after the expiration of 180 days following the promulgation of the initial rules under Section 131.026 of this code and who has filed a permit application in accordance with the provisions of this subchapter may continue to conduct the surface mining operation until the commission approves or denies his application.

[Acts 1977, 65th Leg., p. 2619, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1990, ch. 784, § 3, eff. Aug. 27, 1979.]

Amendment by Acts 1977, 65th Leg., p. 1321, ch. 524, § 3

Acts 1977, 65th Leg., p. 1321, ch. 524, § 3, purports to amend subsec. (a) of § 8 of Civil Statutes, art. 5920–10 [now, this section], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5). As so amended, subsec. (a) reads:

"No person shall conduct any surface mining operation without having first obtained a surface mining permit issued by the commission pursuant to this Act; provided, however, that any operator conducting a surface mining operation in this state before September 20, 1976, who has filed a permit application in accordance with the provisions of this Act may continue to conduct such surface mining operation until such time as the commission approves or denies his application."

§ 131.132. Form of Permit Application

On application to the commission for a surface mining permit, an operator shall submit three copies of a permit application on a form prescribed by the commission, and the commission shall require in the form the information it considers reasonably necessary to process the application and to ensure compliance with the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.133. Required Information

The permit application shall include information concerning:

(1) the name, address, ownership, and management officers of the permit applicant and affiliated persons engaged in surface mining;

(2) legal and equitable interests of record, if reasonably ascertainable, in the surface and mineral estates of the permit area and in the surface estate of land located within 500 feet of the permit area, provided that the mineral estate includes only minerals as defined in this chapter;

(3) persons residing on the property at the time of the application;

(4) current or previous surface mining permits held by the applicant, including any revocations, suspensions, or bond forfeitures;

(5) the type and method of surface mining operation, the engineering techniques, and the equipment that is proposed to be used, including mining schedules, the nature and expected amount of overburden to be removed, the depth of excavations, a description of the affected land and permit area, the results of any test borings, test pits, or core samplings that have been gathered from the permit area, and the anticipated hydrologic consequences of the mining operation;

(6) the applicant's legal right to surface mine the affected land; and

(7) other pertinent matters that the commission considers reasonably necessary to effectuate the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.134. Documents to be Included With Application

An applicant shall include with his permit application a copy of a reclamation plan prepared as provided in Section 131.101 of this code and a copy of the notice published in compliance with the requirement of Section 131.159 of this code.

[Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.135. Application Fees

(a) Each application for a surface mining permit shall be accompanied by an initial application fee as determined by the commission in accordance with a published fee schedule.

(b) An initial application fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application, but shall not exceed $200.

(c) After approval but before issuance of the surface mining permit, the applicant shall pay an approved application fee in the amount of $10 per acre of the permit area, which may be paid in annual installments apportioned over the term of the permit.

[Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1991, ch. 784, § 4, eff. Aug. 27, 1979.]

§ 131.136. Amendment to Permit Application

A permit application may be amended to exclude the part of an operation that lies within an area designated as unsuitable for surface mining under Sections 131.035 through 131.041 of this code.

[Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.137. Combined Permit Application

(a) The commission shall adopt rules permitting an operator of more than one noncontiguous surface mining operation to submit a single application for a combined surface mining permit covering all his mining operations.

(b) A combined permit application shall require the same detailing of information as required by this subchapter for each separate location.

(c) An operator desiring to operate under a combined permit may submit a consolidated reclamation plan covering all his operations under rules prescribed by the commission, but he may be required to furnish specific information relating to reclamation of a single operating area if the commission determines that this is necessary to carry out the purposes of this chapter.

(d) Except as provided in this section, each surface mining operation submitted as part of a combined permit application shall be separate and independent of all other surface mining operations included in the same permit application.

(e) The commission may approve or deny an individual surface mining operation and the reclamation plan that relates to an individual surface mining operation without affecting other portions of the same permit application.

[Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.138. Filing Application With County Clerk

After deleting confidential information as provided in Section 131.048 of this code, the commission shall file for public inspection with the county clerk at the county courthouse of the county in which any portion of the mining is proposed to occur a copy of each application.

[Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.139. Submission of Application to Agencies for Comment

(a) The commission immediately shall submit copies of the permit application to the Parks and Wildlife Department, Texas Water Quality Board, Texas Water Development Board, General Land Office, Texas Air Control Board, Texas Historical Commission, Texas Water Rights Commission, State Soil and Water Conservation Board, Bureau of Economic Geology, Texas Department of Health Resources, and other state agencies whose jurisdiction the commission feels the particular mining operation may affect.

(b) Each of these agencies shall review the permit application and submit any comments the agency cares to make within 30 days of receipt of the application.

(c) An agency's comments shall include an enumeration of permits or licenses required under the agency's jurisdiction.

(d) The comments of each agency shall be made a part of the record and a copy shall be furnished to the applicant.

[Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.140. Approval of Permit

(a) The commission shall grant a surface mining permit if it is established that the permit application complies with the requirements of this chapter and applicable federal and state laws.

(b) The commission may approve a surface mining permit conditioned on the approval of other state permits or licenses that may be required.

[Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.141. Denial of a Permit

The commission shall deny a permit if:

(1) it finds that the reclamation as required by this chapter cannot be accomplished by means of the proposed reclamation plan;

(2) part of the proposed operation lies within an area designated as unsuitable for surface mining in Sections 131.035 through 131.041 of this code;

(3) it is advised by the Texas Water Quality Board that the proposed mining operation will cause pollution of water of the state, or by the Texas Air Control Board that the proposed mining operation will cause pollution of the ambient air of the state, in violation of the laws of this state;

(4) the applicant has had another permit issued under this chapter revoked or any bond posted to comply with this chapter forfeited and the conditions causing the permit to be revoked or the bond to be forfeited have not been corrected to the satisfaction of the commission;

(5) it determines that the proposed operation will endanger the health and safety of the public;

(6) the surface mining operation will adversely affect a public highway or road; or

(7) the operator is unable to produce the bonds or otherwise meet the requirements of Sections 131.201 through 131.206 of this code.

[Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1989, ch. 784, § 2, eff. Aug. 27, 1979.]

§ 131.142. Term and Transferability of Permit

(a) A surface mining permit issued under this chapter for uranium and uranium ore shall be issued for a term of not more than 10 years.

(b) Except as provided in Sections 131.155 through 131.158 of this code, a surface mining permit is nontransferable.

[Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 308, ch. 141, § 41, eff. May 9, 1979; Acts 1979, 66th Leg., p. 853, ch. 379, § 4, eff. June 6, 1979.]

§ 131.143. Liability Insurance Policy

(a) After a permit application is approved but before the permit is issued, the applicant shall file a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to conduct business in this state.

(b) The liability insurance policy required by Subsection (a) of this section shall cover all surface mining operations of the applicant in this state and shall afford bodily injury protection and accidental

business property damage protection in an amount determined by the commission to compensate adequately any persons damaged as a result of surface mining and reclamation operations.

(c) The liability insurance policy shall be maintained in full force and effect during the term of the permit or the renewal of the permit, including the length of all reclamation operations.

[Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.144. Rules for Revision, Transfer, and Renewal of Permits

The commission shall promulgate rules for renewal, revision, and transfer of surface mining permits.

[Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.145. Right to Renewal

A valid surface mining permit issued under this chapter carries with it the right of successive renewal on expiration with respect to area within the boundaries of the existing permit.

[Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.146. Application for and Issuance of Renewal

The holder of a permit may apply for renewal and the renewal shall be issued on the basis of the following requirements and written findings by the commission that:

(1) the terms and conditions of the existing permit are being satisfactorily met;

(2) the performance bond or substitute collateral required under the terms of this chapter will continue in full force and effect and unimpaired for the requested renewal, revision, or transfer;

(3) the operator has provided additional or revised information as required by the commission; and

(4) notice under Section 131.159 of this code has been provided with respect to the application for renewal, revision, or transfer.

[Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.147. Renewal Application Fee

(a) Each application for renewal of a surface mining permit shall be accompanied by a renewal application fee as determined by the commission in accordance with a published fee schedule.

(b) The fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application, but in no event shall the amount exceed $200.

(c) The approved application fee as provided in Section 131.135 of this code is not applicable to a renewal application except for the portion, if any, that addresses any new land areas.

[Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.148. Extension of Permit Coverage

If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit that addresses any new land areas shall be subject to the full standards, including application fees, applicable to new applications under this chapter.

[Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.149. Term of Renewal Permit

A surface mining permit renewal shall be for a term not to exceed the period of the original permit established under this chapter.

[Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.150. Time Limit for Renewal Application

Application for permit renewal shall be made at least 90 days before the expiration of the valid permit.

[Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.151. Revision of Permit

During the term of a surface mining permit, the permittee may submit an application, together with a revised reclamation plan, to the commission for a revision of the permit.

[Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.152. Approval or Disapproval of Permit Revision

No application for a revision of a permit may be approved unless the commission finds that reclamation as required under this chapter can be accomplished under the revised reclamation plan.

[Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1990, ch. 784, § 2, eff. Aug. 27, 1979.]

§ 131.153. Guidelines for Revision

(a) The commission shall establish by rule guidelines for a determination of the scale or extent of a revision request to which all permit application information requirements and procedures, including notice and hearings, shall apply.

(b) A revision that proposes a substantial change in the intended future use of the land or significant alteration in the reclamation plan shall be subject at a minimum to the notice and hearing requirements provided in Sections 131.159 and 131.163 of this code.
[Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.154. Extensions to Area

Except for incidental boundary revisions, an extension to the area covered by a permit must be made by application for another permit or for revision of a permit.
[Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.155. Transfer of Permit

(a) No transfer, assignment, or sale of the rights granted under a permit issued under this chapter shall be made without the written approval of the commission.

(b) A person desiring to succeed to the interests of a permittee under this chapter must file an application on a form prescribed by the commission and including any pertinent information the commission by rule may require.
[Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.156. Required Information for Transfer

As part of the information for transfer, the commission shall require:

(1) the information required by Subdivisions (1) and (4) of Section 131.133 of this code relating to ownership and other mining activities of the applicant;

(2) proof that the public liability insurance requirement in Section 131.143 of this code will be fulfilled;

(3) proof that the performance bond or substitute collateral required by Sections 131.201 through 131.206 of this code will be furnished; and

(4) the statement of the applicant that he will faithfully carry out all of the requirements of the reclamation plan approved in the original application.

[Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.157. Approval of Transfer

After notice and an opportunity for a public hearing, if required under Sections 131.159 and 131.163 of this code, and on a written finding by the commission that the requirements of Sections 131.146 through 131.150 of this code have been met, the application for transfer shall be approved.
[Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.158. Denial of Application for Transfer

An application for transfer shall be denied if the applicant has had a permit issued under this chapter revoked or a bond posted to comply with this chapter forfeited, and the conditions causing the permit to be revoked or the bond to be forfeited have not been corrected to the satisfaction of the commission.
[Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 849, ch. 379, § 1, eff. June 6, 1979.]

§ 131.159. Notice by Applicant

(a) At the time an application for a surface mining permit or an application for revision, renewal, or transfer of an existing surface mining permit is submitted under this chapter, the applicant shall publish notice of the ownership, location, and boundaries of the permit area sufficiently detailed for local residents to locate readily the proposed operation and the location at which the application is available for public inspection.

(b) The notice shall be published in the local newspaper of greatest general circulation in the locality in which the proposed surface mine is to be located.

(c) The notice shall be published at least once a week for four consecutive weeks.
[Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.160. Notification by Commission

The commission shall contact various local governmental bodies, planning agencies, sewage, and water treatment authorities or water companies that have jurisdiction over or in the locality in which the proposed surface mining will occur, and the owners of record of surface areas within 500 feet of any part of the permit area and shall give them notice of the applicant's intention to surface mine a particularly described tract of land and indicate the applicant's permit number, if any, and the place at which a copy of the proposed mining and reclamation plan may be inspected.
[Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.161. Comments

(a) Within 30 days after the last publication as provided in Section 131.159 of this code, each local body, agency, authority, or company may submit written comments with respect to the effect of the proposed operation on the environment within its area of responsibility.

(b) These comments shall be made part of the record, and one copy of the comments shall be furnished to the operator.
[Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.162. Written Objections

(a) Within 30 days after the last publication of notice under Section 131.159 of this code, a person affected or a federal, state, or local governmental agency or authority is entitled to file with the commission written objections to the application for a surface mining permit or to the application for the renewal, revision, or transfer of a surface mining permit.

(b) The written objections shall be made part of the record and one copy of the written objections shall be furnished to the operator.

[Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.163. Notice and Public Hearing

(a) If the commission determines that the application for a surface mining permit is of a significance sufficient to warrant a public hearing, the commission shall hold a public hearing in the locality of the proposed surface mining and reclamation operations.

(b) In determining whether to hold a public hearing, the commission shall consider any objections that have been filed, and if no substantial written objections have been filed, no hearing shall be required.

(c) The commission shall publish notice of the date, time, and location of the public hearing in the newspaper with the greatest general circulation in the locality at least once a week for three consecutive weeks before the scheduled hearing date.

[Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 853, ch. 379, § 5, eff. June 6, 1979.]

§ 131.164. Repealed by Acts 1979, 66th Leg., p. 1991, ch. 784, § 5, eff. Aug. 27, 1979

The repealed section, relating to transcripts of public hearings, was derived from Acts 1977, 65th Leg., p. 2626, ch. 871, art. I, § 1.

§ 131.165. Procedure

The commission shall comply with the Administrative Procedure and Texas Register Act [1] in all proceedings under this chapter except where inconsistent with this chapter.

[Acts 1977, 65th Leg., p. 2626, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1989, ch. 784, § 2, eff. Aug. 27, 1979.]

[1] Civil Statutes, art. 6252–13a.

§ 131.166. Repealed by Acts 1979, 66th Leg., p. 1991, ch. 784, § 5, eff. Aug. 27, 1979

The repealed section, relating to a decision without an initial hearing, was derived from Acts 1977, 65th Leg., p. 2626, ch. 871, art. I, § 1.

[Sections 131.167 to 131.200 reserved for expansion]

SUBCHAPTER E. BONDS AND DEPOSITS

§ 131.201. Performance Bond Requirement

(a) After a surface mining permit application has been approved but before the permit is issued, the applicant shall file with the commission, on a form prescribed by rule, a bond for performance payable to the State of Texas and conditioned on full and faithful performance of all the requirements of this chapter and the permit.

(b) The bond shall cover that area of land within the permit area on which the operator will initiate and conduct surface mining and reclamation operations, and as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the commission an additional bond or bonds to cover the increments in accordance with Sections 131.202 through 131.206 of this code.

[Acts 1977, 65th Leg., p. 2626, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.202. Amount of Performance Bond

(a) The amount of the bond required for each bonded area depends on the reclamation requirements of the approved permit and shall be determined by the commission.

(b) The commission's determination shall be based on at least two independent estimates, one of which shall be submitted by the permit applicant and the other prepared at the commission's direction under procedures established by rule. Only one independent estimate need be submitted if the applicant waives his right to submit an estimate.

(c) The amount of the bond shall be determined by the commission and shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by a third party in the event of forfeiture, but in no event shall the bond exceed the highest independent estimate made under this section.

[Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.203. Bond Without Surety

The commission may accept the bond of the operator itself, without separate surety, if the operator demonstrates to the satisfaction of the commission the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient to self-insure or bond the amount.

[Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.204. Extent of Liability Under Bond

Liability under the bond shall be for the duration of surface mining and reclamation operations and

for a period coincident with the operator's responsibility pursuant to Section 131.102 of this code.
[Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.205. Security for Bond

(a) The bond shall be executed by the operator and a corporate surety licensed to do business in this state, or the operator may elect to deposit cash or negotiable securities acceptable to the commission, or an assignment of a savings account in a Texas bank on an assignment deposit form prescribed by the commission's rules.

(b) A cash deposit or market value of the substitute collateral shall be equal to or greater than the amount of the bond required for the bonded area.

(c) Cash or other substitute collateral shall be deposited on the same terms as the terms on which surety bonds may be deposited.
[Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.206. Increase or Decrease of Bond

(a) The amount of the bond or deposit required and the terms of acceptance of the applicant's bond or substitute collateral may be increased or decreased from time to time to reflect changes in the cost of future reclamation of land mined or to be mined.

(b) The amount of the bond or substitute collateral may be reduced only in accordance with the provisions of Sections 131.208 through 131.213 of this code.
[Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.207. Forfeiture of Operator's Performance Bond

On issuance of a final order revoking an operator's permit for failure to comply with an order of the commission to take action as required by this chapter or rules adopted under this chapter, the operator's performance bond shall be forfeited if it is determined that forfeiture is necessary to reclaim land disturbed by the operator's surface mining operation.
[Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.208. Application for Release of Performance Bond or Deposit

(a) At any time, an operator may file an application with the commission for the release of all or part of the performance bond or deposit.

(b) The application shall be on a form prescribed by the commission and in addition to other information the commission may require, shall include the type and the approximate date of reclamation work performed and a description of the results achieved as they relate to the operator's reclamation plan.

(c) The commission shall file a copy of the bond release application for public inspection with the county clerk at the county courthouse of the county in which the surface mining and reclamation operation is located.
[Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.209. Notice

(a) The operator shall submit a copy of a notice that has been published once a week for four consecutive weeks in the newspaper of greatest general circulation in the locality of the surface mining and reclamation operation.

(b) The advertisement shall be considered part of any bond release application and shall include:

(1) notice of the location and boundaries of the land affected;

(2) the permit number and the date approved;

(3) the amount of the bond filed and the portion sought to be released; and

(4) the location at which the bond release application has been placed for public inspection.
[Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.210. Inspection and Evaluation

(a) On receipt of the notice and request, the commission shall conduct an inspection and evaluation of the reclamation work involved, the inspection and evaluation to occur within a reasonable time not to exceed 45 days.

(b) The evaluation shall consider among other things:

(1) the degree of difficulty to complete remaining reclamation;

(2) whether pollution of surface and subsurface water is occurring;

(3) the probability of continuance or future occurrence of pollution; and

(4) the estimated cost of abating pollution.
[Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.211. Basis for Release of Bond or Deposit

The commission may release in whole or part the bond or deposit if it is satisfied that reclamation covered by the bond or deposit or a portion of the bond or deposit has been accomplished as required by this chapter according to the following schedule:

(1) when the operator completes required backfilling, regrading, and drainage control of a bonded area as provided in his approved recla-

mation plan, the commission may authorize the release of up to 75 percent of the bond or substitute collateral for the applicable permit area, provided the amount of the unreleased portion of the bond or substitute collateral is not less than the amount necessary to assure completion of the reclamation work by a third party in the event of forfeiture; and

(2) when the operator has successfully completed the remaining reclamation activities, but not before the expiration of the period specified for operator responsibility in Section 131.102 of this code, the commission may release the remaining portion of the bond or substitute collateral, provided that no bond is fully released until all reclamation requirements of this chapter are fully met.

[Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.212. Disapproval of Application for Bond or Deposit Release

If the commission disapproves the application for release of the bond or deposit or a portion of the bond or deposit, it shall notify the operator in writing of the reasons for disapproval and recommend corrective actions necessary to secure the release.

[Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.213. Notice of Release to Local Governmental Agency

Within 30 days after an application for total or partial bond or deposit release is filed with the commission, the commission shall notify the local governmental agency in which the surface mining operation is located by certified mail.

[Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.214. Objections to Release

(a) Any person or the officer or head of a federal, state, or local governmental agency is entitled to file written objections to the proposed release from the bond or deposit.

(b) The objections must be filed with the commission within 30 days after the last publication of notice as provided in Section 131.209 of this code.

(c) If the commission determines that the application is of a significance sufficient to warrant a public hearing considering the objections that have been filed, the commission shall hold a public hearing.

(d) The commission shall give notice to all interested parties of the time and place of the hearing which shall be conducted as provided in Sections 131.160 through 131.164 of this code.

(e) The hearing shall be held in the locality of the surface mining operation proposed for bond or deposit release.

(f) Notice of the date, time, and location of the public hearing shall be published by the commission as provided in Section 131.163 of this code.

[Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 131.215 to 131.230 reserved for expansion]

SUBCHAPTER F. FUNDS

§ 131.231. Land Reclamation Fund

(a) Money received through the payment of fees, loans, grants, gifts, penalties, bond forfeitures, and other money received by the commission shall be deposited in the State Treasury and credited to a special account to be designated the land reclamation fund.

(b) The fund shall be available to the commission and may be spent for the administration and enforcement of this chapter and for the reclamation of land affected by surface mining operations.

[Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.232. Appropriation

Money for the operation of the commission under this chapter shall be appropriated by the legislature.

[Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.233. Use of Proceeds From Bond Forfeitures and Penalties

Proceeds from the forfeiture of bonds and penalties recovered shall be spent to reclaim land as provided in this chapter with respect to which the bonds were provided and the penalties assessed.

[Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.234. Reclamation of Land

(a) In the reclamation of land affected by surface mining for which funds are available, the commission may use services of other state agencies or the federal government and may compensate them for the services.

(b) The commission may have reclamation work done by its own employees or by employees of other governmental agencies or through contracts with qualified persons.

(c) The contracts shall be awarded to the lowest bidder on competitive bids after reasonable advertisement.

(d) The commission and any other agency and any contractor under a contract are entitled to access to the land affected to carry out the reclamation.
[Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 131.235 to 131.260 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT

§ 131.261. Conditions, Practices, and Violations Creating Imminent Danger or Causing Imminent Harm

(a) On the basis of any inspection, if the commission or its authorized representative or agent determines that a condition or practice exists or that a permittee is in violation of a requirement of this chapter or a permit condition required by this chapter, and that this condition, practice, or violation also creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, a member of the commission shall immediately order a cessation of surface mining operations on the portion of the area relevant to the condition, practice, or violation.

(b) The cessation order shall set a time and place for a hearing to be held before the commission and shall be held as soon after the order is issued as is practicable.

(c) The requirements of Section 131.159 of this code relating to time for notice, newspaper notice, and method of giving notice do not apply to a hearing under this section, but general notice shall be given in the manner that the commission judges to be practicable under the circumstances.

(d) No more than 24 hours after the commencement of the hearing and without adjournment, the commission shall affirm, modify, or set aside the order.
[Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.262. Violations Not Creating Imminent Danger or Causing Imminent Harm

(a) On the basis of an inspection, if the commission or its authorized representative or agent determines that a permittee is in violation of a requirement of this chapter or a permit condition required by this chapter, but the violation does not create an imminent danger to the health or safety of the public or is not causing or reasonably expected to cause significant imminent harm to land, air, or water resources, the commission shall issue a notice to the permittee or his agent setting a reasonable time not to exceed 30 days for the abatement of the violation.

(b) If, on expiration of the period of time as originally set or subsequently extended, for good cause shown, and on written finding of the commission, the commission finds that the violation has not been abated, it may order a cessation of surface mining operations on the portion of this area relevant to the violation. However, if requested by the operator, a hearing must be held prior to a commission finding or order.

(c) The cessation order shall remain in effect until the commission determines that the violation has been abated or until modified, vacated, or terminated by the commission under Section 131.263 of this code.
[Acts 1977, 65th Leg., p. 2631, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.263. Continuous Violations

(a) On the basis of an inspection, if the commission has reason to believe that a pattern of violations of any requirements of this chapter or any permit conditions required by this chapter exists or has existed, and if the commission also finds that these violations are caused by the unwarranted failure of the permittee to comply with requirements of this chapter or permit conditions or that the violations are wilfully caused by the permittee, the commission shall issue an order to the permittee forthwith to show cause as to why the permit should not be suspended or revoked.

(b) The order shall set a time and place for a public hearing to be held in accordance with the notice and procedural requirements of Sections 131.159 through 131.164 of this code.

(c) On failure of a permittee to show cause why the permit should not be suspended or revoked, the commission shall promptly suspend, or revoke the permit.
[Acts 1977, 65th Leg., p. 2631, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.264. Form of Notices and Orders

(a) Notices and orders issued under Sections 131.261 through 131.263 of this code shall set forth with reasonable specificity:

(1) the nature of the violation and the remedial action required;

(2) the period of time established for abatement; and

(3) a reasonable description of the portion of the surface mining and reclamation operation to which the notice or order applies.

(b) Each notice or order issued under this section shall be given promptly to the permittee or his agent by the commission.

(c) Notices and orders shall be in writing and shall be signed by the commission or its authorized representative.

(d) A notice or order issued under Sections 131.261 through 131.263 of this code may be modified, vacated, or terminated by the commission.

[Acts 1977, 65th Leg., p. 2631, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.265. Civil Actions

(a) The commission may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the permittee:

(1) violates or fails or refuses to comply with an order or decision issued by the commission under this chapter;

(2) interferes with, hinders, or delays the commission or its authorized representative in carrying out the provisions of this chapter;

(3) refuses to admit an authorized representative to the mine;

(4) refuses to permit inspection of the mine by an authorized representative;

(5) refuses to furnish information or a report requested by the commission under the commission's rules; or

(6) refuses to permit access to and copying of records the commission determines reasonably necessary to carry out the provisions of this chapter.

(b) The action shall be brought in a district court in Travis County or in the county in which the greater portion of the surface mining and reclamation operation is located.

(c) The court has jurisdiction to provide the relief that is appropriate, and relief granted by the court to enforce Subdivision (1) of Subsection (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of the order under this chapter unless before that time the district court granting the relief sets the order aside or modifies it.

[Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.266. Injunctive Relief and Civil Penalty

(a) The commission may have a civil suit instituted for injunctive relief to restrain a permittee from continuing a violation or threatening a violation or for the assessment of a civil penalty of not more than $5,000 as the court considers proper for each day of violation, or for both.

(b) In determining the amount of the civil penalty, consideration shall be given to:

(1) the permittee's history of previous violations under this chapter;

(2) the appropriateness of the penalty to the size of the business of the permittee;

(3) the seriousness of the violation, including irreparable harm to the environment and hazard to the health or safety of the public;

(4) whether the permittee was negligent; and

(5) the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notice of the violation.

[Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.267. Criminal Penalty for Violating Permits and Orders

A person who wilfully and knowingly violates a condition of a permit issued under this chapter or fails or refuses to comply with an order issued under Section 131.264 of this code or an order incorporated in a final decision issued by the commission under this chapter, on conviction by a district court, shall be punished by a criminal penalty of not more than $10,000 or by imprisonment for not more than one year or by both.

[Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.268. Criminal Penalty for Corporate Permittee

If a corporate permittee violates a condition of a permit issued under this chapter or fails or refuses to comply with an order issued under Section 131.264 of this code or an order incorporated in a final decision issued by the commission under this chapter, a director, officer, or agent of the corporation who wilfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal, on conviction by a district court, is punishable by a criminal penalty of not more than $10,000 or by imprisonment for not more than one year or by both.

[Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.269. Criminal Penalty for False Statement, Representation, or Certification

A person who knowingly makes a false statement, representation, or certification or who knowingly fails to make a statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained under this chapter, on conviction by a district court, is punishable by a criminal penalty of not more than $10,000 or by imprisonment for not more than one year or by both.

[Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.270. Recovery of Civil Penalties

(a) The commission may request the attorney general to institute a suit to recover civil or criminal penalties or to obtain injunctive relief or for both as

provided in Sections 131.265 through 131.269 of this code.

(b) Suit shall be brought in a district court in Travis County or in the county in which the greater portion of the surface mining and reclamation operation is located.

[Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 132. INTERSTATE MINING COMPACT

Section
132.001. Adoption of Compact.
132.002. Text of Compact.
132.003. Establishment and Duties of Texas Mining Council.
132.004. Membership of Texas Mining Council.
132.005. Terms of Office.
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§ 132.001. Adoption of Compact

The Interstate Mining Compact is enacted into law and entered into with all other jurisdictions legally joining in the compact in the form provided in Section 132.002 of this code.

[Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.063, purports to add § 1a to Acts 1975, 64th Leg., ch. 136 [now, this Chapter], without reference to repeal of said Act by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5). As so added, § 1a reads:

"The office of Interstate Mining Compact Commissioner for Texas is subject to the Texas Sunset Act [Civil Statutes, art. 5429k]; and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 132.002. Text of Compact

The Interstate Mining Compact reads as follows:

INTERSTATE MINING COMPACT

ARTICLE I. FINDINGS AND PURPOSES

(a) The party states find that:

(1) Mining and the contributions thereof to the economy and well-being of every state are of basic significance.

(2) The effects of mining on the availability of land, water, and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.

(3) Measures for the reduction of the adverse effects of mining on land, water, and other resources may be costly and the devising of means to deal with them are of both public and private concern.

(4) Such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

(5) The states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles and with due regard for local conditions.

(b) The purposes of this compact are to:

(1) advance the protection and restoration of land, water, and other resources affected by mining;

(2) assist in the reduction or elimination or counteracting of pollution or deterioration of land, water, and air attributable to mining;

(3) encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated;

(4) assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of such land and other resources;

(5) assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

ARTICLE II. DEFINITIONS

As used in this compact, the term:

(a) "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction.

(b) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

ARTICLE III. STATE PROGRAMS

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

(a) the protection of the public and the protection of adjoining and other landowners from damage to their land and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations;

(b) the conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational, or aesthetic value and utility of land and water;

(c) the institution and maintenance of suitable programs of adaptation, restoration, and rehabilitation of mined land;

(d) the prevention, abatement, and control of water, air, and soil pollution resulting from mining, present, past, and future.

ARTICLE IV. POWERS

In addition to any other powers conferred on the Interstate Mining Commission established by Article V of this compact, such commission shall have power to:

(a) study mining operations, processes, and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes, and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change;

(b) study the conservation, adaptation, improvement, and restoration of land and related resources affected by mining;

(c) make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact;

(d) gather and disseminate information relating to any of the matters within the purview of this compact;

(e) cooperate with the federal government and any public or private entities having interest in any subject coming within the purview of this compact;

(f) consult, on the request of a party state and within resources available therefor, with the officials of such state in respect to any problem within the purview of this compact;

(g) study and make recommendations with respect to any practice, process techniques, or course of action that may improve the efficiency of mining or the economic yield from mining operations;

(h) study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

ARTICLE V. THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "Interstate Mining Commission," hereinafter called "the commission." The commission shall be composed of one commissioner from each party state who shall be the governor thereof. Pursuant to the laws of his party state, each governor shall have the assistance of any advisory body (including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the commission. In any instance where a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, he shall designate an alternate, from among the members of the advisory body required by this paragraph, who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the governor to the commission in such manner as its bylaws may provide.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission making a recommendation pursuant to Articles IV(c), IV(g), and IV(h) of this compact, or requesting, accepting, or disposing of funds, services, or other property pursuant to this paragraph or Article V(g), V(h), or VII of this compact, shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor thereof. All other action shall be by a majority of those present and voting; provided that action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The commission shall appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission. The executive director, the treasurer, and such other personnel as the commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the commission.

(e) Irrespective of the civil service, personnel, or other merit system laws of any of the party states, the executive director with the approval of the commission, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(g) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and service, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize, and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to Paragraph (g) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.

(i) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(j) The commission annually shall make to the governor, legislature, and advisory body required by Article V(a) of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been made by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE VI. ADVISORY, TECHNICAL, AND REGIONAL COMMITTEES

The commission shall establish such advisory, technical, and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the commission.

ARTICLE VII. FINANCE

(a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-half in equal shares, and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the commission shall employ such available public source

or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article V(h) of this compact; provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article V(h) of this compact, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII. ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any four or more states. Thereafter, this compact shall become effective as to any other state on its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE IX. EFFECT ON OTHER LAWS

Nothing in this compact shall be construed to limit, repeal, or supersede any other law of any party state.

ARTICLE X. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

[Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 132.003. Establishment and Duties of Texas Mining Council

The Texas Mining Council is established in the office of the governor and shall perform the duties of the advisory board provided in Section (a), Article V of the Interstate Mining Compact.

[Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 132.004. Membership of Texas Mining Council

(a) The Texas Mining Council is composed of 11 members appointed by the governor.

(b) Each member of the Texas Mining Council shall be a member of the general public who has demonstrated a continuing interest in conservation matters, the head of a state agency, board, or commission, or a representative of the mining industry.

(c) Of the 11 members of the Texas Mining Council, at least three shall be members of the general public who have demonstrated an interest in conservation matters, at least three shall be representatives of the mining industry, and at least two shall be heads of state agencies, boards, or commissions.

(d) The service of members who are heads of state agencies, boards, or commissions is in addition to their other duties.

(e) A person serving as a member of the Texas Mining Council who is the head of a state agency, board, or commission ceases to be a member of the council if he ceases to be head of a state agency, board, or commission.

[Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 132.005. Terms of Office

Members of the Texas Mining Council shall serve for terms of two years.

[Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 132.006. Compensation and Travel Expenses

(a) The members of the Texas Mining Council are not entitled to compensation for their services.

(b) The members of the Texas Mining Council are entitled to receive actual expenses incurred for attendance at council meetings or attendance at meetings of the Interstate Mining Commission as alternate for the governor.

[Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 132.007. Membership in Employees Retirement System

(a) The Employees Retirement System of Texas may enter into agreements with the Interstate Mining Commission for participation in the retirement system and other benefit programs for state employees administered by the agency or agencies.

(b) An agreement made under this section shall provide, as nearly as possible, for rights, contributions, obligations, and benefits comparable to those accorded employees of this state participating in or benefiting from the program involved.

[Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 132.008. Filing Bylaws and Amendments

A copy of the bylaws and all amendments to the bylaws of the Interstate Mining Commission promulgated under Section (i), Article V of the Interstate Mining Compact shall be filed in the office of the Secretary of State.

[Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

TITLE 5. GEOTHERMAL ENERGY AND ASSOCIATED RESOURCES

CHAPTER 141. GEOTHERMAL RESOURCES

SUBCHAPTER A. GENERAL PROVISIONS

Section
141.001. Short Title.
141.002. Declaration of Policy.
141.003. Definitions.

SUBCHAPTER B. POWERS AND DUTIES OF THE RAILROAD COMMISSION

141.011. General Duty of the Railroad Commission.
141.012. Rules.

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSIONER AND BOARD

141.071. General Authority of Commissioner.
141.072. Deposit of Fees.
141.073. Lease of Permanent School Fund Land.
141.074. Furnishing Lists of Land to Other Agencies.
141.075. Notice of Sale.
141.076. Bids.
141.077. Leases and Permits for Governmental Agencies.
Section
141.078. Unit Agreements.
141.079. Report to Legislature.

SUBCHAPTER A. GENERAL PROVISIONS

§ 141.001. Short Title

This chapter may be cited as the Geothermal Resources Act of 1975.

[Acts 1977, 65th Leg., p. 2640, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.002. Declaration of Policy

It is declared to be the policy of the State of Texas that:

(1) the rapid and orderly development of geothermal energy and associated resources located within the State of Texas is in the interest of the people of the State of Texas;

(2) in developing the state's geothermal energy and associated resources, the primary purpose is to provide a dependable supply of energy in an efficient manner that avoids waste of the energy resources;

(3) consideration shall be afforded to protection of the environment, to protection of correlative rights, and to conservation of natural resources by all agencies and officials of the State of Texas involved in directing and prescribing rules or orders governing the exploration, development, and production of geothermal energy and associated resources and by-products in Texas;

(4) since geopressured geothermal resources in Texas are an energy resource system, and since an integrated development of components of the resources, including recovery of the energy of the geopressured water without waste, is required for best conservation of these natural resources of the state, all of the resource system components, as defined in this chapter, shall be treated and produced as mineral resources; and

(5) in making the declaration of policy in Subdivision (4) of this section, there is no intent to make any change in the substantive law of this state, and the purpose is to restate the law in clearer terms to make it more accessible and understandable.

[Acts 1977, 65th Leg., p. 2640, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 394, ch. 185, § 1, eff. Aug. 27, 1979.]

§ 141.003. Definitions

In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Board" means the School Land Board. (New.)

(3) "Commissioner" means the Commissioner of the General Land Office.

(4) "Geothermal energy and associated resources" means:

(A) products of geothermal processes, embracing indigenous steam, hot water and hot brines, and geopressured water;

(B) steam and other gasses, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(C) heat or other associated energy found in geothermal formations; and

(D) any by-product derived from them.

(5) "By-product" means any other element found in a geothermal formation which is brought to the surface, whether or not it is used in geothermal heat or pressure inducing energy generation.

[Acts 1977, 65th Leg., p. 2641, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 395, ch. 185, § 2, eff. Aug. 27, 1979.]

[Sections 141.004 to 141.010 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF THE RAILROAD COMMISSION

§ 141.011. General Duty of the Railroad Commission

Except for duties and responsibilities given to other agencies and officials under this chapter, the commission shall regulate the exploration, development, and production of geothermal energy and associated resources on public and private land for the purpose of conservation and the protection of correlative rights.

[Acts 1977, 65th Leg., p. 2641, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.012. Rules

(a) The commission, in consultation with the commissioner, executive director of the Texas Water Quality Board, and the executive director of the Texas Air Control Board, shall make, publish, and enforce rules providing for the rapid and orderly exploration, development, and production of geothermal energy and associated resources and to accomplish the purposes of this chapter.

(b) The rules made under this section shall include rules governing:

(1) protection of the environment against damage resulting from the exploration, development, and production of geothermal energy and associated resources;

(2) prevention of waste of natural resources, including geothermal energy and associated resources, in connection with the exploration, development, and production of geothermal energy and associated resources;

(3) protection of the general public against injury or damage resulting from the exploration, development, and production of geothermal energy and associated resources; and

(4) protection of correlative rights against infringement resulting from the exploration, development, and production of geothermal energy and associated resources.

(c) Rules shall be made and enforced only after a public hearing.

[Acts 1977, 65th Leg., p. 2641, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 141.013 to 141.070 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSIONER AND BOARD

§ 141.071. General Authority of Commissioner

To facilitate and encourage the rapid and orderly development of geothermal energy and associated resources, the commissioner may:

(1) provide for the orderly exploration of land that belongs to the permanent school fund, excluding wildlife refuges and recreational areas except as provided in Section 141.077 of this code; and

(2) issue permits and charge reasonable fees for the permits in accordance with rules promulgated under this chapter by the board.

[Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.072. Deposit of Fees

The fees collected from issuance of the permits shall be deposited in General Land Office Fund 80 and used as the legislature may direct.

[Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.073. Lease of Permanent School Fund Land

(a) On direction of the commissioner, the board may lease land that belongs to the permanent school fund, excluding wildlife refuges and recreational areas, for the production of geothermal energy and associated resources.

(b) The board has full authority to set the terms and conditions of leases and may adopt rules relating to exploration, development, and production of geothermal energy and associated resources as the board determines to be in the best interest of the state.

(c) The board may require the taking in kind of the state's interest in the geothermal energy and associated resources or its by-products provided from this land.

[Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.074. Furnishing Lists of Land to Other Agencies

Before advertising land for lease, the commissioner shall furnish a list of the tracts considered by the board for lease to the Texas Water Quality Board, the Texas Air Control Board, the commission, and any other state or federal agency that might have information that would be beneficial to the board in its determination of terms and conditions of the proposed lease.

[Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.075. Notice of Sale

Land offered for lease to the public by the board shall be advertised in four daily newspapers in the state that have general circulation at least 30 days in advance of the sale date. The notice shall be published in three issues of each newspaper.

[Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.076. Bids

(a) Sales of leases shall be made by sealed bids.

(b) The board is entitled to reject any and all bids, but if it accepts a bid, the bid must be determined by the board to be in the best interest of the State of Texas.

[Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.077. Leases and Permits for Governmental Agencies

(a) The board may grant permits and leases to state and federal institutions, organizations, or groups desiring to do exploratory or experimental research of geothermal energy and associated resource potentials.

(b) These permits and leases may be granted on land that belongs to the permanent school fund, excluding wildlife refuges and recreational areas.

(c) The permits and leases may be issued or granted for research or experimental purposes under rules and conditions the board determines to be in the best interest of the state.

(d) In granting these leases, the commissioner and board do not have to follow the procedures in this subchapter for leasing to the public.

[Acts 1977, 65th Leg., p. 2643, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.078. Unit Agreements

(a) The board may approve unit agreements of one or more leased tracts on application of the lessees.

(b) Before approving any unit agreement, the board must find that the unit agreement if approved by the board will be in the best interest of the state.

[Acts 1977, 65th Leg., p. 2643, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.079. Report to Legislature

During the first 30 days of each regular session of the legislature, the commissioner shall report on the status of the exploration, development, and production of geothermal energy and associated resources under the land governed by this subchapter.

[Acts 1977, 65th Leg., p. 2643, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 142. NATURAL ENERGY AND WATER RESOURCES COMPACT

Section
142.001. Ratification.
142.002. Appointment of Commissioners.
142.003. Terms and Oath of Commissioners.
142.004. Compensation.
142.005. Text of Compact.

§ 142.001. Ratification

The compact set out in Section 142.005 of this code is ratified by this state.

[Added by Acts 1979, 66th Leg., p. 2001, ch. 785, § 4, eff. June 13, 1979.]

§ 142.002. Appointment of Commissioners

When the compact takes effect as provided in Article I, the governor, the lieutenant governor, and the speaker of the house of representatives shall each appoint a commissioner.

[Added by Acts 1979, 66th Leg., p. 2001, ch. 785, § 4, eff. June 13, 1979.]

§ 142.003. Terms and Oath of Commissioners

(a) Each commissioner serves a term of two years and until his successor is appointed and has qualified.

(b) Each commissioner shall take the constitutional oath of office and shall also take an oath to faithfully perform his duties as commissioner.

(c) If a vacancy occurs in the office of commissioner, the original appointing officer shall appoint a successor to serve for the unexpired portion of the term.

[Added by Acts 1979, 66th Leg., p. 2001, ch. 785, § 4, eff. June 13, 1979.]

§ 142.004. Compensation

Each commissioner is entitled to compensation and reimbursement for expenses as provided by legislative appropriation.

[Added by Acts 1979, 66th Leg., p. 2001, ch. 785, § 4, eff. June 13, 1979.]

§ 142.005. Text of Compact

The compact reads as follows:

Article I. The states of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas are eligible to ratify this compact. When three of those states have ratified it, the compact takes effect as to those three states. It takes effect as to others of them when they ratify it.

Article II. (a) The purposes of this compact are to:

(a) The purposes of this compact are to:

(1) provide for the conservation and wise utilization of natural energy and water resources by party states;

(2) establish the relative importance of different types of natural energy and water resources being used;

(3) promote comity among the party states and remove causes of present and future controversies;

(4) foster the expeditious development of agriculture and industry in the party states; and

(5) give priority to the exchange of natural energy and water resources among the party states.

(b) To accomplish the purposes of this compact, the party states pledge their mutual cooperation and their intention to develop and execute appropriate programs.

Article III. (a) This compact applies within each party state to individuals, associations, corporations, and governmental and private entities claiming any right to the use of the natural energy or water resources in a party state, except as otherwise provided in this compact.

(b) Each party state agrees that within a reasonable time it may enact laws designed to promote a free flow of natural energy and water resources among all party states. These laws will not apply to states that are not parties to this compact.

Article IV. (a) An administrative agency known as the Interstate Natural Energy and Water Resources Commission is created. Each party state shall appoint, in accordance with its laws, three members of the commission. Members of the commission are known as commissioners.

(b) The commission shall conduct studies and make recommendations to the party states regarding the conservation and wise utilization of natural energy and water resources by those states. It shall recommend to the party states methods of coordinating the exercise of state power to promote maximum conservation and utilization of natural energy and water resources.

(c) The commission may meet as often as it considers necessary, but it must meet at least once each year. At least once each year the commission shall report its findings and recommendations to the governor and legislature of each party state.

(d) The commission shall organize and adopt rules and bylaws for conducting its business. It shall adopt a seal. The commission may not act on any matter except by an affirmative vote of a majority of all commissioners serving on the commission.

(e) The commission shall elect annually from among its members a chairman, vice-chairman, and treasurer. It shall appoint a director who serves at its pleasure. The director is also secretary of the commission. The director and treasurer shall be bonded in an amount and in a manner determined by the commission. The director is responsible for the appointment and discharge of personnel. He shall establish personnel policies, retirement programs, and employee benefit programs, subject to the approval of the commission.

(f) The commission shall establish and maintain such facilities as it considers necessary for transacting its business.

(g) For the purposes of this compact, the commission may accept and use gifts or grants of money, equipment, or supplies from any public or private legal entity and may accept and use the services of personnel made available to it by any public or private legal entity.

Article V. (a) Nothing in this compact shall be construed as:

(1) affecting the jurisdiction of any interstate agency in which a party state participates;

(2) affecting the provisions of any interstate compact to which a member state is a party, or any obligation of a member state under such a compact;

(3) discouraging additional interstate compacts in which one or more parties to this compact may be a party;

(4) discouraging the coordination of activities regarding a specific natural resource or any aspect of natural resource management;

(5) discouraging the establishment of intergovernmental planning agencies within the area of the states that are party to this compact; or

(6) limiting the jurisdiction or activities of any participating government or any agency or officer of a participating government except as expressly provided in this compact.

Article VI. The commission shall submit to the governor and legislature of each party state a budget of its estimated expenditures for a period of time as is appropriate, based on the laws of that state. Each budget of estimated expenditures shall contain specific recommendations as to the apportionment of costs among the party states.

Article VII. Any party state may, by legislative act and one year's notice, withdraw from this compact.

Article VIII. The provisions of this compact are severable. If any provision or application of it is held invalid, that does not affect the validity of any other provision or application. The provisions of this compact shall be construed liberally to accomplish its purposes.

Article IX. This compact does not seek to affect political balance within the federal system and shall not be construed as requiring the consent of congress under Article I, Section 10, United States Constitution.

[Added by Acts 1979, 66th Leg., p. 2001, ch. 785, § 4, eff. June 13, 1979.]

TITLE 6. TIMBER

CHAPTER 151. PROVISIONS GENERALLY APPLICABLE

SUBCHAPTER A. BRANDING AND FLOATING TIMBER

Section
151.001. Definitions.
151.002. Timber to be Branded.
151.003. Recording Brand.
151.004. Filing Written Report.
151.005. Evidence of Ownership.
151.006. Penalties.
151.007. Venue.

SUBCHAPTER B. BILL OF SALE FOR PURCHASE OF TREES AND TIMBER

151.041. Required Bill of Sale.
151.042. Information in Bill of Sale.
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151.044. Statement in Lieu of Bill of Sale for Staves or Crossties.
151.045. Penalty.
151.046. Applicability.

SUBCHAPTER A. BRANDING AND FLOATING TIMBER

§ 151.001. Definitions

In this subchapter:

(1) "Lumber" means lumber attached or bound together in some way for floating, but does not include loose lumber.

(2) "Shingles" means shingles in bunches or bundles, but does not include loose shingles.

[Acts 1977, 65th Leg., p. 2644, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.002. Timber to be Branded

A person engaged in floating or rafting timber on the water of a river or creek of this state shall have a log brand and shall brand distinctly each log or stick which he floats or hauls and puts in the water for sale or market.

[Acts 1977, 65th Leg., p. 2644, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.003. Recording Brand

(a) A person engaged in floating or rafting timber on the water of a river or creek of this state shall have his log brand recorded by the county clerk in:

(1) each county in which he cuts timber; and

(2) the county in which he proposes to sell or market the timber.

(b) The brand shall be recorded in a book kept by the county clerk for that purpose or on microfilm as permitted in Article 1941(a), Revised Civil Statutes of Texas, 1925.

(c) The county clerk shall receive the same fee as is allowed by law for recording stock brands.

[Acts 1977, 65th Leg., p. 2644, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.004. Filing Written Report

(a) A person who floats any logs or timber in this state shall make a written report under oath on the first day of January, April, July, and October of each year, or within 15 days of those dates, showing:

(1) the number of logs cut or floated during the next preceding three months;

(2) the survey or surveys of land from which the logs were cut or carried;

(3) the number of logs cut from each survey; and

(4) a description of the brand placed on the logs.

(b) The person who floats the logs or timber shall file the report required in Subsection (a) of this section with the county clerk of the county in which the timber was cut. The county clerk shall record and index the report in a book kept for that purpose or on microfilm as permitted in Article 1941(a), Revised Civil Statutes of Texas, 1925.

(c) This section of the code does not apply to pickets, posts, rails, or firewood.

[Acts 1977, 65th Leg., p. 2644, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.005. Evidence of Ownership

A certificate signed by the county clerk, containing a description of a log brand and the name of the owner of the brand, with a transfer on the back of it, signed and acknowledged by the owner or proved as other instruments for record, shall be prima facie evidence that the person to whom the transfer is made owns the logs described in the certificate.

[Acts 1977, 65th Leg., p. 2644, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.006. Penalties

(a) A person who buys or sells any timber or log floating, or that has been floated, in this state before it is branded shall be fined not more than $10 for each unbranded log or piece of timber purchased, sold, or traced.

(b) A person shall be fined not more than $200 for each offense if he:

(1) floats any unbranded log or timber for market;

(2) fails to make the reports required under Section 151.004 of this code;

(3) brands any log or timber of another without his authority;

(4) defaces a brand on any log or timber except when it is in the act of being sawed or manufactured into lumber or other commodity for use in building; or

(5) is not an employee of the owner and without the written consent of the owner takes into possession any branded or unbranded log or timber cut for floating or sawing, or any sawed timber, lumber, or shingle floating in any water of this state or deposited on the banks of a river or stream in this state.

[Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.007. Venue

The accused may be prosecuted in any county in which the timber or lumber was deposited in the water or in which it was unlawfully taken into possession or unlawfully defaced, sold, purchased, or branded.

[Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 151.008 to 151.040 reserved for expansion]

SUBCHAPTER B. BILL OF SALE FOR PURCHASE OF TREES AND TIMBER

§ 151.041. Required Bill of Sale

Before purchasing any trees or timber in the form of logs or pulpwood, a person, firm, partnership, or corporation shall require a bill of sale for the trees or timber, executed and acknowledged by the seller in the manner required by law for registration.

[Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.042. Information in Bill of Sale

The bill of sale shall include:

(1) the name and address of the seller and purchaser;

(2) a description of the survey or tract of land from which the logs or pulpwood were cut;

(3) the number of logs or pulpwood; and

(4) the markings, if any, on the logs or pulpwood.

[Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.043. Expenses in Connection With Bill of Sale

Notarial fees, filing fees, and other expenses in connection with the bill of sale shall be assumed and paid by the purchaser.

[Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.044. Statement in Lieu of Bill of Sale for Staves or Crossties

(a) On or before the 10th day of each succeeding month from the date of purchase, a purchaser of staves or crossties who does not secure a bill of sale or deed to the staves or crossties shall file a verified statement with the county clerk of the county in which the land is located from which the staves or crossties were cut.

(b) The verified statement shall include:

(1) the name and address of the seller and purchaser;

(2) a description of the survey or tract of land from which the staves or crossties were cut;

(3) the number of staves or crossties; and

(4) the markings, if any, on the staves or crossties.

(c) The verified statement shall be kept by the county clerk as a record for public inspection for a period of at least two years.

[Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.045. Penalty

A seller or purchaser who fails to see that a bill of sale is given in a sale as provided for in this subchapter, or a purchaser who does not secure a bill of sale and fails to file the statement required by Section 151.044 of this code, is guilty of a misdemeanor and on conviction is subject to a fine of not more than $100 or confinement for not more than 30 days in the county jail, or both.

[Acts 1977, 65th Leg., p. 2646, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.046. Applicability

The provisions of this subchapter shall not apply to the sale of finished lumber, cedar staves, wood, or posts.

[Acts 1977, 65th Leg., p. 2646, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 152. FOREST PEST CONTROL

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SUBCHAPTER A. GENERAL PROVISIONS

§ 152.001. Policy

It is the public policy of the State of Texas to control forest pests in or threatening forests in this state in order to protect forest resources, enhance the growth and maintenance of forests, promote stability of forest-using industries, protect recreational wildlife uses, and conserve other values of the forest.

[Acts 1977, 65th Leg., p. 2647, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.002. Public Nuisance

Forest pests are declared to be a public nuisance.

[Acts 1977, 65th Leg., p. 2647, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.003. Definitions

In this chapter:

(1) "Service" means the Texas Forest Service.

(2) "Forest pests" means insects and diseases that are harmful, injurious, or destructive to forests and whose damage, if uncontrolled, is of considerable economic importance, and includes:

(A) pine bark beetles of the genera Dendroctonus, Ips, Pissodes, and Hylobius;

(B) sawflies of the genus Neodiprion;

(C) defoliators in the genera Datana, Malacosoma, Hyphantria, Diapheromera, and Galerucella;

(D) pine shoot moth of the genus Rhyacionia;

(E) wilt of the genus Chalora; and

(F) rots of the genera Fomes and Polyporus.

(3) "Forest land" means land on which the trees are potentially valuable for timber products, protection of watersheds, wildlife habitat, recreational uses, or for other purposes, but does not include land within the incorporated limits of a village, town, or city.

(4) "Forest" means the standing trees on forest land.

(5) "Control" means prevent, retard, suppress, eradicate, or destroy.

(6) "Infestation" means actual infestation or infection at conditions beyond normal proportion causing abnormal epidemic loss to present or future commercial timber supply or both.

(7) "Landowner" and "owner" mean a person who owns forest land or has forest land under his direction irrespective of ownership.

(8) "Forest owner" means a person who owns the standing trees on forest land, either by a present right or by a future right under the terms of a valid existing contract.

(9) "Tract" means all contiguous land in common ownership.

[Acts 1977, 65th Leg., p. 2647, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 152.004 to 152.010 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF THE TEXAS FOREST SERVICE

§ 152.011. In General

The Texas Forest Service shall administer the provisions of this chapter and make all relevant determinations.

[Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.012. Surveys and Investigations

(a) The service shall make surveys and investigations to determine the existence of infestations of forest pests and means practical for their control by landowners.

(b) Duly delegated representatives of the service may enter private land and public land, including that held by the United States if permission is obtained, for the purpose of conducting surveys and investigations.

(c) All the service's information shall be available to all interested landowners.

[Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.013. Determination of Area Control Measures

If the service finds an infestation existent or threatened in the state, it shall determine:

(1) when control measures are needed;

(2) the nature of the control measures;

(3) availability of control measures; and

(4) the techniques by which the control measures shall be applied.

[Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.014. Notice of Finding of Infestation

After determining that an infestation exists, the service shall give notice of the fact by:

(1) placing a notice in a newspaper or newspapers in the county or counties in which any infested land is located, or, if there is no newspaper in the county, placing a notice in a newspaper or newspapers with general circulation in the county or counties in which any infested land is located, stating its findings and setting a time and place for a hearing on the need for the control of the pest, to be held not less than 10 days from the date of the notice;

(2) mailing copies of the notice to owners of forest land known to the service to have holdings in the affected area; and

(3) arranging for publicity on the subject by all news media serving the affected area.

[Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.015. Hearing

At the hearing, the agent of the service who presides shall:

(1) describe the conditions that have been found;

(2) explain the measures needed to control the pest infestation;

(3) hear all suggestions and protests; and

(4) record the proceedings.

[Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.016. Procedures for Control

(a) As soon as practicable after the hearing, the service shall promulgate procedures to be followed for the control of the infestation and shall:

(1) mail a copy to all appearing at the hearing and to all to whom notices were originally sent; and

(2) publish a copy in a newspaper circulated in the affected area in the same manner as publication of preliminary notice.

(b) Publication as provided in Subsection (a) of this section is notice to each landowner and each tract of land in the affected area on the date of publication.

[Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.017. Specific Control Measures

If the provisions of Sections 152.013 through 152.016 of this code have not been applied and control measures are needed to check the spread of the forest pests on forest land owned or controlled by any person, written notice, signed by a duly authorized representative of the service whose mailing address is shown on the notice, shall be given to the person owning or controlling the forest land.

[Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.018. Notice to Specific Landowner

(a) The notice required by Section 152.017 of this code shall inform the landowner of:

(1) the facts found to exist;

(2) his responsibilities for the control measures;

(3) the control technique recommended;

(4) the law under which control must be accomplished; and

(5) the authority of the service in the event the landowner takes no action toward controlling the pest.

(b) The notice may be given by:

(1) personal service on the landowner or on the person having control of the forest land;

(2) registered or certified mail directed to the landowner or person having control of the forest land at his last known address; or

(3) if the person or his address is unknown, publication in one issue of a newspaper of general circulation in the county in which the land is located.

(c) A published notice under Subsection (b) of this section shall include the information specified in Subsection (a) of this section, state the name of the owner, if known, and briefly describe the land to which the notice applies.

(d) No other notice is necessary under the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.019. Notice to Forest Owner

If the landowner has given notice to the service of an interest in the forest on his land owned by another, as provided for in Section 152.064 of this code, the service shall furnish the same information to the forest owner that it is required by the provisions of this chapter to give to the landowner.

[Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.020. Supervision

(a) The service shall keep informed of what is done by the landowner to take measures to control the infestation and the result of it.

(b) The service may change its prescribed procedures as conditions or new information may require.

(c) On request, the service shall certify when all reasonably practicable measures to be done by the landowner, pursuant to its prescribed procedures, have been completed.

[Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.021. Control Measures Applied by Forest Service

If pest control measures prescribed by the service are not applied by the landowner or any other person within 10 days from the time notice is given as provided in this chapter, exclusive of the date the notice is given, representatives of the service shall enter the land and have the forest pests controlled or destroyed.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.022. Expense of Control Measures Taken by Service

(a) Except as provided in Subsection (b) of this section, all charges and expenses of destruction or control measures taken by the service shall be paid by the owner of the land on which the infestation occurred.

(b) If the tract with respect to which the service conducted control measures contains 50 acres of forest land or less and the landowner in whose name the record title to the land stands owns no more than 50 acres of forest land in the county in which the infestation occurred, the cost of control shall be borne by the service.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.023. Claim Against Landowner

If control is undertaken by the service, the cost, not to exceed $10 for each infested acre or part of an acre on which control measures have been employed, constitutes a legal claim against the landowner, but does not constitute a lien on any land owned by the landowner.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.024. Suit

The attorney general may bring suit on behalf of the service in the county in which the infestation occurred to recover the claim against the landowner, together with all costs incurred in the suit.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.025. Landowner Reimbursement

If the landowner has given the service notice of an interest owned by another in the forest on his land and the landowner has made expenditures for pest control purposes as provided in Section 152.062 of this code, or has paid a legal claim against him under the provisions of Sections 152.022 through 152.024 of this code, the landowner is entitled to a reasonable reimbursement for the expenses from the forest owner. The reimbursement shall be proportional to the interest owned in the forest by the forest owner.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.026. Cooperative Agreements

The service may enter into cooperative agreements with private landowners or forest owners, the federal government, or other public or private agencies to accomplish the control of forest pests.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 152.027 to 152.060 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF THE LANDOWNER

§ 152.061. General Duty of Landowner

Each owner of forest land shall control the forest pests on land owned by him or under his direction as provided in this chapter.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.062. Duty to Apply Control Measures

Within 10 days after notice is given as provided in Section 152.014 or 152.018 of this code, exclusive of the date the notice is given, each affected landowner shall commence diligently to take measures to control the infestation as prescribed and continue this activity with all practical expedition and efficiency under the direction of the service.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.063. Reports and Consultation With Service

(a) The landowner shall notify the service of his actions and the result of his actions.

(b) The landowner may report to and consult with a representative of the service as often as necessary.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.064. Notifying Service of Forest Owner

If all or part of the standing trees are owned by someone other than the landowner, either by a present right or by a future right under the terms of a valid existing contract, the landowner shall notify the service of that fact and furnish the names and addresses of the forest owner within 10 days after receiving the notice from the service as provided for in Section 152.014 or 152.018 of this code.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 152.065 to 152.100 reserved for expansion]

SUBCHAPTER D. JUDICIAL REVIEW

§ 152.101. Judicial Review of Service Notice

A landowner or person having control of forest land who is aggrieved by the notice given by the service is entitled to seek relief but only if the proceedings to obtain the relief are initiated within 10 days from the time notice is given, exclusive of the date the notice is given.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.102. Venue

The proceeding to obtain relief shall be in the district court of the county in which the land is located.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.103. Control Measures Pending Litigation

The service shall not proceed with any control measures while the litigation is pending unless permission to do so is given by the court on a showing of probable harm due to a delay in using the control measures.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.104. Priority

The district court shall give priority to a case seeking relief from notice given by the service.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.105. Injunctive Relief for Landowner

If the final judgment in an action seeking relief from a notice is in favor of the landowner, the landowner may be entitled to injunctive relief against the use of any control measures on his forest land by the service until such time as the court may determine.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.106. Notice Final

If the final judgment is against the landowner, or if the landowner fails to seek relief in the district court of the county in which the land is located, the notice from the service is final, and the service shall summarily take the measures necessary to control the infestation.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

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SUBCHAPTER A. GENERAL PROVISIONS

§ 161.001. Definitions.

In this chapter:

(1) "Board" means the Veterans Land Board.

(2) "Commissioner" means the Commissioner of the General Land Office.

(3) "Land office" means the General Land Office.

(4) "Program" means the Veterans Land Program.

(5) "Fund" means the veterans land fund.

(6) "Bonds" means veterans land bonds.

(7) "Veteran," "Texas veterans of the present war or wars, commonly known as World War II," and "Texas veterans of service in the Armed Forces of the United States of America subsequent to 1945" used in Article III, Section 49–b of the Texas Constitution, are synonymous and mean any citizen of the United States either male or female over 18 years of age, who served not less than 90 consecutive days, unless sooner discharged because of a service-connected disability, on active duty in the Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States after September 16, 1940, who on the date of filing his or her application has not been dishonorably discharged from the branch of the service in which he or she served, who was a bona fide resident of this state at the time of his or her enlistment, induction, commission, or drafting, and who is a bona fide resident of this state at the time of seeking benefits under this chapter; or who has resided in this state for at least five years immediately before the date of filing his or her application.

[Acts 1977, 65th Leg., p. 2655, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.098, purports to add § 2(D) to Civil Statutes, art. 5421m, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1). As so added, § 2(D) reads:

"The Veterans' Land Board is subject to the Texas Sunset Act [Civil Statutes, art. 5429k], but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1985 and of every 12th year after 1985 are reviewed."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

[Sections 161.002 to 161.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 161.011. Veterans Land Board Designated

The Veterans Land Board is a state agency designated to perform the governmental functions authorized in Article III, Section 49–b of the Texas Constitution.

[Acts 1977, 65th Leg., p. 2655, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.012. Bond

(a) Each citizen member of the board shall execute a bond payable to the state in the amount of $50,000, to be approved by the governor and conditioned on the faithful performance of the member's duties.

(b) The premiums on the member's bond shall be paid from funds appropriated by the legislature for the operation of the land office.

[Acts 1977, 65th Leg., p. 2655, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.013. Executive Secretary and Assistant Executive Secretary

(a) The board shall select an executive secretary and an assistant executive secretary, each of whom shall be nominated by the commissioner and approved by a majority of the board.

(b) The executive secretary and assistant executive secretary shall perform all duties required of them by the board.

[Acts 1977, 65th Leg., p. 2655, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.014. Employees

(a) The commissioner may employ all other employees that may be necessary for the discharge of the board's duties. The employees may include stenographers, typists, bookkeepers, surveyors, appraisers, and other employees in the number and for the time necessary to perform these duties.

(b) The employees of the board are considered to be employees of the land office, and civil and criminal laws regulating the conduct and relations of the employees of the land office apply to the employees of the board.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.015. Compensation and Duties of Employees

The employees of the board shall be paid their compensation and shall perform their duties with the same rules and requirements of the general law governing other state employees in those respects.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.016. Fiscal Agent

(a) The board may designate the State Treasurer as the fiscal agent for payment of principal of and interest on the bonds.

(b) The State Treasurer shall act as fiscal agent without compensation.

(c) In the alternative, the board may employ a private fiscal agent to perform these services and shall pay him adequate compensation.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.017. Meetings of Board

(a) When necessary, the board shall meet on the first and third Tuesdays of each month in the land office, where its session shall be held and continue until its docket is cleared. The board may recess at its own discretion.

(b) The chairman of the board may call special meetings of the board at any time he thinks necessary by giving the other members notice.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.018. Minutes of Board

Minutes of each meeting of the board shall be kept, and only those matters that actually transpire at the meeting shall be entered in the minutes.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.019. Depository for Papers, Records, and Archives

Papers, records, and archives of the board shall be deposited and kept in the land office.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.020. Purchase of Supplies

The board may purchase at state expense through the board of control supplies, including stationery, stamps, printing, record books, and other things that may be needed to carry on the board's functions as a state agency in performing the duties imposed by this chapter.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.021. Seal

The board shall procure and adopt a seal bearing the words "Veterans Land Board" encircled by the oak and olive branches common to other official seals.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.022. Chapter Application to Successor Boards

The provisions of this chapter shall apply to any successor of the board.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.023 to 161.060 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 161.061. General Duties of Board

The board shall:

(1) authorize and execute negotiable bonds as provided by law;

(2) provide by resolution for use of the fund in a manner that will effectuate the intent of the constitution and the law;

(3) fix the interest rates as provided by law;

(4) provide for the forfeiture of contracts of sale and purchase and resale of forfeited land;

(5) conduct investigations it considers necessary; and

(6) formulate policies and rules necessary and not in conflict with the law to ensure the proper administration and to carry out the intent and purposes of the law.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.062. General Duties of Commissioner

The commissioner is the chairman of the board and administrator of the program as provided in Article III, Section 49–b of the Texas Constitution, and shall perform the duties and functions of the board prescribed by law except for those duties and functions provided in Section 161.061 of this code, which shall be performed by the board.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.063. Rules

(a) The board may adopt rules that are not inconsistent with this chapter and that it considers necessary or advisable.

(b) The rules shall be considered a part of this chapter and violation of the rules subject the offender to prosecution under Sections 161.401 through 161.403 of this code.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.064. Board Authority to Make Investigations

The board may make any investigation it considers necessary relating to transactions involving land purchases or sales under this chapter.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.065. Oaths; Books, Records, and Documents

(a) The board is specifically authorized to administer oaths and to examine the books, records, or other documents dealing with or relating to the transactions of any person involved in the transaction.

(b) The board may make copies of the books, records, and other documents that in its judgment may show or tend to show fraud on the board or a veteran or a violation or attempted violation under this chapter.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.066. Subpoena Duces Tecum

The board may issue a subpoena duces tecum to require a person to produce books, records, or any other documents for the board's examination.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.067. Forfeiture of Charter and Rights

(a) If a corporation fails or refuses to comply with the orders of the board under Sections 161.064 through 161.066 of this code, the corporation shall forfeit its right to do business in this state, and its permit or charter shall be canceled or forfeited by the attorney general.

(b) The failure or refusal by a person is presumed to be prima facie evidence of fraud on the board and veteran in violation of this chapter, and the person shall lose and forfeit all rights and benefits under this chapter.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.068. Form of Instruments

The board may prescribe the form and contents of notices, bids, applications, awards, contracts, deeds, and instruments used by the board in carrying out a project or plan if it is not in conflict with the law.

[Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.069. Fees

(a) The board shall collect the fee it considers necessary from each applicant under Subchapter G of this chapter and deposit the fee in a bank. Interest received on the deposit shall be credited to the General Land Office special fund and shall be spent for administrative purposes.

(b) The board shall collect a fee of $35 from each successful bidder under Section 161.319 of this code. This fee shall be held in a trust fund to be used to pay for examination of title, recording fees, and other expenses, or any one or more of these items and, except as provided in Section 161.319 of this code, the unused balance remaining after the payment for these items shall be refunded.

[Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.070. Additional Fees

(a) The board shall charge and collect for the use of the state the following fees:

(1) fee for each appraisal for each application under Subchapter G of this chapter $35

(2) contract of sale and purchase transfer fee for each transfer $35

(3) mineral lease service fee for each lease executed by purchasers $10

(4) reappraisal fee if required by the board $35

(5) fee for each loan of abstract $10

(6) fee for servicing and filing each easement $10

(7) service fee for each contract of sale and purchase $35

(8) fee for homesite, severance, or paid-in-full deed. $20

(b) The fees shall be used for the processing and servicing of purchase applications and contracts of sale and purchase and matters incidental to these purposes.

(c) Fees or portions of fees that are in the opinion of the board unused shall be refunded.

(d) Money received from payment of these fees and not refunded shall be deposited in the State Treasury and credited to the fund and shall be spent as provided in the General Appropriations Act.

[Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.071. Pamphlets

The board shall have published pamphlets containing the provisions of this chapter and rules the board desires, and these pamphlets shall be made available to any interested veteran, veterans organization, or other interested person in the state.

[Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.072. Lease by Board

(a) The board may lease any property that it owns on terms it considers proper.

(b) A lease for agricultural and grazing purposes is subject to cancellation on the sale of the property to a veteran.

(c) The board may execute oil, gas, and mineral leases on land purchased by it before it sells the land by following the same procedure provided for the school land board in the lease of public school land.

[Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.073 to 161.110 reserved for expansion]

SUBCHAPTER D. BONDS

§ 161.111. Issuance and Sale of Bonds; Disposition of Proceeds

By appropriate action, the board may provide by resolution for the issuance and sale of negotiable bonds authorized by the constitution, and the proceeds shall be a part of the fund.

[Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.112. Installments

The board, at its option, may issue bonds in one or several installments.

[Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.113. Interest Rate

(a) The bonds shall bear the rate of interest prescribed by the board.

(b) The weighted average annual interest rate of the bonds, as that phrase is commonly and ordinarily used and understood in the municipal bond market, may not be more than six percent in each installment.

[Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.114. Payment and Maturity of Bonds

(a) The bonds shall be payable as provided by the board and shall mature serially or otherwise not later than 40 years from their date.

(b) Bonds previously issued shall mature according to their provisions.

(c) The board shall determine the medium of payment for both principal of and interest on the bonds.

(d) The board at its own option may make the bonds redeemable before maturity at the price and under the terms and conditions fixed by the board in the resolution providing for the issuance and sale of the bonds.

[Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.115. Form, Denomination, and Place of Payment of Bonds

The board shall determine the form of the bonds, including the forms of interest coupons attached to the bonds, and shall fix the denomination or denominations of the bonds and the place or places for payment of the principal of and interest on the bonds.

[Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.116. Manner of Execution

(a) The bonds shall be executed by and on behalf of the board as obligations of the state in the manner provided in Subsection (b) of this section.

(b) The bonds shall be signed by the chairman and the secretary of the board and the seal of the board shall be impressed on the bonds. In addition, the bonds shall be signed by the governor and attested by the Secretary of State with the seal of the state impressed on the bonds.

[Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.117. Signatures and Seals

(a) The resolution authorizing the issuance of an installment or series of bonds may prescribe the extent to which facsimile signatures and facsimile seals may be used in lieu of manual signatures and manually impressed seals in executing the bonds and attached coupons.

(b) Interest coupons may be signed with the facsimile signatures of the chairman and secretary of the board.

(c) If an officer whose manual or facsimile signature appears on a bond, or whose facsimile signature appears on a coupon, ceases to be an officer before the bonds are delivered, the signature shall still be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery of the bonds.

[Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.118. Approval by Attorney General

Before bonds are delivered to the purchasers, the record relating to the bonds shall be examined by the attorney general and the record and bonds shall be approved by the attorney general.

[Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.119. Registration With Comptroller

After the bonds are approved by the attorney general, they shall be registered in the office of the state comptroller.

[Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.120. Validity of Bonds

(a) After the bonds are approved by the attorney general and registered with the state comptroller, they shall be held as valid and binding obligations of the state in every action, suit, or proceeding in which their validity is or may be brought into question.

(b) In each action brought to enforce collection of the bonds or rights incident to the bonds, the certificate of approval by the attorney general or a certified copy of that certificate shall be admitted and received in evidence as to the validity of the bonds.

(c) The only defense that can be offered against the validity of the bonds shall be forgery or fraud.

[Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.121. Bonds as Negotiable Instruments

Bonds issued under this chapter have and are declared to have all qualities and incidents of negotiable instruments under the laws of this state.
[Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.122. Preferential Right of Purchase

Immediately after bonds are offered for sale, written notice shall be given to the proper administrators of the various teacher retirement funds, the permanent university fund, and the permanent free school fund of the preferential right given by the constitution to purchase the bonds offered for sale.
[Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.123. Notice for Bids on Bonds

(a) If the board authorizes the issuance of a series of bonds and decides to call for bids, it shall publish an appropriate notice at least one time not less than 10 days before the date of the sale in a daily newspaper of general statewide circulation that is published not less than seven times a week.

(b) The notice shall be published for the number of times the board determines in one or more popularly recognized financial journals of general circulation.
[Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.124. Security for Bid

At its option, the board may require bidders, other than administrators of state funds listed in Section 161.122 of this code, to accompany their bids with exchange or bank cashier's checks in an amount considered adequate by the board to be a forfeit guaranteeing the acceptance and payment for bonds covered by the bids and accepted by the board.
[Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.125. Sale of Bonds

(a) No bonds may be sold for less than their face value with accrued interest from their date and shall be sold after competitive bidding to the highest and best bidder.

(b) The provisions of Subsection (a) of this section do not apply to administrators of the state funds that are given a priority if they exercise the right of priority to take the bonds at the highest price bid by another within 15 days after notice is given.

(c) If two or more administrators of state funds desire to exercise their right of priority to purchase the bonds, the board shall prorate the bonds to the administrators who desire to make the purchase.
[Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.126. Replacement Bonds

The board may provide for replacement of bonds that are mutilated, lost, or destroyed.
[Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.127. Refunding Bonds

(a) The board may provide by resolution for issuance of refunding bonds for the purpose of refunding outstanding bonds issued under this chapter together with accrued interest on the bonds.

(b) As far as applicable, the preceding provisions of this subchapter shall govern:

(1) the issuance of the refunding bonds;

(2) the maturities and other details of the refunding bonds;

(3) the rights of bondholders; and

(4) the duties of the board with respect to the refunding bonds.

[Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.128. Bonds as Investments and Security

(a) Bonds issued under Article III, Section 49-b of the Texas Constitution, and this chapter are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

(b) The bonds, if accompanied by unmatured coupons appurtenant to them, are legal and sufficient security for the deposits in the amount of the par value of the bonds.
[Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.129. Taxation of Bonds

Bonds issued under Article III, Section 49-b of the Texas Constitution, and laws implementing that section of the constitution, are exempt from any tax by the state and by cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.
[Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.130 to 161.170 reserved for expansion]

SUBCHAPTER E. VETERANS LAND FUND

§ 161.171. Money and Land Included in Veterans Land Fund

(a) The veterans land fund shall include:

(1) land purchased by the board until the sale price, interest, and penalties due have been received by the board;

(2) money attributable to bonds issued and sold by the board, including proceeds from the issuance and sale of the bonds;

(3) money received from the sale or resale of land or rights in land purchased with the proceeds from the bonds;

(4) money received from the sale or resale of land or rights in land purchased with other money attributable to the bonds;

(5) interest and penalties received from the sale or resale of the land or rights in the land;

(6) bonuses, income, rents, royalties, and any other pecuniary benefit received by the board from the land;

(7) money received as indemnity or forfeiture for the failure of any bidder for purchase of bonds to comply with his bid and accept and pay for the bonds or for the failure of a bidder for purchase of land comprising a part of the fund to comply with his bid and accept and pay for the land; and

(8) interest received from investments of this money.

(b) Money in the fund shall be deposited in the State Treasury to the credit of the fund.

(c) The provisions of this section may not be construed to prevent the board from accepting [1] for a portion of a tract of land.

[Acts 1977, 65th Leg., p. 2662, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[1] So in enrolled bill; words "full payment" probably should be inserted.

§ 161.172. Deposit and Use of Bond Money

(a) Money attributable to bonds issued and sold under this chapter shall be credited to the fund and shall be used to retire the bonds and to pay interest on them.

(b) At the time there is sufficient money to retire the bonds, money remaining in the fund over this amount or coming into the fund at a later time shall be governed as provided in this chapter.

[Acts 1977, 65th Leg., p. 2662, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.173. Payment of Principal and Interest; Investments

(a) The principal of and interest on bonds issued by the board shall be paid from money in the fund as provided in the constitutional provision authorizing the bonds.

(b) Money in the fund that is not immediately committed to paying principal of and interest on the bonds, to the purchase of land, or to the payment of expenses as provided in this chapter may be invested in bonds or obligations of the United States until the funds are needed for these purposes.

[Acts 1977, 65th Leg., p. 2662, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.174. Divisions; Use of Money in Divisions to Pay for Various Bond Issues

(a) A division consists of money attributable to bonds issued and sold under a single constitutional authorization and land purchased with money from that issue.

(b) If a division of the fund contains sufficient money to retire bonds secured by the division, the money attributable to that division, except that portion necessary to retire bonds in that division, may be used at the discretion and direction of the board to pay principal of and interest on and authorized expenses for other bonds issued and sold by the board. However, the amount of money necessary to retire bonds in the division shall be set aside and shall remain a part of that division for the purpose of retiring those bonds.

(c) No use of money as provided in Subsection (b) of this section may be made contrary to the rights of a holder of bonds issued and sold by the board or violative of a contract to which the board is a party.

[Acts 1977, 65th Leg., p. 2662, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.175. Use of Fund for Expenses Related to the Land

(a) The board may use money in the fund attributable to bonds that have been issued and sold to pay:

(1) expenses of surveying and monumenting the land and the tracts of land;

(2) the cost of constructing roads on the land or the tracts of land;

(3) legal fees, recordation fees, and advertising costs arising from the purchase and sale or resale of the land and the tracts of land; and

(4) other similar costs necessary or incidental to the purchase and sale of land acquired by the board.

(b) These expenses shall be added to the price of the land when sold or resold by the board.

(c) No money in the fund before November 11, 1967, may be used to pay the expenses listed in Subsection (a) of this section until there is sufficient money in the division to retire all bonds secured by the division, at which time, all money except that needed to retire the bonds secured by the division, which shall be retained in the division to retire the bonds, may be used to pay the expenses as fully as the money attributable to bonds.

[Acts 1977, 65th Leg., p. 2663, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.176. Use of Fund to Pay Bond Expenses

(a) The board may use money in the fund attributable to bonds issued and sold to pay:

(1) legal fees and fees for financial advice necessary in the opinion of the board to the sale of bonds;

(2) the expense of publishing notice of sale of an installment of bonds;

(3) the expense of printing the bonds;

(4) the expenses of delivering the bonds, including the costs of travel, lodging, and meals of officers or employees of the board, the state comptroller, the State Treasurer, and the attorney general that are necessary in the opinion of the board to effectuate the delivery of the bonds;

(5) the cost of manually signing the bonds; and

(6) remuneration to any agent employed by the board to pay the principal of and interest on the bonds.

(b) No money in a division of the fund created before November 11, 1967, may be used to pay the expenses listed in Subsection (a) of this section until there is sufficient money for the division to retire all bonds secured by the division, at which time all money, except that which may be needed to retire the bonds, may be used to pay the expenses under Subsection (a) of this section as fully as money attributable to bonds issued and sold in the future. The money in the division needed to retire the bonds shall remain in the division.

[Acts 1977, 65th Leg., p. 2663, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.177. Purchase and Destruction of Bonds

(a) The board may use money in the fund to purchase on the open market any bonds it has issued and sold, and the debt represented by these bonds when purchased is considered canceled.

(b) Bonds purchased by the board under Subsection (a) of this section shall be mutilated, burned, or otherwise destroyed by the State Treasurer, who shall certify this fact to the board under the seal of his office.

(c) No further interest shall be paid on these bonds.

[Acts 1977, 65th Leg., p. 2664, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.178. Disposal of Excess Funds

(a) Money in the fund that is not spent for the purposes provided in this chapter shall remain in the fund until there is sufficient money to retire fully bonds issued and sold by the board.

(b) Money in the fund that is in addition to that necessary to retire the bonds shall be deposited to the credit of the General Revenue Fund to be appropriated as provided by law, and the money necessary to retire the bonds shall be set aside and shall remain in the fund.

(c) Money that becomes at a later time a part of the fund after there is sufficient money to retire the bonds shall be deposited to the credit of the General Revenue Fund.

[Acts 1977, 65th Leg., p. 2664, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.179. Legislative Appropriations

(a) During the existence of the fund, if the board determines that there will not be sufficient money in the fund during the following biennium to pay principal of or interest on the bonds or both principal and interest that are to come due during the following biennium, the legislature shall appropriate from the General Revenue Fund sufficient money to pay the obligations.

(b) The money appropriated shall be used to pay the obligations only if at the time the principal or interest or both actually become due there is not sufficient money in the fund to pay the amount due.

[Acts 1977, 65th Leg., p. 2664, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.180 to 161.210 reserved for expansion]

SUBCHAPTER F. PURCHASE, SALE, AND OTHER DISPOSITION OF LAND

§ 161.211. Purchase of Land and Payment of Bonds

(a) A series of bonds is all bonds issued and sold in a single transaction as a single installment of bonds.

(b) Money attributable to any series of bonds issued and sold by the board may be used for the purchase of land that is likewise located and owned, if the land is sold as provided in this chapter, for a period ending eight years after the date of sale of the series of bonds.

(c) As much of the money as is necessary to pay interest on the bonds issued and sold shall be set aside for that purpose in accordance with the resolution adopted by the board authorizing the issuance and sale of the series of bonds.

(d) At the end of the eight-year period, and until there is sufficient money to retire all the bonds, the money shall be set aside to retire the bonds issued and sold and to pay interest on them, together with any expenses, in accordance with the resolution authorizing the issuance and sale of the additional bonds.

(e) Money coming into the fund not necessary to retire the bonds and pay interest on them under Subsection (d) of this section shall be governed as provided in this chapter.

[Acts 1977, 65th Leg., p. 2664, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.212. Appraisal

(a) Before purchasing land under the provisions of this chapter, the board shall have an appraisement of the property made to determine its value.

(b) An appraiser representing the board shall be reasonably qualified to give competent appraisals of land.

(c) The appraiser shall make a written report to the board in affidavit form, duly sworn to before a notary public or other official authorized to administer oaths, and showing:

(1) the appraised value of the land;

(2) the name and address of any person contacted relative to the valuation of the land;

(3) that the appraiser has examined the records of the county clerk's office relative to the amount paid by the vendor for the land;

(4) that he has checked past sales of adjacent land to aid in determining valuation;

(5) if the purchase is being made under Subchapter G of this chapter, that the appraiser has met the veteran on the land and has explained the transaction to him in detail as authorized by this chapter; and

(6) that neither the appraiser nor any member of his family has received any personal benefits from the transaction and does not expect to receive any future personal benefits from the transaction.

(d) If a veteran is in the active military service and is stationed overseas or in Alaska, Hawaii, or United States territories or possessions, or aboard a ship with a mission outside the continental United States including Alaska, his representative designated by him in writing may meet the board appraiser on the land for the purpose expressed in this section.

[Acts 1977, 65th Leg., p. 2665, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.213. Sworn Report

(a) Before the board purchases land under Section 161.211 of this code or Subchapter G of this chapter, it shall require the seller to execute a sworn report to the board that shall include the following:

(1) the date the seller purchased the land;

(2) the amount the seller paid for the land if purchased subsequent to June 7, 1949;

(3) from whom the seller purchased the land; and

(4) the improvements made on the land since the seller purchased it and the cost of the improvements.

(b) If the land is purchased under Subchapter G of this chapter, the sworn report shall include the following additional information:

(1) if the seller by any manner or method is making the down payment to the board on behalf of the veteran;

(2) if there is a lease arrangement between the seller and the veteran, and if so, the duration, term, and amount to be paid; and

(3) if there is an agreement or contract of any nature between the seller and the veteran to transfer, sell, or convey at any time in the future.

[Acts 1977, 65th Leg., p. 2665, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.214. Title

(a) Before making payment for land, the board shall have the title of the property sought to be purchased examined and may require for this purpose an abstract of title or policy of title insurance. The board may submit the title to the attorney general for examination and opinion.

(b) The board may purchase land that is subject to outstanding mineral leases or that has all or part of the mineral interests outstanding, but the title must otherwise be marketable and good.

[Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.215. Purchase of Land

Land purchased by the board shall be acquired at the lowest price that can be obtained in the opinion of the board, taking into consideration the quality, location, natural advantages, and improvements of the land. The land shall be paid for in cash and shall be clear of all liens and shall be a part of the fund.

[Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.216. Cost of Land to Board

Except for forfeited land that may be resold to the board at less than actual cost under Section 161.319 of this code, land shall not be sold to the board at less than its actual cost.

[Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.217. Appointment of Local Committee

The commissioners court of each county in the state shall appoint a committee composed of three resident real property owners of the county.

[Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.218. Work of Local Committee

(a) A person who considers himself an eligible veteran under this chapter and who desires to benefit under this chapter shall submit to the local committee the forms prescribed by the board before he

submits his application of purchase and sales contract to the board. If the veteran is a resident of one county and is seeking to purchase land located in another, he shall submit the forms to the local committee in both counties.

(b) The local committee shall consider the forms and shall submit to the board a report concerning the financial responsibility of the veteran, if it is known, a statement of opinion as to whether or not the transaction is bona fide, a statement as to the amount the committee considers to be the reasonable value of the land in question, and a statement of the credit rating of the veteran applicant.

[Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.219. Board Investigation

(a) The board may make other inquiries and investigations it considers proper to determine the veteran's eligibility and qualifications.

(b) If the board determines from the information submitted or from its own inquiries and investigations that the financial responsibility of the veteran leaves reasonable doubt as to his ability to carry the contract through to completion and make all payments, the board shall reject the application.

[Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.220. Exemption

The provisions of Sections 161.217 through 161.219 of this code do not apply to sales under Sections 161.175, 161.231 through 161.234, and 161.319 of this code unless the board so desires.

[Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.221. Initiation of Sale

The sale of land by the board may be properly initiated by contract of sale and purchase, and the contract shall be recorded in the deed records in the county in which the land is located.

[Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.222. Purchase Payments

(a) The purchaser shall make an initial payment of at least five percent of the selling price of the land if sold under Sections 161.175 and 161.231 through 161.234 of this code or at least five percent of the amount the board agrees to pay for the land if sold under Subchapter G of this chapter. In neither event shall the payment be more than five percent of $20,000 together with an additional down payment as provided in Sections 161.175 and 161.231 through 161.234 of this code or Subchapter G of this chapter.

(b) The balance of the selling price shall be amortized over a period determined by the board not to exceed 40 years together with interest at a rate to be determined by the board. The interest may not exceed one and one-half percent a year more than the accepted bid price for each series in the bond sale division.

(c) The purchaser is entitled to pay any or all installments still remaining unpaid on any installment date.

(d) In an individual case, the board may postpone for good cause the payment of the whole or any part of an installment of the selling price or interest on the selling price on terms the board considers proper.

[Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1898, ch. 768, § 1, eff. June 13, 1979.]

§ 161.223. Board to Specify Terms

The board may specify in each individual case the terms of the contract entered into with the purchaser as long as they are not contrary to the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.224. Time Limit on Transfer

(a) No property sold under this chapter may be transferred, sold, or conveyed in whole or part until the original veteran purchaser has enjoyed possession for a period of three years from the date of purchase of the property and complied with the terms and conditions of this chapter and rules of the board.

(b) If the veteran purchaser dies or becomes financially incapacitated or if there is an involuntary transfer by court order or proceedings including bankruptcy, sheriff or trustee sale, or divorce, the property may be conveyed before the expiration of the three-year period by the purchaser or his heirs, administrators, or executors by complying with rules of the board and by securing the approval of the board.

(c) After the three-year period, a purchaser may transfer, sell, or convey land purchased under this chapter at any time if all mature interest, principal, and taxes have been paid, the terms and conditions of this chapter and rules of the board have been met, and the approval of the board has been obtained.

[Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.225. Sale to a Nonveteran

If the sale is made to a person other than a qualified Texas veteran, the assignee and all subsequent assignees shall assume an interest rate on the indebtedness to the board determined by the board at an amount not less than one percent a year

greater than the rate determined by the board for sale to veterans under Sections 161.175 and 161.231 through 161.234 of this code or Subchapter G of this chapter on the date on which the transfer, sale, or conveyance is approved. If the purchase contract is awarded in a divorce action or incident to a written separation agreement, the interest rate shall not change.

[Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.226. Disposition of Land That is Paid For

Property sold under this chapter may be transferred, sold, or conveyed at any time after the entire indebtedness due to the board has been paid.

[Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.227. Lease of Land

(a) No land purchased under this chapter may be leased by the purchaser for a term of more than 10 years except for oil, gas, and other minerals and as long after 10 years as minerals are produced from the land in commercial quantities.

(b) No lease may contain a provision for option or renewal of the lease or re-lease of the property for any term, and the taking of an option, renewal, or re-lease agreement in a separate instrument to take effect in the future is prohibited. A lease or instrument that contains an option, renewal, or re-lease agreement in violation of this section is expressly declared to be void.

[Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.228. Conditions of Leases

(a) While the veteran is indebted to the board for land purchased, if he executes or there exists a lease or contract of sale of oil, gas, or other minerals, chemicals, or hard metals or a lease or contract of sale for timber, sand, gravel, or other materials that covers all or part of the land and that would result in the depletion of the corpus of the tract, at least one-half of all bonus money, delay rentals, and royalties received as consideration for or payment under the oil, gas, and mineral lease and at least one-half of all money received under a lease or contract of sale of any other minerals, chemicals, hard metals, timber, sand, gravel, and other materials or as much as is required, shall be paid to the board by the owner of the lease or contract of sale and applied by the board to the satisfaction of the indebtedness.

(b) No oil, gas, or mineral lease may be for a primary term of more than 10 years and the lease may provide that it shall remain in force as long as production is obtained in paying quantities.

[Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.229. Deeds

(a) When the entire indebtedness due the state under the contract of sale is paid, the chairman of the board shall execute a deed under seal to the original purchaser of the land or to the last assignee whose assignment has been approved by the board.

(b) None of the provisions of this chapter shall be construed to prohibit the board from accepting full payment for a portion of a tract and issuing a deed to the land according to the rules of the board.

(c) Deeds issued by the board and executed by the chairman under seal are ratified, confirmed, and validated whether they convey all or only a part of the land contracted to be sold to the veteran.

(d) If a deed is executed to a person other than the legal owner or to a deceased grantee, the deed and the rights conveyed still inure to the benefit of the legal owner.

[Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.230. Death of Purchaser

(a) If the purchaser of the land dies while indebted to the board under a contract, his rights, acquired under this chapter and the contract devolve on his heirs, devisees, or personal representatives under the laws of this state, but subject to all rights, claims, and charges of the board.

(b) Default by an heir, devisee, or personal representative with respect to a right, claim, or charge of the board has the same effect as default by the purchaser before his death.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.231. Subdividing Land

Land acquired by the board may be subdivided for sale into tracts of the size the board may consider advisable.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.232. Conditions for Sale of Land

Land acquired and subdivided under Sections 161.175, 161.231, 161.233, and 161.234 of this code shall be offered for sale according to rules adopted by the board and shall be sold by the board to veterans qualified to participate in the program in conformity with the provisions of this chapter relating to the sale of land purchased generally by the board.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.233. Down Payment

(a) Unless the purchaser pays in cash as a down payment under board rules in addition to the initial payment required by Section 161.222 of this code the amount of the sale price in excess of $20,000 not

later than the sale date, no tract may be sold under Sections 161.175 and 161.231, 161.232, and 161.234 of this code at a price including the addition of the expenses provided in Section 161.175 of this code of more than $20,000.

(b) If the sale is not consummated, the down payment shall be refunded to the veteran.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1899, ch. 768, § 2, eff. June 13, 1979.]

§ 161.234. Sale to Other Purchasers

The provisions of Sections 161.175 and 161.231 through 161.233 of this code notwithstanding, land acquired and subdivided under these sections that has first been offered for sale to veterans and that has not been sold to the purchasers may be sold to any purchaser in the same manner as land forfeited under this chapter.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.235. Rights of Surviving Spouse

If an eligible Texas veteran dies after he has filed with the board an application and contract of sale to purchase through the board the tract selected by him or her and before the purchase is completed, the surviving spouse of the veteran may complete the transaction.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.236. Number of Tracts Purchased

No veteran may purchase more than one tract of land under this chapter.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.237 to 161.280 reserved for expansion]

SUBCHAPTER G. PURCHASE AND SALE OF SELECTED LAND

§ 161.281. Selection of Land

If a veteran desires a particular tract of land located in this state that contains not less than 10 acres, on proper showing of eligibility to benefits under this chapter, he may be authorized by the board to select the land that he desires and submit his selection to the board on its prescribed form.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.282. Processing Applications

As far as practical, applications shall be processed in the order in which they are received by the board.

[Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.283. Purchase by Board

(a) If the board is satisfied with the value and desirability of the property selected by the veteran, it may purchase the land from its owner on the agreed terms.

(b) The board shall pay not more than $20,000 for the property, but may pay more if the veteran pays to the board in cash, in accordance with its rules, that portion of the purchase price in excess of the amount that the board agrees to pay. The amount shall be paid not later than the date on which the board acquires title to the property.

(c) A cash payment by the veteran is considered a down payment on the price of the land when sold to the veteran by the board and is in addition to the initial payment required by Section 161.222 of this code.

[Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1899, ch. 768, § 3, eff. June 13, 1979.]

§ 161.284. Appraisal and Title

The board shall have an appraisal of the property made as it considers necessary to determine the value and, before consummating the purchase, shall satisfy itself regarding the title as provided in Section 161.214 of this code.

[Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.285. Separate Transactions

(a) No transaction under this chapter may be considered together with any other transaction to constitute a block deal between the state and two or more veteran purchasers, and each tract of land is considered as a wholly separate entity without dependence on any other tract of land, substance, matter, person, or thing in determining its value, purchase, or sale under this chapter.

(b) None of the provisions of this chapter may be construed to prevent the purchase or sale or both of contiguous tracts of land to separate purchasers as long as the value of the land is determined in the manner provided in Section 161.284 of this code.

[Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.286. Purchase Preference

(a) The property acquired by the board becomes a part of the fund, but the veteran who has selected the land has a preference right to purchase the land from the board.

(b) To be entitled to the preference right, the veteran shall agree in writing before the board purchases the land to purchase the land from the board for the price paid for it.

(c) If the veteran fails or refuses to exercise the preference right, the land may be sold by the board

in the same manner provided for the sale of land forfeited under this chapter.
[Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.287. Rules Governing Sale

The rules governing the sale of land under this subchapter are governed by the provisions of this chapter relating to sale of land generally by the board except where those provisions conflict with this subchapter.
[Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.288. Refund

If the title to the land is not approved and accepted by the board, any amount paid to the board in excess of the amount that the board agreed to pay for the selected land shall be refunded to the veteran together with any other down payment remitted to the board.
[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.289 to 161.310 reserved for expansion]

SUBCHAPTER H. FORFEITURE

§ 161.311. Board Judge of Forfeiture

The board is the sole judge of forfeiture of any purchase contract under this chapter and any person availing himself of the provisions of this chapter by so doing agrees to abide by this chapter.
[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.312. Forfeiture by Board

(a) If a portion of the principal of or interest on any sale is not paid when due, or if the provisions of this chapter, the contract, or the rules of the board are not complied with, the contract of sale and purchase is subject to forfeiture by action of the board on 30 days written notice to the original purchaser and his vendee.

(b) The notice shall state the reason why the contract of sale and purchase is subject to forfeiture and is sufficient if given by registered mail to the last known address of the original purchaser and his vendees.
[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.313. Correction of Reason for Forfeiture

If the person corrects or cures the reason for forfeiture within the 30-day notice period, the board shall not enter an order of forfeiture.
[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.314. Time of Forfeiture

The forfeiture is effective at the time the board meets and adopts a resolution directing its chairman to endorse on the wrapper that contains the papers of the sale or on the purchase contract filed in the land office the word "forfeited" or words of similar import and the date of the action and to officially sign the document. At that time, the land and all payments previously made are forfeited.
[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.315. Notice to County Clerk

Notice of the board's action in forfeiting the original contract shall be mailed to the county clerk of the county in which the land is located and the clerk shall enter a notation of the forfeiture on the margin of the page or pages containing the record of the original contract.
[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.316. Effect of Forfeiture on Leases

On forfeiture, the full title to the land, including both surface and mineral estates, shall revest in the board, and the board shall recognize and continue in force and effect any outstanding valid oil, gas, or mineral lease and collect all rentals, royalties, or other amounts payable under the lease.
[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.317. Reinstatement of Purchase

(a) If a sale is forfeited and the title to the land revested in the fund, the original purchaser or his vendee is entitled to reinstate his purchase contract at any time before the date on which the board meets and orders the land to be advertised for resale or for lease for mineral development but not after that time.

(b) A person who exercises a right of reinstatement shall pay all delinquent installments, penalties, and costs incident to the reinstatement as prescribed by the board.
[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.318. Resale of Land

Land included in a forfeited contract is subject to resale under Section 161.319 of this code.
[Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.319. Resale of Forfeited Land

(a) Resale of forfeited land under this chapter may be made to the highest bidder, but the sale shall be made only to a qualified purchaser under Article III, Section 49–b of the Texas Constitution, and

under terms and conditions and at the time and in the manner prescribed by the board in its rules, the provisions of this chapter notwithstanding.

(b) The board may reject any and all bids.

(c) If the successful bidder refuses to execute a contract of sale and purchase, the money submitted with his bid is forfeited and shall be deposited in the State Treasury and credited to the fund.

[Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.320. Interest Rate on Delinquent Principal and Interest

Principal and interest that become delinquent shall bear interest at a rate fixed by the board from time to time but shall not be more than 10 percent a year from the date the principal and interest become delinquent until paid.

[Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.321. Vacating Premises

If the board declares a forfeiture under a purchase contract, the purchaser shall vacate the premises within 45 days after the date of the letter giving notice of the declaration. The letter shall be sent by registered mail to the last known address of the purchaser.

[Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.322. Enforcement of Forfeiture and Protection of Rights

The board, by and through the attorney general, shall institute legal proceedings that are necessary to enforce the forfeiture or to recover the full amount of the delinquent installments, interest, and other penalties that may be due to the board at the time the forfeiture occurred or to protect any other right to the land.

[Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.323. Liability

The liability of the original veteran purchaser and any subsequent assignee or assignees of the veteran are joint and several, but the original veteran purchaser is primarily liable for payment of the money under the original contract of sale and purchase.

[Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.324. Defenses in Lawsuits

After obtaining the permission of the legislature, in any action brought in the courts against the state involving the title to a tract of land to which the state has a warranty deed, the state is entitled to plead all statutes of limitations in the general laws of this state, but this shall not be considered as a limitation to any other defense the state may have.

[Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.325 to 161.360 reserved for expansion]

SUBCHAPTER I. INSURANCE

§ 161.361. Definitions

In this subchapter:

(1) "Persons purchasing land under the program" means a person or his successor or assign who buys land from the board under contract of sale and purchase regardless of whether the land is sold under Sections 161.175 and 161.231 through 161.234 or Section 161.319 of this code or Subchapter G of this chapter.

(2) "Person in the group" means a person purchasing land under the program who has elected to accept the offer of the insurance coverage provided in this subchapter.

(3) "The indebtedness due to the board" means the principal of and interest on the indebtedness necessary to pay in full the obligation set forth in any contract of sale and purchase under which a person in the group is purchasing land from the board, exclusive of delinquent principal, interest, and penalties.

[Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.362. Insurance Requirement

(a) Each veteran purchaser shall carry insurance on the improvements on the property under contract of purchase that the board considers necessary, and failure to do so will subject the contract to forfeiture under Subchapter H of this chapter.

(b) The board may promulgate rules it considers necessary to enforce this section.

(c) If the board desires, it may require each veteran applicant to make additional semiannual payments to be held in trust to pay premiums that may become due and unpaid on the contracted insurance covering the improvements. The payments shall be deposited in a trust fund with the State Treasurer and shall be used to make the premium payments. The unused balance of the veteran's deposit shall be held by the board until the time that maintenance of the account is unnecessary and then shall be refunded to the veteran.

[Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.363. Master Insurance Contract

The board may enter into a master contract or agreement with one or more life insurance compa-

nies authorized to do business in this state to provide group life insurance coverage cancelling on death the indebtedness due to the board of persons purchasing land under the program.
[Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.364. Provisions of Insurance

In addition to the provisions of Article 3.50, Insurance Code, as amended, the master contract or agreement shall provide that the life insurance coverage will be offered by the insurer to all persons without physical examination and that no person may be denied coverage because he is disabled at the time of application for the coverage.
[Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.365. Approval of Contract; Contractual Relationship

The policy contract shall be approved by the State Board of Insurance under the provisions of the Insurance Code, as amended, and shall express and control the contractual relationship between the parties to it.
[Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.366. Insurance Not Mandatory

It is not mandatory that a person purchasing land under the program accept the offer of the insurance coverage, and refusal by the person to accept the offer of the coverage shall not be a ground for the board to decline to enter into a contract of sale and purchase with the person.
[Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.367. Amount of Coverage

The total insurance coverage for any person in the group shall not at any time exceed the indebtedness due to the board and in no event shall the total insurance coverage exceed the amount provided in the master contract.
[Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.368. Collection of Premium

The board may collect or provide for collection of the premium for insurance coverage in a reasonable manner.
[Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.369. Death of Insured

If a person in the group dies while the insurance coverage is in force, the benefits of the coverage shall be paid to the board for credit to the fund and the indebtedness due the board shall be canceled.
[Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.370. Cancellation by Insurer

The master contract or agreement shall not prohibit cancellation by the insurer of the entire contract on reasonable notice to the board but shall prohibit cancellation of individual coverage except as provided in this subchapter.
[Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.371. Termination of Insurance

(a) The insurance coverage shall be terminated for any person in the group on:

(1) the satisfaction of the indebtedness due the board;

(2) the board's approval of a transfer of interest in the land being purchased from the board; or

(3) failure to make timely payment of the premium to be paid for the coverage.

(b) The master contract may provide that coverage will terminate on the person purchasing land under the program attaining the age of 65 years.

(c) If the coverage is terminated for a member of the group for failure to make timely payment of the premium, renewal coverage is subject to evidence of insurability as required by and satisfactory to the insurer and to payment of the premium due plus any penalty that may be provided.
[Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.372 to 161.400 reserved for expansion]

SUBCHAPTER J. PENALTIES

§ 161.401. Penalty for Certain Transactions

Any person, seller, veteran, or appraiser who knowingly makes, utters, publishes, passes, or uses any false, fictitious, or forged paper, document, contract, affidavit, application, assignment, or other instrument in writing in connection with or pertaining to any transaction under this chapter is guilty of a felony and on conviction shall be punished by imprisonment in the state penitentiary for not less than two nor more than 10 years, or by a fine of not less than $1,000 nor more than $10,000, or by both.
[Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.402. Penalty Relating to Certain Purchases, Sales, and Resales of Land

A person who knowingly files a false, fictitious, or forged paper, document, contract, affidavit, application, assignment, or other instrument in writing relating to the purchase, sale, or resale of land under this chapter is guilty of a felony and on conviction shall be punished by imprisonment in the state peni-

tentiary for not less than two nor more than 10 years or by a fine of not less than $1,000 nor more than $10,000, or by both.

[Acts 1977, 65th Leg., p. 2675, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.403. Penalty for Defrauding Veteran and State

A person who defrauds a veteran of his rights and benefits under this chapter by an act of fraud, duress, deceit, coercion, or misrepresentation or a person who uses the purposes or provisions of this chapter to defraud the state or any veteran by an act of fraud, duress, coercion, misrepresentation, or deceit, is guilty of a felony, and on conviction shall be punished by imprisonment in the state penitentiary for not less than two nor more than 10 years or by a fine of not less than $1,000 nor more than $10,000, or by both.

[Acts 1977, 65th Leg., p. 2675, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

TITLE 8. ACQUISITION OF RESOURCES

CHAPTER 181. TEXAS CONSERVATION FOUNDATION

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SUBCHAPTER A. GENERAL PROVISIONS

§ 181.001. Purpose

The Texas Conservation Foundation is established to encourage private gifts of real and personal property or income from or other interest in real and personal property, to survey and collect data concerning the natural resources and areas of Texas, to apply for, receive, and make proper use of federal grants and funds as well as private funds, to create a register of Texas's unique natural areas and resources, and to make timely acquisition by purchase or option of any property for the benefit of or in connection with the Texas state system of historic sites, parks, refuges, wildlife preserves, wildlife management areas, and scientific and recreational areas, and thereby further the conservation of natural, scenic, historical, scientific, educational, inspirational, wildlife, or recreational resources for future generations of Americans.

[Acts 1977, 65th Leg., p. 2676, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1644, ch. 688, § 1, eff. June 13, 1979.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.086, purports to add § 1a to Civil Statutes, art. 6145–7, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(4). As so added, § 1a reads:

"The Texas Conservation Foundation is subject to the Texas Sunset Act [Civil Statutes, art. 5429k]; and unless continued in existence as provided by that Act the foundation is abolished, and this Act expires effective September 1, 1985."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 181.002. Definitions

In this chapter:

(1) "Foundation" means the Texas Conservation Foundation.

(2) "Board" means the board of the Texas Conservation Foundation.

(3) "Member" means a member of the board who has voting rights.

[Acts 1977, 65th Leg., p. 2676, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1647, ch. 688, § 4, eff. June 13, 1979.

[Sections 181.003 to 181.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 181.011. Texas Conservation Foundation

A charitable and nonprofit corporation known as the Texas Conservation Foundation is established to perform the acts and have the duties and purposes in Section 181.001 of this code and to accept and administer gifts and otherwise to acquire and hold property or interests in property in accordance with the provisions of this code.

[Acts 1977, 65th Leg., p. 2676, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1644, ch. 688, § 1, eff. June 13, 1979.]

§ 181.012. Members of Board

(a) The foundation shall be governed by a board that shall have as members:

(1) the executive director of the Parks and Wildlife Department;

(2) the Commissioner of the General Land Office;

(3) the executive director of the Texas Historical Commission; and

(4) three interested citizens of the State of Texas, one appointed by the governor, one appointed by the speaker of the house of representatives and one appointed by the lieutenant governor.

(b) Membership on the board is not considered to be an office within the meaning of the statutes and the Texas Constitution.

(c) Each member who is named in Subdivision (1), (2), or (3) of Subsection (a) of this section may designate in writing from time to time a representative from his staff to serve by proxy as a member of the board, thereby vesting full authority of each member in his representative.

(d) No state funds for property maintenance, operations, or development shall be expended by an agency of the state pursuant to the provisions of this Act without express legislative authorization either through the General Appropriations Act or separate statute.

[Acts 1977, 65th Leg., p. 2676, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1644, ch. 688, § 1, eff. June 13, 1979.]

§ 181.013. Terms of Office

Each citizen member shall serve at the pleasure of the official who appointed him. The initial terms of the appointed members shall be staggered so that the terms of one-third of the initial members will expire every two years.

[Acts 1977, 65th Leg., p. 2677, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1644, ch. 688, § 1, eff. June 13, 1979.]

§ 181.014. Board Officers

(a) The governor shall annually select the chairman from among the board membership.

(b) The executive director of the Parks and Wildlife Department shall be secretary of the board.

(c) The governor may from time to time appoint a variable number of advisors to the board, who shall have no vote nor receive any compensation but who shall be persons of competence who have a genuine interest in furthering the goals of the foundation. The advisors shall serve at the pleasure of the governor.

[Acts 1977, 65th Leg., p. 2677, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1644, ch. 688, § 1, eff. June 13, 1979.]

§ 181.015. Board Meetings

(a) The board shall meet at the call of the chairman.

(b) There shall be at least one meeting each year.

[Acts 1977, 65th Leg., p. 2677, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.016. Quorum

A majority of the members of the board serving at any one time constitutes a quorum for the transaction of business.

[Acts 1977, 65th Leg., p. 2677, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.017. Compensation; Expenses

(a) No compensation shall be paid to the members of the board for their services as members.

(b) The members of the board shall be reimbursed for actual and necessary travel and subsistence expenses incurred by them in the performance of their duties as members of the board. Reimbursement shall be paid from the foundation funds available to the board for this purpose.

[Acts 1977, 65th Leg., p. 2677, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.018. Suits; Liability

(a) The foundation has perpetual succession with all the usual powers and obligations of a corporation acting as a trustee, including the power to sue and be sued in its own name.

(b) The members of the board are not personally liable, except for malfeasance, and are granted immunity from civil liability while performing their official functions.

(c) The State of Texas shall not be liable for any debts, defaults, acts, or omissions of the foundation.

[Acts 1977, 65th Leg., p. 2677, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1647, ch. 688, § 2, eff. June 13, 1979.]

§ 181.019. Seal

The foundation shall have an official seal, which shall be judicially recognized.

[Acts 1977, 65th Leg., p. 2678, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 181.020 to 181.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 181.051. In General

The foundation may:

(1) contract in its own name with any governmental agency or private person or entity;

(2) act through agents and employees;

(3) execute and acknowledge all instruments;

(4) contract for necessary services;

(5) maintain confidential files, not subject to the provisions of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–17a, Vernon's Texas Civil Statutes), regarding details of the location, ownership, quantity, and identifying data related to any archeological, paleontological, or geological site or any species of plants or wildlife that are rare, threatened, or endangered or subject to abuse by collectors. No privately owned property may be listed in such files unless and until the owner or a majority of the owners if the property is owned by more than two people gives written consent to allow its inclusion. Nothing contained herein shall be construed as legislative condonance of unauthorized entry onto private property; and

(6) do any lawful acts necessary or appropriate to its statutory purposes.

[Acts 1977, 65th Leg., p. 2678, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1644, ch. 688, § 1, eff. June 13, 1979.]

§ 181.052. Rules and Regulations

The board may adopt bylaws and rules necessary for the administration of its functions in carrying out the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2678, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.053. Annual Report

As soon as practicable after the end of each fiscal year, the foundation shall transmit to the legislature and the governor an annual report of its proceedings and activities, including a full and complete statement of its receipts, expenditures, property, and investments.

[Acts 1977, 65th Leg., p. 2678, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1644, ch. 688, § 1, eff. June 13, 1979.]

§ 181.054. Gifts, Devises, Trusts, and Bequests

(a) The foundation may accept, receive, solicit, hold, administer, and use gifts, devises, trusts, or bequests, either absolutely or in trust, of real or personal property or income from or other interest in real or personal property for the benefit of or in connection with the Texas system of natural areas, parks, refuges, scientific, historical, prehistoric, educational, inspirational, wildlife management, or recreational areas and sites.

(b) An interest in real property includes easements or other rights for preservation, conservation, protection, or enhancement by and for the public of natural, scenic, historical, archeological, geological, scientific, educational, inspirational, wildlife, or recreational resources anywhere in the State of Texas.

[Acts 1977, 65th Leg., p. 2678, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1644, ch. 688, § 1, eff. June 13, 1979.]

§ 181.055. Gifts, Devises, and Bequests Subject to Restriction or Beneficial Interest

The foundation may accept a gift, devise, or bequest that is encumbered, restricted, or subject to a beneficial interest of private persons or corporations as long as any current or future use or interest in the gift, devise, or bequest is for the benefit of the Texas system of natural areas, parks, refuges, and scenic, wildlife preservation, historical, archeological, geological, wildlife management, or scientific areas.

[Acts 1977, 65th Leg., p. 2678, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1644, ch. 688, § 1, eff. June 13, 1979.]

§ 181.056. Purchase or Other Acquisition of Land

(a) To the extent that funds or credit are available to it for this purpose, the foundation may enter into and exercise purchase options, buy by outright purchase, or contract for, trade for, or otherwise acquire in the title and name of the foundation any land or interest in land that the foundation considers significant and necessary for the purposes of the foundation.

(b) Unless specially restricted by the instrument of transfer, the foundation may hold this land or interest in land in undeveloped and protective holdings if the foundation considers such holding necessary for the accomplishment of its statutory purposes.

[Acts 1977, 65th Leg., p. 2678, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1644, ch. 688, § 1, eff. June 13, 1979.]

§ 181.057. Management and Disposition of Property or Income

(a) Except as otherwise limited or required by the instrument of transfer, the foundation may sell, lease, trade, invest, reinvest, retain, or otherwise

dispose of or deal with any property or income from any property in a manner the board may from time to time determine.

(b) The foundation shall not engage in any business, nor shall it make any investment that may not lawfully be made under the Texas Trust Act, as amended (Article 7425b–1, Vernon's Texas Civil Statutes), except that the foundation may make any investment that is authorized by the instrument of transfer and may retain, manage, and operate any property accepted by the foundation.

[Acts 1977, 65th Leg., p. 2679, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1647, ch. 688, § 3, eff. June 13, 1979.]

§ 181.058. Private Benefit or Profit Prohibited

No property, income, or interest in property that passes to the foundation may enure thereafter to the private benefit or profit of any individual, firm, or corporation.

[Acts 1977, 65th Leg., p. 2679, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.059. Services and Facilities of Other Agencies

The foundation may use the services and facilities of the Parks and Wildlife Department, the Texas Historical Commission, and the office of the attorney general. There services and facilities may be made available on request to the extent practicable without reimbursement.

[Acts 1977, 65th Leg., p. 2679, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.060. Eminent Domain

None of the provisions of this chapter confer on the foundation the right of eminent domain.

[Acts 1977, 65th Leg., p. 2679, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 181.061 to 181.100 reserved for expansion]

SUBCHAPTER D. TAX EXEMPTIONS

§ 181.101. Exempt Gifts or Transfers

Contributions, gifts, and other transfers made to or for the use of the foundation are contributions, gifts, or transfers to or for the use of the State of Texas for scientific, educational, and benevolent purposes and shall be made without tax to the transferor.

[Acts 1977, 65th Leg., p. 2679, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.102. Tax on Beneficial Interest

If a beneficial interest is retained, it shall be taxable to the grantor to the extent of the fair market value of the beneficial interest by the State of Texas or any taxing authority created by the laws of the State of Texas.

[Acts 1977, 65th Leg., p. 2679, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.103. Exemption of Foundation

(a) The foundation and any income or property received or owned by it, and all transactions relating to the income or property received or owned by the foundation, are exempt from all forms of taxation.

(b) In the discretion of the board, the foundation may contribute toward the costs of local government in amounts not to exceed those that it would be obligated to pay the government if it were not exempt from taxation by virtue of Subsection (a) of this section or by virtue of its being a charitable and nonprofit corporation. The foundation may agree to contribute with respect to property transferred to it and the income derived from property transferred to it if the agreement is a condition of the transfer.

[Acts 1977, 65th Leg., p. 2679, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 182. TEXAS HISTORICAL RESOURCES DEVELOPMENT COUNCIL

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182.001. Definition.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

182.011. Creation of Council.
182.012. Council Membership.
182.013. Compensation.
182.014. Council Officers.
182.015. Quorum.
182.016. Council Meetings.
182.017. Use and Provision of Services of Certain Agencies.

SUBCHAPTER C. POWERS AND DUTIES

182.041. Communication Between Agencies.
182.042. Study.
182.043. Soliciting and Considering Suggestions.
182.044. Recommendations.
182.045. Semiannual Reports.

SUBCHAPTER A. GENERAL PROVISIONS

§ 182.001. Definition

In this chapter, "council" means the Texas Historical Resources Development Council.

[Acts 1977, 65th Leg., p. 2680, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.081, purports to add § 1a to Civil Statutes, art. 6145–10, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(4). As so added, § 1a reads:

"The Texas Historical Resources Development Council is subject to the Texas Sunset Act [Civil Statutes, art. 5429k]; and unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1983."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

[Sections 182.002 to 182.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 182.011. Creation of Council

To encourage the best use of the unique historical resources of this state, the Texas Historical Resources Development Council is created.

[Acts 1977, 65th Leg., p. 2680, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.012. Council Membership

(a) The council consists of the following ex officio members:

(1) the executive director of the Texas Historical Commission;

(2) the director and librarian of the Texas State Library;

(3) the executive director of the Texas Tourist Development Agency;

(4) the director of the Travel and Information Division of the State Department of Highways and Public Transportation;

(5) the director of the Park Services Division of the Parks and Wildlife Department; and

(6) the chairman of the State Antiquities Committee.

(b) Membership on the council shall not be considered to be an office within the meaning of the statutes and Constitution of the State of Texas.

[Acts 1977, 65th Leg., p. 2680, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.013. Compensation

No compensation may be paid to the members of the council for their services as members.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.014. Council Officers

The executive director of the Texas Historical Commission is chairman of the council, and the director and librarian of the Texas State Library is the secretary.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.015. Quorum

A majority of the members of the council constitute a quorum authorized to transact business of the council.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.016. Council Meetings

(a) The council meets at least four times a year.

(b) Additional meetings may be held on the call of the chairman or on written request of any two members of the council.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.017. Use and Provision of Services of Certain Agencies

The council may use the services and facilities of the Texas Historical Commission, the Texas State Library and Historical Commission, the Texas Tourist Development Agency, the State Department of Highways and Public Transportation, the Parks and Wildlife Department, and the State Antiquities Committee, and these services and facilities may be made available on request to the extent practicable without reimbursement for them.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 182.018 to 182.040 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 182.041. Communication Between Agencies

The council shall establish communication between the Texas Historical Commission, the Texas State Library and Historical Commission, the Texas Tourist Development Agency, the State Department of Highways and Public Transportation, the Parks and Wildlife Department, and the State Antiquities Committee in order to coordinate the efforts of these agencies to develop and publicize the historical resources of this state.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.042. Study

The council shall make a continuous study of the means that state agencies and private promotional and historical organizations in Texas may employ to develop and publicize the historical resources of this state.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.043. Soliciting and Considering Suggestions

The council shall solicit and consider suggestions from state officials, interested private citizens, and private promotional and historical organizations in Texas for improving the methods employed to develop and publicize the historical resources of this state.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.044. Recommendations

The council shall make recommendations for effective methods that may be used by state agencies and private promotional and historical organizations in Texas to develop and publicize the historical resources of this state.

[Acts 1977, 65th Leg., p. 2682, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.045. Semiannual Reports

The council shall make a complete and detailed report semiannually of all of its proceedings, findings, and recommendations held or made since the last report, this report to be made to the governor and to the executive director of the Texas Legislative Council.

[Acts 1977, 65th Leg., p. 2682, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

TITLE 9. HERITAGE

CHAPTER 191. ANTIQUITIES COMMITTEE

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191.002. Declaration of Public Policy.
191.003. Definitions.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

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191.012. Qualifications for Citizen Members.
191.013. Appointment of Citizen Members.
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191.015. Per Diem and Expenses for Citizen Members.
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SUBCHAPTER A. GENERAL PROVISIONS

§ 191.001. Title

This chapter may be cited as the Antiquities Code of Texas.

[Acts 1977, 65th Leg., p. 2683, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.002. Declaration of Public Policy

It is the public policy and in the public interest of the State of Texas to locate, protect, and preserve all sites, objects, buildings, pre-twentieth century shipwrecks, and locations of historical, archeological, educational, or scientific interest, including but not limited to prehistoric and historical American Indian or aboriginal campsites, dwellings, and habitation sites, archeological sites of every character, treasure imbedded in the earth, sunken or abandoned ships and wrecks of the sea or any part of their contents, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants, pre-history, history, natural history, government, or culture in, on, or under any of the land in the State of Texas, including the tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.

[Acts 1977, 65th Leg., p. 2683, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.003. Definitions

In this chapter:

(1) "Committee" means the Antiquities Committee.

(2) "Landmark" means a state archeological landmark.

[Acts 1977, 65th Leg., p. 2683, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 191.004 to 191.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 191.011. Creation and Membership of Committee

There is created an Antiquities Committee, which is composed of seven members, including the Director of the Texas Historical Commission, the Director of the Parks and Wildlife Department, the Commissioner of the General Land Office, the State Archeologist, and the following citizen members: one professional archeologist from a recognized museum or institution of higher learning in Texas, one professional historian with expertise in Texas history and culture, and the Director of the Texas Memorial Museum of The University of Texas System.
[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.079, purports to add § 3a to Civil Statutes, art. 6145–9, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(4). As so added, § 3a reads:

"The Antiquities Committee is subject to the Texas Sunset Act [Civil Statutes, art. 5429k]; and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1983."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 191.012. Qualifications for Citizen Members

Each citizen member of the committee must be a resident of the State of Texas.
[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.013. Appointment of Citizen Members

Each citizen member of the committee shall be appointed by the governor with the advice and consent of the senate.
[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.014. Term of Citizen Members

Each citizen member of the committee shall serve for a term coexistent with the governor appointing him and until his successor is appointed and qualifies.
[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.015. Per Diem and Expenses for Citizen Members

Each citizen member of the committee is entitled to receive a per diem allowance for each day spent in the performance of his duties and reimbursement for actual and necessary travel expenses incurred in the performance of his duties, as provided by the General Appropriations Act.
[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.016. Chairman of Committee

The committee shall select one of its members as chairman.
[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.017. Quorum

Four members of the committee constitute a quorum for conducting business.
[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.018. Employees of Committee

(a) The committee may employ the personnel necessary to perform its duties to the extent the employment is provided for by the General Appropriations Act.

(b) Employees of the committee are considered to be employees of the Texas Historical Commission.
[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.019. Records of Committee

The committee shall keep a record of its proceedings which shall be subject to inspection by any citizen of Texas desiring to make an examination in the presence of a member of the committee or an authorized employee of the committee.
[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 191.020 to 191.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 191.051. In General

(a) The committee is the legal custodian of all items described in this chapter that have been recovered and retained by the State of Texas.

(b) The committee shall:

(1) maintain an inventory of the items recovered and retained by the State of Texas, showing the description and depository of them;

(2) determine the site of and designate landmarks and remove from the designation certain sites, as provided in Subchapter D of this chapter;

(3) contract or otherwise provide for discovery and salvage operations under the provisions of Section 191.053 of this code;

(4) consider the requests for and issue the permits provided for in Section 191.054 of this code; and

(5) protect and preserve the archeological resources of Texas.

[Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.052. Rules

The committee may promulgate rules and require contract or permit conditions to reasonably effect the purposes of this chapter.

[Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.053. Contract for Discovery and Salvage

(a) The committee may contract with other state agencies or institutions and with qualified private institutions, corporations, or individuals for the discovery and salvage of sunken or abandoned ships or wrecks of the sea, or any part or the contents of them, or treasure imbedded in the earth.

(b) At the discretion of the committee, the contract may provide for fair compensation to the salvager in terms of a percentage of the reasonable cash value of the objects recovered or a fair share of the objects recovered. The contract may provide for appraisal by qualified experts or by representatives of the contracting parties to determine the reasonable cash value. The committee shall determine the amount constituting a fair share, taking into consideration the circumstances of each operation.

(c) The contract shall:

(1) be on a form approved by the attorney general;

(2) specify the location, nature of the activity, and the time period covered by the contract; and

(3) provide for the termination of any right in the salvager or permittee under the contract on the violation of any of the terms of the contract.

(d) The executed contract shall be recorded by the person, firm, or corporation obtaining the contract in the office of the county clerk in the county or counties in which the operations are to be conducted prior to the commencement of the operation.

(e) Title to all objects recovered is retained by the State of Texas unless and until it is released to the salvager or permittee by the committee.

[Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.054. Permit for Salvage, Restoration, or Study

(a) The committee may issue a permit to other state agencies or institutions or to qualified private institutions, companies, or individuals for the taking, salvage, excavation, restoration, or the conduct of scientific or educational studies at, in, or on landmarks, if it is the opinion of the committee that the permit is in the best interest of the State of Texas.

(b) The permit may provide for the permittee to retain a portion of any recovery as provided for contracting parties under the provisions of Section 191.053 of this code.

(c) The permit shall:

(1) be in compliance with forms approved by the attorney general;

(2) specify the location, nature of the activity, and the time period covered by the permit; and

(3) provide for the termination of any right in the permittee under the permit on the violation of any of the terms of the permit.

[Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.055. Supervision

All salvage or recovery operations conducted under the contract provisions in Section 191.053 of this code and all operations conducted under permits or contracts set out in Section 191.054 of this code must be carried out:

(1) under the general supervision of the committee;

(2) in accordance with reasonable rules adopted by the committee; and

(3) in such manner that the maximum amount of historic, scientific, archeological, and educational information may be recovered and preserved in addition to the physical recovery of items.

[Acts 1977, 65th Leg., p. 2686, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.056. Purchase From Salvager or Permittee

(a) The committee may purchase from the salvager or permittee the salvager's or permittee's share or portion of a share of items recovered that in the opinion of the committee should remain the property of the state. The committee may spend any appropriations made for this purpose that it considers advisable.

(b) The committee may accept gifts, grants, devises, or bequests of money, securities, or property to be used in the purchase of items from the salvager or permittee.

(c) The committee may contract or agree with persons, firms, corporations, or institutions that, for the privilege of retaining temporary possession of

the items, the person, firm, corporation, or institution may advance to the committee the money necessary to procure from the salvager or permittee the items the committee determines should remain the property of the State of Texas, on the condition that at any time the committee may repay the person, firm, corporation, or institution the sum so advanced, without interest or additional charge of any kind, and recover possession of the items. During the time the items are in the possession of the person, firm, corporation, or institution advancing the money for the purchase of them, the items shall be available for viewing by the general public without charge or at no more than a nominal admission fee, and the items may not be removed from the State of Texas except on the express authorization of the committee for appraisal, exhibition, or restorative purposes.

[Acts 1977, 65th Leg., p. 2686, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.057. Restoration for Private Parties

The committee may restore antiquities for private parties under rules promulgated by the committee. All real and administrative costs incurred in the restoration shall be paid by the private party.

[Acts 1977, 65th Leg., p. 2686, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.058. Display of Artifacts

(a) As far as is consistent with the public policy of this chapter, the committee, on a majority vote, may arrange or contract with other state agencies or institutions, incorporated cities, and qualified private institutions, corporations, or individuals for public display of artifacts and other items in its custody through permanent exhibits established in the locality or region in which the artifacts were discovered or recovered. The committee, on a majority vote, may also arrange or contract with these same persons and groups for portable or mobile displays.

(b) The committee is the legal custodian of the items described in this chapter and shall adopt appropriate rules, terms, and conditions to assure appropriate security, qualification of personnel, insurance, facilities for preservation, restoration, and display of the items loaned under the contracts.

[Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 191.059 to 191.090 reserved for expansion]

SUBCHAPTER D. STATE ARCHEOLOGICAL LANDMARKS

§ 191.091. Ships, Wrecks of the Sea, and Treasure Imbedded in Earth

Sunken or abandoned pre-twentieth century ships and wrecks of the sea, and any part or the contents of them, and all treasure imbedded in the earth, located in, on, or under the surface of land belonging to the State of Texas, including its tidelands, submerged land, and the beds of its rivers and the sea within jurisdiction of the State of Texas, are declared to be state archeological landmarks.

[Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.092. Other Sites or Articles

Other sites, objects, buildings, artifacts, implements, and locations of historical, archeological, scientific, or educational interest, including those pertaining to prehistoric and historical American Indians or aboriginal campsites, dwellings, and habitation sites, their artifacts and implements of culture, as well as archeological sites of every character that are located in, on, or under the surface of any land belonging to the State of Texas or to any county, city, or political subdivision of the state are state archeological landmarks and are the sole property of the State of Texas.

[Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.093. Prerequisites to Taking, Altering, Damaging, Destroying, Salvaging, or Excavating Certain Landmarks

Landmarks under Section 191.091 of this code are the sole property of the State of Texas and may not be taken, altered, damaged, destroyed, salvaged, or excavated without a contract with or permit from the committee.

[Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.094. Designating a Landmark on Private Land

(a) Any site located on private land which is determined by majority vote of the committee to be of sufficient archeological, scientific, or historical significance to scientific study, interest, or public representation of the aboriginal or historical past of Texas may be designated a state archeological landmark by the committee.

(b) No site may be designated on private land without the written consent of the landowner or landowners in recordable form sufficiently describing the site so that it may be located on the ground.

(c) On designation, the consent of the landowner shall be recorded in the deed records of the county in which the land is located.

[Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.095. Permit for Landmark on Private Land

All sites or items of archeological, scientific, or historical interest located on private land in the

State of Texas in areas designated as landmarks, as provided in Section 191.094 of this code, and landmarks under Section 191.092 of this code, may not be taken, altered, damaged, destroyed, salvaged, or excavated without a permit from the committee or in violation of the terms of the permit.

[Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.096. Marking Landmark on Private Land

Any site on private land which is designated a landmark shall be marked by at least one marker bearing the words "State Archeological Landmark" for each five acres of area.

[Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.097. Removing Designation as Landmark

(a) Any landmark on public or private land may be determined by majority vote of the committee to be of no further historical, archeological, educational, or scientific value, or not of sufficient value to warrant its further classification as a landmark, and on this determination may be removed from the designation as a landmark.

(b) On removal of the designation on private land which was designated by instrument of record, the committee may execute and record in the deed records of the county in which the site is located an instrument setting out the determination and releasing the site from the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 191.098 to 191.130 reserved for expansion]

SUBCHAPTER E. PROHIBITIONS

§ 191.131. Contract or Permit Requirement

(a) No person, firm, or corporation may conduct a salvage or recovery operation without first obtaining a contract.

(b) No person, firm, or corporation may conduct an operation on any landmark without first obtaining a permit and having the permit in his or its possession at the site of the operation, or conduct the operation in violation of the provisions of the permit.

[Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.132. Damage or Destruction

(a) No person may intentionally and knowingly deface American Indian or aboriginal paintings, hieroglyphics, or other marks or carvings on rock or elsewhere that pertain to early American Indian or aboriginal habitation of the country.

(b) A person who is not the owner shall not wilfully injure, disfigure, remove, or destroy a historical structure, monument, marker, medallion, or artifact without lawful authority.

[Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.133. Entry Without Consent

No person who is not the owner, and does not have the consent of the owner, proprietor, lessee, or person in charge, may enter or attempt to enter on the enclosed land of another and intentionally injure, disfigure, remove, excavate, damage, take, dig into, or destroy any historical structure, monument, marker, medallion, or artifact, or any prehistoric or historic archeological site, American Indian or aboriginal campsite, artifact, burial, ruin, or other archeological remains located in, on, or under any private land within the State of Texas.

[Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 191.134 to 191.170 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT

§ 191.171. Criminal Penalty

(a) A person violating any of the provisions of this chapter is guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than $50 and not more than $1,000, by confinement in jail for not more than 30 days, or by both.

(b) Each day of continued violation of any provision of this chapter constitutes a separate offense for which the offender may be punished.

[Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.172. Civil Action by Attorney General

(a) In addition to, and without limiting the other powers of the attorney general, and without altering or waiving any criminal penalty provided in this chapter, the attorney general may bring an action in the name of the State of Texas in any court of competent jurisdiction for restraining orders and injunctive relief to restrain and enjoin violations or threatened violations of this chapter, and for the return of items taken in violation of the provisions of this chapter.

(b) Venue for an action instituted by the attorney general lies either in Travis County or in the county in which the activity sought to be restrained is

alleged to be taking place or from which the items were taken.

[Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.173. Civil Action by Citizen

(a) A citizen of the State of Texas may bring an action in any court of competent jurisdiction for restraining orders and injunctive relief to restrain and enjoin violations or threatened violations of this chapter, and for the return of items taken in violation of the provisions of this chapter.

(b) Venue of an action by a citizen lies in the county in which the activity sought to be restrained is alleged to be taking place or from which the items were taken.

[Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.174. Assistance From State Agencies and Law Enforcement Officers

(a) The chief administrative officers of all state agencies are directed to cooperate and assist the committee and the attorney general in carrying out the intent of this chapter.

(b) All state and local law enforcement agencies and officers are directed to assist in enforcing the provisions and carrying out the intent of this chapter.

[Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

TITLE 10. CAVES

CHAPTER 201. CAVERN PROTECTION

SUBCHAPTER A. GENERAL PROVISIONS

Section
201.001. Policy.
201.002. Definitions.

SUBCHAPTER B. PERMITS

201.011. Permit Required.
201.012. Issuance of Permit.
201.013. Revocation.
201.014. Penalties.

SUBCHAPTER C. PROHIBITIONS

201.041. Vandalism.
201.042. Sale of Speleothems.
201.043. Pollution.

SUBCHAPTER A. GENERAL PROVISIONS

§ 201.001. Policy

It is declared to be the public policy and in the public interest of the State of Texas to protect and preserve all caves on or under any of the land in the State of Texas, including tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.

[Added by Acts 1979, 66th Leg., p. 2003, ch. 785, § 5, eff. June 13, 1979.]

§ 201.002. Definitions

In this chapter:

(1) "Cave" means any naturally occurring subterranean cavity, and includes or is synonymous with cavern, pit, pothole, well, sinkhole, and grotto.

(2) "Gate" means any structure, lock, door, or device located to limit or prohibit access or entry to any cave.

(3) "Speleothem" means a natural mineral formation or deposit occurring in a cave, and includes or is synonymous with stalagmites, stalactites, helictites, anthodites, gypsum flowers, needles, angel's hair, soda straws, draperies, bacon, cave pearls, popcorn (coral), rimstone dams, columns, plettes, flowstone, or other similar crystalline mineral formations commonly composed of calcite, epsomite, gypsum, aragonite, celestite, and other similar minerals and formations.

(4) "Owner" means a person who owns title to land on which a cave is located, including a person who owns title to a leasehold estate in the land.

[Added by Acts 1979, 66th Leg., p. 2003, ch. 785, § 5, eff. June 13, 1979.]

[Sections 201.003 to 201.010 reserved for expansion]

SUBCHAPTER B. PERMITS

§ 201.011. Permit Required

No person may excavate, remove, destroy, injure, alter in any significant manner, or deface any part of a cave owned by the State of Texas, unless he first obtains a permit under Section 201.012 of this code.

[Added by Acts 1979, 66th Leg., p. 2003, ch. 785, § 5, eff. June 13, 1979.]

§ 201.012. Issuance of Permit

The General Land Office may issue a permit under this subsection if the person seeking the permit furnishes the following information:

(1) a detailed statement giving the reasons and objectives for the excavation, removal, or alteration and the benefits expected to be obtained from the contemplated work;

(2) data and results of any completed excavation;

(3) the prior written permission from the state agency which manages the site of the proposed excavation;

(4) a sworn statement that he will carry the permit while exercising the privileges granted; and

(5) any other reasonable information which the General Land Office may prescribe.

[Added by Acts 1979, 66th Leg., p. 2003, ch. 785, § 5, eff. June 13, 1979.]

§ 201.013. Revocation

The General Land Office may for good cause revoke any permit issued under Section 201.012 of this code.

[Added by Acts 1979, 66th Leg., p. 2003, ch. 785, § 5, eff. June 13, 1979.]

§ 201.014. Penalties

(a) A person who violates Section 201.011 of this code is guilty of a Class B misdemeanor.

(b) A person who violates Section 201.012 of this code is guilty of a Class C misdemeanor and the permit shall be revoked.

[Added by Acts 1979, 66th Leg., p. 2003, ch. 785, § 5, eff. June 13, 1979.]

[Sections 201.015 to 201.040 reserved for expansion]

SUBCHAPTER C. PROHIBITIONS

§ 201.041. Vandalism

(a) A person may not, without express, prior, written permission of the owner, wilfully or knowingly:

(1) break, break off, crack, carve upon, write, burn, or otherwise mark upon, remove, or in any manner destroy, disturb, deface, mar, or harm the surfaces of any cave or any natural material in a cave, including speleothems;

(2) disturb or alter in any manner the natural condition of any cave; or

(3) break, force, tamper with, or otherwise disturb a lock, gate, door, or other obstruction designed to control or prevent access to any cave, even though entrance to the cave may not be gained.

(b) A person who violates a provision of this section is guilty of a Class A misdemeanor, unless he has previously been convicted of violating this section, in which case he is guilty of a felony of the third degree.

[Added by Acts 1979, 66th Leg., p. 2003, ch. 785, § 5, eff. June 13, 1979.]

§ 201.042. Sale of Speleothems

(a) A person may not sell or offer for sale any speleothems in this state, or export them for sale outside the state, without written permission from the owner of the cave from which the speleothems were removed.

(b) A person who violates this section is guilty of a Class B misdemeanor.

[Added by Acts 1979, 66th Leg., p. 2003, ch. 785, § 5, eff. June 13, 1979.]

§ 201.043. Pollution

(a) A person may not, without prior permission of the owner, store, dump, dispose of, or otherwise place in caves any chemicals, dead animals, sewage, trash, garbage, or other refuse.

(b) A person who violates any provision of this section is guilty of a Class C misdemeanor. A person who violates any provision of this section is, for the second offense, guilty of a Class A misdemeanor. A person who violates any provision of this section is, for the third or any subsequent offense, guilty of a felony of the third degree.

[Added by Acts 1979, 66th Leg., p. 2003, ch. 785, § 5, eff. June 13, 1979.]

DISPOSITION TABLE

Showing where provisions of former articles of the Civil Statutes and the unclassified laws of the General and Special Laws of Texas are covered in the Natural Resources Code.

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§ 5	36.059
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§ 7	36.061
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§ 8	36.061
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5267	31.014
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	22.012
	22.013
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5269	22.015
	22.016
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	22.018
5270	22.053
	22.054
	22.055
5271	22.055
	22.056
	22.057
	22.058
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	22.060
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5272	22.101
5273	22.061
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5275	22.052
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	22.061
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	22.063
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§ 5	34.058
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TITLE 1. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

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SUBCHAPTER A. PURPOSE AND POLICY

§ 1.001. Purpose of Code

(a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 488, Acts of the 58th Legislature, 1963 (Article 5429b–1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent parks and wildlife law more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 1.002. Construction of Code

The Code Construction Act (Article 5429b–2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 1.003 to 1.010 reserved for expansion]

SUBCHAPTER B. PROPERTY OF THE STATE

§ 1.011. Property of the State

(a) All wild animals, fur-bearing animals, wild birds, and wild fowl inside the borders of this state are the property of the people of this state.

(b) All fish and other aquatic animal life contained in the freshwater rivers, creeks, and streams and in lakes or sloughs subject to overflow from rivers or other streams within the borders of this state are the property of the people of this state.

(c) All the beds and bottoms and the products of the beds and bottoms of the public rivers, bayous, lagoons, creeks, lakes, bays, and inlets in this state and of that part of the Gulf of Mexico within the jurisdiction of this state are the property of this state. The state may permit the use of the waters and bottoms and the taking of the products of the bottoms and waters.

(d) The Parks and Wildlife Department shall regulate the taking and conservation of fish, oysters, shrimp, crabs, turtles, terrapins, mussels, lobsters, and all other kinds and forms of marine life, or sand, gravel, marl, mud shell, and all other kinds of shell in accordance with the authority vested in it by this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 1.012. Private Fresh Water

Any freshwater lake, river, creek, or bayou in this state contained in any survey of private land may not be sold but shall remain open to the public. If the Parks and Wildlife Department stocks the water with fish, it is authorized to protect the fish under rules as it may prescribe.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 1.013 to 1.100 reserved for expansion]

SUBCHAPTER C. DEFINITIONS

§ 1.101. Hunt and Catch Defined

In this code:

(1) "Hunt" means seek or pursue with intent to take or kill and includes take, kill, and an attempt to take or kill.

(2) "Catch" means take or kill and includes an attempt to take or kill.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

TITLE 2. PARKS AND WILDLIFE DEPARTMENT

CHAPTER 11. PARKS AND WILDLIFE DEPARTMENT

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SUBCHAPTER A. GENERAL PROVISIONS

§ 11.001. Definitions

In this code:

(1) "Commission" means the Parks and Wildlife Commission.

(2) "Department" means the Parks and Wildlife Department.

(3) "Director" means the executive director of the Parks and Wildlife Department.

(4) "Chairman" means the chairman of the Parks and Wildlife Commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 11.002 to 11.010 reserved for expansion]

SUBCHAPTER B. ORGANIZATION OF DEPARTMENT

§ 11.011. Parks and Wildlife Department

The Parks and Wildlife Department is established as an agency of the state. It is under the policy direction of the Parks and Wildlife Commission.

[Acts 1975, 64th Leg., p. 1405, ch. 541, § 1, eff. Sept. 1, 1975.]

§ 11.0111. Application of Sunset Act

The Parks and Wildlife Department is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the department is abolished effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.099a, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

§ 11.012. Commission

(a) The commission consists of six members appointed by the governor with the advice and consent of two-thirds of the members of the senate present and voting.

(b) If the senate is not in session, the governor shall appoint the members and issue commissions to them as provided by law, and their appointment shall be submitted to the next session of the senate for its advice and consent in the manner that appointments to fill vacancies under the constitution are submitted to the senate.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.013. Terms

The members of the commission hold office for staggered terms of six years, with the terms of two members expiring every two years. Each member holds office until his successor is appointed and has qualified. The terms expire on January 31 of odd-numbered years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.014. Chairman, Vice-Chairman

(a) The governor shall designate biennially one of the six members as chairman of the commission for a term of two years expiring on January 31 of the succeeding odd-numbered year.

(b) The commission shall elect biennially a vice-chairman from among its members for a term of two years expiring on January 31 of the succeeding odd-numbered year.

(c) A vacancy in the office of chairman or vice-chairman is filled for the unexpired portion of the term in the same manner as the original appointment or election.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.015. Meetings, Quorum

The commission may meet as often as is necessary but shall meet at least once during each quarter of the year. Four members constitute a quorum.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.016. Expenses, Per Diem

Members of the commission are entitled to reimbursement for their actual expenses incurred in attending meetings and to the per diem as provided in the general appropriations act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.017. Executive Director

The commission may appoint an executive director who is the chief executive officer of the department and performs its administrative duties. The director serves at the will of the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.018. Employees

The director may appoint heads of divisions, game management officers, park managers, and other employees authorized by appropriations and necessary for administering the duties and services of the department. These employees serve at the will of the director.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.019. Employees as Peace Officers

(a) The director may commission as peace officers any of the employees provided for in the general appropriations act.

(b) Employees commissioned under this section have the powers, privileges, and immunities of peace officers while on state parks or on state historical sites or in fresh pursuit of those violating the law in a state park or historical site.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.020. Deputy Game Wardens

(a) The director may commission deputy game wardens to serve at the will of the director. Provided, however, that no deputy game warden commissioned under this section may be commissioned for a period of longer than four years. At the expiration of each four-year commission the deputy game warden shall be eligible for recommission.

(b) The commission shall make regulations to govern the qualifications, conduct, and duties of commissioned deputy game wardens. The director shall implement an education course which includes training in pertinent aspects of a game warden's duties. Completion of this course shall be a prerequisite to any person obtaining a commission as deputy game warden.

(c) A commissioned deputy game warden may enforce state laws relating to hunting and fishing and to the preservation and conservation of wildlife and marine animals. The department shall prescribe the geographical area in which a deputy game warden may operate, except that a deputy game warden may not operate on the coastal waters, bays, or estuaries of this state. At all times when any commissioned deputy game warden is on duty or is acting in an official capacity he shall carry official identification and shall wear an official badge which is clearly visible. A commissioned deputy game warden must present his official identification to any person he believes is violating this code before the deputy game warden makes an investigation or arrest. A commissioned deputy game warden shall purchase and wear at all times when on duty or acting in an official capacity a uniform prescribed by the department.

(d) A deputy game warden must file an oath and a bond in the amount of $2,000 payable to the department at the time he receives the commission.

(e) Commissioned deputy game wardens serve without compensation from the state, but the department may expend necessary funds to support and maintain this responsibility.

[Added by Acts 1977, 65th Leg., p. 650, ch. 241, § 1, eff. May 25, 1977.]

[Sections 11.021 to 11.030 reserved for expansion]

SUBCHAPTER C. SPECIAL FUNDS

§ 11.031. Game, Fish, and Water Safety Fund

There is in the state treasury a special fund called the "game, fish, and water safety fund."

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 546, ch. 260, art. 1, § 1, eff. Sept. 1, 1979.]

§ 11.032. Game, Fish, and Water Safety Fund: Sources

The department shall deposit to the credit of the game, fish, and water safety fund all revenue, less allowable costs, from the following sources:

(1) all types of fishing and shrimping licenses;

(2) all types of hunting licenses and stamps;

(3) trapping licenses and other licenses relating to the taking, propagation, and sale of fur-bearing animals or their pelts;

(4) sale of marl, sand, gravel, shell, and mud-shell;

(5) oyster bed rentals and permits;

(6) federal funds received for research and development of commercial fisheries and state funds appropriated for this purpose;

(7) sale of property, less advertising costs, purchased from this fund or a special fund that is now part of this fund;

(8) fines and penalties collected for violations of a law pertaining to the protection and conser-

vation of wild birds, wild fowl, wild animals, fish, shrimp, oysters, game birds and animals, fur-bearing animals, and any other wildlife resources of this state;

(9) sale of rough fish by the department;

(10) fees for importation permits;

(11) fish farm licenses;

(12) fees from supplying fish for or placing fish in water located on private property; .

(13) sale of seized pelts;

(14) sale or lease of grazing rights to and the products from game preserves, sanctuaries, and management areas;

(15) contracts for the removal of fur-bearing animals and reptiles from wildlife management areas;

(16) motorboat registration fees;

(17) motorboat manufacturer or dealer registration fees;

(18) fines or penalties imposed by a court for violation of water safety laws contained in Chapter 31 of this code; and

(19) any other source provided by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 546, ch. 260, art. 1, § 1, eff. Sept. 1, 1979.]

§ 11.033. Use of Game, Fish, and Water Safety Fund

The game, fish, and water safety fund may be used for the following purposes only:

(1) enforcement of fish, shrimp, and oyster laws, game laws, and laws pertaining to sand, shell, and gravel;

(2) dissemination of information pertaining to marine life, wild animal life, wildlife values, and wildlife management;

(3) scientific investigation and survey of marine life for the better protection and conservation of marine life;

(4) establishment and maintenance of fish hatcheries, fish sanctuaries, tidal water fish passes, game preserves, wildlife management areas, and public hunting grounds;

(5) propagation and distribution of marine life, game animals, and wild birds;

(6) protection of wild birds, fish, and game;

(7) purchase, repair, and operation of boats and dredges;

(8) research and management of the fish and game resources of this state;

(9) salaries of employees and other expenses necessary to carry out the duties of the department under laws relating to fish, shrimp, oysters, game, and sand, shell, and gravel;

(10) expansion and development of additional opportunities of hunting and fishing in state-owned land and water;

(11) removing rough fish from public water;

(12) construction and maintenance of artificial reefs under Section 12.016 of this code;

(13) administration of the water safety laws as set out in Chapter 31 of this code;

(14) purchasing all necessary forms and supplies, including reimbursement of the department for any material produced by its existing facilities or work performed by other divisions of the department;

(15) purchase, construction, and maintenance of boat ramps on or near public waters as provided in Chapter 31 of this code; and

(16) any other use provided by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 546, ch. 260, art. 1, § 1, eff. Sept. 1, 1979.]

§ 11.034. Game, Fish, and Water Safety Fund Expenditures

All expenditures of the department from the game, fish, and water safety fund must be approved by the director. The comptroller shall draw a warrant on the state treasury from the game, fish, and water safety fund for the amount of the expenditure in favor of the person claiming the expenditure.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 546, ch. 260, art. 1, § 1, eff. Sept. 1, 1979.]

§ 11.035. State Parks Fund

(a) There is in the state treasury a special fund called the "state parks fund."

(b) The department shall deposit to the credit of the state parks fund all revenue, less allowable costs, received from the following sources:

(1) grants or operation of concessions in state parks or fishing piers;

(2) publications on state parks, state historic sites, or state scientific areas;

(3) fines or penalties received from violations of regulations governing parks issued pursuant to Subchapter B, Chapter 13, of this code; and

(4) any other source provided by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.036. Repealed by Acts 1979, 66th Leg., p. 549, ch. 260, art. 1, § 6 eff. Sept. 1, 1979

The repealed section, relating to the special boat fund, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Section 7 of art. 1 of the 1979 Act provided:

"Money credited to the special boat fund is transferred to the game, fish, and water safety fund. An appropriation to the Parks and Wildlife Department for the biennium beginning on September 1, 1979, from the special boat fund is an appropriation from the game, fish, and water safety fund. This section expires on August 31, 1981."

§ 11.037. State Land and Water Conservation Fund

(a) There is in the state treasury a special fund called the "state land and water conservation fund."

(b) The department shall deposit in the state land and water conservation fund all revenue received from the federal government or any other source for the purpose of administering programs authorized under Sections 13.301 through 13.311 of this code.

(c) The state land and water conservation fund may be used for paying the cost of planning, acquisition, operation, and development of outdoor recreation resources of the state and the administrative expenses incident to the projects or programs authorized under Sections 13.301 through 13.311 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.038. Operating Fund

(a) There is a fund in the state treasury called the "parks and wildlife operating fund."

(b) The commission may transfer any funds appropriated to the department for personal services, travel, consumable supplies and materials, current operating expenses, and capital outlay, as these terms are used in the comptroller's object classification codes of the general appropriations act. All expenditures by the department from this fund shall be made only for the purposes for which appropriations are made in the general appropriations act.

(c) The parks and wildlife operating fund shall be used for the purposes specified by law and nothing may be done by any officer or employee of the department or commission to divert or jeopardize the fund or any portion of the fund, including any federal aid the department receives or administers.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.039. Revolving Petty Cash Fund

(a) The department may establish a revolving petty cash fund out of existing funds on deposit in the state treasury. The balance of this fund may not exceed $2,500.

(b) The purpose of this fund is to make refunds of cash receipts, subject to the approval of the state auditor. The account must be maintained at a bank in Austin.

(c) With the prior approval of the commission, the director may designate a bonded employee of the department to sign checks drawn on this fund. The fund shall be reimbursed by warrants drawn and approved by the comptroller out of those funds in the state treasury in which the refunded receipts were originally deposited.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.040. Mistaken Deposit

(a) Any funds deposited in the state treasury by the department by mistake of fact or mistake of law shall be refunded by warrant issued against the fund in the state treasury into which the money was deposited. Refunds necessary to make the proper correction shall be appropriated by the general appropriations act.

(b) The comptroller may require written evidence from the director of the department to indicate the reason for the mistake of fact or law before issuing the refund warrant authorized in Subsection (a) of this section.

(c) This section does not apply to any funds that have been deposited under a written contract or to any funds on deposit as of June 8, 1971, which are the subject of litigation in any of the courts of this state or the United States.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.041. Transfer of Property

(a) The commission may transfer tangible property, other than money or real estate held for limited purposes, from one division of the department to another division.

(b) If the property to be transferred was acquired with funds the use of which is limited by law or dedicated in any other manner, and the prospective use of the property is different from the use allowed by law, the department shall transfer from available funds to the fund from which the property was acquired the value of the property at the time of the transfer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 12. POWERS AND DUTIES CONCERNING WILDLIFE

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SUBCHAPTER A. GENERAL POWERS AND DUTIES

§ 12.001. General Duties.

(a) The department shall administer the laws relating to game, fish, oysters, and marine life, as set out in this code.

(b) The department may:

(1) collect and enforce the payment of all taxes, licenses, fines, and forfeitures due to the department;

(2) inspect all products required to be taxed by the laws relating to game, fish, oysters, and marine life and verify the weights and measures of the products;

(3) examine on request all streams, lakes, and ponds for the purpose of stocking with fish best suited to the locations;

(4) manage the propagation and distribution of fish in state fish hatcheries; and

(5) manage the propagation and distribution of birds and game in state reservations.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.002. Report to Governor

(a) The department shall report to the governor on August 31 of each year, or as soon after that date as practicable, but not later than October 1 of each year, showing the condition of the fish and oyster industry.

The report shall contain:

(1) a statement of the amount of special taxes collected;

(2) the number of licenses issued and the amount of license fees collected;

(3) the number and class of all boats engaged in the fish and oyster trade;

(4) the number, place, and acreage of private oyster beds and the amount of rents received for private oyster beds;

(5) all other amounts collected and disbursed by the department;

(6) a statement of all stock furnished, to whom the stock was furnished, the cost of the stock, the streams, lakes, or ponds stocked, the number and kind of fish used in each, and the condition of the plants; and

(7) any other observations or pertinent data.

(b) The governor shall order a sufficient number of copies of the report to be printed and filed in the secretary of state's office for free distribution.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.003. Records

(a) The department shall keep a record containing the following information:

(1) the amount of all special taxes collected;

(2) a list of all licenses issued and the amount of license fees collected;

(3) a list of all certificates issued for location of private oyster beds, the date of the certificate and application, when and how the applications were executed, and the manner in which the bottoms were examined and the amount of rent collected for the location;

(4) all stock fish furnished, to whom the fish were furnished, and the cost of the stock fish;

(5) all streams, lakes, or ponds stocked and the number and kinds of fish stocked in each; and

(6) all collections and disbursements of the department.

(b) The department shall keep an account with each person, firm, or corporation holding certificates for the location of private oyster beds, showing the amounts received as rents.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.004. List of Fees and Fines

(a) The department shall maintain a complete list of all license fees and fines collected. The list shall be maintained in Austin and is a public record.

(b) The department shall file at the end of each calendar month a written report with the comptroller showing fines, licenses, and other fees collected, their disposition, and any other necessary information.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.005. Funds in Lieu of Taxes

(a) The department shall expend funds to counties and school districts for assessments in lieu of property taxes on wildlife management areas purchased from federal funds or grants authorized by the Pittman-Robertson Act or Dingell-Johnson Act.

(b) No general revenue funds may be expended in lieu of taxes for wildlife management areas; however, special funds may be expended for this purpose provided reimbursement or matching from the federal government is available at a federal ratio of two to one or better.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.006. Publications on Wildlife Values and Management

(a) The department may inform the public about wildlife values and management.

(b) Any book, bulletin, or magazine published under this section may be sold for a price not to exceed the cost of publication and mailing. Money received from the sale of these publications shall be sent to the department at its office in Austin not later than 10 days following the date of collection. The money shall be deposited in the state treasury to the credit of the special game and fish fund.

(c) Under the terms of the same bond and authority, any person authorized to issue hunting and fishing licenses may sell subscriptions to any monthly publication prepared and published by the department under this section. The seller may retain 10 percent of each subscription payment as his fee for collecting and send the balance of the subscription fee to the department.

(d) The amount of money collected for each subscription to any monthly publication shall be recorded on a prenumbered form bearing the name, complete address, and length of the subscription period. The prenumbered form shall be issued and accounted for in the same manner as hunting licenses.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.007. Cautioning Sportsmen

The department shall caution sportsmen and other persons of the danger from fire in the woods, marshes, or prairies of the state and request sportsmen and other persons to extinguish all fires left burning and to give notice, whenever possible, of fires ranging beyond control so that they may be controlled and extinguished.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.008. Leasing of Grazing Rights: Sale of Products

(a) The department may lease grazing rights on any land acquired by, and for the use of, the department as game preserves, game sanctuaries, and game management areas. The department may harvest and sell, or sell in place, any timber, hay, or other product grown on land of the department when the product is found to be in excess of wildlife management needs.

(b) The department may agree to accept consideration in lieu of money as part or full payment for a sale or lease under this section. The consideration in lieu of money must be materials, supplies, or services that are needed for wildlife management projects on any state-owned game management area administered by the department. The materials, supplies, or services accepted in lieu of money may be assigned a value no greater than that which the department would have been authorized to pay for them in a bona fide purchase.

(c) The state board of control shall execute any sale or lease under this section under the general law governing the sale of state property; however, the department shall determine the quantity of products, or grazing lease, to be offered for sale or lease and the consideration in lieu of money to be received under the sale or lease.

(d) All money derived from a sale or lease under this section shall be deposited in the state treasury to the credit of the game, fish, and water safety fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 549, ch. 260, art. 3, § 1, eff. Sept. 1, 1979.]

Acts 1979, 66th Leg., p. 549, ch. 260, art. 1, § 6, purports to repeal subsec. (c) of this section. Article 3, § 1, of the same Act amends this section, including subsec. (c).

§ 12.009. Seafood Consumption Program

(a) The department shall develop and administer a market promotion program to foster and expand the sale and consumption of seafood by the public. The department may use its own personnel or contract for personnel and use only state funds or state funds in conjunction with federal or private funds.

(b) Forty percent of the funds collected from commercial fisherman's license fees, 20 percent of wholesale fish dealers' license fees and wholesale truck dealers' fish license fees, and 50 percent of shrimp house operators' license fees shall be used by the department in carrying out the program required by this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.010. Noxious Vegetation Program

The department may contract or use the services of department personnel for the eradication of noxious vegetation from the water of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.011. Teaching Equipment

On request of a state-supported institution of higher education engaged in teaching and research related to marine science and oceanography, the department may transfer to the institution fish nets, seines, motors, boats, and other marine equipment

confiscated under the authority of the game and fish laws to be used in the teaching and research programs of the institution.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.012. Fire Hazard

(a) If the state forester determines that the continuation of any hunting season is likely to cause a serious forest fire hazard in Red River, Titus, Camp, Harrison, Gregg, Henderson, Van Zandt, Anderson, Nacogdoches, Angelina, San Augustine, Sabine, Trinity, Walker, Montgomery, Polk, Liberty, Tyler, Hardin, Jasper, Newton, Grimes, or San Jacinto counties, he shall immediately notify the department of the local conditions and recommend that any hunting season then open be closed temporarily.

(b) The department shall report to the governor on the local conditions which contribute to the danger of a fire hazard.

(c) If the governor finds that an extreme fire hazard exists, he shall proclaim a closed season to remain in effect in the county until the danger abates. The governor may revoke the proclamation at any time revocation is in the best interests of the people.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.013. Power to Take Wildlife

The department may take, transport, release, and manage any of the wildlife and fish in this state for investigation, propagation, distribution, or scientific purposes. It is a defense in any prosecution of an employee of the department for a violation of any law for the protection of wildlife or fish that the employee was acting within the scope of this authority.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.014. Fees for Stocking Fish in Private Water

(a) The commission may, at the times and in the manner found to be necessary or appropriate, set and charge a reasonable fee for each species of fish supplied to or placed in lakes or other bodies of water located solely on private property. In setting the fee, the commission may consider the costs of propagation and transportation from the fish hatchery and the size of the fish used for stocking the lake or other body of water.

(b) Repealed by Acts 1979, 66th Leg., p. 549, ch. 260, art. 1, § 6, eff. Sept. 1, 1979.

[Added by Acts 1977, 65th Leg., p. 39, ch. 23, § 1, eff. March 24, 1977. Amended by Acts 1979, 66th Leg., p. 549, ch. 260, art. 1, § 6, eff. Sept. 1, 1979.]

§ 12.015. Noxious Aquatic Plants

(a) In this section, "noxious aquatic plant" means a plant that thrives in water, marshes, or swamps and that:

(1) is harmful or potentially harmful to human life;

(2) may impede navigation; or

(3) may diminish the quality of water-oriented recreational areas.

(b) The department shall:

(1) identify noxious aquatic plants;

(2) publish a list of the names of noxious aquatic plants identified by the department; and

(3) make rules and regulations necessary to carry out this section.

(c) The department may issue permits for the importation, sale, transport, or release of noxious aquatic plants identified by the department if the department finds that the proposed use of the noxious aquatic plants by the permit applicant will not pose a danger to persons, wildlife resources, or water resources.

(d) No person may intentionally or knowingly import or intentionally or knowingly sell, transport, or release in this state a noxious aquatic plant identified by the department unless the person has an unexpired written permit issued by the department authorizing the importation, sale, transportation, or release.

(e) A person who violates Subsection (d) of this section or who violates a regulation of the department made under this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1219, ch. 456, § 17, eff. Sept. 1, 1975.]

§ 12.016. Artificial Reefs

The department may construct or contract for the construction of artificial reefs in the coastal water of this state or in international or United States water adjacent to the coastal water of this state. The department may also accept any such reefs which have previously been constructed by the Texas Coastal and Marine Council and marked with buoys and agree to maintain such buoys and other location navigation markers in the future as may be necessary. The department may acquire any acceptable materials including surplus vessels under the provisions of federal law for use in developing future new reefs or adding to existing reefs.

[Added by Acts 1977, 65th Leg., p. 1125, ch. 421, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 547, ch. 260, art. 1, § 2, eff. Sept. 1, 1979.]

§ 12.017. Damaging Markers

(a) No person may damage, deface, destroy, or remove, tie up a boat to, or in any way render inoperative or ineffective a marker, buoy, light or sound signal, radar reflector, or daymark or any part of these devices, including the attachment intended to hold the device in place.

(b) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than $25 nor more than $200. On a second or subsequent conviction of a violation of Subsection (a) of this section, the person shall be punished by a fine of not less than $200 nor more than $500.

(c) The fact that a device or part of a device specified in Subsection (a) of this section may have been established by the state in water adjacent to but outside the territorial water of the state is not a defense against a prosecution for damaging state property.

[Added by Acts 1977, 65th Leg., p. 1126, ch. 421, § 2, eff. Aug. 29, 1977.]

[Sections 12.018 to 12.100 reserved for expansion]

SUBCHAPTER B. ENFORCEMENT POWERS

§ 12.101. Duty to Enforce Law

The department shall enforce all state laws relating to the protection and preservation of wild game, wild birds, and fish and other marine life.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.102. Power to Arrest

(a) An authorized employee of the department has the same authority as a sheriff to arrest, serve criminal process, and require aid in serving criminal process in connection with violations of the laws relating to game, fish, and birds. The department may receive the same fees as are provided by law for sheriffs in misdemeanor cases.

(b) An authorized employee of the department may arrest without a warrant any person found in the act of violating any law relating to game, birds, or fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.103. Entering Land

To enforce the game and fish laws of the state and to conduct scientific investigations and research regarding wild game or fish, an authorized employee of the department may enter on any land or water where wild game or fish are known to range or stray. No action may be sustained against an employee of the department to prevent his entering on land or water when acting in his official capacity.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.104. Right to Search

An authorized employee of the department may search a game bag, vehicle, or other receptacle if he has reason to believe that the game bag, vehicle, or receptacle contains game unlawfully killed or taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.105. Suits

(a) The department may file complaints in the name of the State of Texas to recover fines and penalties for violations of the laws relating to game, birds, and fish.

(b) The department may file a complaint and commence proceedings against an individual for violation of the laws relating to game, birds, and fish without the approval of the county attorney of the county in which the proceedings are brought. The department is not required to furnish security for costs for proceedings under this subsection.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.106. Notice to Appear

(a) Any peace officer of this state or a political subdivision of this state or an authorized employee of the department who arrests a person for a violation of a game, fish, or park law of this state or of a regulation of the commission may deliver to the alleged violator a written notice to appear before the justice court having jurisdiction of the offense not later than 15 days after the date of the alleged violation.

(b) On signing the written notice to appear and thereby promising to appear as provided in the notice, the alleged violator shall be released.

(c) Failure to appear within the time specified in the written notice is a misdemeanor punishable by a fine of not less than $10 nor more than $200, and a warrant for the arrest of the alleged violator may be issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.107. Remission of Fines

(a) A justice of the peace, clerk of any court, or any other officer of the state who receives a fine imposed by a court for a violation of any law relating to the protection and conservation of wild birds, wild fowl, wild animals, fish, oysters, and other wildlife shall send the fine to the department within 10 days after the date of collection. A statement containing the docket number of the case, the name of the person fined, and the section of the law violated must accompany the remission of the fine.

(b) The amount of the fine to be remitted to the department is 80 percent in county court cases and 85 percent in justice court cases.

(c) The fees set out in Articles 950 and 951, Code of Criminal Procedure, 1925, shall be deducted from fines imposed for violations of laws relating to wild game, birds, fish, oysters, and other wildlife.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.108. Expenses

In making an arrest, summoning a witness, and serving a process, the department is entitled to the same fee and mileage allowance as a sheriff. The fee is charged and collected in the same manner as sheriff's fees.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.109. Confiscated Marine Life

(a) When an enforcement officer of the department believes that a person has unlawful possession of any fish, oysters, shrimp, or other marine life, he shall seize and sell the marine life and dispose of the proceeds as provided in this section. If the person is in possession of a greater quantity of marine life than is authorized by law, all such marine life shall be deemed to have been taken in contravention of the law and shall be seized by the arresting officer. The officer shall give to the person a receipt for all marine life seized.

(b) The confiscated marine life shall be sold to the highest of three bidders. The proceeds of the sale shall be deposited in the state treasury to the credit of suspense fund No. 900 pending the outcome of the action taken against the person charged with illegal possession.

(c) Unless the person is found guilty, all the proceeds shall be paid to the owner of the marine life.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1214, ch. 456, § 13(k), eff. Sept. 1, 1975.]

§ 12.110. Disposition of Confiscated Game

(a) The department shall donate, whenever same is reasonably practicable, any wild game animal, bird, fowl, or game fish which is unlawfully killed, taken, shipped, held in storage, or found in a public eating place to a charitable institution, hospital, or person or persons.

(b) The expense of any cold storage that may be necessary for an unlawfully possessed game bird, fowl, animal, or game fish shall be assessed against the violator on his conviction.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 33, ch. 16, § 1, eff. March 16, 1977.]

§ 12.1101. Seizure and Disposal of Pelts

(a) A game warden or authorized employee of the department may seize the pelt of any fur-bearing animal taken or possessed in violation of a provision of this code or a lawful regulation of the commission. If an alleged violator is charged with a violation of a provision of this code or of a regulation of the commission in connection with the pelt seized, the warden or employee shall hold the pelt as evidence. On conviction of the alleged violator or on his plea of nolo contendere, the pelts may be sold to the highest bidder after taking the minimum of three written bids by the department. If the alleged violator is not guilty of the offense or if the charge is dismissed the pelts shall be returned to their lawful owner.

(b) A game warden or authorized employee of the department acting under the authority of this section is immune from liability and from suit for the seizure of pelts.

(c) Repealed by Acts 1979, 66th Leg., p. 549, ch. 260, art. 1, § 6, eff. Sept. 1, 1979.
[Added by Acts 1977, 65th Leg., p. 82, ch. 39, § 1, eff. March 30, 1977. Amended by Acts 1979, 66th Leg., p. 549, ch. 260, art. 1, § 6, eff. Sept. 1, 1979.]

§ 12.1105. Seizure and Disposition of Unlawful Nets; Inside Water

(a) When a game warden or authorized employee of the department finds in the inside water of the state a seine, net, trawl, trap, or other device that is in the water in violation of a provision of this code or in violation of a lawful regulation of the commission or is aboard a vessel in violation of a provision of this code or a lawful regulation of the commission, the warden or employee shall seize without a warrant the seine, net, trawl, trap, or device.

(b) When an alleged violator is charged with an offense in connection with the unlawful use or possession of the seine, net, trawl, trap, or device seized by the warden or employee, the warden or employee shall hold the seine, net, trawl, trap, or device as evidence. Except as provided in Subsection (f) of this section, on a final conviction for the offense of the alleged violator, including a final judgment arising from a plea of nolo contendere, the warden or employee shall destroy the seine, net, trawl, trap, or device. If the alleged violator is not guilty of the offense or if the charge is not prosecuted and dismissed, the seine, net, trawl, trap, or device shall be returned to the owner.

(c) If no person is charged with an offense in connection with the seizure of a seine, net, trawl, trap, or other device under this section, and no person is found in possession of the seine, net, trawl, trap, or device, the warden or employee shall give notice of the seizure to the county judge or a judge of a county court at law of the county where the seizure occurred. The notice must include a description of the items seized and the location of the seizure. The court shall then direct the sheriff or a

constable to post a copy of the notice in the county courthouse for not less than 10 days. At the expiration of 10 days, the court shall hold a hearing to determine if the seine, net, trawl, trap, or device was used or possessed in violation of a provision of this code or of a lawful regulation of the commission. Except as provided in Subsection (f) of this section, if the use or possession was unlawful, the warden or employee shall destroy the seine, net, trawl, trap, or device.

(d) A game warden or authorized employee of the department who seizes items under this section is immune from liability and from suit for a seizure or destruction of a net as authorized by this section.

(e) This section does not apply to shrimp trawls used for catching shrimp or on board a licensed shrimp boat.

(f) The Parks and Wildlife Department, when requested by authorized representatives of units of The University of Texas System, The Texas A & M University System, the Texas A & I University System, Pan American University, the Lamar University System, and Southwest Texas State University, engaged in teaching and research related to marine science and oceanography, may transfer to such units of said universities and university systems nets, seines, and other marine equipment, which have been seized under this section, to be used in carrying out the teaching and research programs within said institutions.

[Added by Acts 1977, 65th Leg., p. 381, ch. 190, § 3, eff. May 20, 1977.]

§ 12.111. Violation by Employee

An employee of the department who violates any provision of this code relating to game, fish, and oysters which the employee is authorized to enforce is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.112. Forfeiture of Licenses

(a) The licenses issued under Chapters 42 and 46 of this code (general hunting and fishing licenses) are not subject to forfeiture for a violation of a game or fish law or a regulation of the department.

(b) No other license issued by the department is subject to forfeiture unless forfeiture is expressly provided for and then only by the jury, or the judge in the absence of a jury, in the same manner as other penalties are assessed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.113. Coastal Survey Charts Admissible

In any prosecution under this code, United States Coastal Survey Charts are admissible.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 13. POWERS AND DUTIES CONCERNING PARKS AND OTHER RECREATIONAL AREAS

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SUBCHAPTER A. GENERAL POWERS AND DUTIES

§ 13.001. Control by Department

Except as otherwise provided by law, all recreational and historic areas designated as state parks are under the control and custody of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.002. Comprehensive State Plan

The department may:

(1) prepare, maintain, and revise a statewide comprehensive plan for the development of the outdoor recreation resources of this state;

(2) develop, operate, and maintain outdoor areas and facilities of the state; and

(3) acquire land, water, and interests in land and water for outdoor recreation areas and facilities.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.003. Gifts and Improvements of Park Sites

The department may receive gifts of state park sites and may improve and equip parks sites or contract for their improvement and equipment.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.004. Financing of Park Programs

(a) The operation, maintenance, and improvement of state parks shall be financed from the general revenue fund, the state parks fund, other funds that may be authorized by law, and donations, grants, and gifts received by the department for these purposes.

(b) No donation, grant, or gift accruing to the state or received by the department for the purpose of operating, maintaining, improving, or developing state parks may be used for any purpose other than the operation, maintenance, or developing of state parks.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.005. Acquisition of Historical Structures and Sites

(a) The department may acquire by purchase, gift, or other manner a structure or site:

(1) where events occurred that represent an important aspect of the cultural, political, economic, military, or social history of the nation or state;

(2) significantly associated with the lives of outstanding historic persons or with an important event that represents a great ideal or idea;

(3) embodying the distinguishing characteristics of an architectural type which is inherently valuable for study of a period, style, or method of construction;

(4) that contributes significantly to the understanding of aboriginal man in the nation or state; or

(5) that is of significant geologic interest relating to prehistoric animal or plant life.

(b) The department shall restore and maintain each structure or site acquired under this section for the benefit of the general public. The department may enter into interagency contracts for this purpose.

(c) The department shall use money appropriated in the general appropriations act for restoring and maintaining the structures or sites acquired under this section.

(d) The department shall prescribe and collect a nominal fee for admission to structures and sites acquired under this section. The admission fees shall be used to pay for the restoration and maintenance of structures and sites.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.006. Lease of Park Lands

(a) The department may lease for park purposes any land and improvements it holds to any city, county, special district, or other political subdivision. The leased area may not be referred to as a state park, and no state funds may be used to operate or maintain a park leased under this section.

(b) The conditions and duration of the lease agreement are determined by the agreement of the department and the governing body of the political subdivision.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.007. Investigation Expenses

A locality may pay the expenses of a representative of the department for a trip to the locality to determine the suitability of a site for a state park. If the expenses of the representative are paid by the locality, state funds may not be used for the expenses of the trip.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.008. Solicitation, Receipt, and Transfer of Land

(a) The department may solicit and receive donations of land for state park purposes and may refuse donations of land not acceptable for park purposes.

(b) If title to a site has vested in the state for park purposes and the site is deemed unsuitable for

a state park by the department, the department may transfer the title:

(1) to another state department or institution requesting the site;

(2) to the donor of the land if the donor requests the return of the site;

(3) to the United States if it has undertaken the development of the site for park purposes; or

(4) on a declaration that the site is unsuitable for park purposes, to the grantor if the deed to the department contains a reversion clause providing that title reverts to the grantor when the site is not used for park purposes.

(c) A two-thirds vote of the commission is necessary for action taken under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.009. Sale or Exchange of Land

(a) The director with the approval of the commission may execute a deed exchanging real property or an interest in real property either as all or partial consideration for other real property or interest in real property to be used by the department for a state park, historic site, scientific area, fish hatchery, or game management area. The director with the approval of the commission may execute a deed selling real property or an interest in real property acquired as a state park, historic site, scientific area, fish hatchery, or game management area if the real property is no longer suitable for the purpose for which it was acquired.

(b) All state land exchanged under this section shall be for other land suitable for use as a park, historic site, scientific area, fish hatchery, or game management area.

(c) The state shall receive a good and marketable title to all land exchanged under this section. The title to land received in the exchange must be approved by the attorney general.

(d) All land to be received in the exchange must be appraised and if the land to be received is of greater value, as determined by an independent and competent appraisal, than the state land exchanged, the department may use funds available for land acquisitions as a partial consideration for the exchange.

(e) All transactions for the exchange of land under this section must have the prior written approval of the governor.

(f) The receipts from the sale of land under this section shall be used for the sole purpose of acquiring other real property dedicated to the same purpose for which the land sold was dedicated.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 609, ch. 220, § 1, eff. May 24, 1977; Acts 1979, 66th Leg., p. 550, ch. 260, art. 3, § 2, eff. Sept. 1, 1979.]

§ 13.010. Historic Locations

The department may locate, designate, and suitably mark historic grounds, battlefields, and other historic spots in Texas. Fitting markers may be erected; however, no expense may be incurred in the name of the state for this project.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.011. Natural Features

(a) The commission may locate and designate outstanding natural features and formations located in this state. It may erect or contract to have erected suitable markers or monuments to call the features and formations to the public's attention.

(b) The commission may accept title to a suitable site for a marker or monument from private individuals, associations, or corporations by gift. Sites may also be acquired by purchase with appropriated funds.

(c) The commission may adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites.

(d) All other agencies shall cooperate with the department to aid in the location of sites. The department may accept jurisdiction over suitable sites located on state land by an interagency transfer of jurisdiction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.012. Roadside Parks

An area under the control of the department which is more suitable for use as a roadside park than any other type of park may be transferred to the State Highway Department for roadside park purposes if the land meets the specifications of the State Highway Department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.013. Construction of Roads by State Highway Department

(a) The department may contract with the State Highway Commission for the construction and paving of roads in and adjacent to state parks.

(b) Agreements under this section must be made in conformity with the Interagency Cooperation Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.014. Roads and Trails to Certain Park Sites

(a) The department shall acquire, construct, and maintain roads and trails from public roads to park sites located on and accessible to the waters of Buchanan and Inks lakes in Burnet, Lampasas, Llano, San Saba, Travis, and Williamson counties. The

park sites may be state parks or land owned by the Lower Colorado River Authority dedicated to public use for park purposes.

(b) The department may acquire the rights-of-way for the roads and trails by purchase or gift or by exercise of the power of eminent domain.

(c) The State Highway Commission shall cooperate with the department and the department shall cooperate and match funds with any state or federal governmental agency and shall sponsor any state or federal project.

(d) The department may make contracts to carry out the provisions of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.015. Concessions

(a) The department may operate or grant contracts to operate concessions in state parks or on causeways, beach drives, or other improvements in connection with state park sites. The department may make regulations governing the granting or operating of concessions.

(b) The department shall deposit any revenue received from the contracts or operations authorized by this section in the state treasury to the credit of the state parks fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.016. Prison Labor

(a) The department may use the labor of trusty state convicts on or in connection with state parks.

(b) Convicts working in connection with a state park remain under the control of the Texas Board of Corrections and are considered as serving their terms in the penitentiary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.017. Publications on Parks

(a) The department may disseminate information to the public on state parks, state historic sites, and state scientific areas. The department may sell the publications but only at state parks, historic sites, scientific areas, the state departmental headquarters, and regional and district offices.

(b) No publication authorized by this section may be published and sold at regular periodic intervals.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.018. State Parklands Passport

(a) The following people may apply to the department for a state parklands passport:

(1) a person who is 65 years old or over; and

(2) a veteran of the armed services of the United States who, as a result of military service, has a service-connected disability, as defined by the Veterans' Administration, consisting of the loss of the use of a lower extremity or of a 60 percent disability rating and who is receiving compensation from the United States because of the disability.

(b) The department shall issue a passport to each qualified applicant. The passport shall be issued on a form designed and provided by the department.

(c) The holder of a state parklands passport is entitled to enter any state park without payment of an entrance or admission fee. When a fee is charged by the department for entrance of a vehicle into a state park, the vehicle of the holder of a state parklands passport is exempt from the fee when the holder is present.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 36, ch. 19, § 1, eff. Aug. 29, 1977.]

§ 13.019. Campsite Reservation Fee

The department may permit the advance reservation of a lodging or campsite at a state park and require the payment of a fee by a person making the reservation. If the reservation is cancelled by 72 hours prior to the day the site is first to be occupied under the reservation, the reservation fee shall be refunded. If the reservation is confirmed by the person's arriving at the park, the reservation fee shall be applied to the first day's user fee. No user fee may be required in advance as part of the reservation procedure.

[Added by Acts 1979, 66th Leg., p. 1065, ch. 495, § 1, eff. June 7, 1979.]

[Sections 13.020 to 13.100 reserved for expansion]

SUBCHAPTER B. REGULATIONS GOVERNING PARKS AND OTHER RECREATIONAL AREAS

§ 13.101. Authorization

The commission may promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1206, ch. 456, § 4(a), eff. Sept. 1, 1975.]

§ 13.102. Scope of Regulations

The regulations may govern:

(1) the conservation, preservation, and use of state property whether natural features or constructed facilities;

(2) the abusive, disruptive, or destructive conduct of persons;

(3) the activities of park users including camping, swimming, boating, fishing, or other recreational activities;

(4) the disposal of garbage, sewage, or refuse;

(5) the possession of pets or animals;

(6) the regulation of traffic and parking; and

(7) conduct which endangers the health or safety of park users or their property.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.103. Hearing on Regulation

(a) Prior to the adoption of a regulation, the commission must hold a hearing on the regulation, at which time interested persons are entitled to express their views on the proposed regulation.

(b) The hearing may be held only within the two-week period beginning one week after the final publication of the notice.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.104. Publication of Notice

(a) Except as provided in Subsection (b) of this section, notice of the hearing to consider the proposed regulation must be published in at least three newspapers of general circulation in this state.

(b) If the proposed regulation applies to one park only, notice must be published on two consecutive weeks in the county where the park is located.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.105. Contents of Notice

The notice must contain:

(1) the time, date, and place of the hearing on the proposed regulation;

(2) a statement of the proposed regulation; and

(3) a statement that interested persons may obtain additional copies of the proposed regulation from the department prior to the hearing.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.106. Posting of Regulations

All specific or general regulations applying to a state park, historic site, scientific area, or fort must be posted in a conspicuous place at the park, site, or fort. A copy of the regulations shall be made available on request to persons using the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.107. Adoption of Penalties

The commission may adopt the following penalties for violations of regulations issued under this subchapter:

(1) a fine not to exceed $25 for a first conviction;

(2) a fine not to exceed $50 for a second conviction of a violation of the same regulation by the same person within a six-month period;

(3) a fine not to exceed $200 for a third or subsequent conviction of a violation of the same regulation by the same person within a one-year period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.108. Removal From Park

(a) Any person directly or indirectly responsible for disruptive, destructive, or violent conduct which endangers property or the health, safety, or lives of persons or animals may be removed from a park, historic site, scientific area, or fort for a period not to exceed 48 hours.

(b) Prior to removal under this section, the person must be given notice of the provisions of this section and an opportunity to correct the conduct justifying removal.

(c) A court of competent jurisdiction may enjoin a person from reentry to the park, scientific area, site, or fort, on cause shown, for any period set by the court.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.109. Enforcement of Regulations

Regulations adopted under this subchapter may be enforced by any peace officer, including those employees of the department commissioned as peace officers under Section 11.019 of this code. A notice to appear may be issued by a peace officer for violation of a regulation on a form prescribed by the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.110. Effect of Regulations

No regulation adopted under this subchapter may amend or repeal any penal law of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.111. Portion of Fine to be Retained by County

The justice or county court imposing a fine for a violation of this subchapter may retain 15 percent of the amount of the fine collected to be deposited in the county treasury in the same manner as court costs.

[Acts 1975, 64th Leg., p. 1206, ch. 456, § 4(b), eff. Sept. 1, 1975.]

[Sections 13.112 to 13.200 reserved for expansion]

SUBCHAPTER C. REGULATIONS GOVERNING AREAS ADJACENT TO STATE PARKS

§ 13.201. Authorization

The commission may make regulations prohibiting the use of firearms or certain types of firearms on state property adjacent to state parks and within 200 yards of the boundary of the state park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.202. Application Limited

The regulations of the commission under Section 13.201 of this code apply only to state parks located within one mile of coastal water of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.203. Notice of Regulation; Hearing

(a) Before making a regulation under Section 13.201 of this code, the commission shall publish notice of the proposed regulation in a newspaper of general circulation in the county in which the regulation is to apply. The notice must contain the text of the proposed regulation and give the date, time, and location of the hearing on the regulation.

(b) The commission shall hold a hearing on the proposed regulation and shall hear persons who wish to speak for or against the regulation. The hearing may be held in Austin.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.204. Effective Date of Regulation

A regulation made under Section 13.201 of this code takes effect 30 days after final action by the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.205. Penalty

A person who violates a regulation made by the commission under Section 13.201 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 13.206 to 13.300 reserved for expansion]

SUBCHAPTER D. PARTICIPATION IN FEDERAL PROGRAMS

§ 13.301. Programs for the Development of Historic Sites and Structures

(a) The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program involving the planning, acquisition, and development of historic sites and structures.

(b) The department may contract with the United States or its agencies to plan, acquire, and develop historic sites and structures in this state in conformity with any federal act concerning the development of historic sites and structures.

(c) The department shall keep financial and other records relating to programs under this section and shall furnish appropriate officials and agencies of the United States and of this state all reports and information reasonably necessary for the administration of the programs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.302. Programs for the Development of Outdoor Recreation Resources

The department is the state agency to cooperate with the federal government in the administration of federal assistance programs for the planning, acquisition, operation, and development of the outdoor recreation resources of the state, including acquisition of land and water and interests in land and water. The department shall cooperate with the federal government in the administration of the provisions of the Land and Water Conservation Fund Act of 1965 (Public Law 88–578).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.303. Cooperation With Other Agencies

The department shall cooperate with departments of the federal government and other departments of state and local government, including as a part of the state plan, water districts, river authorities, and special districts in outdoor recreation. The department shall issue rules and regulations to cooperate in the enforcement and administration of federal acts and rules and regulations.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.304. Additional Powers of Counties and Special Districts

Counties, river authorities, water districts, and other political subdivisions organized under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, may:

(1) acquire land for public recreation;

(2) construct facilities for public use on land acquired for public recreation;

(3) provide for the operation, maintenance, and supervision of the public recreation areas;

(4) execute agreements with other local, state, or federal agencies for planning, construction, maintenance, and operation of public recreation facilities and necessary access roads; and

(5) maintain adequate sanitary standards on the land and water areas that are part of or adjacent to public recreation areas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.305. Condemnation Proceedings

(a) The department may institute condemnation proceedings according to the laws of this state to acquire land for programs developing outdoor recreation resources under Section 13.302 of this code.

(b) Costs incurred in the exercise of eminent domain under this section for the relocation, raising, lowering, rerouting, or change in grade, or alteration in the construction of any electric transmission, telegraph, or telephone line, railroad, conduit, pole, property, facility, or pipeline are the sole expense of the department.

(c) "Sole expense" means the actual cost of the lowering, rerouting, or change in grade or alteration of construction in providing comparable replacement without enhancement of the facility, after deducting the net salvage value derived from the old facility.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.306. Application for Participation in Federal Programs

(a) The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal outdoor recreation program.

(b) The department may contract with the United States or any appropriate federal agency to plan, acquire, and develop outdoor recreation resources of the state in conformity with the Land and Water Conservation Fund Act of 1965 or any other federal act to develop outdoor recreation resources of the state.

(c) The department shall keep financial and other records relating to the programs under this section and shall furnish to appropriate officials and agencies of the United States and of this state reports and information reasonably necessary for the administration of the programs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.307. Coordination of Activities

To obtain the benefits of outdoor recreation programs under this subchapter, the department shall coordinate its activities with and represent the interests of all agencies and political subdivisions of the state as a part of a state plan. The state plan shall include cities, counties, water districts, river authorities, and special districts in outdoor recreation having interests in the planning, development, acquisition, operation, and maintenance of outdoor recreation resources and facilities.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.308. Availability of State Funds

(a) The department may not make a commitment or an agreement to participate in an outdoor recreation program under this subchapter until sufficient funds are available to meet the state's share of the cost of the project.

(b) An outdoor recreation area or facility acquired or developed by the department under this subchapter shall be publicly maintained to the extent necessary to insure its proper operation and maintenance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.309. Availability of Local Funds

The department may agree with the United States or any appropriate agency to plan, acquire, operate, and develop projects involving participating federal aid funds on behalf of any political subdivision of this state if the political subdivision certifies to the department that:

(1) sufficient funds are available to meet its share, if any, of the cost of the project; and

(2) the acquired or developed areas will be operated and maintained at the expense of the subdivision for public outdoor recreation use.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.310. Receipt and Expenditure of Funds

(a) The department may receive and spend federal money allocated to the state for any project established to develop outdoor recreation resources under this subchapter and for administrative and other expenses incident to the administration of these projects.

(b) The department may receive and expend funds from the state, a county, a city, or any other source for the development of outdoor recreation resources under this subchapter.

(c) The department shall deposit all funds received for the development of outdoor recreation resources in the state treasury to the credit of the state land and water conservation fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.311. Project Priority

The department may make rules and regulations governing the priority of projects submitted under an outdoor recreation plan under this subchapter and within the limitations of the appropriations made for these purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.312. Administration Expense

The department may employ necessary personnel, as determined by the director, and expend amounts necessary to administer efficiently the outdoor recreation programs under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.313. Fish and Wildlife Restoration Projects

The department may conduct and establish cooperative fish and wildlife restoration projects under the provisions of Public Law No. 415, Acts of the 75th Congress, and Public Law No. 681, Acts of the 81st Congress, as amended.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.314. Compliance in Fishery Management

The department may cooperate and contract with the Gulf of Mexico Fishery Management Council or the National Marine Fisheries Service for conduct of such work as may be necessary in complying with requirements of the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.).

[Added by Acts 1977, 65th Leg., p. 1280, ch. 501, § 1, eff. June 15, 1977.]

TITLE 3. PARKS

CHAPTER 21. TEXAS PARK DEVELOPMENT FUND

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SUBCHAPTER A. TEXAS PARK DEVELOPMENT BONDS

§ 21.001. Issuance of Park Development Bonds

The department, by resolution of the commission, from time to time may provide for the issuance of negotiable bonds in an aggregate amount not to exceed $75 million pursuant to the provisions of Article III, Section 49–e, of the Texas Constitution.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.002. Description of Bonds

The bonds are called State of Texas Park Development Bonds and shall be issued on a parity. The department may issue them in one or several installments and shall date the bonds of each issue.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.003. Sale Price

The department may not sell an installment or series of bonds for an amount less than the face value of all of the bonds comprising the installment or series with the accrued interest from their date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.004. Interest Rate

The department shall determine the rate of interest of an installment or series of bonds and shall determine whether interest is payable annually or semiannually.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.005. Form, Denomination, Place of Payment

The department shall determine:

(1) the form of the bonds, including the form of any interest coupons to be attached;

(2) the denominations of the bonds; and

(3) the places for payment of principal and interest.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.006. Maturity

The bonds of each issue mature, serially or otherwise, not more than 40 years from their date.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.007. Redemption Before Maturity

In the resolution providing for the issuance of bonds, the department may determine the price, terms, and conditions for redemption of bonds before maturity.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.008. Registered and Bearer Bonds

The resolution may provide for the registration of bonds as to ownership, successive conversion and reconversion from bearer to registered bonds, and successive conversion and reconversion from registered to bearer bonds.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.009. Notice of Bond Sale

(a) After determining to sell a series of bonds, the department shall publish notice of the sale at least one time not less than 10 days before the date of the sale. The notice shall be published in one or more recognized financial publications of general circulation published in the state and one or more recognized financial publications of general circulation published outside the state.

(b) The department may publish notice of the sale more than once and in more than one publication.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.010. Competitive Bids

The bonds shall be sold only after competitive bidding to the highest and best bidder. The department may reject any or all bids.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.011. Security for Bids

The department shall require every bidder, except administrators of state funds, to include with their bid an exchange or cashier's check for an amount the department considers adequate as a forfeit guaranteeing acceptance of and payment for all bonds covered by the bid.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.012. Approval of Bonds; Registration

Before delivering bonds to the purchasers, the department shall submit the bonds and the records pertaining to them for approval by the attorney general. When approval is obtained, the bonds shall be registered in the office of the comptroller of public accounts.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.013. Execution of Bonds

(a) The bonds shall be executed on behalf of the department as general obligations of the state as provided in this section.

(b) The bonds shall be signed by the chairman and the director, and the seal of the department shall be impressed on them.

(c) The bonds shall be signed by the governor and attested by the secretary of state, and the state seal shall be impressed on them.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.014. Facsimile Signatures and Seals

In the resolution authorizing the issuance of an installment or series of bonds, the commission may prescribe the extent to which facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals may be used in executing the bonds and appurtenant coupons. Interest coupons may be signed by the facsimile signatures of the chairman and the director.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.015. Signature of Former Officer

If an officer whose signature or facsimile signature appears on a bond or whose facsimile signature appears on a coupon ceases to be an officer before the delivery of the bond, the signature is valid and sufficient for all purposes as if he had remained in office until the delivery had been made.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.016. Bonds Incontestable, Valid, and Binding

(a) After approval by the attorney general, registration by the comptroller, and delivery to the purchaser, the bonds are incontestable and constitute general obligations of the state.

(b) After approval by the attorney general and registration by the comptroller, the bonds shall be held to be valid and binding obligations of the state in any action, suit, or other proceeding in which their validity is questioned.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.017. Evidence of Validity

In an action to enforce collection of the bonds or rights incident to the bonds, the certificate of approval by the attorney general and a certificate of

registration by the comptroller, or certified copies of these certificates, shall be received in evidence as proof of the validity of the bonds.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.018. Payment by Treasurer

The state treasurer shall pay or cause to be paid the principal on bonds as they mature and the interest as it becomes payable.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.019. Duties Enforceable

The performance of the official duties of the comptroller and the treasurer may be enforced by mandamus or other appropriate proceeding.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.020. Refunding Bonds

The commission may provide by resolution for the issuance of refunding bonds. The department may sell these bonds and use the proceeds to retire the outstanding bonds issued under this chapter, including interest accrued on outstanding bonds, or the department may exchange refunding bonds for outstanding bonds, including accrued interest. The issuance of the refunding bonds, their maturity, the rights of the bondholders, and the duties of the department with respect to refunding bonds are governed by the provisions of this chapter relating to the original bonds, to the extent they are applicable and by refunding statutes of general application not in conflict with the provisions of this chapter.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.021. Bonds Negotiable Instruments

The bonds issued under the provisions of this chapter are negotiable instruments under the laws of this state.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.022. Bonds Not Taxable

Bonds issued under this chapter, income from the bonds, and profit made on their sale are free from taxation within this state.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.023. Authorized Investments

Bonds issued under this chapter are legal and authorized investments for:

(1) banks;

(2) savings banks;

(3) trust companies;

(4) building and loan and savings and loan associations;

(5) insurance companies;

(6) fiduciaries;

(7) trustees;

(8) guardians; and

(9) sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.024. Security for Deposit of Funds

Bonds issued under this chapter, when accompanied by all appurtenant unmatured coupons, are lawful and sufficient security for all deposits of funds of the state or of a city, town, village, county, school district, or other political subdivision or agency of the state, at the par value of the bonds.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.025. Mutilated, Lost, or Destroyed Bonds

The department may provide for the replacement of a mutilated, lost, or destroyed bond.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 21.026 to 21.100 reserved for expansion]

SUBCHAPTER B. FUNDING PROVISIONS

§ 21.101. Texas Park Development Fund

(a) The Texas Park Development Fund, referred to as the "development fund," is created pursuant to the provisions of Article III, Section 49–e, of the Texas Constitution.

(b) Proceeds derived from the sale of Texas Park Development Bonds shall be deposited in the development fund.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.102. Use of Development Fund

The department may use the development fund only for:

(1) acquiring state park sites from the United States or any of its agencies, agencies of the state, or any other person;

(2) improving, developing, beautifying, and equipping acquired park sites; and

(3) paying expenses incurred in issuing bonds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.103. Acquiring Park Sites

(a) Except as provided in Subsection (b) of this section, the department may acquire park sites, including property already devoted to public use, by purchase, condemnation, or other manner.

(b) Except as provided in Subchapter O of Chapter 22 of this code,[1] no real property of the state or a political subdivision of the state may be acquired without its consent.

(c) The department shall exercise the power of eminent domain in the manner prescribed by general law, including the provisions of Section 13.305 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1809, ch. 736, § 3, eff. Aug. 27, 1979.]

[1] Section 22.201 et seq.

§ 21.104. Contracts Authorized

The department may contract with any state or federal agency or with any other person to accomplish the functions prescribed by Subdivisions (1) and (2) of Section 22.102 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.105. Interest and Sinking Fund

The Texas park development bonds interest and sinking fund, referred to as the "interest and sinking fund," is created to be used exclusively for:

(1) paying the principal of Texas Park Development Bonds as they mature;

(2) paying the interest on the bonds as it comes due; and

(3) paying exchange and collection charges in connection with the bonds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.106. Credits to Interest and Sinking Fund

(a) Accrued interest received in the sale of bonds, net income received from entrance or gate fees to state park sites, and income from investments of the development fund and the interest and sinking fund shall be credited to the interest and sinking fund.

(b) In the resolution authorizing a series of bonds, the commission may appropriate from the proceeds of the sale of bonds an amount which, together with accrued interest received, is sufficient to pay interest coupons coming due during the fiscal year in which the bonds are sold and to establish appropriate reserves.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.107. Additional Transfers

(a) If the amount credited to the sinking and interest fund at the end of the fiscal year is insufficient to pay the interest coming due and the principal maturing on bonds for the next fiscal year, the state treasurer shall transfer from the first money coming into the treasury, not otherwise appropriated by the constitution, an amount stipulated in the certification of the director as is necessary to pay the interest and principal on the bonds.

(b) The director shall certify the amount required to be stipulated by Subsection (a) of this section as of August 15 of each fiscal year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.108. Interest and Sinking Fund: Final Transfer

After all bonds have been paid, the balance of the interest and sinking fund shall be transferred to the state parks fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.109. Transfers Required

The state comptroller shall make any transfer required by this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.110. Investment of Funds

(a) The department may invest the development fund and, in making the investments, is governed by the provisions of Chapter 401, Acts of the 60th Legislature, Regular Session, 1967.

(b) The department may invest the interest and sinking fund only in direct obligations of the United States or in obligations the principal and interest of which are guaranteed by the United States.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.111. Entry Fees to Parks

(a) The department, wherever feasible and so long as any of the bonds are outstanding, shall charge and collect an entrance fee to state park sites.

(b) Income derived from the fees required by this section, less expenses incurred in collecting the fees, shall be deposited in a special fund with the state treasurer. The amounts deposited are net income.

(c) If any state park site includes a public beach on the seaward shore of the Gulf of Mexico, extending from the line of mean low tide to the line of vegetation, over which the public has acquired a right of use or easement to or over the area by prescription or dedication or has retained a right by virtue of continuous right in the public, no entrance or gate fee may be charged to persons desiring to

enter or to leave the public beach area, so long as the persons do not enter any other portion of the park for which an entrance or gate fee is charged. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1211, ch. 456, § 11, eff. Sept. 1, 1975.]

CHAPTER 22. STATE PARKS

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SUBCHAPTER A. FANNIN STATE BATTLEGROUND

§ 22.001. Jurisdiction

Fannin State Battleground is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.002. Fannin State Park Advisory Commission

(a) The Fannin State Park Advisory Commission is composed of three residents of the state appointed by the governor.

(b) Members serve terms of six years each, with the term of one member expiring each odd-numbered year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.003. Meetings

The Fannin State Park Advisory Commission shall meet quarterly to review the policies and operation of the battleground and to advise the department on the proper historical development of the battleground.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.004. Powers of Advisory Commission

The Fannin State Park Advisory Commission may accept, in the name of the state, all bequests, gifts, and grants of money or property made to the battleground and use the bequests for the purposes specified by the grantor, if any.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.005. Data

All data collected by the advisory commission is the property of the state and shall be used to depict the story of Texas history and independence at the battleground.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.006. Concession Account

A Fannin State concession account may be established in the state treasury according to the rules and procedures established by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.007 to 22.010 reserved for expansion]

SUBCHAPTER B. SAN JACINTO BATTLEGROUND

§ 22.011. Jurisdiction

The San Jacinto Battleground is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.012. San Jacinto Historical Advisory Board

(a) The San Jacinto Historical Advisory Board is composed of:

(1) the chairman of the Battleship Texas Commission;

(2) the president of the San Jacinto Museum of History Association; and

(3) three members of the public.

(b) The three members of the public are appointed by the governor for terms of six years each, with the term of one member expiring each odd-numbered year.

(c) One or more of the three members of the public may be selected from the San Jacinto Chapter, Daughters of the Republic of Texas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.013. Meetings

The San Jacinto Historical Advisory Board shall meet quarterly to review the policies and operations of the San Jacinto Battleground and to advise the department on the proper historical development of the battleground.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.014. Powers of the Board

The board may accept, in the name of the state, all bequests, gifts, and grants of money or property made to the battleground and use the bequests for the purposes specified by the grantor, if any.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.015. Data

All data collected by the board is the property of the state and shall be used to depict the story of Texas history and independence at the battleground.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.016. San Jacinto Museum of History Association

The San Jacinto Museum of History Association, a nonprofit historical association organized for the purposes of operating the San Jacinto Memorial Building and Tower and establishing a museum, retains ownership of property and historical data held in the name of the association and may acquire museum accessions by gift, grant, or purchase from association funds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.017 to 22.020 reserved for expansion]

SUBCHAPTER C. PALO DURO CANYON STATE PARK

§ 22.021. Jurisdiction

(a) The Palo Duro Canyon State Park is under the jurisdiction of the department.

(b) The original boundaries of the park include the land located in Armstrong and Randall counties and described in the deed executed by Fred A. Emery and wife to Texas State Parks Board, July 28, 1933, and recorded in Volume 69, pages 347 through 350, of the deed records of Randall County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.022. Powers of Department

(a) The department may:

(1) fix entrance fees for admission to the park;

(2) fix charges to be collected from patrons of the park;

(3) execute grazing leases covering all or part of the park land;

(4) grant concessions in the park;

(5) make improvements in the park; and

(6) execute any other contracts necessary to carry out the provisions of this subchapter.

(b) Improvements may include the construction of dams to impound water to form a lake or lakes for recreational and other conservation purposes within the park. Before constructing any dam or lake, the commission must obtain permits required by law from the Texas Water Rights Commission.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.023. Disposition of Income

The department shall use the income derived from leases, royalties, and operation of the park necessary for maintaining, improving, and operating the park. One-half of the balance of the unexpended income may be used by the department on other state parks, and the remaining one-half and any other unexpended balance shall be transferred to the general revenue fund at the end of each biennium.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.024. Issuance of Bonds

The department may issue bonds necessary for the construction of improvements in the park.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.025. Interest on Bonds

Interest on the bonds may not exceed six percent per year, computed with relation to the absolute maturity of the bonds in accordance with standard bond interest tables currently in use by insurance companies and investment houses, excluding from the computation the amount of any premium to be paid on redemption of any bonds prior to maturity.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.026. Maturity of Bonds

The bonds may mature, serially or otherwise, not more than 40 years from the date of their issuance.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.027. Redemption Before Maturity

The department may fix the price, terms, and conditions for redemption of the bonds before maturity in the authorizing proceedings.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.028. Sale of Bonds

The bonds may be sold, at public or private sale, at a price and under terms determined by the department to be the most advantageous terms reasonably obtainable.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.029. Pledge of Income

The department may irrevocably pledge the rents, revenues, and income from the improvements financed by the bonds and from any other revenue-producing facilities or properties of the park, including the fees collected for admission to the park, to the payment of the interest on and the principal of the bonds and may enter into agreements regarding the imposition of charges and the collection, pledge, and disposition of revenue.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.030. Right to Issue Additional Bonds

In pledging the rents, revenues, and income, the department may expressly reserve the right to issue additional bonds on a parity with or subordinate to the bonds then being issued.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.031. Additional Security for Bonds

(a) If, after reasonable effort, the department is unable to sell the bonds, the bonds may be additionally secured by a deed of trust lien on the land and property comprising the park, or any part of it, after the department has obtained written approval of the governor.

(b) The governor may not give his approval under this section until he has obtained the advice and consent of the Legislative Budget Board.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.032. Form of Bonds

The department may prescribe the form, conditions, and details of the bonds in accordance with the provisions of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.033. Refunding of Bonds

(a) A bond issued by the department under a law of this state which is payable from any part of the revenues of a revenue-producing facility or property of Palo Duro Canyon State Park may be refunded or refinanced by the department under this subchapter.

(b) The provisions of this subchapter are applicable to a refunding bond.

(c) In the same authorizing proceedings, the department may refund or refinance any bond issued under this subchapter and combine all refunding bonds and any new bonds to be issued into one or more issues or series and may provide for the subsequent issuance of additional parity bonds under terms and conditions set out in the authorizing proceedings.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.034. Employment of Personnel

The department may employ engineers, attorneys, and fiscal agents or financial advisors necessary in the issuance or refunding of bonds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.035. Approval by Attorney General

(a) The bonds and all records relating to their issuance must be submitted to the attorney general for examination prior to delivery.

(b) The attorney general shall approve the bonds if he finds that they have been issued in accordance with the constitution and this subchapter and that they will be binding special obligations of the department.

(c) Bonds approved by the attorney general must be registered by the comptroller of public accounts.

(d) After approval and registration, the bonds are incontestable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.036. Payment of Interest and Expenses

The department may set aside amounts from the proceeds of the sale of a bond issue for:

(1) the payment of interest anticipated to accrue during the construction period;

(2) a deposit into the reserve for the interest and sinking fund to the extent prescribed in the authorizing proceedings; and

(3) payment of attorney's fees, engineer's fees, and expenses of the issuance and sale of bonds, including the fees of fiscal agents or financial advisors.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.037. Legal Investments

(a) Bonds issued under this subchapter are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and other political corporations and subdivisions of the state.

(b) The bonds are eligible to secure the deposit of the public funds of the state, cities, towns, villages, counties, school districts, and other political corporations and subdivisions of the state.

(c) The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.038. Negotiable Instruments

Bonds issued under this subchapter are negotiable instruments under the laws of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.039. Debt Against the State

Nothing in this subchapter creates a debt against the state or binds the state in any way except as to the mortgage of the land and property comprising the Palo Duro Canyon State Park and as to the pledge of the rents, revenue, and income from the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.040 to 22.050 reserved for expansion]

SUBCHAPTER D. JIM HOGG MEMORIAL PARK

§ 22.051. Jurisdiction

(a) The Jim Hogg Memorial Park is under the jurisdiction of the department.

(b) The original boundaries of the park include approximately 180 acres, formerly a part of the General Joseph L. Hogg homestead in Cherokee County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.052. Historical Improvements

To the extent possible, the department shall maintain a replica of the original Hogg home and the grounds adjacent to the residence.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.053. Improvements

The department may repair or construct facilities for recreational and park purposes at the park and may work in conjunction with other governmental agencies for this purpose.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.054. Sale and Use of Timber

(a) The department may use timber cut from the land in the park to repair or construct improvements.

(b) The department may sell timber from the land in the park to finance the construction or repair of improvements.

(c) Timber must be selectively cut for sale or use under the supervision of the Texas Forest Service.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.055. Sale of Iron Ore

(a) The department may sell iron ore in place located in the park. The department may grant all rights necessary for the development of the iron ore to the purchasers of the iron ore.

(b) The chairman of the commission, on behalf of the department, may execute and deliver the necessary instruments to convey the iron ore in place to the purchasers.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.056. Competitive Bids

(a) Timber and iron ore may be sold on competitive bids only. The contract shall be awarded to the party submitting the highest and best bid in the judgment of the Texas Forest Service for the sale of timber and of the department for the sale of iron ore. The department must approve the contract for sale of timber.

(b) The Texas Forest Service shall keep on file the bids for timber sale. The bids are public records. Copies of the bids shall be given to the department.

(c) The department shall keep on file the bids for the sale of iron ore. The bids are public records.

(d) The Texas Forest Service may reject any or all bids for timber sale and readvertise for new bids. The department may reject any or all bids for iron ore sale and readvertise for new bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.057. Advertising for Bids

(a) The Texas Forest Service shall advertise for the sale of timber. The department shall advertise for the sale of iron ore.

(b) The sale must be advertised for two weeks in at least one weekly newspaper published and circulated in Cherokee County.

(c) The advertisement must contain the necessary information pertaining to the sale and the time and place for receiving bids.

(d) The first advertisement must be at least 10 days before the date of receiving bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.058. Regulations

The department shall adopt regulations, forms, and contracts for the sale of iron ore and protection of the income produced from the sale.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.059. Disposition of Funds

Money received from the sale of timber or iron ore from the land in the park shall be placed in the state treasury to the credit of the Jim Hogg State Park building fund. The fund shall be used by the department for the improvement of the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.060 to 22.070 reserved for expansion]

SUBCHAPTER E. HUNTSVILLE STATE PARK

§ 22.071. Improvements

(a) The department may construct and repair improvements to be used for recreational and park purposes in Huntsville State Park, including dams to impound water and form reservoirs or lakes.

(b) The department may cooperate with other governmental agencies in making the improvements.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.072. Permit for Dam

A dam may not be constructed until a permit has been obtained from the Texas Water Rights Commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.073. Sale and Use of Timber

(a) The department may use timber cut from land in the park to repair or construct improvements.

(b) The department may sell timber from land in the park to finance the construction or repair of improvements and dams.

(c) Timber must be selectively cut for sale or use under the supervision of the Texas Forest Service.

(d) The amount of timber sold may not exceed $250,000.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.074. Competitive Bids

(a) Timber may be sold on competitive bids only. The contract shall be awarded to the party submitting the highest and best bid in the judgment of the Texas Forest Service and then approved by the department.

(b) All bids shall be kept on file by the Texas Forest Service and are public records. Copies of the bids shall be furnished to the department.

(c) The Texas Forest Service may reject any or all bids and readvertise for new bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.075. Advertising for Bids

(a) The Texas Forest Service shall advertise for the sale of the timber for two weeks in at least one weekly newspaper published and circulated in Walker County.

(b) The advertisement must contain the necessary information pertaining to the timber sale and the time and place for receiving bids.

(c) The first advertisement must be at least 10 days before the date of receiving bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.076. Disposition of Funds

Money received from the sale of timber cut from the park shall be placed in the state treasury to the credit of the Huntsville State Park building fund to be used by the department for purposes authorized by this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.077 to 22.080 reserved for expansion]

SUBCHAPTER F. GOLIAD STATE PARK

§ 22.081. Jurisdiction

Goliad State Park, including the General Ignacio Zaragoza Birthplace and the Mission of San Rosario, is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.082. General Ignacio Zaragoza Birthplace

(a) The department may care for and protect the birthplace of General Ignacio Zaragoza and shall designate the site as the General Ignacio Zaragoza Birthplace.

(b) The site originally accepted by the state includes approximately two acres, described as lots 4, 5, 6, 11, 12, 13, 14, 15, and 16 in Block X, La Bahia Townsite, in Goliad County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.083. Mission of San Rosario

(a) The department shall care for the grounds of the Mission of San Rosario as a suitable and appropriate memorial and shall enclose the mission grounds with an appropriate and substantial park fence.

(b) The original boundaries of the mission consist of the surface title of 4.77 acres of land in the County of Goliad, Texas, said 4.77 acres of land, more or less, being the following described parcel of land:

BEGINNING at a concrete monument in the Southeast Right-of-Way line of State Highway No. 12, same being a R/W marker for said Highway, and being 50 ft. at right angles from the center line of said Highway, and marked Sta. 914/00;

THENCE South 39 deg. 36 min. West, with right-of-way fence, 295.9 ft. to a concrete monument for corner of this present survey;

THENCE South 56 deg. 02 min. East, at 148.0 ft. an iron pipe, at 350.0 ft. a concrete monument for corner of this present survey;

THENCE South 32 deg. 08 min. East, at 69.9 ft. an iron pipe, at 193.3 ft. a tack in cedar post at 241.4 ft. a concrete monument for corner of this present survey;

THENCE North 83 deg. 35 min. East, 193.4 ft. to a concrete monument for corner of this present survey;

THENCE North 17 deg. 46 min. East, at 109.7 ft. an iron pipe, at 227.3 ft. a concrete monument for corner of this present survey;

THENCE North 43 deg. 17 min. West, at 116.8 ft. an iron pipe, at 240.5 ft. a concrete monument for corner of this present survey;

THENCE North 57 deg. 21 min. West, at 193.3 ft. an iron pipe, at 356.3 ft. a concrete monument for corner of this present survey; same being a highway R/W marker for said Highway for extra width in R/W and also marked Sta. 914/00;

THENCE North 49 deg. 55 min. West, with Highway R/W line, 34.9 ft. to the place of beginning;

Containing Four and 77/100 (4.77) acres of land and all being out of Maria de Jesus de Leon Survey, Abstract 21, Goliad County, Texas.

Said 4.77 acres of land, more or less, being the land conveyed to the County of Goliad by William J.

O'Connor on July 15, 1935, as shown by deed of such date duly recorded in Volume 77, Page 565, of the Deed Records of Goliad County, Texas, on July 17, 1935, and to which reference is here made for all pertinent purposes.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.084. Improvements

The department may construct, maintain, and repair historical and recreational structures and facilities in the park.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.085. Reversion of Title; Mineral Reservation

(a) If the state ceases to use the General Ignacio Zaragoza Birthplace or the Mission of San Rosario as park land, all right, title, and interest shall revert to Goliad County.

(b) All minerals under the land accepted as the Mission of San Rosario are excepted from any conveyance to the state.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.086 to 22.090 reserved for expansion]

SUBCHAPTER G. MISSION SAN FRANCISCO DE LOS TEJAS STATE PARK

§ 22.091. Facilities; Park Site

(a) The department may construct and repair facilities for recreational and other appropriate purposes at Mission San Francisco de los Tejas State Park.

(b) The original boundaries of the park include portions of Hardy Ware Survey, Abstract 1240, situated on the N side of Highway No. 21, about 21 miles NE from the City of Crockett, and being the same tracts of land conveyed to the State of Texas for the use and benefit of the Agricultural and Mechanical College of Texas, more particularly described by the following deeds, to-wit:

Deed from Mrs. Kittie A. Cook, surviving widow of T. S. Cook, deceased, dated October 16, 1939, recorded in Book 200, page 533, Deed Records of Houston County, Texas;

Deed from Southern Pine Lumber Company, dated September 20, 1935, recorded in Book 170, page 367, Deed Records of Houston County, Texas;

Deed from Mrs. Kittie A. Cook, surviving widow of T. S. Cook, deceased, dated February 1, 1935, recorded in Book 166, page 141, Deed Records of Houston County, Texas;

Deed from C. H. Callaway, Trustee, dated January 3, 1935, recorded in Volume 164, page 543, Deed Records of Houston County, Texas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.092. Timber Sale

(a) The department may sell timber from land in the park and may use timber of the park to repair or construct improvements in the park.

(b) Timber may be cut for salvage purposes only or under good forestry practices with the advice of the Texas Forest Service.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.093. Competitive Bids

(a) Timber may be sold on competitive bids only. The contract shall be awarded to the party submitting the highest and best bid in the judgment of the Texas Forest Service and then approved by the department.

(b) All bids shall be kept on file by the Texas Forest Service and are public records.

(c) The Texas Forest Service may reject any or all bids and readvertise for new bids.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.094. Advertising for Bids

(a) The Texas Forest Service shall advertise for the sale of the timber for two weeks in at least one weekly newspaper published and circulated in Houston County.

(b) The advertisement must contain the necessary information pertaining to the timber sale and the time and place for receiving bids.

(c) The first advertisement must be at least 10 days before the date of receiving bids.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.095. Disposition of Funds

Money received from the sale of timber cut from the park shall be placed in the state treasury to the credit of a special fund known as the Mission San Francisco de los Tejas State Park building fund to be used by the department for purposes authorized by this subchapter.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.096 to 22.100 reserved for expansion]

SUBCHAPTER H. PORT ISABEL LIGHTHOUSE STATE HISTORICAL MONUMENT AND PARK

§ 22.101. Jurisdiction

The Port Isabel Lighthouse is a state historical monument and park and is under the jurisdiction of the department.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.102. Powers of Department

The department may rehabilitate, maintain, and preserve the property of the park, and may collect entrance fees for admission to the park or operate it on a concession basis under the provisions of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.103 to 22.110 reserved for expansion]

SUBCHAPTER I. HUECO TANKS STATE PARK

§ 22.111. Control

The department has control of Hueco Tanks State Park and shall improve, preserve, restore, and protect the land and property in the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.112. Acceptance of Gifts

The department may accept gifts for constructing, building, advertising, or creating the park, including gifts for public exhibition that relate to the history of the park or the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.113. Title to Park

The title of the land known as Hueco Tanks in El Paso County is in the name of the state and is subject to limitations, conditions, and exceptions made by the former owners and approved by the department or the department's predecessor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.114 to 22.120 reserved for expansion]

SUBCHAPTER J. STEPHEN F. AUSTIN STATE PARK

§ 22.121. Jurisdiction

Stephen F. Austin State Park is under the jurisdiction of the department. The department shall improve, preserve, and protect the land in the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.122 to 22.150 reserved for expansion]

SUBCHAPTER K. NIMITZ STATE PARK

§ 22.151. Jurisdiction

The Nimitz State Park, located near Fredericksburg in Gillespie County, is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.152. Powers of Department

The department may:

(1) accept gifts for the construction, building, or advertising of the park;

(2) accept gifts for exhibition dealing with the history or life of Fleet Admiral Chester W. Nimitz;

(3) advertise the affairs of the park;

(4) make rules and regulations for administration of the park;

(5) hire personnel necessary to carry out its duties;

(6) grant concessions; and

(7) operate and maintain the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.153 to 22.160 reserved for expansion]

SUBCHAPTER L. EISENHOWER STATE PARK

§ 22.161. Jurisdiction

The Eisenhower State Park, located near Lake Texoma in Grayson County, is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.162. Powers of Department

The department may:

(1) accept gifts for the construction, building, or advertising of the park;

(2) accept gifts for exhibition dealing with the history or life of Dwight D. Eisenhower;

(3) advertise the affairs of the park;

(4) make rules and regulations for administration of the park;

(5) hire personnel necessary to carry out its duties;

(6) grant concessions; and

(7) operate and maintain the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.163. Definitions

As used in this subchapter:

(1) "Impacted property" means that real property located in Grayson County adjacent to or near the western end of Eisenhower State Park that is described as:

(A) Lots 54–79 in "Elm Ridge Homesite Area" as described on a survey and plat of this area by B. & B. Engineering Co. in May, 1958, recorded in Plat Book 1, Page 73, Deed Records, Grayson County, Texas; and

(B) the East one-half and the West one-half of a 60.49 acre tract being part of the survey patented to Alan Carter, Abstract No. 231, dated June 22, 1851, and also being part of the J. A. Sadler 380 acre tract except the 316.05 acres thereof described in a deed to the United States of America, recorded in Volume 432, Page 389, Deed Records, Grayson County, Texas.

(2) "Owner" means the owner or a lessee of impacted property.

(3) "Guest" means a business or personal guest or an employee of an owner of impacted property.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.164. Right to Use Roads

(a) Owners, their family members, and their guests may use the roads of the park without charge for egress from or ingress to the impacted property when traveling between the impacted property and points east of the park.

(b) Owners, their family members, and their guests may use throughout the year whatever road is maintained by the department for travel by automobiles between the eastern and western points of the park and may enter the park at the points at which they were able to enter the park and its roads prior to November 1, 1968, or other reasonably located points the department may direct by regulation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.165. Permits

(a) The department may require owners, their family members, and their guests to obtain permits for entrance into and use of park roads under this subchapter.

(b) Permits shall be issued automatically on presentation of proper identification.

(c) Permits are valid for at least one year and shall be automatically renewed for owners and their family members.

(d) Permits for guests of owners shall be valid for the period of time requested by the owner.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.166 to 22.170 reserved for expansion]

SUBCHAPTER M. GOVERNOR JAMES STEPHEN HOGG MEMORIAL SHRINE

§ 22.171. Governor Hogg Memorial

The Governor James Stephen Hogg Memorial Shrine, located near Quitman, Wood County, is established.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.172 to 22.180 reserved for expansion]

SUBCHAPTER N. ACQUISITION OF CERTAIN STATE PARKS

§ 22.181. Spanish Missions

(a) The department may acquire the following Spanish Mission sites, located in Milam County:

(1) Nuestra Senora de la Candelaria;

(2) San Francisco Xavier de los Dolores; and

(3) San Ildefonso.

(b) The department may acquire the sites with available or appropriated funds or may accept gifts for acquisition, construction, or restoration of the sites.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.182. Texas State Railroad

(a) Except as provided in Subsection (b) of this section, the department may operate any part of the Texas State Railroad as a part of the state parks system for park and recreational purposes. All revenues collected from leases or concessions shall be deposited in the state treasury to the credit of the state parks fund.

(b) The board of managers of the Texas State Railroad shall exercise control and management of the right-of-way and trackage of the Texas State Railroad from Mile Post 0.0 at Palestine, extending eastwardly to Mile Post 3.69, and exercise the powers, duties, and authority over this right-of-way and trackage that are granted to them by Chapter 58, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6550(a), Vernon's Texas Civil Statutes).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.183. Hubbard Lake

(a) The department may create, develop, operate, and maintain a state park on the land donated by the West Central Texas Municipal Water District located on Hubbard Lake in Stephens County.

(b) The department may accept additional gifts of any adjoining land or interest in land donated by the West Central Texas Water Municipal District to enlarge the park created by Subsection (a) of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.184. Fishing Piers

(a) The department may repair and maintain the old causeway across Copano Bay on Highway 35 in Aransas County and the old causeway across Lavaca Bay on Highway 35 in Calhoun County as public fishing piers and recreation areas.

(b) The department and the state highway department may solicit and receive gifts of labor and

materials for the construction and improvement of the fishing piers.

(c) The department may grant concessions to persons allowing the concessioners to charge for use of the piers and approaches.

(d) All revenue received under this section shall be deposited in the state treasury to the credit of the state parks fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER O. MATAGORDA ISLAND STATE PARK AND WILDLIFE MANAGEMENT AREA

Acts 1979, 66th Leg., p. 254, ch. 132, § 1, added this Subchapter O. Acts 1979, 66th Leg., p. 1804, ch. 736, § 1, without reference to ch. 132, also added a Subchapter O. For text of Subchapter O as added by ch. 736, see § 22.201 et seq., post.

§ 22.201. Matagorda Island State Park and Wildlife Management Area

(a) The Matagorda Island State Park and Wildlife Management Area is established under the jurisdiction of the department to primarily be used for public recreational purposes as a state park.

(b) The Matagorda Island State Park and Wildlife Management Area consists of all land, including tideland, submerged land, and beaches, on Matagorda Island in Calhoun County belonging to the state on June 1, 1979, other than permanent school fund land, and any other land on Matagorda Island acquired after that date by the department for inclusion in the park.

[Added by Acts 1979, 66th Leg., p. 254, ch. 132, § 1, eff. May 9, 1979.]

§ 22.202. Dedicated Land

All land within the Matagorda Island State Park and Wildlife Management Area on June 1, 1979, and all land included within the park and management area after that date are dedicated for park and wildlife management area purposes.

[Added by Acts 1979, 66th Leg., p. 254, ch. 132, § 1, eff. May 9, 1979.]

SUBCHAPTER O. FRANKLIN MOUNTAINS STATE PARK

Acts 1979, 66th Leg., p. 1804, ch. 736, § 1, added this Subchapter O. Acts 1979, 66th Leg., p. 254, ch. 132, § 1, without reference to ch. 736, also added a Subchapter O. For text of Subchapter O as added by ch. 132, see § 22.201 et seq., ante.

§ 22.201. Park Established: Jurisdiction of Department

The Franklin Mountains State Park is established under the jurisdiction of the department.

[Added by Acts 1979, 66th Leg., p. 1804, ch. 736, § 1, eff. Aug. 27, 1979.]

Section 2 of the 1979 Act described the boundaries of the Franklin Mountains State Park.

§ 22.202. Department to Acquire Park Land

(a) The department shall acquire by purchase, gift, or condemnation all of the land described in Section 2 of the Act that added this subchapter to this code.

(b) The department shall acquire the land with money from the Texas Park Development Fund, or any fund created to finance the acquisition of state parks.

(c) The department shall not expend any funds for the operation and maintenance of Franklin Mountains State Park.

[Added by Acts 1979, 66th Leg., p. 1804, ch. 736, § 1, eff. Aug. 27, 1979.]

§ 22.203. Condemnation

(a) If necessary for the acquisition of the Franklin Mountains State Park, the department shall institute condemnation proceedings according to the laws of this state against any person, including a governmental entity.

(b) Costs incurred in the exercise of eminent domain under this section for the relocation, raising, lowering, rerouting, or change in grade, or alteration in the construction of any electric transmission, telegraph, or telephone line, railroad, conduit, pole, property, facility, or pipeline are the sole expense of the department.

(c) "Sole expense" means the actual cost of the lowering, rerouting, or change in grade or alteration of construction in providing comparable replacement without enhancement of the facility, after deducting the net salvage value derived from the old facility.

[Added by Acts 1979, 66th Leg., p. 1804, ch. 736, § 1, eff. Aug. 27, 1979.]

CHAPTER 23. NATIONAL PARKS, SEASHORES, AND FORESTS

SUBCHAPTER A. BIG BEND NATIONAL PARK

Section
23.001. Limited Jurisdiction Retained.
23.002. Park Residents May Vote.

SUBCHAPTER B. PADRE ISLAND NATIONAL SEASHORE

23.011. Limited Jurisdiction Retained.
23.012. Seashore Residents May Vote.
23.013. Regulations of Railroad Commission.
23.014. Reversion to State.

Section
23.015. Consent for Acquisition of Navigation District Land.
23.016. Roads.

SUBCHAPTER C. GUADALUPE MOUNTAINS NATIONAL PARK
23.031. Limited Jurisdiction Retained.
23.032. Park Residents May Vote.
23.033. Reconveyance of Title.
23.034. Mineral Rights in Park.

SUBCHAPTER D. DAVY CROCKETT NATIONAL FOREST
23.041. Agreements for Wildlife Management.
23.042. Wildlife Defined.
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SUBCHAPTER E. SABINE NATIONAL FOREST
23.051. Agreements for Wildlife Management.
23.052. Wildlife Defined.
23.053. Hunting and Fishing Regulations.
23.054. Penalty.

SUBCHAPTER A. BIG BEND NATIONAL PARK

§ 23.001. Limited Jurisdiction Retained

The state retains jurisdiction in the Big Bend National Park, concurrently with the United States, as though cession had not occurred, for:

(1) the service of criminal and civil process, issued under the authority of the state, on any person amenable to service; and

(2) the assessment and collection of taxes on the sales of products and commodities and on franchises and property.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.002. Park Residents May Vote

A person residing in Big Bend National Park may vote in all elections in the county of his residence, subject to the same conditions as other residents of the county, as though cession had not occurred.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 23.003 to 23.010 reserved for expansion]

SUBCHAPTER B. PADRE ISLAND NATIONAL SEASHORE

§ 23.011. Limited Jurisdiction Retained

The state retains jurisdiction in the Padre Island National Seashore, concurrently with the United States, as though cession had not occurred, for:

(1) the service of criminal and civil process, issued under the authority of the state, on any person amenable to service; and

(2) the assessment and collection of taxes on the sales and use, or the gross receipts from the sales, of products and commodities and on franchises, properties, and incomes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.012. Seashore Residents May Vote

A person residing in the Padre Island National Seashore may vote in all elections in the county of his residence, subject to the same conditions as other residents of the county, as though cession had not occurred.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.013. Regulations of Railroad Commission

(a) The Railroad Commission shall send by certified mail to the Secretary of Interior of the United States a copy of each proposed rule or regulation affecting mineral rights reserved in deeds conveying land in the Padre Island National Seashore to the United States.

(b) The Department of Interior has 30 days from the day a copy of a proposed rule or regulation is received to send to the Railroad Commission its objections or exceptions. An objection or exception must be sent by certified mail. Thereupon, a rule or regulation, with amendments, if any, promulgated by the Railroad Commission, takes effect.

(c) The development and recovery of minerals in the Padre Island National Seashore shall be carried out in a manner that does not unreasonably interfere with the use of the land for park purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.014. Reversion to State

(a) Any deed executed by the state to the United States for the creation of Padre Island National Seashore becomes null and void on the initiation by any elected or appointed agent, officer, or employee of the United States, or by any agency or department of the United States, of a suit at law or in equity in any federal court to enlarge or expand the title, right, or interest granted by the deed. When a deed becomes void under this subsection, the land immediately reverts to the state.

(b) Unless reversion is waived by the legislature during the biennium following the happening of a condition of reversion, all state-owned land conveyed to the United States for the creation of the Padre Island National Seashore reverts to the state and to the fund to which it belonged before conveyance if:

(1) the United States fails to acquire two-thirds of all privately owned land in the area described by Section 1, Chapter 38, Acts of the 58th Legislature, 1963, within 10 years after the date that the state-owned land was acquired; or

(2) the United States fails to use as a national seashore the privately owned land it has acquired.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.015. Consent for Acquisition of Navigation District Land

The Willacy County Navigation District may consent to the acquisition of surface land for inclusion in Padre Island National Seashore. Interests in surface estates, spoil banks, easements, and rights-of-way controlled by the district in the Padre Island National Seashore shall be used for public purposes only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.016. Roads

The Secretary of Interior is requested to provide roads from the north boundary of Padre Island National Seashore and from the Port Mansfield cut to the access highways from the mainland.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 23.017 to 23.030 reserved for expansion]

SUBCHAPTER C. GUADALUPE MOUNTAINS NATIONAL PARK

§ 23.031. Limited Jurisdiction Retained

The state retains jurisdiction in the Guadalupe Mountains National Park, concurrently with the United States, as though cession had not occurred, for:

(1) the service of criminal and civil process, issued under the authority of the state, on any person amenable to service; and

(2) the assessment and collection of taxes on sales and use, or the gross receipts from the sales, of products and commodities and on franchises, properties, and incomes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.032. Park Residents May Vote

A person residing in the Guadalupe Mountains National Park may vote in all elections in the county of his residence, subject to the same conditions as other residents of the county, as though cession had not occurred.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.033. Reconveyance of Title

If any of the land described by the drawing entitled "Proposed Guadalupe Mountains National Park, Texas," numbered SA–GM–7100C, dated February, 1965, and on file in the offices of the National Park Service and the Secretary of State of Texas ceases to be used for the Guadalupe Mountains National Park, the state may require a reconveyance, without consideration, of the mineral rights conveyed for the creation of the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.034. Mineral Rights in Park

(a) The state reserves a preferential right, without consideration to the United States, to lease all mineral rights and interests that were conveyed by the state for the establishment of the Guadalupe Mountains National Park if:

(1) Congress declares by an act that the national welfare or an emergency requires the development and production of minerals in the park; and

(2) Congress authorizes the Secretary of Interior of the U. S. to lease park land for drilling, mining, developing, or producing minerals.

(b) If oil, gas, or other minerals are discovered and produced in commercial quantities from land outside the park sufficient to cause drainage of minerals from in the park and the Secretary of Interior participates in a communitization agreement or takes other action to protect the rights of the United States, the state retains its right to its proper share of the proceeds of the agreement or action. The state's proper share is not less than all bonuses, rentals, and royalties attributable to mineral rights conveyed to the United States for the establishment of Guadalupe Mountains National Park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 23.035 to 23.040 reserved for expansion]

SUBCHAPTER D. DAVY CROCKETT NATIONAL FOREST

§ 23.041. Agreements for Wildlife Management

(a) The department may agree with the proper agency of the United States for the protection and management of wildlife resources and for restocking desirable species of wildlife in portions of the Davy Crockett National Forest, in Houston and Trinity counties, that can be designated by a natural boundary. A natural boundary may be a road, lake, stream, canyon, rock, bluff, island, or other natural feature.

(b) No agreement under this section may cover more than 40,000 acres at any one time during any five-year period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.042. Wildlife Defined

In this subchapter, "wildlife" means all kinds of birds, animals, and fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.043. Hunting and Fishing Regulations

The commission may promulgate regulations applicable to the Davy Crockett National Forest, in Houston and Trinity counties, to:

(1) prohibit hunting and fishing for periods of time as necessary to protect wildlife;

(2) provide open seasons for hunting and fishing;

(3) provide limitations on the number, size, kind, and sex of wildlife that may be taken; and

(4) prescribe the conditions under which wildlife may be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.044. Penalty

A person who violates any rule or regulation of the commission adopted under this subchapter or who hunts or fishes in the Davy Crockett National Forest at any time other than the open season is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 23.045 to 23.050 reserved for expansion]

SUBCHAPTER E. SABINE NATIONAL FOREST

§ 23.051. Agreements for Wildlife Management

The department may agree with the proper agency of the United States for the protection and management of wildlife resources and for restocking desirable species of wildlife in the parts of the Sabine National Forest, in Sabine and San Augustine counties, that are fenced.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.052. Wildlife Defined

In this subchapter, "wildlife" means all kinds of animals, birds, and fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.053. Hunting and Fishing Regulations

The commission may promulgate regulations applicable to the Sabine National Forest, in Sabine and San Augustine counties, to:

(1) prohibit hunting and fishing for periods of time as necessary to protect wildlife;

(2) provide open seasons for hunting and fishing;

(3) provide limitations on the number, size, kind, and sex of wildlife that may be taken; and

(4) prescribe the conditions under which wildlife may be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.054. Penalty

A person who violates any regulation of the commission adopted under this subchapter or who hunts or fishes in the Sabine National Forest at any time other than during the open season is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 24. STATE ASSISTANCE FOR LOCAL PARKS

Section

24.001. Definitions.
24.002. Fund Established.
24.003. Use of Fund.
24.004. Assistance Grants.
24.005. Direct State Matching Grants.
24.006. Acquisition and Development of State Parks.
24.007. Fund Use to be Consistent With Plans.
24.008. Acquisition of Property.
24.009. Payments, Records, and Accounting.
24.010. Annual Report.
24.011. Noncompliance With Act.
24.012. Fund Not to be Used For Publicity.
24.013. Authority of Political Subdivisions to Have Parks.

§ 24.001. Definitions

In this chapter:

(1) "Political subdivision" means a county, city, special district, river authority, or other governmental entity created under the authority of the state or a county or city.

(2) "Urban area" means the area within a standard metropolitan statistical area (SMSA) in this state used in the last preceding federal census.

(3) "Park" includes land and water parks owned or operated by the state or a political subdivision.

(4) "Open space area" means a land or water area for human use and enjoyment that is relatively free of man-made structures.

(5) "Natural area" means a site having valuable or vulnerable natural resources, ecological processes, or rare, threatened, or endangered species of vegetation or wildlife.

(6) "Parks, recreational, and open space area plan" means a comprehensive plan that includes information on and analyses of parks, recreational, and open space area objectives, needs, resources, environment, and uses, and that identifies the amounts, locations, characteristics, and

potentialities of areas for adequate parks, recreational, and open space opportunities.

(7) "Federal rehabilitation and recovery grants" means matching grants made by the United States to or for political subdivisions for the purpose of rebuilding, remodeling, expanding, or developing existing outdoor or indoor parks, recreational, or open space areas and facilities, including improvements in park landscapes, buildings, and support facilities.

(8) "Fund" means the Texas local parks, recreation, and open space fund.

[Added by Acts 1979, 66th Leg., p. 1733, ch. 710, § 1, eff. Sept. 1, 1979.]

§ 24.002. Fund Established

The Texas local parks, recreation, and open space fund is established in the state treasury.

[Added by Acts 1979, 66th Leg., p. 1733, ch. 710, § 1, eff. Sept. 1, 1979.]

§ 24.003. Use of Fund

Appropriations from the fund may be used only for assistance grants under Section 24.004 of this code, direct grants under Section 24.005 of this code, and the uses permitted under Section 24.006 of this code.

[Added by Acts 1979, 66th Leg., p. 1733, ch. 710, § 1, eff. Sept. 1, 1979.]

§ 24.004. Assistance Grants

(a) The department may make grants of money from the fund to a political subdivision in an urban area for use by the political subdivision as all or part of the subdivision's required share of funds for eligibility for receiving a federal rehabilitation and recovery grant.

(b) In order to receive a grant under this section, the political subdivision seeking the federal grant shall apply to the department for the grant and present evidence that the political subdivision qualifies for the federal grant.

(c) A grant under this section is conditioned on the political subdivision qualifying for and receiving the federal grant.

[Added by Acts 1979, 66th Leg., p. 1733, ch. 710, § 1, eff. Sept. 1, 1979.]

§ 24.005. Direct State Matching Grants

(a) The department may make grants of money from the fund to a political subdivision in an urban area to provide one-half of the costs of the planning, acquisition, or development of a park, recreational area, or open space area in an urban area to be owned and operated by the political subdivision.

(b) In establishing the program of grants under this section, the department shall adopt those allocation formulas, conditions for fund uses, and other procedural requirements, to the extent not inconsistent with this chapter, as are provided for the land and water conservation fund established by Section 460*l*–4, Title 16, United States Code, and the rules and regulations for grant assistance made from that fund.

(c) Money granted to a political subdivision under this section may not be used for the operation and maintenance of parks, recreational areas, and open space areas.

[Added by Acts 1979, 66th Leg., p. 1733, ch. 710, § 1, eff. Sept. 1, 1979.]

§ 24.006. Acquisition and Development of State Parks

The department may acquire and develop in an urban area a state park, recreational area, open space area, or natural area with money appropriated from the fund.

[Added by Acts 1979, 66th Leg., p. 1733, ch. 710, § 1, eff. Sept. 1, 1979.]

§ 24.007. Fund Use to be Consistent With Plans

No grant may be made under Section 24.005 of this code nor may fund money be used under Section 24.006 of this code unless:

(1) there is a present or future need for the acquisition and development of the property for which the grant is requested or the use is proposed;

(2) the acquisition and development is consistent with the local parks, recreational, and open space plan and the Texas outdoor recreation plan; and

(3) a written statement is obtained from the regional planning commission having jurisdiction of the area in which the property is to be acquired and developed that the acquisition and development is consistent with the local parks, recreational, and open space plan most closely reflecting local needs.

[Added by Acts 1979, 66th Leg., p. 1733, ch. 710, § 1, eff. Sept. 1, 1979.]

§ 24.008. Acquisition of Property

(a) No property may be acquired with grant money made under this chapter or by the department under this chapter if the purchase price exceeds the fair market value of the property as determined by two independent appraisers.

(b) A political subdivision may qualify for assistance in acquiring property in advance of actual need for development if presented with the opportunity to do so.

(c) Property may be acquired with provision for a life tenancy if that provision facilitates the orderly and expedient acquisition of the property.

(d) Property that is not to be developed for recreational use for several years may be leased back to the owner if the lessee's use of the property will not impair the character of the property for the park, recreational, or open space purpose for which it was acquired. The terms of the lease must be approved in writing by the department.

(e) If land or water designated for park, recreational, or open space use is included in the local and regional park, recreational, and open space plans for two or more contiguous jurisdictions and that land or water is also included in the Texas outdoor recreation plan, the two or more jurisdictions may cooperate under state law to secure assistance from the fund to acquire or develop the property. In those cases, the department must be assured that a cooperative management plan for the land or water can be developed and effectuated.

(f) All land or water purchased with assistance from the fund shall be dedicated for park, recreational, and open space purposes in perpetuity and may not be used for any other purpose, except where the use is compatible with park, recreational, and open space objectives, and the use is approved in advance by the department.

[Added by Acts 1979, 66th Leg., p. 1733, ch. 710, § 1, eff. Sept. 1, 1979.]

§ 24.009. Payments, Records, and Accounting

(a) On the approval of a grant under this chapter and on the written request by the director, the comptroller of public accounts shall issue a warrant drawn against the fund and payable to the political subdivision in the amount specified by the director.

(b) Each recipient of assistance under this chapter shall keep records as required by the department, including records which fully disclose the amount and the disposition of the proceeds by the recipient, the total cost of the acquisition, a copy of the title and deed for the property acquired, the amount and nature of that portion of the cost of the acquisition supplied by other funds, and other records that facilitate effective audit. The director and the comptroller, or their authorized representatives, may examine any book, document, paper, and record of the recipient that are pertinent to assistance received under this chapter.

(c) The recipient of funds under this chapter shall, on each anniversary date of the grant for five years after the grant is made, furnish to the department a comprehensive report detailing the present and anticipated use of the property, any contiguous additions to the property, and any major changes in the character of the property, including the extent of park development which may have taken place.

[Added by Acts 1979, 66th Leg., p. 1733, ch. 710, § 1, eff. Sept. 1, 1979.]

§ 24.010. Annual Report

(a) The commission shall report to the governor and legislature on August 31 of each year, or as soon as practicable, but not later than October 1 of each year, showing the condition of the fund. The report must contain:

(1) a statement of the amount of money deposited to the credit of the fund for the year;

(2) a statement of the amount of money disbursed by the department for department projects and for qualified political subdivision projects for the year;

(3) a listing of political subdivisions that applied for matching assistance from the fund, to include information for each political subdivision that shows the amount of money applied for, the scope of the proposed acquisition or development project, and the priority assigned the application during department review;

(4) a listing of political subdivisions and state parks which have received money from the fund, to include information for each political subdivision and state park that shows the amount of money, number of parks, recreational areas, and open space areas, and number of acres acquired or developed by park, recreational, or open space area and summed for each political subdivision for the year;

(5) a listing of political subdivisions which have received park, recreational, and open space operation and maintenance money from the fund, to include information for each subdivision which shows the amount of money allocated, amount of money spent, and general statements on how the political subdivision used the money for maintenance;

(6) a statement of the amount of money annually deposited to the credit of the fund that was not disbursed during the year and the reason for nondisbursement; and

(7) a statement of any significant problems encountered in administering the fund, with recommendations for their solution.

(b) The annual report on the fund may be included as a portion of the department's annual report to the governor.

[Added by Acts 1979, 66th Leg., p. 1733, ch. 710, § 1, eff. Sept. 1, 1979.]

§ 24.011. Noncompliance With Act

The attorney general shall file suit in a court of competent jurisdiction against a political subdivision that fails to comply with the requirements of this chapter to recover the full amount of the grant plus interest on that amount of five percent a year accruing from the time of noncompliance or for injunctive relief to require compliance with this

chapter. If the court finds that the political subdivision has not complied with the requirements of this chapter, it is not eligible for further participation in the program for three years following the finding for noncompliance.
[Added by Acts 1979, 66th Leg., p. 1733, ch. 710, § 1, eff. Sept. 1, 1979.]

§ 24.012. Fund Not to be Used For Publicity

No money credited to the fund may be used for publicity or related purposes.
[Added by Acts 1979, 66th Leg., p. 1733, ch. 710, § 1, eff. Sept. 1, 1979.]

§ 24.013. Authority of Political Subdivisions to Have Parks

This chapter does not authorize a political subdivision to acquire, develop, maintain, or operate a park, recreational area, open space area, or natural area.
[Added by Acts 1979, 66th Leg., p. 1733, ch. 710, § 1, eff. Sept. 1, 1979.]

TITLE 4. WATER SAFETY

CHAPTER 31. WATER SAFETY

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SUBCHAPTER A. GENERAL PROVISIONS

§ 31.001. Title

This chapter may be cited as the Water Safety Act.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.002. State Policy

It is the duty of this state to promote recreational water safety for persons and property in and connected with the use of all recreational water facilities in the state, to promote safety in the operation and equipment of facilities, and to promote uniformity of laws relating to water safety.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.003. Definitions

In this chapter:

(1) "Boat" means a vessel not more than 65 feet in length, measured from end to end over the deck, excluding sheer, and manufactured or used primarily for noncommercial use.

(2) "Vessel" means any watercraft, other than a seaplane on water, used or capable of being used for transportation on water.

(3) "Motorboat" means any vessel propelled or designed to be propelled by machinery, whether or not the machinery is the principal source of propulsion.

(4) "Owner" means the person who rightfully claims lawful possession of a vessel by virtue of the legal title or an equitable interest.

(5) "Water of this state" means any public water within the territorial limits of this state.

(6) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(7) "Dealer" means a person customarily engaged in the business of buying, selling, or exchanging motorboats or outboard motors at an established or permanent place of business in this state and that at each place of business there is a sign conspicuously displayed showing the name of the dealership so that it may be located by the public and sufficient space to maintain an office, service area, and display of products.

(8) "Boat livery" means a business establishment engaged in renting or hiring out motorboats for profit.

(9) "Undocumented motorboat" means a vessel that is not required to have, and does not have, a valid marine document issued by the Bureau of Customs of the United States government or its successor.

(10) "Reasonable time" means 15 days.

(11) "Manufacturer" means a person engaged in the business of manufacturing new and unused motorboats and outboard motors for the purpose of sale or trade.

(12) "New" means every motorboat or outboard motor after its manufacture and before its sale or other transfer to a person not a manufacturer or dealer.

(13) "Outboard motor" means any self-contained internal combustion propulsion system, excluding fuel supply, which is used to propel a vessel and which is detachable as a unit from the vessel.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1252, ch. 484, §§ 1(a), 1(b), eff. Sept. 1, 1977.]

Sections 7, 8, and 11 of the 1977 amendatory act, which made various conforming amendments to this code, provided:

"Sec. 7. If a provision of this Act conflicts with another Act of the 65th Legislature, Regular Session, 1977, that amends an Act repealed by this Act or that amends a provision of the Parks and Wildlife Code amended by this Act, the other Act prevails over the provisions of this Act to the extent of the conflict."

"Sec. 8. This Act is intended as a recodification only and no change in the law is intended by this Act."

"Sec. 11. This Act takes effect September 1, 1977."

§ 31.004. Application of Chapter

The provisions of this chapter apply to all public water of this state and to all watercraft navigated or moving on the public water. Privately owned water is not subject to the provisions of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.005. Contracts With Federal Government

(a) The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program relating to water safety, including:

(1) the acquisition, maintenance, and operating costs of facilities;

(2) purchase of equipment and supplies;

(3) personnel salaries; and

(4) other federally approved reimbursable expenses, including personnel training costs, public boat safety and education costs, and general administrative and enforcement costs.

(b) The department may contract with the United States in order to comply with all necessary requirements for the receipt of funds made available under any federal legislation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 31.006 to 31.020 reserved for expansion]

SUBCHAPTER B. IDENTIFICATION OF MOTORBOATS; REQUIRED NUMBERING

§ 31.021. Required Numbering

(a) Each undocumented motorboat on the water of this state shall be numbered in accordance with the provisions of this chapter unless specifically exempted. The numbering system shall be in accord with the Federal Boating Act of 1958 and subsequent federal legislation.

(b) No person may operate or give permission for the operation of any motorboat on the water of this state unless the motorboat is numbered as required

by this chapter, unless the certificate of number awarded to the motorboat is in full force and effect, and unless the identifying number set forth in the certificate is properly displayed on each side of the bow of the motorboat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.022. Exemptions From Required Numbering

(a) A motorboat is not required to be numbered under the provisions of this chapter if it is:

(1) operated within this state for a period not exceeding 90 consecutive days and is covered by a number in full force and effect which has been awarded under federal law or a federally approved numbering system of another state;

(2) from a country other than the United States temporarily using the water of this state;

(3) owned by the United States, a state, or a subdivision of a state; or

(4) a ship's lifeboat.

(b) The department may exempt from numbering a class of motorboats if it finds that the numbering of the motorboats of that class will not materially aid in their identification. The department may also exempt a motorboat if it finds that it belongs to a class of motorboats that would be exempt from numbering under a numbering system of an agency of the federal government if it were subject to federal law.

(c) All canoes, punts, rowboats, sailboats, and rubber rafts when paddled, poled, oared, or windblown are exempt from the numbering provisions of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.023. Boats Numbered Under Federal or Other State Law

The owner of any vessel or motorboat for which a current certificate of number has been awarded under any federal law or a federally approved numbering system of another state shall, if the motorboat or vessel is operated on the water of this state in excess of 90 days, make application for a certificate of number in the manner prescribed in this chapter for residents of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.024. Application for Number

(a) The owner of each motorboat requiring numbering by this state shall file an application for a number with the department, a county tax assessor-collector, or an agent appointed under Section 31.034 of this code.

(b) The application shall be signed by the owner of the motorboat and shall be accompanied by the fee prescribed in Section 31.026 of this code. If the application is received by a county tax assessor-collector or an agent, the application and the portion of the fee not retained by the tax assessor-collector or agent as a collection fee shall be sent to the department.

(c) On receipt of the application in approved form, the department shall enter it on the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner.

(d) The application form, the form of the certificate of number, and the manner of renewal shall be prescribed by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1352, ch. 607, § 1, eff. Aug. 27, 1979.]

§ 31.025. Renewal of Certificates of Number

(a) An application for the renewal of each certificate of number shall be prepared by the department and mailed to the owner of the vessel during the period of the last 90 days before the expiration date of the certificate. The same number shall be issued on renewal.

(b) The application for renewal may be returned to the department, to any county tax assessor-collector, or if permitted by the department, to an agent of the department.

(c) Applications not received during the 90-day period shall be treated in the same manner as original applications.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1353, ch. 607, § 2, eff. Aug. 27, 1979.]

§ 31.026. Fees

(a) Each application for an original or renewal certificate of number for a motorboat shall be accompanied by a two-year fee determined by the following classification schedule:

Class	Description of Boat	Fee
Class A	less than 16 feet in length	$ 6.00
Class 1	16 feet or over and less than 26 feet in length	$ 9.00
Class 2	26 feet or over and less than 40 feet in length	$12.00
Class 3	40 feet or more in length	$15.00

(b) The fee for a boat less than 16 feet in length owned by a boat livery and used for rental purposes is $3.00 for each original and renewal application for a certificate of number.

(c) Owners of newly purchased motorboats or other motorboats not previously operated in this state shall pay the full registration fee.

(d) In order to establish a two-year staggered registration period, fees for currently registered motorboats may be less than the full fee specified in Subsection (a) of this section if the expiration date established by the department is prior to March 21, 1974.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.027. Applicability of Fees to Commercial Boats

The registration fees required by this chapter are inapplicable to boats licensed by the state for commercial fishing or shrimping in the salt water of the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.028. Certificate of Number

The certificate of number shall be pocket-size. The certificate or a facsimile of it shall be carried on board the vessel at all times. It does not have to be on the person of the operator if prior to trial the operator can produce for examination a valid certificate of number.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.029. Term of Certificate of Number

Every certificate of number awarded pursuant to this chapter shall continue in full force and effect for a period of two years unless sooner terminated or discontinued in accordance with the provisions of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.030. Duplicate Certificates and Decals

(a) If a certificate of number becomes lost, mutilated, or illegible, the owner of the motorboat for which the certificate was issued may obtain a duplicate on application to the department and the payment of a fee of $1.

(b) If a registration decal becomes lost, mutilated, or illegible, the owner of the motorboat for which the decal was issued may obtain a replacement decal on application to the department and the payment of a fee of $1.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1275, ch. 497, § 1, eff. Aug. 29, 1977.]

§ 31.031. Numbering Pattern

(a) The numbering pattern used consists of the prefix "TX" followed by a combination of exactly four numerals and further followed by a suffix of two letters. The group of numerals appearing between the letters shall be separated from the letters by hyphens or equivalent spaces.

(b) All basic numbers of each series shall begin with 1000. TX-1000-AA through TX-9999-AA will be allotted to dealers and manufacturers. TX-1000-AB through TX-9999-ZZ will be allotted to all other boat owners and livery operators.

(c) The letters "G", "I", "O", and "Q" shall be omitted from all letter sequences.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.032. Numbering on Bow

The owner shall paint on or attach to each side of the motorboat or vessel near the bow the identification number and a validation decal in the manner prescribed by the department. The number shall read from left to right and shall be of block characters of good proportion of not less than three inches in height. The numbers shall be of a color which will contrast with the hull material of the vessel and so maintained as to be clearly visible and legible.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.033. Unauthorized Numbers Prohibited

(a) No person may paint, attach, or otherwise display on either side of the bow of a motorboat a number other than the number awarded to the motorboat or granted reciprocity under this chapter.

(b) No person may deface or alter the certificate of number or the number assigned to and appearing on the bow of a boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.034. Issuance of Numbers; Agents for Department

(a) The department may award a certificate of number directly or may authorize any person to act as its agent for awarding certificates. An authorized agent may be assigned a block or blocks of numbers and certificates that, on award in conformity with this chapter and with rules and regulations of the department, are valid as if awarded directly by the department.

(b) An authorized agent shall execute a faithful performance bond of not less than $1,000 in favor of the State of Texas.

(c) An agent is entitled to a fee for his services not to exceed 10 percent of the fee for each certificate.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.0341. Issuance of Numbers: County Tax Assessor-Collector

(a) Each county tax assessor-collector shall award certificates of number under this chapter in the manner prescribed by this chapter and the regula-

tions of the department. The department shall issue a block or blocks of numbers to each county tax assessor-collector for awarding to applicants on receipt of applications.

(b) The county tax assessor-collector is entitled to a fee of 10 percent of the amount of the fee for each certificate. The amount retained by the tax assessor-collector shall be deposited to the credit of the officers salary fund of the county to be used for the sole purpose of paying the salaries of persons issuing boat certificates of number.

[Added by Acts 1979, 66th Leg., p. 1353, ch. 607, § 3, eff. Aug. 27, 1979.]

§ 31.035. Rules and Regulations; Copies

Copies of all rules and regulations formulated under this chapter shall be furnished without cost with each certificate of number issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.036. Proof of Ownership

(a) A certificate of title is required as proof of ownership of a motorboat for which a certificate of number is sought unless the motorboat is of the type for which no certificate of title is required under Section 31.045 of this code.

(b) A certified statement of ownership is sufficient proof of ownership for a motorboat of a type for which a certificate of title is not required.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1253, ch. 484, § 1(c), eff. Sept. 1, 1977.]

§ 31.037. Change in Ownership Interest; Notice to Department

(a) The owner of a motorboat numbered in this state shall notify the department within a reasonable time of the transfer of all or any part of his interest in the motorboat, other than the creation of a security interest, or of the destruction or abandonment of the motorboat. The notice shall be accompanied by a surrender of the certificate of number.

(b) If the boat is destroyed or abandoned, the department shall cancel the certificate and enter the cancellation in its records.

(c) The purchaser of a motorboat shall present evidence of his ownership to the department within a reasonable time along with his name, address, and the number of the motorboat and shall at the same time pay to the department a fee of $1. On receipt of the application and fee the department shall transfer the certificate of number issued for the motorboat to the new owner. Unless the application is made and fee paid within a reasonable time the motorboat is without a certificate of number, and it is unlawful for any person to operate the motorboat until the certificate is issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.038. Change of Address; Notice to Department

(a) The holder of a certificate of number shall notify the department within a reasonable time if his address no longer conforms to the address appearing on the certificate and shall inform the department of his new address.

(b) The department may provide in its regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of the outstanding certificate to show the new address of the holder. Changes of address shall be noted on the records of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.039. Public Records

All ownership records of the department made or kept under this chapter are public records.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.040. Boat Liveries

(a) The owner or operator of a boat livery shall obtain a certificate of number for all vessels capable of being used as motorboats that are used to rent or let for hire.

(b) To receive certificates of number, the owner of a boat livery shall apply directly to the department on application forms provided by the department. The application must state that the applicant is a boat livery within the meaning of this chapter, and the facts stated in the application must be sworn before an officer authorized to administer oaths.

(c) The owner of a boat livery shall keep a record of the name and address of the persons hiring any vessel designed or operated as a motorboat, the vessel's certificate of number, the time and date of departure, and the expected time of return. The record shall be kept for six months.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.041. Dealer's and Manufacturer's Number

(a) A dealer or manufacturer of motorboats in this state may obtain a dealer's and manufacturer's number for motorboats he wishes to show, demonstrate, or test on the water of this state instead of securing a certificate of number for each boat. The number shall be attached to any motorboat that he sends temporarily on the water.

(b) The application for a number must state that the applicant is a dealer or manufacturer within the meaning of this chapter, and the facts stated on the application must be sworn before an officer authorized to administer oaths. The two-year fee for a dealer's and manufacturer's number is $25. No

number may be issued until the provisions of this section have been satisfied.

(c) A dealer or manufacturer holding a dealer's and manufacturer's number may issue a reasonable temporary facsimile of the number which may be used by any authorized person. A person purchasing a motorboat may use the dealer's number for a period not to exceed 15 days prior to filing an application for a certificate of number. The form of the facsimile and the manner of display shall be prescribed by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.042. Cancellation of Certificates of Number; Grounds

(a) A certificate of number may be cancelled and the identification number voided by the department even though the action occurs before the expiration date on the certificate and even though the certificate is not surrendered to the department.

(b) Causes for cancellation of certificates and voiding of numbers include:

(1) surrender of the certificate for cancellation;

(2) issuance of a new number for the same boat;

(3) issuance of a marine document by the Bureau of Customs for the same vessel;

(4) false or fraudulent certification in an application for number;

(5) failure to pay the prescribed fee; and

(6) dismantling, destruction, or other change in the form or character of the motorboat or outboard motor so that it is no longer correctly described in the certificate or it no longer meets the definition of a motorboat or outboard motor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1253, ch. 484, § 1(d), eff. Sept. 1, 1977.]

§ 31.043. Manufacturer's Serial Number

(a) All boats manufactured for sale in Texas shall carry a manufacturer's serial number clearly imprinted on the structure of the boat or displayed on a plate permanently attached to the boat.

(b) The owner of a vessel not required to carry a manufacturer's serial number may file an application for a serial number with the department on forms approved by it. The application must be signed by the owner of the vessel and must be accompanied by a fee of $1. On receipt of the application in approved form, the department shall enter the information on the records of its office and shall issue to the applicant a serial number.

(c) No person may wilfully destroy, remove, alter, cover, or deface the manufacturer's serial number or plate bearing the serial number or the serial number issued by the department. No person may possess a boat with a serial number that has been altered, defaced, mutilated, or removed. A person who has a boat with an altered or missing serial number shall file a sworn statement with the department describing the boat, proving legal ownership, and, if known, stating the reason for the destruction, removal, or defacement of the serial number.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Section 31.044 reserved for expansion]

SUBCHAPTER B–1. CERTIFICATES OF TITLE FOR MOTORBOATS AND OUTBOARD MOTORS

§ 31.045. Ownership of Motorboats and Outboard Motors; Certificates of Title

(a) The ownership of a motorboat or of an outboard motor is evidenced by a certificate of title issued by the department, unless the motorboat or the outboard motor is new.

(b) The ownership of a new motorboat or a new outboard motor is evidenced by a manufacturer's or an importer's certificate executed on a form prescribed by the department.

(c) The ownership of a vessel, other than a motorboat more than 14 feet long, or of an outboard motor, other than an outboard motor having a manufacturer's rating of 12 or more horsepower, may, but is not required to be, evidenced by a certificate of title issued by the department, unless the vessel or outboard motor is new.

(d) The ownership of a new vessel, other than a motorboat more than 14 feet long, or of a new outboard motor, other than an outboard motor having a manufacturer's rating of 12 or more horsepower, may, but is not required to be, evidenced by a manufacturer's or importer's certificate executed on a form prescribed by the department.

(e) Separate certificates are required for motorboats and for outboard motors.

[Added by Acts 1977, 65th Leg., p. 1253, ch. 484, § 1(e), eff. Sept. 1, 1977.]

§ 31.046. Application for Certificate of Title

(a) Except as provided in Subsections (b) and (c) of this section, the purchaser of a motorboat or an outboard motor shall apply to the department or to a county tax assessor-collector for a certificate of title not later than 20 days after the date of the sale of the motorboat or outboard motor.

(b) A manufacturer or a dealer who sells a motorboat or an outboard motor to a person other than a manufacturer or a dealer shall apply to the department or to a county tax assessor-collector for a certificate of title for the motorboat or outboard

motor in the name of the purchaser not later than 20 days after the date of the sale.

(c) A dealer who acquires a motorboat or an outboard motor, other than a new motorboat or outboard motor, is not required to apply for a certificate of title in the name of the dealer, but on resale of the motorboat or outboard motor shall apply for the subsequent purchaser under Subsection (b) of this section and shall submit to the department or to a county tax assessor-collector the endorsed certificate of title acquired by the dealer.

[Added by Acts 1977, 65th Leg., p. 1254, ch. 484, § 1(e), eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1353, ch. 607, § 4, eff. Aug. 27, 1979.]

§ 31.047. Application; Form and Content; Fee

(a) A person may apply for a certificate of title on a form prescribed by the department.

(b) The form must contain:

(1) the name and address of the owner;

(2) a description of the motorboat or outboard motor, including, as appropriate, the manufacturer, make, model, year, length, construction material, manufacturer's or builder's number, hull identification number (HIN), motor number, outdrive number, and horsepower;

(3) name and address of purchaser;

(4) date of purchase;

(5) name and address of any security interest owner; and

(6) other information required by the department to show the ownership of the motorboat or outboard motor, a security interest in the motorboat or outboard motor, or a further description of items listed in the subdivision.

(c) The application must be accompanied by other evidence reasonably required by the department to establish that the applicant or other person is entitled to a certificate of title or a noted security interest. The evidence may include:

(1) a certificate of title issued by another state or jurisdiction;

(2) a manufacturer's or importer's certificate;

(3) a bill of sale, assignment, or contract;

(4) a promissory note;

(5) a security agreement;

(6) an invoice;

(7) a bill of lading;

(8) an affidavit;

(9) a probate or heirship proceeding or information;

(10) a judgment of a court of competent jurisdiction; or

(11) other documents.

(d) An application for a certificate of title must be accompanied by the fee required by Section 31.048 of this code.

[Added by Acts 1977, 65th Leg., p. 1254, ch. 484, § 1(e), eff. Sept. 1, 1977.]

§ 31.048. Fee

(a) The fee for the issuance of a certificate of title or for the notation of a security interest, lien, or other encumbrance is $3.50 and is treated as fees collected under Section 31.026 of this code.

(b) If the fee is collected by a county tax assessor-collector, the tax assessor-collector shall retain 10 percent of the fee collected and send the remainder to the department. The amount retained by the tax assessor-collector shall be deposited to the credit of the officers salary fund of the county to be used for the sole purpose of paying the salaries of persons issuing boat and outboard motor certificates of title.

[Added by Acts 1977, 65th Leg., pp. 1255, 1259, ch. 484, §§ 1(e), 9, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1354, ch. 607, § 5, eff. Aug. 27, 1979.]

§ 31.049. Form of Certificate of Title

(a) A certificate of title must be on a form prescribed by the department and must contain:

(1) the name and address of the owner of the motorboat or outboard motor;

(2) the name of the owner of a security interest in the motorboat or outboard motor; and

(3) a description of the motorboat or outboard motor.

(b) If there is no lien on the motorboat or outboard motor, the original certificate of title shall be delivered to the owner and a copy retained by the department.

(c) If there is a lien on the motorboat or outboard motor, the original certificate of title shall be sent to the first lienholder, a duplicate original certificate shall be sent to the owner, and a copy shall be retained by the department.

(d) "Original" shall be printed on an original certificate of title and "duplicate original" shall be marked on a duplicate of the original certificate.

(e) Title may be transferred only by surrender of the original certificate of title properly endorsed to show the transfer.

[Added by Acts 1977, 65th Leg., p. 1255, ch. 484, § 1(e), eff. Sept. 1, 1977.]

§ 31.050. Form of Manufacturer's and Importer's Certificate

(a) A manufacturer's certificate or an importer's certificate must include:

(1) a description of the motorboat or outboard motor as required by Subdivision (2) of Subsection (b) of Section 31.047 of this code;

(2) the name and place of construction or other origin;

(3) the signature of the manufacturer or an equivalent of the signature of the manufacturer; and

(4) the endorsement of the original and each subsequent transferee, including the applicant for the original certificate of title.

(b) A lien, security interest, or other encumbrance may not be shown on a manufacturer's or importer's certificate.

(c) A security interest may be perfected in a new motorboat or outboard motor as provided in Chapter 9, Business & Commerce Code.

[Added by Acts 1977, 65th Leg., p. 1255, ch. 484, § 1(e), Sept. 1, 1977.]

§ 31.051. Replacement Certificates

The department shall provide by regulation for the replacement of lost, mutilated, or stolen certificates.

[Added by Acts 1977, 65th Leg., p. 1255, ch. 484, § 1(e), eff. Sept. 1, 1977.]

§ 31.052. Liens

(a) Except as provided in Subsection (c) of Section 31.050 of this code, all liens, security interests, and other encumbrances in a motorboat or outboard motor:

(1) shall be noted on the certificate of title of the motorboat or outboard motor to which the lien, interest, or encumbrance applies;

(2) take priority in the chronological order that each is noted on the certificate of title; and

(3) are valid as against other general creditors of the owner of the motorboat or outboard motor, subsequent purchasers of the motorboat or outboard motor, and a holder of unnoted or subsequent liens, security interests, or encumbrances.

(b) This section applies to liens, security interests, and encumbrances created after January 1, 1976.

[Added by Acts 1977, 65th Leg., p. 1255, ch. 484, § 1(e), eff. Sept. 1, 1977.]

§ 31.053. Transfers of Motorboats and Outboard Motors

(a) No person may sell, assign, transfer, or otherwise dispose of an interest in a motorboat or an outboard motor without:

(1) if the transferee is not a manufacturer or a dealer and the vessel or outboard motor is new, delivering to the department a manufacturer's or importer's certificate showing the endorsement of the manufacturer and all intervening owners;

(2) if the transferee is a manufacturer or a dealer and the vessel or outboard motor is new, delivering to the transferee a manufacturer's or importer's certificate showing the endorsement of the manufacturer and all intervening owners;

(3) if the motorboat or outboard motor is not covered by a certificate of title or a manufacturer's or importer's certificate and if the transferor is a manufacturer or dealer, delivering to the department sufficient evidence of title or other information to permit the issuance of a certificate of title for the motorboat or outboard motor in the name of the transferee;

(4) if the motorboat or outboard motor is not covered by a certificate of title or a manufacturer's or importer's certificate and if the transferor is not a manufacturer or dealer, delivering to the transferee sufficient evidence of title or other information to permit the transferee to apply for and receive a certificate of title for the motorboat or outboard motor in the name of the transferee; or

(5) delivering to the transferee a certificate of title for the motorboat or outboard motor in the name of the transferor and properly endorsed to show the transfer.

(b) A person does not acquire an interest in a motorboat or outboard motor until a certificate of title for the motorboat or outboard motor has been issued in the name of the person or, if the person is a manufacturer or a dealer, until the manufacturer's or importer's certificate is properly endorsed showing the signature of the manufacturer and all intervening owners.

[Added by Acts 1977, 65th Leg., p. 1256, ch. 484, § 1(e), eff. Sept. 1, 1977.]

§ 31.054. Provisions Applicable to Vessels Not Requiring a Certificate of Title

The provisions of Sections 31.046, 31.047, 31.049, and 31.050 of this code apply to vessels on which a certificate may but is not required to be issued.

[Added by Acts 1977, 65th Leg., p. 1256, ch. 484, § 1(e), eff. Sept. 1, 1977.]

§ 31.055. Exceptions

This subchapter does not apply to:

(1) vessels with a valid marine document issued by the Bureau of Customs of the United States or a federal agency that is a successor to the Bureau of Customs;

(2) an outboard motor of less than 12 horsepower as determined by the manufacturer's rating; and

(3) a motorboat 14 feet or less in length.

[Added by Acts 1977, 65th Leg., p. 1256, ch. 484, § 1(e), eff. Sept. 1, 1977.]

[Sections 31.056 to 31.060 reserved for expansion]

SUBCHAPTER C. REQUIRED EQUIPMENT

§ 31.061. Uniformity of Equipment Regulations; State Policy

It is the policy of the state that all equipment rules and regulations enacted under the authority granted in this chapter be uniform and consistent with the equipment provisions of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.062. Operation of Vessels Without Required Equipment Prohibited

No person may operate or give permission for the operation of a vessel that is not provided with the equipment required by this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.063. Classes of Motorboats

Motorboats subject to the provisions of this chapter are divided into four classes according to length as follows:

Class A. Less than 16 feet in length.

Class 1. 16 feet or over and less than 26 feet in length.

Class 2. 26 feet or over and less than 40 feet in length.

Class 3. 40 feet in length or over.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.064. Lights

(a) A vessel or motorboat when not at dock must have and exhibit at least one bright light, lantern, or flashlight from sunset to sunrise in all weather. A vessel or motorboat when underway between sunset and sunrise in all weather must have and exhibit the lights prescribed below for boats of its class. No other lights that may be mistaken for those prescribed may be exhibited.

(b) Each class A and class 1 motorboat must have the following lights:

(1) a bright white light aft to show all around the horizon; and

(2) a combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

(c) Each class 2 and class 3 motorboat must have the following lights and light screens:

(1) a bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of 20 points of the compass and so fixed as to throw the light 10 points on each side of the vessel, namely from right ahead to 2 points abaft the beam on either side;

(2) a bright white light aft to show all around the horizon and higher than the white light forward;

(3) a green light on the starboard side so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass and so fixed as to throw the light from right ahead to 2 points abaft the beam on the starboard side;

(4) a red light on the port side so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass and so fixed as to throw the light from right ahead to 2 points abaft the beam on the port side; and

(5) inboard screens fitted on the starboard and port side lights of sufficient length and so set as to prevent the side lights from being seen across the bow.

(d) Each class A and class 1 motorboat when propelled by sail alone must have the combined lantern but not the white light aft prescribed in Subsection (b) of this section.

(e) Each class 2 and class 3 motorboat when propelled by sail alone must have the colored side lights, suitably screened, but not the white lights prescribed in Subsection (c) of this section.

(f) Motorboats of all classes when propelled by sail alone must have ready at hand a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert a collision.

(g) A white light required by this section must be visible at a distance of at least two miles. A colored light required by this section must be visible at a distance of at least one mile. In this section, "visible" means visible on dark nights with clear atmosphere.

(h) A motorboat propelled by sail and machinery must have the lights required by this section for motorboats propelled by machinery alone.

(i) A motorboat may have and exhibit the lights required by the Regulations for Preventing Collisions at Sea, 1948, Act of October 11, 1951 (65 Stat. 406–420), as amended, instead of the lights specified by this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.065. Whistles; Bells

(a) A motorboat of class 1, 2, or 3 must have an efficient whistle or other sound-producing mechanical appliance.

(b) A motorboat of class 2 or 3 must have an efficient bell.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.066. Life Preserving Devices

(a) A motorboat must have at least one life preserver, life belt, ring buoy, or other device of the sort prescribed by the regulations of the commandant of the Coast Guard for each person on board, so placed as to be readily accessible.

(b) A motorboat carrying passengers for hire must have a readily accessible life preserver of the sort prescribed by the regulations of the commandant of the Coast Guard for each person on board.

(c) The operator of a class A or class 1 motorboat, while underway, shall require every passenger 12 years of age or under to wear a life preserver of the sort prescribed by the regulations of the commandant of the Coast Guard. A life belt or ring buoy does not satisfy this requirement.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.067. Fire Extinguishers

(a) A motorboat must have the number, size, and type of fire extinguishers prescribed by the commandant of the Coast Guard.

(b) The fire extinguishers must be capable of promptly and effectively extinguishing burning gasoline. They must be kept in condition for immediate and effective use at all times and must be placed so as to be readily accessible.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.068. Flame Arrestors; Backfire Traps

A motorboat must have the carburetor or carburetors of every engine using gasoline as fuel, except outboard motors, equipped with an efficient flame arrestor, backfire trap, or other similar device prescribed by the regulations of the commandant of the Coast Guard.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.069. Ventilators

Each motorboat and vessel, except an open boat, using as fuel any liquid of a volatile nature must have the equipment prescribed by the commandant of the Coast Guard designed to ventilate properly and efficiently the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.070. Exhaust Water Manifold; Muffler

A motorboat operating on the water of this state must have an exhaust water manifold or a factory-type muffler installed on the engine.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.071. Rearview Mirrors

(a) A vessel used to tow a person or persons on water skis or an aquaplane or similar device on the water of this state must have a rearview mirror of a size no less than four inches from bottom to top or across from one side to the other. The mirror must be mounted firmly so as to give the boat operator a full and complete view beyond the rear of the boat at all times.

(b) Subsection (a) of this section does not apply to motorboats or vessels used in water ski tournaments, competitions, exhibitions, or trials.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.072. Racing Boats; Equipment Exemptions

(a) A motorboat designed and intended solely for racing need not have a whistle or other sound-producing mechanical appliance or a bell as required by Section 31.065 of this code or a fire extinguisher as required by Section 31.067 of this code while competing in a race or while engaged in navigation that is incidental to tuning up for a race conducted in accordance with the provisions of this chapter.

(b) A racing craft engaged in a race sanctioned by the governing board of any public water of this state need not have an exhaust water manifold or factory-type muffler installed on the engine as required by Section 31.070 of this code if written permission is granted by the governing board of the water body.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.073. Canoes, Punts, Rowboats, Sailboats, and Rubber Rafts; Equipment Exemptions

All canoes, punts, rowboats, sailboats, and rubber rafts when paddled, poled, oared, or windblown are exempt from all the required safety equipment except the following:

(1) one Coast Guard approved lifesaving device for each person aboard; and

(2) the lights prescribed for class A vessels in Section 31.064 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 31.074 to 31.090 reserved for expansion]

SUBCHAPTER D. BOATING REGULATIONS

§ 31.091. Uniformity of Boating Regulations

In the interest of uniformity, it is the policy of the State of Texas that the basic authority for the enactment of boating regulations is reserved to the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.092. Local Regulations

(a) The governing body of an incorporated city or town, with respect to public water within its corporate limits and all lakes owned by it, may designate by ordinance certain areas as bathing, fishing, swimming, or otherwise restricted areas and may make rules and regulations relating to the operation and equipment of boats which it deems necessary for the public safety. The rules and regulations shall be consistent with the provisions of this chapter.

(b) The commissioners court of a county, with respect to public water within the territorial limits of the county that is outside of the limits of an incorporated city or town or a political subdivision designated in Subsection (c) of this section and that are not lakes owned by an incorporated city or town, may enter an order on its books designating certain areas as bathing, fishing, swimming, or otherwise restricted areas and may make rules and regulations relating to the operation and equipment of boats which it deems necessary for the public safety. The rules and regulations shall be consistent with the provisions of this chapter.

(c) The governing board of a political subdivision of the state created pursuant to Article XVI, Section 59, of the Texas Constitution, for the purpose of conserving and developing the public water of the state, with respect to public water impounded within lakes and reservoirs owned or operated by the political subdivision, may designate by resolution or other appropriate order certain areas as bathing, fishing, swimming, or otherwise restricted areas and may make rules and regulations relating to the operation and equipment of boats which it deems necessary for the public safety. The rules and regulations shall be consistent with the provisions of this chapter.

(d) A copy of all rules and regulations adopted under this section shall be summarily filed with the department.

(e) No city, town, village, special district, or other political subdivision of the state may impose or collect a fee for the registration or inspection of vessels to be used on public water against the owner or operator of a vessel used on public water. This section does not apply to the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), nor to any launch fees, docking fees, entry fees, or other recreational fees which may be imposed or collected by any political subdivision of the State of Texas for the use of the facilities afforded by any such district to the public.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1274, ch. 496, § 1, eff. Aug. 29, 1977.]

§ 31.093. Rules of the Road

The United States Coast Guard Inland Rules apply to all public water of this state to the extent they are applicable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.094. Reckless or Negligent Operation

No person may operate any motorboat or vessel or manipulate any water skis, aquaplane, or similar device in a wilfully or wantonly reckless or negligent manner that endangers the life, limb, or property of any person.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.095. Excessive Speed

No person may operate any boat at a rate of speed greater than is reasonable and prudent, having due regard for the conditions and hazards, actual and potential, then existing, including weather and density of traffic, or greater than will permit him, in the exercise of reasonable care, to bring the boat to a stop within the assured clear distance ahead.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.096. Reckless Operation and Excessive Speed

(a) No person may operate a vessel or manipulate water skis, an aquaplane, or a similar device on the water of this state in wilful or wanton disregard of the rights or safety of others or without due caution or circumspection, and at a speed or in a manner that endangers, or is likely to endanger, a person or property.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $500.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.097. Operation of Vessel While Intoxicated

(a) No person may operate a vessel or manipulate water skis, an aquaplane, or a similar device in a careless or imprudent manner while he is intoxicated or under the influence of intoxicating liquor or while he is under the influence of a narcotic drug, barbiturate, or marijuana.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $500 or by confinement in the county jail for not more than six months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.098. Hazardous Wake or Wash

No person may operate a motorboat so as to create a hazardous wake or wash.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.099. Circular Course Around Fisherman or Swimmer

(a) No person may operate a motorboat in a circular course around any other boat any occupant of which is engaged in fishing or around any person swimming.

(b) No swimmer or diver may come within 200 yards of a sight-seeing or excursion boat except for maintenance purposes or unless within an enclosed area.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.100. Interference With Markers or Ramps

(a) No person may moor or attach a boat to a buoy, beacon, light marker, stake, flag, or other aid to safe operation placed upon the public water of this state by or under the authority of the United States or the State of Texas. No person may move, remove, displace, tamper with, damage, or destroy the markers or aids to safe operation.

(b) No person may moor or attach a vessel to a state-owned boat launching ramp except in connection with the launching or retrieving of a boat from the water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.101. Obstructing Passage

(a) No person may anchor a boat in the traveled portion of a river or channel so as to prevent, impede, or interfere with the safe passage of any other boat through the same area.

(b) No person may anchor a vessel near a state-owned boat ramp so as to prevent, impede, or interfere with the use of the boat ramp.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.102. Operating Boats in Restricted Areas

No person may operate a boat within a water area that has been clearly marked, by buoys or some other distinguishing device, as a bathing, fishing, swimming, or otherwise restricted area by the department or by a political subdivision of the state. This section does not apply to a patrol or rescue craft or in the case of an emergency.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.103. Water Skis, Aquaplanes, etc.: Time and Manner of Operation

(a) No person may operate a vessel on any water of this state towing a person or persons on water skis, surfboards, or similar devices and no person may engage in water-skiing, surfboarding or similar activity at any time between the hours from one hour after sunset to one hour before sunrise. This subsection does not apply to motorboats or vessels used in water ski tournaments, competitions, or exhibitions or trials therefor if adequate lighting is provided.

(b) All motorboats having in tow or otherwise assisting in towing a person on water skis, aquaplanes, or similar contrivances shall be operated in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person.

(c) A person being towed on water skis, aquaplanes, or similar devices by a vessel is considered an occupant of the vessel.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.104. Accidents: Duty of Operators

The operator of a vessel involved in a collision, accident, or casualty shall:

(1) render to other persons affected such assistance as may be practicable and necessary in order to save them from or minimize any danger insofar as he can do so without serious danger to his own vessel, crew, and passengers; and

(2) give his name, address, and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

Amendment by Acts 1975, 64th Leg., p. 108, ch. 48, § 1

Acts 1975, 64th Leg., p. 108, ch. 48, § 1, purports to amend Civil Statutes, Art. 9206, § 24, by adding a subsec. (g), without reference to repeal of said article by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4). As so added, subsec. (g) reads:

"(g) A person who intentionally or knowingly violates or fails to comply with the provisions of Subsection (a), Section 21 of this Act [now, this section] is guilty of a misdemeanor and on conviction is punishable by confinement in jail for a term not to exceed one year, or by a fine not to exceed $2,000, or by both."

Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b–2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

§ 31.105. Accident Reports

(a) The operator of a vessel involved in a collision, accident, or other casualty that results in death or injury to a person or damage to property in excess of $100 shall file with the department on or before the expiration of 30 days after the incident a full description of the collision, accident, or casualty in accordance with regulations established by the department.

(b) The accident reports are confidential and are inadmissible in court as evidence.

(c) On request made by an authorized official or agency of the United States, any information available to the department under Subsection (a) of this section shall be sent to the official or agency.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 835, ch. 311, § 1, eff. May 30, 1977.]

[Sections 31.106 to 31.120 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT AND PENALTIES

§ 31.121. Enforcement Officers

(a) All peace officers of this state and its political subdivisions and game management officers are enforcement officers for the purposes of this chapter.

(b) The enforcement officers may enforce the provisions of this chapter by arresting and taking into custody any person who commits any act or offense prohibited by this chapter or who violates any provision of this chapter.

(c) Game management officers may assist in the search for and rescue of victims of water-oriented accidents.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.122. Water Safety Vessels: Lights

Only the department and police water safety vessels may use rotating blue beacon lights.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.123. Required Response to Police Water Safety Vessel

The operator of a boat underway, on sighting a rotating blue beacon light, shall reduce power immediately and bring his boat to a no-wake speed and subsequent stop until the intention of the water safety vessel is understood.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.124. Inspection of Vessels

(a) In order to enforce the provisions of this chapter, an enforcement officer may stop and board any vessel subject to this chapter and may inspect the boat to determine compliance with applicable provisions.

(b) An officer boarding a vessel shall first identify himself by presenting proper credentials.

(c) The operator of a vessel required by this chapter to hold a certificate of number aboard the vessel shall show the certificate to the officer on demand, and failure to do so constitutes a violation of this chapter.

(d) No person operating a boat on the water of this state may refuse to obey the directions of an enforcement officer when the officer is acting under the provisions of this chapter.

(e) The safety of the vessel shall always be the paramount consideration of an arresting officer.

(f) If an enforcement officer determines that a vessel and its associated equipment is being used in violation of this chapter or of any regulation or standard issued thereunder so as to create an especially hazardous condition, he may direct the operator to return to mooring, and the vessel may not be used until the condition creating the violation is corrected.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.125. Violations; Notice to Appear

(a) An enforcement officer who arrests a person for a violation of this chapter may deliver to the alleged violator a written notice to appear within 15 days after the date of the violation before the justice court having jurisdiction of the offense.

(b) The person arrested shall sign the notice to appear promising to make his appearance in accordance with the requirements set forth in the notice. After signing the notice the person may be released. Failure to appear before the court in the county having jurisdiction constitutes a violation of the chapter. A warrant for the arrest of the person failing to appear may be issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.126. Venue

(a) Venue for an alleged violation or offense under the provisions of this chapter is in the justice court or county court having jurisdiction where the violation or offense was committed.

(b) For an offense under the provisions of this chapter, there is a presumption that the offense was committed in the justice precinct and county where the dam containing the body of water is located.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.127. General Penalty

A person who violates or fails to comply with any provision of this chapter, or who violates or fails to comply with a city ordinance or order of a commissioners court or a political subdivision of the state made or entered under this chapter, for which no other penalty is applicable is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.128. Disposition of Fines

(a) A justice of the peace, or a clerk of any court, or any other officer of this state receiving any fine imposed by a court for a violation of this chapter shall send the fine to the department within 10 days after receipt and shall note the docket number of the case, the name of the person fined, and the section or article of the law under which the conviction was secured.

(b) In justice court cases, the amount to be remitted to the fund shall be 85 percent of the fine. In county court cases the amount to be remitted to the fund shall be 80 percent of the fine. All costs of the court shall be retained by the court having jurisdiction of the offense and deposited as other fees in the proper county fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.129. Violation of Sewage Disposal Regulations

(a) A person who violates or fails to comply with a regulation of the Water Quality Board under Section 21.097, Water Code, is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. A separate offense is committed each day a violation continues.

(b) The enforcement provisions of this subchapter apply to violations punishable by this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 31.130 to 31.140 reserved for expansion]

SUBCHAPTER F. WATER FACILITIES

§ 31.141. Boat Ramps

(a) The department may construct and maintain boat ramps and access roads by the use of existing or additional services or facilities of the department.

(b) On the completion of the work, the department shall prepare and send vouchers to the comptroller of public accounts payable to the department or to any person, firm, or corporation for reimbursement for the work, and the comptroller shall issue warrants on the special boat fund to reimburse the department or any person, firm, or corporation for the work performed.

(c) The department may remove sand, silt, and other materials from state-owned submerged land and may contract for the removal of sand, silt, and other materials from state-owned submerged land to provide access to boat ramps.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1069, ch. 499, § 1, eff. Aug. 27, 1979.]

§ 31.142. Buoys and Markers

The department may provide for a standardized buoy-marking program for the inland water of the state. The department may purchase and provide the controlling agency of the water bodies with buoys and markers from funds remaining in the special boat fund in excess of the cost of administering this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

TITLE 5. WILDLIFE CONSERVATION

SUBTITLE A. HUNTING AND FISHING LICENSES

CHAPTER 41. RECIPROCAL HUNTING AND FISHING PRIVILEGES

Section

41.001. Reciprocal Hunting and Fishing.
41.002. Reciprocal Hunting and Fishing: Louisiana.
41.003. Reciprocal License Agreements: Border States.
41.004. Reciprocal Agreements Proclaimed.
41.005. Termination of Reciprocal License Agreement.
41.006. Regulations for Reciprocal License Agreements.
41.007. Violation of Rule or Regulation.
41.008. Reciprocal License Agreements: Any Other State.

§ 41.001. Reciprocal Hunting and Fishing

(a) A nonresident who is 17 years old or older and under 66 years old may hunt and fish in this state without a Texas license if he has in his immediate possession a valid hunting or fishing license issued to him by the state of his residence and if the state of his residence likewise allows hunting and fishing by Texas residents who have Texas licenses.

(b) A nonresident who may hunt and fish in this state under this section is subject to all laws relating to the taking of wildlife resources.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.002. Reciprocal Hunting and Fishing: Louisiana

(a) A Louisiana resident may hunt and fish for sport in Jefferson, Orange, and Shelby counties if he holds a valid Louisiana license and if the State of

Louisiana allows a reciprocal privilege to Texas residents of Jefferson, Orange, and Shelby counties to hunt and fish in Louisiana parishes adjacent to those counties.

(b) A Louisiana resident may hunt and fish for sport on the water of Sabine River and Sabine Lake that form a common boundary between Texas and Louisiana if he holds a valid Louisiana license and if the State of Louisiana allows a reciprocal privilege to Texas residents who hold valid Texas licenses.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.003. Reciprocal License Agreements: Border States

(a) The director shall negotiate for the commission with the proper representatives of each state having a common border with Texas to allow reciprocal fishing and migratory waterfowl hunting on rivers and lakes on the common boundary between Texas and the border state.

(b) An agreement must provide that residents of the border state who have a commercial or sport fishing license or a hunting license issued by the border state may fish or hunt migratory waterfowl on rivers and lakes of the common border, and Texas residents holding Texas licenses are extended equal privileges.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.004. Reciprocal Agreements Proclaimed

The commission may approve any agreement under Section 41.003 of this code by proclamation. A proclamation becomes effective 30 days after the day it is issued or 30 days after the agreement has been lawfully accepted by the bordering state, whichever is later.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.005. Termination of Reciprocal License Agreement

An agreement under Section 41.003 of this code may be terminated by the commission at any time after 90 days from the day notice of the termination is given to each border state that is a party to the agreement.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.006. Regulations for Reciprocal License Agreements

(a) The commission may make regulations conforming to an agreement under Section 41.003 of this code for the conservation of fish and wildlife.

(b) A regulation may be adopted only at a meeting of the commission in Austin, and any interested person is entitled to be heard at the meeting.

(c) Regulations adopted by the commission or issued by the director, when authorized by the commission to issue regulations, take effect 30 days after their adoption or issuance.

(d) After adoption of a regulation, a copy shall be numbered and filed in the office of the commission. Other copies shall be filed with the secretary of state, sent to the county clerk and county attorney in each county affected by the regulation, sent to the appropriate agency in the border state to which the agreement applies, and sent to each employee of the department who performs duties in a county affected by the regulation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.007. Violation of Rule or Regulation

(a) Any person who violates a regulation of the commission under Section 41.006 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

(b) Each freshwater fish and migratory waterfowl taken in violation of a regulation of the commission under Section 41.006 of this code is a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.008. Reciprocal License Agreements: Any Other State

The department may agree with any other state to license sport hunting and fishing by residents of the other state at the same fee as Texas residents are licensed if the other state licenses Texas residents at the same fee as residents of the other state are licensed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 42. GENERAL HUNTING LICENSE

Section

42.001. Definitions.
42.002. Resident License Required.
42.003. Exception: Resident Hunting on Own Land.
42.004. Exception: Residents of Certain Age.
42.0041. Exception: Resident Disabled Veterans.
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§ 42.001. Definitions

In this chapter:

(1) "Resident" means an individual, other than an alien, who has been a resident of this state for more than six months immediately before applying for a hunting license.

(2) "Alien" means an individual who is not a citizen of the United States and who has not declared his intention to become a citizen.

(3) "Nonresident" means an individual who is not a resident.

(4) "Carcass" means the dead body of a deer minus the offal and inedible organs, or the trunk with the limbs and head attached, with or without the hide.

(5) "Final destination" means the permanent residence of the hunter, the permanent residence of any other person receiving a dead wild turkey, deer carcass, or any part of a deer carcass, or a commercial processing plant after the carcass or turkey has been finally processed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 612, ch. 223, § 1, eff. Sept. 1, 1977.]

Section 2 of the 1977 Act amended § 42.010(b); § 3 amended § 42.017(b), (c); § 4 added § 42.0185; § 5 amended § 42.020; § 6 amended § 42.021; and § 7 thereof provided: "This Act takes effect September 1, 1977."

§ 42.002. Resident License Required

(a) No resident may hunt wild turkey or deer in this state without first having acquired a current resident hunting license.

(b) No resident may hunt any wild bird or animal outside the county of his residence without first having acquired a resident hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.003. Exception: Resident Hunting on Own Land

(a) A resident may hunt on land on which he resides for any wild bird, except turkey, and any wild animal, except deer, without a resident hunting license.

(b) A resident may hunt on land on which he resides for turkey and deer without a resident hunting license if he has acquired a resident exemption hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.004. Exception: Residents of Certain Age

(a) A resident who is under 17 years old or who is 65 years old or older may hunt any wild bird, except turkey, and any wild animal, except deer, without a resident hunting license.

(b) A resident who is under 17 years old or who is 65 years old or older may hunt wild turkey and deer without a resident hunting license if he has acquired a resident exemption hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.0041. Exception: Resident Disabled Veterans

(a) A resident who is a veteran of the armed forces of the United States, who has a service-connected disability, as defined by the Veterans' Administration, consisting of the loss of the use of a lower extremity or of a disability rating of 60 percent or more, and who is receiving compensation from the United States for the disability may hunt any wild bird except turkey and any wild animal except deer without a resident hunting license.

(b) A resident veteran as described in Subsection (a) of this section may hunt wild turkey and deer without a resident hunting license if he has acquired a resident exemption hunting license.

[Added by Acts 1977, 65th Leg., p. 132, ch. 61, § 2, eff. Aug. 29, 1977.]

§ 42.005. Nonresident License Required

(a) No nonresident in this state may hunt a nonindividually owned wild axis deer in Bexar County, wild deer, wild turkey, wild elk, wild antelope, wild desert bighorn sheep, wild black bear, wild collared peccary or javelina, or wild aoudad sheep in Armstrong, Briscoe, Donley, Floyd, Hall, Motley, Randall, and Swisher counties without first having acquired a general nonresident hunting license.

(b) No nonresident may hunt any wild bird or animal in this state without first having acquired a general nonresident hunting license or a nonresident small game hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 317, ch. 150, § 1, eff. Aug. 29, 1977.]

§ 42.006. Exception: Migratory Birds

(a) A nonresident may hunt migratory birds without a nonresident hunting license if he has acquired a valid migratory bird hunting license.

(b) A migratory bird hunting license is valid for a period of five consecutive days only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.007. Exception: Migratory Waterfowl

A nonresident may hunt migratory waterfowl without a nonresident hunting license if he qualifies

for and has received a migratory waterfowl hunting license.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.008. Qualifications for Migratory Waterfowl License

A nonresident residing in a state or nation that allows a resident of this state to purchase a reciprocal migratory waterfowl hunting license at the same fee qualifies to acquire a migratory waterfowl hunting license.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.009. Exception: Certain Armed Services Members

(a) A nonresident who is a member of the armed services may hunt any wild bird or animal in this state without a nonresident hunting license if he qualifies for and has received a resident hunting license.

(b) A member of the armed services on active duty for more than 30 days at a federal facility or installation in this state qualifies to acquire a resident hunting license.

(c) Adequate proof of length of duty assignment may be required from each license applicant, and the validity of the license is contingent on the applicant's proof, either by certification on the license or by use of a separate form issued by the department.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.010. Issuance and Form of Licenses

(a) The department shall prescribe the form of and issue the licenses authorized by this chapter.

(b) Each license authorizing deer and turkey hunting must have attached the number of deer and turkey tags equal to the number of deer and turkey allowed by law to be killed during the year for which the license is issued.

(c) A resident exemption hunting license shall be printed to show clearly on its face that it is an exemption license and shall be signed by the licensee.

(d) No person may issue or receive a license authorized by this chapter except on the form provided by the department.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 612, ch. 223, § 1, eff. Sept. 1, 1977.]

§ 42.011. Issuance of License by Agents

The department may authorize the issuance of licenses by agents.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.012. Resident License Fee

The fee for a resident hunting license is $5.25, 25 cents of which may be retained by an authorized agent issuing the license as his collection fee.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.013. Resident-Exempt License Fee

The fee for a resident-exempt hunting license is $1.25, 25 cents of which may be retained by the officer issuing the license as his collection fee.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 40, ch. 24, § 1, eff. March 24, 1977.]

§ 42.014. Nonresident Small Game License Fee

The fee for a nonresident small game hunting license is an amount set by the commission but not less than $37.75, 75 cents of which may be retained by the officer issuing the license as his collection fee.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 317, ch. 150, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1397, ch. 623, § 1, eff. Aug. 27, 1979.]

§ 42.0141. General Nonresident Hunting License Fee

The fee for a general nonresident hunting license is an amount set by the commission but not less than $100.75, 75 cents of which may be retained by the officer issuing the license as his collection fee.
[Added by Acts 1977, 65th Leg., p. 317, ch. 150, § 3, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1397, ch. 623, § 2, eff. Aug. 27, 1979.]

§ 42.015. Migratory Bird License Fee

The fee for a migratory bird hunting license is $10.25, 25 cents of which may be retained by the officer issuing the license as his collection fee.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.016. Migratory Waterfowl License Fee

The fee for a migratory waterfowl hunting license is $10.25, 25 cents of which may be retained by the officer issuing the license as his collection fee.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.017. Duplicate License

(a) If a person licensed to hunt under the provisions of this chapter loses the license or if the license is destroyed, the person may apply to the department for and receive a duplicate license.

(b) The application for a duplicate license is in the form of an affidavit and must contain a statement of fact concerning the loss or destruction of the license and a statement of the number of deer and

turkey, if any, killed under the authority of the lost or destroyed license.

(c) A duplicate license entitling the holder to hunt deer and turkey shall have attached the number of deer tags allowed on the lost or destroyed license less the number of deer killed under the authority of the lost or destroyed license and the number of turkey tags allowed on the lost or destroyed license less the number of turkey killed under the authority of the lost or destroyed license.

(d) The fee for a duplicate license is 50 cents, 25 cents of which may be retained by the officer issuing the license as his collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 612, ch. 223, § 3, eff. Sept. 1, 1977.]

§ 42.0175. Expiration Date

A resident hunting license, a resident exemption license, and a nonresident hunting license are valid only during the yearly period for which the licenses are issued without regard to the date on which a license is acquired. Each yearly period begins on September 1 of a year and extends through August 31 of the next year.

[Added by Acts 1977, 65th Leg., p. 1536, ch. 626, § 2, eff. Aug. 29, 1977.]

§ 42.018. Tag to be Attached to Deer

(a) No person may possess the carcass of a wild deer at any time before the carcass has been finally processed and delivered to the final destination unless there is attached to the carcass a properly executed tag provided by the department and issued to the person who killed the deer.

(b) A tag is properly executed when it is filled out to show the date and place the deer to which the tag is attached was killed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.0185. Tag to be Attached to Turkey

(a) No person may possess a dead wild turkey at any time before it has been finally processed and delivered to the final destination unless there is attached to the dead wild turkey a properly executed turkey tag provided by the department and issued to the person who killed the turkey.

(b) A turkey tag is properly executed when it is filled out to show the date and place the turkey to which the tag is attached was killed and to show other information required on the tag.

[Added by Acts 1977, 65th Leg., p. 613, ch. 223, § 4, eff. Sept. 1, 1977.]

§ 42.019. Possession of Certain Parts of Deer

(a) No person may possess the carcass of a wild deer with the head removed unless the carcass has been finally processed and delivered to the final destination.

(b) No person, other than the person who killed the deer, may receive or possess any part of a deer without a legible hunter's document attached to the carcass or part of the deer.

(c) A hunter's document is an instrument signed and executed by the person who killed the deer and must contain:

(1) the name and address of the person who killed the deer;

(2) the number of the hunting license of the person who killed the deer;

(3) the date on which the deer was killed; and

(4) the name of the ranch and the county where the deer was killed.

(d) A hunter's document shall remain with any part of the deer until it is finally processed and delivered to the final destination.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.020. Deer or Turkey Tags: Prohibited Acts

(a) No person may use more deer tags or turkey tags during a license year than are originally authorized by the hunting license for the year.

(b) No person may use the same deer tag on more than one deer.

(c) No person may use a deer tag or a turkey tag not issued to him.

(d) No person may use the same turkey tag on more than one turkey.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 613, ch. 223, § 5, eff. Sept. 1, 1977.]

§ 42.021. Bag Limits and Season Not Affected

The provisions of this chapter do not authorize any person to exceed any bag limit or to hunt deer or turkey during a closed season, and the attachment of deer or turkey tags as provided by this chapter is not prima facie evidence that the deer or turkey was lawfully killed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 613, ch. 223, § 6, eff. Sept. 1, 1977.]

§ 42.022. One License for Each Year

(a) No person may acquire or possess more than one hunting license during a license year.

(b) This section does not apply to the acquisition and possession of a duplicate hunting license acquired as provided in this chapter.

(c) This section does not apply to the acquisition and possession by a nonresident of both a general nonresident hunting license and a nonresident small game hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 317, ch. 150, § 4, eff. Aug. 29, 1977.]

§ 42.023. Hunting Under License of Another

No person may hunt under a license issued to another or permit another to hunt under a license issued to him.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.024. Exhibiting License

(a) No person required by the provisions of this chapter to have a hunting license may fail or refuse to show the license to an officer on demand.

(b) If on or before the trial of any person charged with a violation of this section, the person produces for the court or the prosecuting attorney the proper hunting license issued to the person and valid at the time of the offense, the court having jurisdiction of the suit shall dismiss the charge.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 810, ch. 368, § 1, eff. Aug. 27, 1979.]

§ 42.025. Penalty

A person who violates any provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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SUBCHAPTER A. HUNTING BOAT LICENSE

§ 43.001. Hunting Boat License Required

No person owning or navigating a sailboat or powerboat may accommodate on board the boat for pay another person engaged in hunting unless the owner or navigator has acquired a hunting boat license from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.002. Application for Hunting Boat License

The application for a hunting boat license must include:

(1) the name of the vessel;

(2) a statement describing the accommodations for passengers;

(3) the number of crew members; and

(4) a certification signed by the applicant on forms provided by the department and stating that the applicant will not violate any provision of this code with respect to hunting, that the applicant will attempt to prevent any person he accommodates on the vessel from violating any provision of this code with respect to hunting, and that the applicant will refuse to accommodate on the vessel any hunter who does not possess a hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.003. Hunting Boat License Fee

The fee for a hunting boat license is $25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.004. License Period

A license issued under this subchapter is valid for one year only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.005. Penalties

(a) A person who violates Section 43.001 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

(b) The hunting boat license of a person convicted of a violation of Section 43.001 of this code may be cancelled. A person whose license is cancelled under this section may not receive another hunting boat license for one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.006 to 43.010 reserved for expansion]

SUBCHAPTER B. WHITE-WINGED DOVE STAMPS

§ 43.011. White-Winged Dove Stamp Required

No person may hunt white-winged dove in this state unless he has in his possession a white-winged dove stamp issued to him by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.012. Issuance of Stamp

(a) The department or its agent may issue a white-winged dove stamp to any person on the payment to the department of $3.

(b) The stamp shall be issued in the form prescribed by the department and must be signed on its face by the person using the stamp.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.013. Hunting License Required Also

The acquisition of a white-winged dove stamp does not authorize a person to hunt white-winged dove without having acquired a hunting license as provided in Chapter 42 of this code or authorize the hunting of white-winged dove at any time or by any means not otherwise authorized by this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.014. Disposition of Stamp Fees

(a) Ten cents of the fee collected under this subchapter may be retained by the agent of the department, other than a department employee, as his collection fee.

(b) After deduction of the collection fee, if allowed, the receipts from stamp sales shall be sent to the department.

(c) The stamp sale receipts may be spent only for research and management for the protection of white-winged dove and for the acquisition, lease, or development of white-winged dove habitat in the state. Not more than one-half of the receipts may be expended for research and management.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1208, ch. 456, § 7, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 734, ch. 275, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 548, ch. 260, art. 1, § 3, eff. Sept. 1, 1979.]

§ 43.015. Refusal to Show Stamp

A person hunting white-winged dove who refuses on demand of any game management officer or peace officer to show a white-winged dove stamp is presumed to be in violation of Section 43.011 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.016. Penalty

A person who violates Section 43.011 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.017 to 43.020 reserved for expansion]

SUBCHAPTER C. PERMITS FOR SCIENTIFIC, ZOOLOGICAL, AND PROPAGATION PURPOSES

§ 43.021. Protected Wildlife

In this subchapter, "protected wildlife" means all animals, birds, fish, and other aquatic life the taking, possession, or propagation of which is regulated by law or by the department and includes endangered species.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.022. Permit Authorized

The department may issue a permit to a qualified person to take protected wildlife for propagation purposes, zoological gardens, aquariums, and scientific purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.023. Permit is Defense

In any prosecution for the unlawful taking or transporting of wildlife, the possession of a permit issued under this subchapter to the accused is a complete defense if the conduct was authorized under the terms of the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.024. Restrictions on Permits

(a) No permit may be issued for the taking or transportation of any endangered fish or wildlife the possession, taking, or transportation of which is prohibited by federal law.

(b) The department may refuse to grant a permit for the taking or transportation of endangered fish or wildlife from their natural habitat for propagation for commercial purposes if the fish or wildlife may be legally obtained from a source in this state other than from their natural habitat.

(c) No permit may be issued for the taking of migratory birds unless the applicant has obtained a federal permit for the taking of migratory birds.

(d) No permit may be issued for the taking of alligators or marine animals for display in an aquarium unless the aquarium is a public or commercial organization or enterprise.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.025. Application

(a) The application for a permit shall be made under oath and must state the species of protected wildlife to be taken or transported and the purpose of collection or transportation.

(b) The application must be endorsed by two recognized specialists in the biological field concerned who are residents of the United States and have known the applicant for at least five years; except that endorsement is not required for an application for a permit to take alligators or marine life for aquarium purposes.

(c) The department must find that an applicant for a permit to take alligators or marine life for aquarium purposes is qualified to carry out capture in a scientific manner without cruelty.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.026. Conditions of Permit; Expiration

(a) The department shall issue the permits under any conditions determined to be appropriate, including specifying the number and species of wildlife that may be taken.

(b) A permit expires on the last day of the year of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.027. Regulations

The department may make regulations governing the taking and possession of protected wildlife indigenous to the state for the scientific purposes, zoological gardens, and propagation purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.028. Cancellation of Permit

The department may cancel a permit for any violation of the department's regulations.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.029. Reports

The holder of a permit shall file with the department before January 11 of the year after the expiration of the permit a report showing the number and species of wildlife taken under the permit and their

disposition. The report shall also give the results of any research conducted under the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.030. Penalty

A person who violates the conditions of a permit or a regulation of the department issued under this subchapter, or who fails to file a full and complete report as required by Section 43.029 of this code, is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.031 to 43.040 reserved for expansion]

SUBCHAPTER D. PRESERVE AND RESORT LICENSES

§ 43.041. Definitions

In this subchapter:

(1) "Shooting preserve" means the aggregate amount of land owned by one individual, partnership, firm, or corporation in a county and leased for hunting purposes. If an individual, partnership, firm, or corporation owns a single tract of land located partially in one county and partially in another county, the individual, partnership, firm, or corporation may not be required to have a separate shooting preserve license for that portion of the land located in the second county, unless the individual, partnership, firm, or corporation owns other land leased for hunting purposes in the second county. If an individual, partnership, firm, or corporation owns a single tract of land located partially in one county and partially in another county and the individual, partnership, firm, or corporation is not required to have two licenses, the aggregate acreage of the tract shall be used for determining the amount of the license fee required by this subchapter.

(2) "Shooting resort" means a tract of land of not less than 600 nor more than 2,000 contiguous acres on which pen-raised fowls or imported game birds are released to provide hunting for members or guests.

(3) "Shooting club" means an association of persons or a legal entity that owns or operates a shooting preserve or shooting resort.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.042. License Required

No person who is the manager or owner of a shooting preserve or shooting resort may receive as a guest of the shooting resort or shooting preserve for pay another person engaged in hunting unless the owner or manager has acquired a license from the department or an authorized agent of the department authorized the receiving of guests.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.043. Issuance of License

The department shall issue one license for each shooting preserve or shooting resort.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.044. License Fees

(a) The fees for shooting preserve licenses are:

(1) $10 if the area of the shooting preserve is less than 500 acres;

(2) $25 if the area of the shooting preserve is 500 acres or more but less than 1,000 acres; and

(3) $40 if the area of the shooting preserve is 1,000 acres or more.

(b) The fee for a shooting resort license is $25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.045. Duration of License

A shooting preserve license and a shooting resort license are valid for the period from September 1 of one year through August 31 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.046. Form and Execution of License

(a) The department shall furnish license forms to agents who are authorized to issue hunting and fishing licenses.

(b) The license must:

(1) be numbered serially with stubs attached;

(2) be clearly marked as a shooting preserve license or a shooting resort license;

(3) have printed across the face of the license the year for which it is issued;

(4) show the expiration date of the license; and

(5) bear the seal of the department.

(c) The license shall be executed by filling in the name and address of the licensee, the name of the shooting preserve or shooting resort, the character of game found in the area to which the license

applies, and the signature of the employee of the department or issuing agent.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.047. Name of Preserve or Resort

The holder of a shooting preserve or shooting resort license shall file with the department the name of the shooting preserve or shooting resort.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.048. Affidavit Required

The holder of a shooting preserve or shooting resort license shall certify by his signature on forms provided by the department that the licensee will:

(1) not violate any of the provisions of this subchapter;

(2) endeavor to prevent any guest of the shooting preserve or shooting resort from violating any of the provisions of this subchapter; and

(3) not receive guests who do not have valid hunting licenses.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.0485. Shooting Preserve Records

(a) The holder of a shooting preserve license shall keep a suitable record book and shall require each guest to register. The registration of a guest must include:

(1) the name and residence of the guest;

(2) the hunting license number of the guest; and

(3) the number and type of game animals and game birds killed each day by the guest.

(b) Not later than March 1 of each year, the holder of a shooting preserve license shall report to the local game warden or other person as designated by the department. The report must include information required by the department on the previous year's hunting activity on the preserve.

[Added by Acts 1977, 65th Leg., p. 813, ch. 303, § 1, eff. Aug. 29, 1977.]

§ 43.049. Nonresident Hunting License for Shooting Resort

(a) A nonresident may acquire a shooting resort hunting license from the department entitling the nonresident to take wild birds from a shooting resort only.

(b) A nonresident shooting resort hunting license is valid from October 1 of one year to April 1 of the following year.

(c) The fee for a nonresident shooting resort hunting license is $5, of which fee 25 cents may be retained as a collection fee by the agent issuing the license but not by an employee of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.050. Shooting Resort Identified

(a) The owner or manager of a shooting resort shall mark the boundaries of the shooting resort with metal signs. The signs shall be placed at each entrance to the resort and around the perimeter of the resort at a distance of not more than 1,000 feet apart.

(b) The size of the sign must be at least 18 inches by 24 inches.

(c) The signs must bear the words "Shooting resort licensed by the Parks and Wildlife Department—Hunting by permit only." The lettering of the words must be large enough so that they may be read under ordinary conditions from a distance of 200 feet.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.051. Season

The open season on a shooting resort for the taking of game birds, pen-raised fowl, and imported game birds that have been stocked by the owner is from October 1 of one year through April 1 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.052. Banding Game Birds

Each game bird killed on a shooting resort shall be banded with a band showing the permit number of the owner of the resort. The band must remain on the bird after it is killed and processed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.053. Releasing of Fowl Required

The operator of a shooting resort shall release at least 500 quail or at least 500 pheasant or chukar annually for each 600 acres of land licensed as a shooting resort.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.054. Cancellation of License

(a) If the manager of a shooting resort or shooting preserve fails or refuses to comply with any provision of this subchapter, the department or its

authorized agent may cancel the license granted under this subchapter without refunding the license fee.

(b) A person whose license is cancelled under this section may not receive another license for one year after the cancellation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.055. Penalty

A manager of a shooting resort or shooting preserve who violates any provision of this subchapter or who fails to comply with any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200 or by confinement in the county jail for not more than 90 days, or by both, except that a manager of a shooting preserve who knowingly and intentionally fails to comply with Section 43.0485 of this code is punishable only by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 813, ch. 303, § 2, eff. Aug. 29, 1977.]

§ 43.056. Cancellation of License

(a) If the manager of a shooting club, shooting resort, shooting preserve, or land leased for hunting fails or refuses to comply with any provision of this subchapter, the department or its authorized agent may cancel the license granted under this subchapter without refunding the license fee.

(b) A person whose license is cancelled under this section may not receive another license for one year after the cancellation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.057. Penalty

A manager of a shooting club, shooting resort, shooting preserve, or land leased for hunting who violates any provision of this subchapter or who fails to comply with any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200 or by confinement in the county jail for not more than 90 days, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.058 to 43.060 reserved for expansion]

SUBCHAPTER E. PERMIT FOR CAPTURE OF INDIGENOUS GAME

§ 43.061. Indigenous Mammals and Birds

(a) No person may capture or transport any game mammal or game bird captured from the wild that is indigenous to this state unless he has obtained a permit from the department.

(b) The department may issue permits for trapping and transporting game mammals or game birds from the wild that are indigenous to this state as a means of better wildlife management by making adjustments in the game population.

(c) This section does not apply to any game animals or game birds that are privately owned or privately raised.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.062 to 43.070 reserved for expansion]

SUBCHAPTER F. PRIVATE BIRD SHOOTING AREAS

§ 43.071. Definitions

In this subchapter:

(1) "Private bird shooting area" means an area on which the hunting or taking of privately owned game birds is authorized.

(2) "Licensee" means a person holding a private bird shooting area license.

(3) "Guest" means a person other than a licensee who is authorized by a license to hunt or take birds in a private bird shooting area.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.072. Application for License

(a) Any person, including the holder of a shooting resort license, may apply to the department for a private bird shooting area license.

(b) The applicant shall certify by his signature on forms provided by the department stating that he will not violate any of the provisions of this subchapter and will endeavor to prevent guests from committing violations.

(c) The private bird shooting area license fee is $25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.073. Size of Area; Markings

(a) A private bird shooting area may consist of not more than 300 contiguous acres.

(b) A private bird shooting area shall be distinguished from any other club, shooting resort, shooting preserve, or leased premises for hunting purposes by clearly marking its boundaries with wood or metal markers bearing the words, "Private Bird Shooting Area, Licensed by the Texas Parks and Wildlife Department." The lettering on these markers shall be large enough to permit reading under ordinary conditions at 200 feet.

(c) Markers shall be placed to identify clearly the boundaries of each area and each entrance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.074. Taking of Game Birds Authorized

(a) A licensee or a guest may take privately owned game birds or pen-reared game birds in a private bird shooting area during the private bird shooting area season.

(b) The private bird shooting area season begins January 1 and extends through December 31 of each year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.075. Game Birds in Captivity; Banding

(a) A licensee may hold game birds in captivity for use in the private bird shooting area.

(b) All privately owned game birds and pen-reared game birds released on a private bird shooting area shall be banded.

(c) The band shall remain on each bird killed until it is finally processed.

(d) Each band must show the permit number of the licensee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.076. License Form

No person may issue or accept a private bird shooting area license except on the form prescribed by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.077. Penalty

A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.078. Hunting License Required

Nothing in this subchapter authorizes any person to hunt game birds without having a hunting license required by Chapter 42 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.079 to 43.100 reserved for expansion]

SUBCHAPTER G. PREDATOR CONTROL FROM AIRCRAFT

§ 43.101. Applicability of Subchapter

This subchapter applies only to the following counties: Andrews, Archer, Armstrong, Atascosa, Bailey, Bandera, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazos, Brewster, Briscoe, Brown, Burnet, Caldwell, Callahan, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Dimmit, Donley, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fisher, Floyd, Foard, Frio, Gaines, Garza, Gillespie, Glasscock, Gray, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hockley, Hood, Howard, Hudspeth, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lamb, Lampasas, LaSalle, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, McCulloch, McMullen, Martin, Mason, Maverick, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Moore, Motley, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Real, Reeves, Roberts, Robertson, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom Green, Upton, Uvalde, Val Verde, Ward, Webb, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Winkler, Yoakum, Young, Zapata, Zavala.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1222, ch. 456, § 23, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 568, ch. 202, § 1, eff. May 20, 1977; Acts 1979, 66th Leg., p. 255, ch. 133, § 1, eff. May 9, 1979; Acts 1979, 66th Leg., p. 784, ch. 346, § 1, eff. June 6, 1979.]

§ 43.102. Permit Authorized

Under Public Law 92–159, Section (b)(1) (85 Stat. 480, 16 U.S.C. 742j–1), the department may issue permits for predator animal control by the use of aircraft in this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.103. Definition

"Predator animals" means coyotes, bobcats, red foxes, and crossbreeds between coyotes and dogs but does not include birds or fowl.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.104. Grounds to Issue Permit

The department may issue the permit to any person if the department finds that predator animal control by the use of aircraft is necessary to protect

or to aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.105. Application for Permit

An applicant for a permit under this subchapter shall file with the application one or more affidavits, containing facts as well as opinion, stating the kind and number of predator animals that are requested to be taken by the use of aircraft, a list of the counties from which the animals are requested to be taken, and the reasons why the permit should be issued.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.106. Form and Period of Validity of Permit; Renewal

The department shall prescribe the form and manner of issuance of the permit. No permit issued under this subchapter is valid for more than one year, but the department may renew a permit on a showing that renewal is necessary.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.107. Reports Required

The holder of a permit under this subchapter shall file with the department within 30 days following the end of each calendar quarter a report showing:

(1) the name and address of the permit holder;

(2) the number and a description of the predator animals taken under the permit, and the number and description of the predator animals authorized to be taken under the permit;

(3) a description of the area to which the permit is applicable; and

(4) any other relevant information the department may require.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.108. Reports by Department

The department shall report annually to the Secretary of the Interior of the United States as required by federal law.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.109. Regulations

The commission may make regulations governing predator animal control by aircraft under this subchapter. The commission shall give notice and hold hearings on all proposed regulations under this subchapter.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.110. Permit Fee

The commission shall set an annual fee for the taking of predator animals by the use of aircraft.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.111. Penalty

A person who violates any provision of this subchapter or any person in an aircraft who shoots any animals or birds other than predator animals with a gun, rifle, or any other device capable of injuring or killing a wild animal or bird is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.112 to 43.150 reserved for expansion]

SUBCHAPTER H. PERMITS TO CONTROL PROTECTED SPECIES

§ 43.151. Damage to Crops or Domestic Animals

(a) A person whose crops or domestic animals are being damaged or destroyed by a wild bird or animal protected by this code and who desires to kill the protected bird or animal shall give written notice of the facts to the county judge of the county in which the damage occurs.

(b) The county judge, on receiving the notice, shall immediately cause a substantial copy of the notice to be posted in the county courthouse and shall notify the department of the location of the property where the damage is occurring, the type of crops or animals being damaged, and the name of the applicant.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.152. Department Inspection

On receiving notice from a county judge, the department shall inspect the property and determine if damage is occurring as alleged in the notice. If the damage is occurring, the department shall make recommendations to the person as are feasible and appropriate for controlling the damage.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.153. Application for Permit

(a) A person whose crops or domestic animals are being damaged may file with the department an application for a permit to kill protected wild birds or animals.

(b) The application must be in writing and be sworn to by the applicant and must contain:

(1) a statement of facts relating to the damage; and

(2) an agreement by the applicant to comply with the provisions of this subchapter relating to the disposition of game.

(c) The application must be accompanied by:

(1) a statement signed by the employee of the department who made the investigation that damage is being done and control measures have been recommended;

(2) a statement by the applicant that he has taken all measures recommended by the department for the prevention of damage; and

(3) a certification of the county judge that the application is true.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.154. Permit

(a) On receipt of an application, the department may issue a permit for the killing of wild birds and wild animals without regard to the closed season, bag limit, or prohibition against night hunting.

(b) The department shall deliver the permit, if issued, to the county judge that sent the notice of damage. The permit may not be delivered earlier than 24 hours after the notice from the county judge was received by the department.

(c) A permit must specify:

(1) the period of time during which it is valid;

(2) the area in which it applies;

(3) the kind of birds and animals authorized to be killed; and

(4) the persons permitted to kill the noxious birds or animals.

(d) No permit authorizing the killing of migratory game birds protected by the Federal Migratory Bird Treaty Act may be issued unless the applicant has received a permit from the United States Department of Interior, Fish and Wildlife Service. No permit may be issued for the taking of birds or animals protected under Chapter 68 of this code (Endangered Species).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.155. Deer

(a) The holder of a permit issued under this subchapter who kills a deer under the authority of the permit shall give the location of the deer carcass to the game management officer or other department employee assigned to the area covered by the permit.

(b) The officer or other department employee notified shall dispose of the carcass by donating it to a charitable institution or hospital or to needy persons.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.156. Cancellation of Permit

The department may cancel a permit if the holder violates a term or condition of the permit, the holder exceeds the authority granted in the permit, or the permit does not accomplish its intended purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.157. Violations; Penalty

(a) No permittee may fail to notify a game management officer or other department employee of the killing of a deer as required by Section 43.155 of this code.

(b) No permittee may dispose of a deer carcass killed under the permit or allow the deer to be disposed of except as allowed under Section 43.155 of this code.

(c) No permittee may violate a term or condition of the permit.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $500.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.158 to 43.200 reserved for expansion]

SUBCHAPTER I. ARCHERY STAMPS

§ 43.201. Archery Stamp Required

(a) No person may hunt wild deer, bear, turkey, or javelina (collared peccary) during an open archery season provided by law or by the proclamations of the commission and during which season only longbows and arrows may be used unless the person has first acquired from the department or from an authorized agent of the department an archery hunting stamp.

(b) The stamp shall be issued in the form prescribed by the department and must be signed on its face by the person using the stamp.

[Acts 1975, 64th Leg., p. 1203, ch. 456, § 1, eff. Sept. 1, 1975.]

§ 43.202. Fee

The fee for an archery hunting stamp is $3.25, of which 25 cents shall be retained by the agent issuing the stamp as a collection fee, except that employees of the department may not retain the collection fee.

[Acts 1975, 64th Leg., p. 1203, ch. 456, § 1, eff. Sept. 1, 1975.]

§ 43.203. Hunting License Required

The purchase or possession of an archery hunting stamp does not permit a person to hunt wild deer, bear, turkey, or javelina without the license required by Chapter 42 of this code or by any means or methods not allowed by law.

[Acts 1975, 64th Leg., p. 1203, ch. 456, § 1, eff. Sept. 1, 1975.]

§ 43.204. Stamp Sale Receipts

The net revenue derived from the sale of archery hunting stamps shall be sent to the department.
[Acts 1975, 64th Leg., p. 1203, ch. 456, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 548, ch. 260, art. 1, § 4, eff. Sept. 1, 1979.]

§ 43.205. Penalty

(a) A person who violates Section 43.201 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

(b) A person hunting a species covered by this chapter during an open archery season who fails or refuses on the demand of any game warden or other peace officer to exhibit an archery hunting stamp is presumed to be in violation of Section 43.201 of this code.
[Acts 1975, 64th Leg., p. 1203, ch. 456, § 1, eff. Sept. 1, 1975.]

[Sections 43.206 to 43.250 reserved for expansion]

SUBCHAPTER J. FIELD TRIAL LICENSES

§ 43.251. Definitions

In this subchapter:

(1) "Member field trial" means a trial of retriever dogs held by a club or association that is a member of the American Kennel Club and during which championship points may be awarded.

(2) "Licensed field trial" means a trial of retriever dogs held by a club or association not a member of the American Kennel Club but which trial has been licensed by the American Kennel Club and during which championship points may be awarded.

(3) "Sanctioned field trial" means an informal retriever dog field trial held by any club or association and which trial is sanctioned by the American Kennel Club even though championship points are not awarded.

(4) "Retriever dog training" means any training activity relating to the development of retrieving breeds of dogs under field conditions for hunting purposes or which would qualify retriever breeds of dogs to take part in member, licensed, or sanctioned field trials.

(5) "Captive-reared birds" means pen-raised pheasant, chukar, mallard duck, and feral pigeon only.
[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.252. Field Trial Licenses Authorized

(a) The department may issue primary field trial area licenses applying to not more than 1,000 contiguous acres of land for each license.

(b) The department may issue to the holder of a primary field trial license not more than six auxiliary field trial licenses applying to not more than 300 contiguous acres for each auxiliary field trial license.

(c) The licenses authorized by this section must be on a form designed and provided by the department.

(d) A license authorized by this section is valid until December 31 of the year for which it is issued.
[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.253. License Fees

(a) The fee for a primary field trial area license is $25.

(b) The fee for each auxiliary field trial area license is $5.25.
[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.254. Who May Receive Licenses

(a) The owner or other person holding a possessory interest in land may apply for and receive a primary field trial area license for the land.

(b) No person may hold more than one primary field trial area license. No person may hold more than six auxiliary field trial area licenses.
[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.255. Areas to be Marked

(a) Each area covered by a primary field trial area license shall be identified with signs marked as follows: "Retriever dog field trial area licensed by the Parks and Wildlife Department."

(b) Each area covered by an auxiliary field trial area license shall be identified with signs marked as follows: "Retriever dog auxiliary field trial area licensed by the Parks and Wildlife Department."

(c) The signs described in Subsections (a) and (b) of this section shall be placed at each entrance of an area and along the boundaries of the area at intervals not to exceed 1,000 feet in a manner that clearly identifies the boundaries of the area.

(d) The lettering on each sign must be large enough to permit a person with ordinary vision under ordinary conditions to read the sign from 200 feet away.
[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.256. Taking Captive-Reared Birds Permitted

(a) A person holding a valid Texas hunting license, including a license issued to a nonresident under Section 43.257 of this code, may hunt and take captive-reared birds on land covered by a primary field trial area license or an auxiliary field trial area license at any time during a member field trial, a

licensed field trial, a sanctioned field trial, or during retriever dog training.

(b) Subsection (a) of this section does not apply unless the person is registered as provided in Section 43.258 of this code.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.257. Limited Nonresident Hunting License

(a) A nonresident may apply to the department or its agent for a nonresident field trial area hunting license, that permits the holder to hunt and take captive-reared birds on land covered by a primary field trial area license or an auxiliary field trial area license during a member field trial, a licensed field trial, or a sanctioned field trial only.

(b) The license fee for the nonresident field trial hunting license is $5.25.

(c) A nonresident field trial hunting license expires on December 31 of the year for which it is issued.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.258. Record Book

The holder of a primary field trial area license or the manager of an area covered by any field trial area license shall keep a suitable record book and shall enter in the book the name and address and hunting license number of each guest participating in a member, licensed, or sanctioned field trial on the primary or an auxiliary area. The license holder or manager shall enter in the book the number and species of captive-reared birds acquired for the area or areas, the date of acquisition of the birds, the name of the seller, the number and species of captive-reared birds taken on the area or areas, and the disposition of all captive-reared birds taken on the area or areas.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.259. Birds to be Banded

(a) No person may release a captive-reared bird on a primary or auxiliary field trial area licensed under this subchapter unless the bird is banded with tag of a type approved by the department and which contains the license number of the area.

(b) No person may remove from a captive-reared bird the tag required by Subsection (a) of this section until the bird is finally processed.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.260. Prohibited Acts

(a) No person may:

(1) fail to mark the entrances and boundaries of a primary or auxiliary field trial area as required by Section 43.255 of this code;

(2) fail to keep a record book as required by Section 43.258 of this code;

(3) violate Section 43.259 of this code; or

(4) represent to others that he is the owner or manager of land covered by a primary or auxiliary field trial area when in fact he is not the owner or manager or when the land is not in fact licensed as permitted by this subchapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.261. Hunting During Season Not Prohibited

This subchapter does not prohibit the hunting of game birds by any lawful method or the operation of field trials during an open season for the taking of game birds as provided by law.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

CHAPTER 44. GAME BREEDER'S LICENSE

Section

44.001. Definitions.
44.002. License Requirement.
44.003. Game Breeder's License.
44.004. Reissuance of License.
44.005. Serial Number.
44.006. License Privileges.
44.007. Records.
44.008. Enclosure Size.
44.009. Inspection.
44.010. Shipment of Game Animals.
44.011. Purchase and Sale of Live Game Animals.
44.012. Sale During Open Season.
44.013. Use of Purchased Game Animals.
44.014. Application of General Laws.
44.015. Right of Department.
44.016. Penalties.

§ 44.001. Definitions

In this chapter:

(1) "Game breeder" means a person holding a valid game breeder's license.

(2) "Captivity" means the keeping of game animals in an enclosure suitable for and capable of retaining the animal it is designed to retain at all times under reasonable and ordinary circumstances and to prevent entry by another animal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.002. License Requirement

No person may place in captivity or engage in the business of propagating any game animal of this state unless he has obtained a license issued under this chapter from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1209, ch. 456, § 9, eff. Sept. 1, 1975.]

§ 44.003. Game Breeder's License

The department shall issue a game breeder's license on payment of a license fee of $5. The license is valid for a period of one year following the date of its issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1209, ch. 456, § 9, eff. Sept. 1, 1975.]

§ 44.004. Reissuance of License

A game breeder's license may not be issued to a previous licensee unless the licensee has filed with the department a copy of the record required by Section 44.007 of this code with an affidavit made before an officer qualified to administer oaths that the copy is true and correct.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.005. Serial Number

(a) The department shall issue a serial number to the applicant at the time of the first issuance of a game breeder's license to the applicant. The same serial number shall be assigned to the licensee whenever he holds a game breeder's license.

(b) The game breeder shall place a suitable permanent metal tag bearing his serial number on the ear of each deer or antelope held in captivity or sold by the game breeder.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.006. License Privileges

The holder of a valid game breeder's license may:

(1) engage in the business of game breeding in the immediate locality for which the license was issued; and

(2) sell or hold in captivity for the purpose of propagation or sale wild deer, wild antelope, elk, black bear, collared peccary, and wild squirrels.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.007. Records

Each game breeder shall keep a written record in a suitably bound book for the period from the date of license issuance until the following September 1 containing:

(1) the number and source of each kind of game animal on hand at the time the license is issued;

(2) the number, source, and date of receipt of each kind of game animal on hand at any time after the license is obtained; and

(3) the number of each kind of game animal shipped or delivered, the date of shipment or delivery, and the name and address of persons to whom the shipment or delivery is made.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.008. Enclosure Size

A single enclosure for any game animal may not contain more than 320 acres.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.009. Inspection

An authorized employee of the department may inspect at any time and without warrant any pen, coop, or enclosure holding a game animal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.010. Shipment of Game Animals

(a) A common carrier may not accept a live game animal unless the game animal is one listed in Section 44.006(2) of this code and the shipment is made by a game breeder.

(b) No person, except a game breeder or his authorized agent, may transport or ship a live game animal unless he obtains a permit for shipment or transportation from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.011. Purchase and Sale of Live Game Animals

(a) Only game animals that are in a healthy condition may be sold, bartered, or exchanged, or offered for sale, barter, or exchange by a game breeder.

(b) No person may purchase or accept in this state a live game animal unless:

(1) the game animal bears a tag required by Section 44.005 of this code and is delivered or sold by a game breeder; or

(2) the game animal is delivered by a common carrier from outside this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.012. Sale During Open Season

No game breeder may sell or ship to another person in this state a wild deer, wild antelope, or collared peccary, and no person in this state may purchase from a game breeder in this state a wild deer, wild antelope, or collared peccary during an open season for taking the game animal or during a period of 10 days before and after an open season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.013. Use of Purchased Game Animals

(a) Except as provided in Subsection (b) of this section, game animals may be purchased or received in this state only for the purpose of liberation for stocking purposes or holding for propagation purposes. All game animals and increase from the game animals are under the full force of the laws of

this state pertaining to wild game and the game animals may be held in captivity for propagation in this state only after a license is issued by the department under this chapter.

(b) Game animals may be held, taken, or received for scientific and zoological purposes under a permit issued by the department pursuant to Section 43.022 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.014. Application of General Laws

In order that native game species may be preserved, game animals held under a game breeder's license are subject to all laws and regulations of this state pertaining to wild game animals except as specifically provided in this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.015. Right of Department

The department or an authorized employee of the department may take, possess, hold, transport, or propagate any game animal of this state for public purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.016. Penalties

(a) A person who violates a provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

(b) Each animal sold, purchased, or held in violation of this chapter constitutes a separate offense.

(c) The license of a game breeder convicted of a violation of this chapter is subject to forfeiture. If the license of a game breeder is forfeited, he is not entitled to reissuance of the license for a period of one year following the date of conviction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 45. GAME BIRD BREEDER'S LICENSE

Section
45.001. License Required.
45.002. Form of License; Period of Validity.
45.003. Types of Licenses; Fees.
45.004. Size of Enclosures.
45.005. Live Birds to be Banded.
45.006. Bird Carcasses to be Stamped; Purchase Without Stamp Prohibited.
45.0061. Source of Game Birds.
45.007. Prohibited Acts.
45.008. Records; Reports.
45.009. Exceptions.
45.010. Inspections.
45.011. Permits Required by the United States.
45.012. Penalty.

§ 45.001. License Required

(a) Except as provided in Subsection (b) of this section, no person may engage in the business of propagating game birds without first acquiring the proper license authorized to be issued under this chapter.

(b) A person is not required to have a license issued under this chapter if he possesses not more than 12 game birds for personal use only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1208, ch. 456, § 8(a), eff. Sept. 1, 1975.]

§ 45.002. Form of License; Period of Validity

(a) The department shall issue the licenses authorized by this chapter on a form provided by the department and may designate agents for their issuance.

(b) Each license shall be numbered.

(c) A license is valid for one year from the date of its issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.003. Types of Licenses; Fees

(a) A class 1 commercial game bird breeder's license entitles the holder to engage in the business of propagating game birds for sale or holding game birds in captivity. The fee for a class 1 commercial game bird breeder's license is $50.

(b) A class 2 commercial game bird breeder's license entitles the holder to engage in the business of propagating game birds for sale or holding game birds in captivity, except that the holder of a class 2 license may not possess more than 1,000 game birds during any calendar year. The fee for a class 2 commercial game bird breeder's license is $5.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1208, ch. 456, § 8(b), eff. Sept. 1, 1975.]

§ 45.004. Size of Enclosures

(a) No holder of a license under this chapter may retain game birds, other than a migratory bird or waterfowl, in an enclosure larger than 40 acres.

(b) No holder of a license under this chapter may retain a migratory bird or waterfowl in an enclosure larger than 320 acres.

(c) "Captivity" means the keeping of game birds in an enclosure or pen.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.005. Live Birds to be Banded

(a) No holder of a commercial game bird breeder's license may fail to band all live game birds in his possession before selling the birds as required by this section.

(b) The department shall issue to each holder of a commercial game bird breeder's license a serial number which shall remain the number of the person holding the license as long as he continues to hold a license.

(c) The bands required in this section shall be of metal and shall bear the serial number of the holder of the license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1209, ch. 456, § 8(c), eff. Sept. 1, 1975.]

§ 45.006. Bird Carcasses to be Stamped; Purchase Without Stamp Prohibited

(a) No holder of a license required by this chapter may sell or offer for sale the carcass of a dead pen-raised game bird unless the carcass is clearly stamped and marked by the stamp required by Subsection (b) of this section.

(b) Each holder of a license required by this chapter who offers for sale the carcass of a pen-raised game bird shall acquire and maintain a rubber stamp which, when used, shows the serial number of the holder of the license.

(c) No person may knowingly purchase the carcass of a game bird in this state unless the bird is stamped as required by this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.0061. Source of Game Birds

A person who is not required to possess a commercial game bird breeder's license under Subsection (b) of Section 45.001 shall, on the request of a game warden commissioned by the department, furnish to the warden information as to the source from which game birds in the possession of the person were derived. The failure or refusal to comply with this section is a violation of this chapter.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 8(d), eff. Sept. 1, 1975.]

§ 45.007. Prohibited Acts

(a) No holder of a game bird breeder's license may sell a live game bird unless it is in a healthy condition.

(b) No person may purchase a live game bird except from a holder of a game bird breeder's license; however, this subsection does not prohibit the purchase of live game birds delivered by a common carrier from outside the state.

(c) The carcass of a pen-raised game bird offered for sale must be killed other than by shooting.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.008. Records; Reports

(a) Each commercial game bird breeder shall maintain records showing the numbers of game birds acquired, propagated, sold, and disposed of in any other manner. The records shall be on forms provided by the department and shall contain any other information required by the department.

(b) During August of each year, but before August 31, a commercial game bird breeder shall send to the department a report showing the total number of game birds in the possession of the breeder during the previous year and accounting for the acquisition and disposition of each game bird.

(c) The failure to keep the records required by Subsection (a) of this section or to make the report as required by Subsection (b) of this section is a violation of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.009. Exceptions

(a) A person may purchase live pheasant from a commercial game bird breeder for any purpose.

(b) A commercial game bird breeder may slaughter game birds for his personal consumption at any time.

(c) This chapter does not apply to a person holding a permit under Section 43.022 of this code.

(d) Any person owning or operating a restaurant, hotel, boarding house, club, or other business where food is sold for consumption may sell game birds for consumption on the premises of the business.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.010. Inspections

An authorized employee of the department may inspect the facilities and enclosures of a person licensed under this chapter at any time during normal business hours without a warrant.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.011. Permits Required by the United States

This chapter does not authorize any act prohibited by federal law without a permit issued by the United States, nor does the possession of a permit issued by the United States authorize any act prohibited by this chapter unless expressly provided by federal law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.012. Penalty

A person who violates this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 46. FISHING LICENSES

SUBCHAPTER A. GENERAL FISHING LICENSE

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SUBCHAPTER A. GENERAL FISHING LICENSE

§ 46.001. Prohibited Acts

Except as provided in this chapter, no person may fish in the water of this state unless he has obtained a fishing license issued under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.0011. Resident, Nonresident, and Alien Defined

For this chapter, resident, nonresident, and alien are defined in Section 42.001 of this code.

[Added by Acts 1977, 65th Leg., p. 1110, ch. 409, § 1, eff. Aug. 29, 1977.]

§ 46.002. Exemptions

(a) A license issued under this chapter is not required of a resident:

(1) under 17 years old or 65 years old or older;

(2) fishing on property that he owns or on which he resides;

(3) fishing on property that a member of his immediate family owns or on which the family resides;

(4) fishing in the county of his residence with a trotline, throw line, or ordinary pole and line without a reel or other winding device;

(5) having a commercial fishing license of this state; or

(6) who is a member of a group of 25 or more persons who are visiting as tourists and do their fishing as a group; or

(7) who is a resident of a hospital or state school, who is engaging in recreational fishing as a part of medically approved therapy, and who is fishing under the immediate supervision of personnel approved or employed by the hospital or state school.

(b) A license issued under this chapter is not required of a resident of the Republic of Mexico who is traveling in this country on a visa granted by the United States and who is fishing in coastal water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 115, ch. 56, § 1, eff. April 13, 1977; Acts 1977, 65th Leg., p. 1110, ch. 409, § 5, eff. Aug. 29, 1977.]

§ 46.003. Exception for Blind and Disabled Veterans

(a) The following persons are entitled to receive a special fishing license on proof of eligibility and on the payment of a fee of $1.25, 25 cents of which may be retained as a collection fee:

(1) a blind person as defined by Section 1, Chapter 227, Acts of the 59th Legislature, Regular Session, 1965; [1] and

(2) a disabled veteran of the armed forces of the United States who has a service-connected disability, as defined by the Veterans' Administration, consisting of the loss of the use of a lower extremity or of a disability rating of 60 percent or more, and who is receiving compensation from the United States for the disability.

(b) The department may make regulations concerning proof of eligibility under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 132, ch. 61, § 1, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 678d-1.

§ 46.004. License Fee

(a) The resident fishing license fee is $4.50.

(b) The nonresident or alien fishing license fee is an amount set by the commission but not less than $10.50.

(c) The license deputy issuing the license may retain 50 cents as a fee for collecting the license fee and issuing the license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1110, ch. 409, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1475, ch. 599, § 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1397, ch. 623, § 3, eff. Aug. 27, 1979.]

§ 46.005. Temporary Saltwater Sportfishing License

(a) Any person is entitled to receive from the department a license allowing fishing for sporting purposes in salt water for a period of three days.

(b) The fee for the temporary saltwater sportfishing license is $1.25 of which fee 25 cents may be retained as a collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.0051. Temporary Nonresident License

(a) A nonresident or alien is entitled to receive from the department a license allowing fishing for sporting purposes in public water for a period of five days.

(b) The license fee is an amount set by the commission but not less than $4.50, of which fee 50 cents may be retained as a collection fee.

[Added by Acts 1975, 65th Leg., p. 1110, ch. 409, § 3, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1397, ch. 623, § 4, eff. Aug. 27, 1979.]

§ 46.006. Duplicate License

(a) If a license issued under this subchapter is lost or destroyed, a license deputy may issue a duplicate license on application of the license holder and receipt of a 50-cent duplicate license fee.

(b) The application for a duplicate license must be an affidavit containing:

(1) the facts concerning the loss or destruction of the license; and

(2) the serial number of the lost or destroyed license.

(c) The license deputy issuing the license may retain 25 cents as a fee for issuing the duplicate license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.007. Expiration of Licenses

(a) A license required or authorized by this subchapter is valid only during the yearly period for which it is issued without regard to the date on which the license is acquired. Each yearly period begins on September 1 of a year and extends through August 31 of the next year.

(b) A duplicate license is valid for the period of validity of the original license only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1110, ch. 409, § 4, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1536, ch. 626, § 1, eff. Aug. 29, 1977.]

§ 46.008. License Form

A license issued under this subchapter must contain:

(1) the year for which the license is issued (printed across the face of the license);

(2) the name, address, and residence of the licensee;

(3) an approximate weight, height, age, and color of hair and eyes of the licensee for identification in the field; and

(4) the statement: "This license does not entitle the holder to fish on the enclosed and posted lands of another without the consent of the owner or his agent."

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1476, ch. 599, § 2, eff. Sept. 1, 1977.]

§ 46.009. License Deputies

Employees of the department, county clerks, and any person designated by the department to issue licenses are license deputies and may issue licenses under this subchapter. An employee of the department may not retain a collection or issuance fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.010. Duties of License Deputies

The license deputy shall:

(1) fill out correctly and preserve for the use of the department the stubs attached to the license; and

(2) keep a complete and correct record of all licenses issued, showing the name and residence of each licensee, the serial number of the license, and the date of issuance of the license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.011. Monthly Report

(a) Within 10 days after the end of each calendar month, license deputies shall send to the department the fees due the state and a report containing:

(1) the serial number and date of issuance of each license issued during the preceding month; and

(2) the names and addresses of the persons to whom licenses were issued during the preceding month.

(b) The department shall credit the license deputy with the amount remitted.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.012. License Books

(a) When all licenses in a license book are issued, the license deputy shall return the license book to the department by the 10th day of the month following the month in which last license in the book is issued.

(b) Unissued licenses shall be returned on the request of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.013. Issuance or Acceptance of License

No person may issue or accept a license required by this subchapter except on a form provided by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.014. Fishing Under the License of Another

No person may fish under a license issued to another or allow another person to fish under a license issued to him.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.015. Penalty

(a) A person who violates a provision of this subchapter or, except as provided by Subsection (b) of this section, who fails or refuses to show an officer his license on the request of the officer is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

(b) If on or before the trial of any person charged with the failure or refusal to show an officer a license issued under this subchapter, the person produces for the court or the prosecuting attorney the proper fishing license issued to the person and valid at the time of the offense, the court having jurisdiction of the suit shall dismiss the charge.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 810, ch. 368, § 1, eff. Aug. 27, 1979.]

[Sections 46.016 to 46.100 reserved for expansion]

SUBCHAPTER B. LAKE TEXOMA FISHING LICENSE

§ 46.101. Lake Texoma

This subchapter applies only to Lake Texoma, which is the portion of this state inundated by the water impounded by a dam across the channel of the Red River, known as Denison Dam, and any other portion of that area of land acquired by the United States for the operation of the reservoir.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.102. Fishing License Required

Except as provided in this subchapter, no person may catch fish in Lake Texoma unless he has acquired and possesses on his person a valid license issued under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.103. Exemptions

Residents of this state engaged in fishing within the territorial boundaries of this state are not required to obtain a license issued under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.104. License: Period of Validity and Fee

(a) A Lake Texoma fishing license is valid until December 31 following its date of issuance.

(b) The fee for the license is $5. Fifteen cents of the fee may be retained by the issuing officer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1400, ch. 623, § 12, eff. Aug. 27, 1979.]

§ 46.105. Lake Texoma 10-Day Fishing License

(a) A Lake Texoma 10-day fishing license is valid for 10 consecutive days including the date of issuance.

(b) The fee for the license is $1.25. Fifteen cents of the fee may be retained by the officer issuing the license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.106. Form of License

Licenses issued under this subchapter shall be on the form prescribed by the department and must contain:

(1) the name and address of the licensee;

(2) a personal description of the licensee;

(3) date of issuance of the license; and

(4) other information necessary for enforcement of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.107. Disposition of Fees

The issuing officer shall send license fees less allowable deductions collected under this subchapter to the department by the 10th day of the month following the date of receipt.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.108. Division of Fees

The department shall keep separate and strict account of the revenue received from licenses issued under this subchapter for annual division between this state and the State of Oklahoma. The division shall be on a basis of the proportionate area of Lake Texoma lying within the territorial jurisdiction of the respective states.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.109. Payment by Comptroller

On February 1 of each year the comptroller shall pay to the state of Oklahoma 70 percent of the revenue collected from licenses issued under this subchapter during the previous calendar year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.110. Penalty

A person who violates this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.111. Effective Date of Subchapter

This subchapter does not become effective until:

(1) the State of Oklahoma makes provision for the sale of licenses in Oklahoma that are parallel to the licenses authorized by this subchapter;

(2) the State of Oklahoma provides for payment to this state of not less than 30 percent of all revenue collected by Oklahoma for the licenses; and

(3) the department is satisfied that this subchapter and the provisions of Oklahoma law are not in conflict and directs that this subchapter is effective.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 47. COMMERCIAL FISHING LICENSES

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SUBCHAPTER A. LICENSES

§ 47.001. Definitions

In this chapter:

(1) "Commercial fisherman" means a person who catches fish, oysters, or other edible aquatic products from the water of this state for pay or for the purpose of sale, barter, or exchange.

(2) "Commercial finfish fisherman" means a person who catches only finfish from the waters of this state for pay or for the purpose of sale, barter, or exchange.

(3) "Wholesale fish dealer" means a person engaged in the business of buying for the purpose of selling, canning, preserving, processing, or handling for shipments or sale fish, oysters, shrimp, or other commercial edible aquatic products to retail fish dealers, hotels, restaurants, cafes, or consumers.

(4) "Retail fish dealer" means a person engaged in the business of buying for the purpose of sale to a consumer fresh or frozen edible aquatic products.

(5) "Bait dealer" means a person who catches or transports for sale, or who is engaged in the business of selling minnows, fish, shrimp, or other aquatic products for fish bait.

(6) "Fish guide" means a person who operates a boat for compensation to accompany or to transport a person engaged in fishing in the water of this state.

(7) "Tidal water" means all the salt water of this state, including that portion of the state's territorial water in the Gulf of Mexico within three marine leagues from shore.

(8) "Nontidal water" means all the water of this state excluding tidal water.

(9) "Place of business" means the place where orders for aquatic products are received or

where aquatic products are sold, including a vehicle if aquatic products are sold from the vehicle, but does not include a public cold-storage vault, temporary receiving station, or vehicle from which no orders are taken or no shipments or deliveries are made other than to the place of business of a licensee in this state.

(10) "Menhaden fish plant" means a fixed installation on land designed, equipped, and used to process fish and the by-products of fish by the application of pressure, heat, or chemicals or a combination of pressure, heat, and chemicals to raw fish to convert the raw fish into fish oil, fish solubles, fish scraps, or other products.

(11) "Red drum" means the species Sciaenops ocellata, commonly called "redfish."

(12) "Resident" means an individual, other than an alien, who has been a resident of this state for more than six months immediately before applying for a license from the department.

(13) "Nonresident" means an individual who is not a resident.

(14) "Finfish" means those living natural resources having either cartilaginous or bony skeletons (Chondrichthyes and Osteichthyes).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 214, ch. 105, § 2, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 720, ch. 270, § 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 550, ch. 260, art. 4, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1398, ch. 623, §§ 5, 6, eff. Aug. 27, 1979.]

§ 47.002. General Commercial Fisherman's License

(a) No person may engage in business as a commercial fisherman unless he has obtained a general commercial fisherman's license.

(b) The license fee for a general commercial fisherman's license is $10. Twenty-five cents of the fee may be retained by the issuing agent, except an employee of the department.

(c) The license fee for a nonresident general commercial fisherman's license is the amount that a Texas resident is charged in the state in which the nonresident is residing for a similar license or $20, whichever amount is the larger. The department shall publish a list of nonresident fees according to the fees of each state and may alter the fee amounts in the list before September 1 of each year for the remainder of that license year. Twenty-five cents of the fee may be retained by the issuing agent, except an employee of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1398, ch. 623, § 7, eff. Aug. 27, 1979.]

§ 47.003. Commercial Finfish Fisherman's License

(a) No person may engage in business as a commercial finfish fisherman unless he has obtained a commercial finfish fisherman's license.

(b) The license fee for a resident commercial finfish fisherman's license is $50. Twenty-five cents of the fee may be retained by the issuing agent, except an employee of the department.

(c) The license fee for a nonresident commercial finfish fisherman's license is the amount that a Texas resident is charged in the state in which the nonresident is residing for a similar license or $100, whichever amount is larger. The department shall publish a list of nonresident fees according to the fees of each state and may alter the fee amounts in the list before September 1 of each year for the remainder of that license year. Twenty-five cents of the fee may be retained by the issuing agent, except an employee of the department.

(d) No person may be issued a commercial finfish fisherman's license unless the person files with the department at the time he applies for the license an affidavit containing statements that:

(1) not less than 50 percent of the applicant's gainful employment is devoted to commercial fishing;

(2) the applicant is not employed at any full-time occupation other than commercial fishing; and

(3) during the period of validity of the commercial finfish fisherman's license the applicant does not intend to engage in any full-time occupation other than commercial fishing.

(e) The department shall revoke a commercial finfish fisherman's license if:

(1) the holder engages in any full-time employment other than commercial fishing;

(2) the affidavit required by this section contains a false statement; or

(3) the holder violates any law or regulation of the commission more than one time providing for the conservation and protection of finfish and the holder is convicted of the violations by a proper court within a period of two years.

(f) If any person executes and files with the department an affidavit under this section that contains a false statement knowingly made by the person, the department shall revoke each fishing license held by the person at the time the determination is made.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1398, ch. 623, § 8, eff. Aug. 27, 1979.]

Repeal

This section was also repealed by Acts 1979, 66th Leg., p. 550, ch. 260, art. 4, § 5, effective September 1, 1979.

§ 47.004. Fish Guide License

(a) No person may engage in business as a fish guide unless he has obtained a fish guide license.

(b) The license fee for a fish guide license is $25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.005. Fish Boat License

(a) A boat equipped with a motor of any kind or sails may not be used in nontidal water to catch fish, oysters, or other edible aquatic products for pay or for the purpose of sale, barter, or exchange unless the owner of the boat has obtained a fish boat license.

(b) The license fee for a fish boat license is $3.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.006. Skiff License

(a) A boat propelled by oars or poles may not be used in nontidal water to catch fish, oysters, or other edible aquatic products for pay or for the purpose of sale, barter, or exchange unless the owner of the boat has obtained a skiff license and has firmly attached the skiff license to the boat.

(b) The license fee for a skiff license is $1.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.007. Commercial Fishing Boat License

(a) No person may use a boat required to be numbered or registered under the laws of this state or the United States for the purpose of catching or assisting in catching fish, oysters, or any other edible aquatic life, except shrimp and menhaden, from tidal water for pay or for the purpose of sale, barter, or exchange unless the owner of the boat has obtained a commercial fishing boat license.

(b) The license fee for a commercial fishing boat license is $6. Twenty-five cents of the fee may be retained by the issuing officer, except an employee of the department.

(c) A licensee under this section whose boat is destroyed, lost, or put to another use is not required to obtain another license if another boat is used to replace the previous one.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.008. Menhaden Boat License

(a) A boat may not be used for the purpose of catching menhaden in tidal water unless the owner of the boat has acquired a menhaden boat license.

(b) The license fee for each boat is $200 a year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.009. Wholesale Fish Dealer's License

(a) No person may engage in business as a wholesale fish dealer unless he has obtained a wholesale fish dealer's license.

(b) The license fee for a wholesale fish dealer's license is $250 for each place of business.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.010. Wholesale Truck Dealer's Fish License

The license fee for a wholesale truck dealer's fish license is $125 for each truck.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.011. Retail Fish Dealer's License

(a) No person may engage in business as a retail fish dealer unless he has obtained a retail fish dealer's license.

(b) The license fee for a retail fish dealer's license is:

(1) $6 for each place of business in a city or town of less than 7,500 population according to the last preceding federal census;

(2) $15 for each place of business in a city or town of not less than 7,500 nor more than 40,000 population according to the last preceding federal census; and

(3) $20 for each place of business in a city or town of more than 40,000 population according to the last preceding federal census.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.012. Retail Oyster Dealer's License

(a) A retail fish dealer may engage in the business of buying only fresh or frozen oysters for the purpose of sale to the consumer if he obtains a retail oyster dealer's license.

(b) The license fee for a retail oyster dealer's license is $5 for each place of business in a city or town of more than 7,500 population according to the last preceding federal census.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.013. Retail Dealer's Truck License

(a) A person may engage in the business of selling edible aquatic products from a motor vehicle to consumers only if he obtains a retail dealer's truck license.

(b) The license fee for a retail dealer's truck license is $25 for each truck.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.014. Bait Dealer's License

(a) No person may act as a bait dealer unless he has obtained a bait dealer's license.

(b) The license fee for a bait dealer's license is $10 for each place of business.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 214, ch. 105, § 3, eff. Sept. 1, 1977.]

§ 47.015. Seine or Net License

(a) No person may use a seine or net for the purpose of catching edible aquatic life in the water of this state for pay or sale unless he has acquired a seine or net license.

(b) The license fee for a seine or net is $1 for each 100 feet or fraction of 100 feet of the length of the seine or net.

(c) The seine or net license shall be metal and must be firmly attached to each 100 feet or fraction of 100 feet of the length of the seine or net.

(d) A seine or net license may not be issued for any seine or net that is longer than 1,800 feet or whose meshes are less than one and one-half inches from knot to knot.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.016. Menhaden Fish Plant License

(a) No person may operate a menhaden fish plant unless he has obtained a menhaden fish plant license.

(b) Applications for a menhaden fish plant license must be submitted on forms prescribed by the department and accompanied by a $50 filing fee and a certified copy of an order of the commissioners court of the county in which the plant will be located containing:

(1) a description of the plant and its location; and

(2) approval of the court for the construction and operation of the plant.

(c) Decisions of the commissioners court in approving or disapproving the construction of a plant are final and may not be reviewed or appealed.

(d) A menhaden fish plant license shall be issued after a hearing and a finding by the department that the construction and operation of the plant is in the public interest. Regardless of the decision of the department, the $50 filing fee is not refundable.

(e) Notice of the hearing must be given at least 20 days prior to the date set for the hearing to the county judge of the county in which the plant is to be constructed and to all known interested parties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.017. Renewal of Fish Plant License

The department shall renew a menhaden fish plant license on the application of the licensee and on the payment of a $50 renewal fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.018. Interstate Transportation

(a) No person may bring into this state aquatic products for the purpose of offering them for sale unless he has obtained a license issued under this subchapter. Aquatic products caught in another state may not be sold under a general commercial fisherman's license, commercial finfish fisherman's license, or a commercial red drum license.

(b) Aquatic products lawfully taken from the waters of another state may be sold within this state by licensed dealers without regard to size limitations imposed on such products taken within this state. A record of the source and disposition of such undersize or oversize products shall be maintained by the dealer for as long as the undersize or oversize products are retained and for at least 30 days thereafter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1399, ch. 623, § 10, eff. Aug. 27, 1979.]

§ 47.019. Commercial Red Drum License

(a) No person may catch or transport for the purpose of sale or may sell red drum taken from the tidal water of this state unless he has obtained from the department and possesses a valid commercial red drum license.

(b) The commercial red drum license fee is $50.

(c) The department may issue red drum licenses, and a person may obtain a red drum license only during September of each year.

(d) No holder of a commercial red drum license may catch red drum at any time for any purpose other than sale.

(e) A commercial red drum license is valid from October 1 of the year for which it is issued through September 30 of the next year and when catching red drum is permitted during that period.

(f) A person licensed under this chapter as a fish dealer is not required to have a commercial red drum license unless the person catches red drum from the water of this state for sale.

[Added by Acts 1977, 65th Leg., p. 720, ch. 270, § 2, eff. Sept. 1, 1977.]

Sections 15 to 17 of the 1977 Act provided:

"Sec. 15. (a) No person may purchase more than 200 pounds of whole red drum in one day from any one holder of a commercial red drum license or other holder of a commercial fishing license.

"(b) No holder of a commercial red drum license may catch and retain in one day more than 200 pounds of whole red drum. No holder of a commercial red drum license or two or more holders of commercial red drum licenses may possess in a single boat or conveyance more than 200 pounds of whole red drum at any time.

"(c) For the red drum harvest and license year beginning on October 1, 1978, and each year thereafter, the maximum number of pounds of red drum that may be set by the commission under Section 61.065, Parks and Wildlife Code, is 1.6 million pounds and the minimum number that may be set by the commission is 1.4 million pounds.

"(d) Except as provided in this subsection, a person who violates Subsection (a) or (b) of this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than $25 nor more than $200, and on a second or subsequent conviction is punishable by a fine of not less than $200 nor more than $500 and shall forfeit the license under which he is fishing. A person who violates Subsection (b) of this section, whether a first, second, or subsequent conviction, by catching and retaining 300 or more pounds of red drum in a day is guilty if a misdemeanor and is punishable by a fine of not less than $200 nor more than $1,000, by forfeiture of the license under which he is fishing, and by the confiscation of the red drum, nets, and trotlines in his possession.

"(e) Subsections (a) and (b) of this section expire on October 1, 1978.

"Sec. 16. This Act takes effect on September 1, 1977; except that Sections 8, 9, 10, 12, and 14 of this Act take effect on October 1, 1978.

"Sec. 17. Nothing in this Act shall be construed as conferring upon the Parks and Wildlife Department any additional authority not specifically set forth in this Act or not already in existence for opening or closing bay areas to the use of trawls, nets, and saltwater trotlines."

§ 47.020. Commercial Red Drum License: Issuance and Revocation

(a) No person may be issued a red drum license unless the person files with the department at the time he applies for the license an affidavit containing statements that:

(1) not less than 50 percent of the applicant's gainful employment is devoted to commercial fishing;

(2) the applicant is not employed at any full-time occupation other than commercial fishing;

(3) during the period of validity of the commercial red drum license the applicant does not intend to engage in any full-time occupation other than commercial fishing; and

(4) the applicant possesses a commercial fishing license issued by the department under this chapter.

(b) The department shall revoke a commercial red drum fishing license if:

(1) the holder engages in any full-time employment other than commercial fishing;

(2) the holder does not possess a valid commercial fishing license, other than the commercial red drum license;

(3) the affidavit required by this section contains a false statement; or

(4) the holder violates any law or regulation of the commission more than one time providing for the conservation and protection of red drum.

(c) If any person executes and files with the department an affidavit under this section that contains a false statement knowingly made by the person, the department shall revoke each commercial fishing license held by the person at the time the determination is made.

[Added by Acts 1977, 65th Leg., p. 721, ch. 270, § 3, eff. Sept. 1, 1977.]

[Sections 47.021 to 47.030 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO COMMERCIAL FISHING LICENSES

§ 47.031. Expiration of Licenses

(a) Except as provided in Subsections (b) and (c) of this section, all licenses issued under this chapter expire August 31 following the date of issuance.

(b) A menhaden boat license expires one year from the date of issuance.

(c) A menhaden fish plant license expires one year from the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.032. Refusal of License

(a) Except as provided in Subsection (b) of this section, no person owing the state any amount for a license or fee under a final judgment of a court may receive a license under this chapter until the indebtedness is satisfied by payment to the department.

(b) Subsection (a) of this section does not apply to applicants for a tidal water commercial fisherman's license, commercial fishing boat license, menhaden boat license, or menhaden fish plant license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.033. Display of License

All licenses, except a tidal water commercial fisherman's license, commercial fishing boat license, menhaden boat license, and menhaden fish plant license, must be publicly displayed at all times in the place of business of the licensee. Licenses required for vehicles transporting aquatic products for sale must be displayed in the vehicle.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.034. Fish Size

(a) No person engaged in business as a commercial fisherman or wholesale or retail fish dealer may possess in his place of business or on a boat or vehicle for the purpose of sale those species of fish of greater or lesser length than set out in Subsection (c) of this section.

(b) No person may buy, sell, or offer for sale those species of fish of greater or lesser length than set out in Subsection (c) of this section.

(c) The maximum and minimum length of fish are as follows:

Fish	Maximum Length	Minimum Length
Redfish or channel bass	35 inches	14 inches
Flounder and speckled sea trout	None	12 inches
Sheephead and pompano	None	9 inches
Mackerel	None	14 inches
Gaff topsail	None	11 inches

(d) This section does not prohibit the processing and selling of lawful fish by cutting, filleting, wrapping, freezing, or otherwise preparing the fish for market.

(e) The possession of saltwater species of fish of greater or lesser length than set out in Subsection (c) of this section on board a licensed commercial shrimp boat engaged in the taking of shrimp or returning to port after taking shrimp is not a violation of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1214, ch. 456, § 13(*l*), eff. Sept. 1, 1975.]

§ 47.035. Prima Facie Evidence

Proof of possession of any undersized or oversized fish in the place of business of any wholesale or retail fish dealer or on board any boat engaged in commercial fishing or in any commercial vehicle is prima facie evidence of possession for the purpose of sale.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.036. Venue

Venue for a suit for possession of undersized or oversized fish is in the county where the illegal fish are found in possession, where the illegal fish are sold or offered for sale, or from which the illegal fish are shipped.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.037. Inspection

No person may refuse to allow an employee of the department to inspect aquatic products handled by or in the possession of any commercial fisherman, wholesale fish dealer, or retail fish dealer at any time or in any place.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.038. Seines or Nets for Menhaden

(a) Nets or purse seines used for catching menhaden may not be:

(1) less than one and one-half inch stretched mesh, excluding the bag;

(2) used in any bay, river, pass, or tributary, nor within one mile of any barrier, jetty, island, or pass, nor within one-half mile offshore in the Gulf of Mexico; or

(3) used for the purpose of taking edible aquatic products for the purpose of barter, sale, or exchange.

(b) No person lawfully catching menhaden in the tidal water of this state may sell, barter, or exchange any edible aquatic products caught in a menhaden seine or net. Possession of edible aquatic fish in excess of five percent by volume of menhaden fish in possession is a prima facie violation of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 47.039 to 47.050 reserved for expansion]

SUBCHAPTER C. PENALTIES, DISPLAY OF LICENSE, AND TRANSFER OF FUNDS

§ 47.051. Penalty

A person who violates a provision of Section 47.002, 47.004 through 47.006, 47.009 through 47.015, 47.017, 47.032 through 47.034, or 47.037, of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200 and is subject to the forfeiture, for one year from the date of the conviction, of a license held under the authority of the listed sections.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.052. Penalty

(a) A person who fails to comply with or who violates a provision of Section 47.007 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $1,000, by confinement in jail for not less than one month nor more than one year, or by both.

(b) The department may seize boats, nets, seines, trawls, or other tackle in the possession of a person violating the sections listed in Subsection (a) of this section and hold them until after the trial of the person.

(c) Violations of the above sections may also be enjoined by the attorney general by suit filed in a district court in Travis County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 550, ch. 260, art. 4, § 2, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1399, ch. 623, § 11, eff. Aug. 27, 1979.]

§ 47.053. Penalty

(a) A person who violates a provision of Section 47.008, 47.016, or 47.038, of this code is guilty of a misdemeanor and on first conviction is punishable by a fine of not less than $20 nor more than $100. On second conviction, the violator is punishable by a fine of not less than $50 nor more than $500.

(b) A licensee under any of the above sections who violates any of the above sections is also subject to suspension of his license for not less than 7 days nor more than 30 days at the discretion of the department on first conviction for a violation. On second conviction, the licensee is subject to revocation of his license for six months after the date of conviction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 550, ch. 260, art. 4, § 3, eff. Sept. 1, 1979.]

§ 47.0531. Penalty: Red Drum License

(a) A person who violates Section 47.019 of this code is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than $25 nor more than $200. On a second or subsequent conviction, the person is punishable by a fine of not less than $200 nor more than $500.

(b) Nets, trotlines, and all red drum in possession of a person violating Section 47.019 of this code shall be confiscated.

[Added by Acts 1977, 65th Leg., p. 721, ch. 270, § 4, eff. Sept. 1, 1977.]

§ 47.054. Refusal to Show License

A person catching fish for the purpose of market or sale who refuses to show his license to an authorized employee of the department upon request is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.055. Disposition of Funds

Money received for licenses issued under this chapter or fines paid for violations of this chapter, less allowable deductions, shall be sent to the department by the 10th day of the month following receipt.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 48. FISH FARMER'S LICENSE

Section

48.001. Definitions.
48.002. Fish Farmer's License Required.
48.003. Fish Farm Vehicle License Required.
48.004. Bill of Lading Required for Certain Vehicles.
48.005. License Fees.
48.006. Form and Duration of License.
48.007. Additional Fish Farmer's Licenses.
48.008. Records.
48.009. Harvesting and Sale of Fish.
48.010. Sales of Bass and Crappie Limited.
48.011. Federal Grants.
48.012. Penalties.
48.013. Fish Farms Protected.

§ 48.001. Definitions

In this chapter:

(1) "Fish farmer" means any person engaged in the business of producing, propagating, transporting, possessing, and selling fish raised in a private pond, but does not include a person engaged in the business of producing, propagating, transporting, possessing, and selling fish propagated for bait purposes.

(2) "Private pond" means a pond, reservoir, vat, or other structure capable of holding fish in confinement wholly within or on the enclosed land of an owner or lessor.

(3) "Owner" means a fish farmer licensed by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.002. Fish Farmer's License Required

No person may be a fish farmer without first having acquired from the department a fish farmer's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.003. Fish Farm Vehicle License Required

(a) Except as provided by Subsection (b) of this section, a vehicle used to transport fish from a fish farm for sale from the vehicle is required to have a fish farm vehicle license.

(b) A fish farm vehicle license is not required for a vehicle owned and operated by the holder of a fish farmer's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.004. Bill of Lading Required for Certain Vehicles

A vehicle, from which no fish sales are made, transporting fish from a fish farm shall carry a bill of lading that shows the number and species of fish carried, the name of the owner and the location and license number of the fish farm from which the fish were transported, and the destination of the cargo.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.005. License Fees

The department shall issue a fish farmer's license or a fish farm vehicle license on the payment of $5 for each license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.006. Form and Duration of License

(a) A fish farmer's license and a fish farm vehicle license must be on a numbered form provided by the department.

(b) A license is valid from September 1 or the date of issue, whichever is later, through the following August 31.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.007. Additional Fish Farmer's Licenses

A fish farmer holding a fish farmer's license may acquire additional licenses for display in or on additional premises or vehicles on payment to the department of $1 for each additional license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.008. Records

The holder of a fish farmer's license shall maintain a record of the sales and shipments of fish. The record is open for inspection by designated employees of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.009. Harvesting and Sale of Fish

Fish of any size from a fish farm may be harvested and sold at any time and in any county.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.010. Sales of Bass and Crappie Limited

(a) Except as provided in Subsection (b) of this section, no person may sell bass or crappie from a fish farm for consumption or for resale.

(b) Bass and crappie may be sold for resale to a licensed fish farmer only, and to any person for stocking purposes.

(c) Other kinds of fish from a fish farm may be sold for any purpose.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.011. Federal Grants

Federal grants for research and development of commercial fisheries may be used for individual fishery projects with the approval of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.012. Penalties

Any person who violates any provision of this chapter for which a specific penalty is not provided is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.013. Fish Farms Protected

(a) No person, other than the owner or operator of a fish farm or a person with the owner's or operator's consent, may fish on or take fish from a fish farm.

(b) Except as provided in Subsection (c) of this section, a person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

(c) A person who violates this section by taking fish of a value of more than $200 is guilty of a felony and on conviction is punishable by imprisonment in the penitentiary for not more than 10 years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 49. FALCONRY PERMIT

Section

49.001. Definitions.
49.002. Prohibited Acts.
49.003. Apprentice Falconer's Permit.
49.004. General Falconer's Permit.
49.0045. Master Falconer's Permit.
49.0047. Joint Federal-State Permits.
49.005. Raptor Limit.
49.006. Renewal.
49.007. Renewal Fees.
49.008. Nonresident Falconer's Permit.
49.009. Reciprocity.
49.010. Hunting.
49.011. Sale of Raptors.
49.012. Property of State.
49.013. Transportation of Raptors.
49.014. Powers of Department.
49.015. Rare or Endangered Species.
49.016. Advisory Board.
49.017. Penalties.

§ 49.001. Definitions

In this chapter:

(1) "Nonresident" means an individual, other than an alien, who has not been a resident of this state for more than six months immediately before applying for a falconry permit.

(2) "Alien" means an individual who is not a citizen of the United States and who has not declared his intention to become a citizen.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.002. Prohibited Acts

(a) Except as provided in Subsection (b) of this section, no person may take, capture, or possess, or attempt to take or capture, any native raptors unless he has obtained a permit issued under this chapter.

(b) A person may collect and hold protected species of wildlife for scientific, zoological, and propagation purposes if he holds a permit issued by the department for that purpose.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.003. Apprentice Falconer's Permit

The department may issue an apprentice falconer's permit to any person who:

(1) is at least 14 years of age;

(2) is sponsored by the holder of a general falconer's or a master falconer's permit;

(3) submits an application on forms prescribed by the department; and

(4) submits a $20 original permit fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 116, ch. 57, § 1, eff. Sept. 1, 1977.]

Section 11 of the 1977 Act provided:

"This Act takes effect September 1, 1977. A permit issued before the effective date of this Act under Chapter 49, Parks and Wildlife Code, remains valid as provided under the law under which it was issued until the date of its renewal."

§ 49.004. General Falconer's Permit

The department may issue a general falconer's permit to any person who:

(1) is at least 18 years of age;

(2) has at least two years of hunting experience with raptors under an apprentice falconer's permit or its equivalent;

(3) submits an application on forms prescribed by the department; and

(4) submits a $30 original permit fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 116, ch. 57, § 2, eff. Sept. 1, 1977.]

§ 49.0045. Master Falconer's Permit

The department may issue a master falconer's permit to any person who:

(1) is at least 21 years of age;

(2) has at least five years of hunting experience with raptors under a general falconer's permit or its equivalent;

(3) submits an application on forms prescribed by the department; and

(4) submits a $40 original permit fee.

[Added by Acts 1977, 65th Leg., p. 116, ch. 57, § 3, eff. Sept. 1, 1977.]

§ 49.0047. Joint Federal-State Permits

The department may issue joint federal-state falconer's permits as allowed by the regulations of the U. S. Fish and Wildlife Service.

[Added by Acts 1977, 65th Leg., p. 116, ch. 57, § 4, eff. Sept. 1, 1977.]

§ 49.005. Raptor Limit

(a) The holder of a falconer's permit may take, possess, and transport only the number of raptors allowed by regulation of the commission for the kind of permit held.

(b) The department shall designate species of raptor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 117, ch. 57, § 5, eff. Sept. 1, 1977.]

§ 49.006. Renewal

(a) A falconer's permit expires on June 30 of the second calendar year following the date of issuance.

(b) Applications for renewal must be accompanied by the renewal fee and a report prescribed by the department accounting for all activities during the license period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 117, ch. 57, § 6, eff. Sept. 1, 1977.]

§ 49.007. Renewal Fees

The renewal fee for each falconer's permit is $10.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 117, ch. 57, § 7, eff. Sept. 1, 1977.]

§ 49.008. Nonresident Falconer's Permit

(a) A nonresident falconer's permit may be issued by the department to a nonresident or alien entitled to a nonresident hunting license.

(b) An applicant for a nonresident falconer's permit must submit an application on forms prescribed by the department and a $5 permit fee.

(c) The permit is valid for five consecutive days.

(d) The holder of this permit may hunt with the aid of a validly held raptor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.009. Reciprocity

A person holding raptors under a valid license issued by another state and establishing permanent residence in this state must apply to the department within 10 days for a falconer's permit from this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.010. Hunting

The holder of a valid permit issued under this chapter and a valid hunting license may hunt native species of wild birds, wild animals, and migratory game birds during the open season and may hunt unprotected species of wildlife.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.011. Sale of Raptors

(a) Except as permitted in Subsection (b) of this section, no person may buy, sell, barter, or exchange, or offer to buy, sell, barter, or exchange, a raptor in this state.

(b) The holder of a falconer's permit may, with approval of the department, exchange a raptor with another holder of a falconer's permit if there is no consideration for the exchange other than the raptors exchanged.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 117, ch. 57, § 8, eff. Sept. 1, 1977.]

§ 49.012. Property of State

All raptors captured, taken, or held in this state remain the property of the people of the state except as provided in this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.013. Transportation of Raptors

The department may issue a special permit to transport raptors out of the state on application of a permittee holding raptors who is permanently leaving the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.014. Powers of Department

The department may:

(1) prescribe reasonable rules and regulations for taking and possessing raptors, time and area from which raptors may be taken, and species that may be taken;

(2) provide standards for possessing and housing raptors held under a permit;

(3) prescribe annual reporting requirements and procedures;

(4) prescribe eligibility requirements for any falconry permit; and

(5) require and regulate the identification of raptors held by permit holders.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 117, ch. 57, § 9, eff. Sept. 1, 1977.]

§ 49.015. Rare or Endangered Species

The department shall insure that the taking and possessing for falconry purposes of raptors classified as rare or endangered by this state, the regulations of the department, or the United States Bureau of Sports, Fisheries, and Wildlife are restricted to competent and experienced individuals and to numbers consistent with good management practices and the current population status of the individual species or subspecies involved.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 117, ch. 57, § 10, eff. Sept. 1, 1977.]

§ 49.016. Advisory Board

(a) The department shall establish an advisory board consisting of three mature and experienced falconers.

(b) Members of the advisory board shall be selected by the department from nominees submitted by the Texas Hawking Association, the North American Falconers Association, or any unaffiliated resident falconers.

(c) The advisory board shall advise the department on the development and implementation of the rules and regulations issued under this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.017. Penalties

A person who violates a provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200 for each violation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 50. COMBINATION HUNTING AND FISHING LICENSE

Section
50.001. Combination License Authorized.
50.002. License Fee.
50.003. Other Licenses Not Required.
50.004. Form; Duplicate License.
50.005. Holder Shall Comply With Other Law.

§ 50.001. Combination License Authorized

The department may issue to residents of this state a combination hunting and fishing license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 50.002. License Fee

The fee for the combination license is $8.75. Authorized agents of the department, other than employees of the department, may retain 25 cents of the fee as a collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 50.003. Other Licenses Not Required

A resident who has acquired a combination hunting and fishing license is not required to obtain the hunting license required by Chapter 42 of this code or the fishing license required by Chapter 46 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 50.004. Form; Duplicate License

(a) The department shall prescribe the form of the license and shall attach to it deer tags as provided in Chapter 42 of this code.

(b) Duplicate licenses may be issued for the same fee and in the same manner as hunting licenses under Chapter 42 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 50.005. Holder Shall Comply With Other Law

A holder of a combination hunting and fishing license shall comply with and is subject to the penalties in Chapters 42 and 46 of this code, unless those requirements or penalties conflict with this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 51. SHELLFISH CULTURE LICENSE

Section
51.001. Definitions.
51.002. License Required.
51.003. License for Each Premises.
51.004. Issuance of License; Period of Validity.
51.005. License Fee.
51.006. Shipments of Shellfish.
51.007. Records.
51.008. Harvest and Sale of Shellfish.
51.009. Exotic Shellfish Permit Required.
51.010. Permits for Taking Brood Stock.
51.011. Penalty.

§ 51.001. Definitions

In this chapter:

(1) "Shellfish culture" means the business of producing, propagating, transporting, selling, or possessing for sale shellfish raised in private ponds or reservoirs in this state.

(2) "Shellfish" means aquatic species of crustaceans and mollusks, including oysters, clams, shrimp, prawns, crabs, and crayfish of all varieties.

(3) "Private pond" means a pond, reservoir, vat, or other structure capable of holding shellfish in confinement wholly within or on privately owned enclosed land.

(4) "Exotic shellfish" means shellfish imported alive into this state for shellfish culture purposes, but does not include shellfish taken from the high seas adjacent to the Texas coast.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.002. License Required

No person may engage in shellfish culture in this state unless he has first acquired a shellfish culture license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.003. License for Each Premises

A separate license is required for each tract of land on which a private pond is used for shellfish culture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.004. Issuance of License; Period of Validity

(a) The department shall issue the shellfish culture license, and each license shall be numbered on a form provided by the department.

(b) A license is valid during the license year for which it is issued. The license year begins September 1 and extends through August 31 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.005. License Fee

The fee for a shellfish culture license is $25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.006. Shipments of Shellfish

Vehicles transporting shellfish to or from a licensed facility shall carry a bill of lading showing:

(1) the name, location, and license number of the shellfish culturist;

(2) the quantity and species of shellfish; and

(3) the source and destination of the shellfish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.007. Records

(a) The holder of a shellfish culture license shall make and keep records showing purchases, sales, and shipments of shellfish.

(b) The records are open to inspection by authorized employees of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.008. Harvest and Sale of Shellfish

(a) Shellfish produced by a shellfish culturist may be harvested by any means and may be of any size.

(b) Subject to health regulations, shellfish produced by a shellfish culturist may be sold any time and in any county to any person.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.009. Exotic Shellfish Permit Required

(a) No person may import, possess, propagate, or transport exotic shellfish unless he has acquired a permit from the department.

(b) The department may not issue a permit to any shellfish culturist for exotic shellfish unless the applicant furnishes sufficient evidence showing that the shellfish are free of disease.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.010. Permits for Taking Brood Stock

(a) The department may issue permits to shellfish culturists or their agents authorizing the taking of a reasonable quantity of shellfish brood stock during a closed season, in closed public waters, or of any size.

(b) The permits shall show:

(1) the name, address, and license number of the shellfish culturist;

(2) the period of time during which brood fish may be taken;

(3) the place where taking is allowed;

(4) the species and number of shellfish to be taken; and

(5) the method of taking.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.011. Penalty

A person who violates any provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBTITLE B. HUNTING AND FISHING

CHAPTER 61. UNIFORM WILDLIFE REGULATORY ACT

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61.001. Title.
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61.003. Applicability of Chapter.
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SUBCHAPTER F. PENALTIES

Section
61.901. Penalties.
61.902. Penalties: Red Drum Violations.

SUBCHAPTER A. GENERAL PROVISIONS

§ 61.001. Title

This chapter may be cited as the Uniform Wildlife Regulatory Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.002. Purpose

The purpose of this chapter is to provide a method for the conservation of an ample supply of wildlife resources in the places covered by this chapter to insure reasonable and equitable enjoyment of the privileges of ownership and pursuit of wildlife resources. This chapter provides a flexible law to enable the commission to deal effectively with changing conditions to prevent depletion and waste of wildlife resources.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.003. Applicability of Chapter

Title 7 of this code prescribes the counties, places, and wildlife resources to which this chapter applies.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.004. Applicability of Additional Counties

A law making this chapter applicable to all or a portion of the wildlife resources of a county or place repeals any provision of general or special law regulating the taking of those wildlife resources when the commission's proclamation relating to those wildlife resources in the county or place takes effect.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.005. Definitions

In this chapter:

(1) "Hunt" includes take, kill, pursue, trap, and the attempt to take, kill, or trap.

(2) "Wildlife resources" means all game animals, game birds, fur-bearing animals, alligators, marine animals, fish, and other aquatic life.

(3) "Depletion" means the reduction of a species below its immediate recuperative potential by any deleterious cause.

(4) "Waste" means a supply of a species or one sex of a species in sufficient numbers that a seasonal harvest will aid in the reestablishment of a normal number of the species.

(5) "Daily bag limit" means the quantity of a species of game that may be taken in one day.

(6) "Possession limit" means the maximum number of a species of game that may be possessed at one time.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.006 to 61.020 reserved for expansion]

SUBCHAPTER B. PROHIBITED ACTS

§ 61.021. Taking Wildlife Resources Prohibited

Except as permitted under a proclamation issued by the commission under this chapter, no person may hunt or possess a game bird, game animal, or fur-bearing animal, or catch a fish, marine animal, or other aquatic life at any time or in any place covered by this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.022. Taking Wildlife Resources Without Consent of Landowner Prohibited

No person may hunt or possess a game animal, game bird, or fur-bearing animal, or catch a fish, marine animal, or other aquatic life at any time and at any place covered by this chapter unless the owner of the land or water, or the owner's agent, consents.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.023 to 61.050 reserved for expansion]

SUBCHAPTER C. REGULATORY DUTIES

§ 61.051. Duty to Investigate and Study Wildlife Resources

(a) The department shall conduct scientific studies and investigations of all species of wildlife resources to determine:

(1) supply;

(2) economic value;

(3) environments;

(4) breeding habits;

(5) sex ratios;

(6) effects of hunting, trapping, fishing, disease, infestation, predation, agricultural pressure, and overpopulation; and

(7) any other factors or conditions causing increases or decreases in supply.

(b) The studies and investigations may be made periodically or continuously.

(c) The commission shall make findings of fact based on the studies and investigations of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.052. General Regulatory Duty

(a) The commission shall regulate the periods of time when it is lawful to take wildlife resources in the places covered by this chapter.

(b) The commission shall regulate the means, methods, manners, and places in which it is lawful to take wildlife resources in the places covered by this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.053. Open Seasons

The commission shall provide open seasons for the taking of wildlife resources if its investigations and findings of fact reveal that open seasons may be safely provided or if the threat of waste requires an open season to conserve wildlife resources.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.054. Proclamations of the Commission

(a) Regulation of the taking of wildlife resources under this chapter shall be by proclamation of the commission.

(b) A proclamation of the commission authorizing the taking of wildlife resources must specify:

(1) the species, quantity, age or size, and, to the extent possible, the sex of the wildlife resources authorized to be taken;

(2) the means or method that may be used to take the wildlife resources; and

(3) the region, county, area, or portion of a county where the wildlife resources may be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.055. Amendments and Revocations

(a) If the commission finds that there is a danger of depletion or waste, it shall amend or revoke its proclamations to prevent the depletion or waste and to provide to the people the most equitable and reasonable privilege to pursue, take, and kill wildlife resources.

(b) The commission may amend or revoke its proclamations at any time it finds the facts warrant a change.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.056. Proclamations Concerning Certain Deer, Antelope, and Elk

A proclamation of the commission authorizing the taking of antlerless deer, antelope, and elk is not effective for a specific tract of land unless the owner or other person in charge of the land agrees in writing to the removal and to the number of antlerless deer, antelope, or elk authorized to be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.057. Antlerless Deer, Antelope, and Elk Permits

(a) Except as provided in Subsection (c) of this section, no person may hunt an antlerless deer, antelope, or elk without first having acquired an antlerless deer, antelope, or elk permit issued by the department on a form provided by the department.

(b) The permit may be distributed by the department or by the owner or other person in charge of a tract of land where hunting is authorized and which is subject to an agreement under Section 61.056 of this code. An owner or other person in charge of land may distribute permits only for the land he owns or is in charge of.

(c) When conditions warrant, the commission may allow hunting of antlerless deer, antelope, or elk without a permit. The proclamation allowing hunting without a permit must be specific as to the county or portion of a county to which it applies.

(d) No person may sell or trade a permit authorized by this section for anything of value.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.058 to 61.060 reserved for expansion]

SUBCHAPTER C–1. REGULATION OF COMMERCIAL FISHING

§ 61.061. Finfish Research

The department shall conduct continuous research and study of:

(1) the supply, economic value, environment, and breeding habits of the various species of finfish, including red drum;

(2) factors affecting the increase or decrease of finfish supply;

(3) the use of trawls, nets, and other devices for the taking of finfish;

(4) the effect on finfish of industrial and other types of water pollution in areas naturally frequented by finfish; and

(5) statistical information gathered by the department on the marketing, harvesting, processing, and catching of fish landed in this state.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

§ 61.062. Reports

(a) The department shall make findings and issue reports based on the research required by Section 61.061 of this code.

(b) The findings and reports shall be filed in the permanent records of the department.

(c) The reports and findings must include recommendations for opening or closing bay areas to the use of trawls, nets, and saltwater trotlines when the studies indicate appropriate action to prevent waste or avoid depletion of red drum and other desirable finfish.

(d) Before the convening of each regular session of the legislature, the department shall publish and present to the governor and the legislature a special report on studies, findings, recommendations, and actions taken under this subchapter.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

§ 61.063. Red Drum: Prohibitions

No person may catch red drum for sale:

(1) in excess of the harvest limits set by the commission under this chapter;

(2) by a method or means not permitted by the regulations of the commission issued under this chapter; or

(3) at a time or a place prohibited by a regulation of the commission under this chapter.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

§ 61.064. Proclamations: Red Drum

The commission shall provide for the means, manner, and methods for taking red drum for sale, the times and places for taking red drum for sale, and the maximum individual and collective retention limits for the taking of red drum for sale.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

§ 61.065. Yearly Harvest Limits

The commission shall set the maximum number of pounds of red drum that may be taken for sale from each of the eight bay areas of the Texas coast and from the Gulf of Mexico within the state during each yearly period beginning on October 1 of a year and extending through September 30 of the following year.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

Section 15(c) of the 1977 Act provided:

"For the red drum harvest and license year beginning on October 1, 1978, and each year thereafter, the maximum number of pounds of red drum that may be set by the commission under Section 61.065, Parks and Wildlife Code, is 1.6 million pounds and the minimum number that may be set by the commission is 1.4 million pounds."

§ 61.066. Closing Water

(a) When the department determines through statistical data that 90 percent of the allowable red drum for the yearly period has been taken for sale from a bay system, the commission shall issue a proclamation closing the bay system to the taking of red drum during the remainder of the yearly period.

(b) The hearing required by Section 61.101 of this code is not required prior to the issuance of a proclamation under this section.

(c) In addition to the requirements of Section 61.105 of this code, the department shall provide for adequate notice of a proclamation under this section closing a bay for the taking for sale of red drum.
[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

§ 61.067. Sale of Red Drum From Closed System

No person may purchase or sell a red drum taken from a closed bay system after the effective date of a proclamation closing the bay system under Section 61.066 of this code.
[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

§ 61.068. Access to Records of Red Drum Sales

(a) Not later than 72 hours after a sale of red drum, the department is entitled to examine and shall have access to cash sale tickets showing the sale of red drum.

(b) A cash sale ticket must include:

(1) the name of the seller;

(2) the red drum license number of the seller;

(3) the number of pounds of red drum sold;

(4) the date of the sale; and

(5) the name of the bay system or the area of Gulf of Mexico water from which the red drum were taken.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

[Sections 61.069 to 61.100 reserved for expansion]

SUBCHAPTER D. ADMINISTRATIVE PROCEDURES

§ 61.101. County Hearing on Proclamation

(a) Before a proclamation of the commission may be adopted, the department shall hold a public hearing in the county to be affected by the proclamation.

(b) The hearing may be conducted by a member of the commission or by any designated employee of the department. This subsection does not require the presence of a member at any county hearing.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.102. Notice on County Hearing

Notice of the hearing must be given in a newspaper published in the county at least 10 days before the date of the hearing. If no newspaper is published in the county, the notice must be given in a newspaper published in an adjoining county and having wide circulation in the county in which the hearing is to be held.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.103. Adoption of Proclamations

(a) A proclamation under this chapter must be adopted by a quorum of the commission at a meeting of the commission held in the commission's office in Austin.

(b) A proclamation may be adopted at any special or regular meeting of the commission, for which the date and time are designated by the commission.

(c) Any person interested in a proclamation is entitled to be heard at the meeting and may introduce evidence on the imminence of depletion or waste.

(d) For the purpose of adopting a proclamation under this chapter, a quorum of the commission is four members.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.104. Effective Date and Duration of Proclamations

(a) Except as provided in Subsection (b) of this section, a proclamation takes effect at the time determined by the commission. The time designated by the commission may not be earlier than 20 days after the day the proclamation is adopted by the commission.

(b) If the commission finds that there is an immediate danger of depletion in any area as to a species, the commission may declare a state of emergency, and a proclamation issued under the state of emergency takes effect on issuance.

(c) A proclamation of the commission continues in effect until it expires by its own terms or until it is amended or repealed.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 549, ch. 260, art. 2, § 1, eff. Sept. 1, 1979.]

§ 61.105. Copies of Proclamations

On the adoption of a proclamation, a copy shall be numbered and filed in the office of the commission in Austin. A copy shall be filed with the secretary of state. A copy shall be sent to each county clerk for filing and to each county attorney of a county affected by the proclamation.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 549, ch. 260, art. 2, § 2, eff. Sept. 1, 1979.]

§ 61.106. Judicial Review of Proclamation

(a) The venue for any suit challenging the validity of a proclamation of the commission under this chapter is in Travis County.

(b) The party complaining of a proclamation has the burden of proof to show invalidity.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.107 to 61.200 reserved for expansion]

SUBCHAPTER E. PROVISIONS AFFECTING LIMITED AREAS

§ 61.201. Lake Tawakoni

The commission's regulations for Lake Tawakoni shall be uniform for the entire lake.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.202. Approval of Certain County Commissioners Courts

(a) No proclamation of the commission is effective in a county listed in Subsection (e) of this section unless it has been approved by the commissioners court of the county.

(b) The commissioners court of a county listed in Subsection (e) of this section shall approve or disapprove a proclamation, in whole or in part, at the first regular meeting occurring more than five days after it receives notification of the adoption of a proclamation affecting the county.

(c) If the commissioners court approves the proclamation, it takes effect at the time the commission has designated or immediately on its approval, whichever is later.

(d)(1) If the commissioners court of Bandera, Coke, Crockett, Dimmit, Edwards, Frio, Grayson, Hays, Kinney, Lampasas, Medina, Reagan, Robertson, Sutton, Val Verde, or Zavala county disapproves a proclamation, the taking of wildlife resources in the county is governed by the previous year's proclamation. After disapproval of a proclamation, no public hearing on a similar proposed proclamation may be held within six months of the disapproval, unless the commissioners court certifies to the commission that there has occurred a material change in the surrounding circumstances which requires a public hearing before the end of the six-month period.

(2) If the commissioners court of Brooks, Comal, Gillespie, Kerr, Kimble, Llano, Mason, Menard, Real, Refugio, San Saba, Schleicher, or Uvalde county disapproves a proclamation, or part of a proclamation, the taking of wildlife resources in the county is governed either by the general law of this state or by the proclamations of the prior year, to be determined by order of the commissioners court, until such time as the commissioners court approves of subsequent proclamations of the commission. If the commissioners court fails to designate either the general law or the proclamations for the prior year, the law or proclamation in effect for the prior year continues in effect. After disapproval of a proclamation, no public hearing on a similar proposed proclamation may be held within six months of the disapproval, unless the commissioners court certifies to the commission that there has occurred a material change in the surrounding circumstances which requires a public hearing before the end of the six-month period.

(e) This section applies only to Bandera, Coke, Brooks, Comal, Crockett, Dimmit, Edwards, Grayson, Frio, Gillespie, Hays, Kerr, Kimble, Kinney, Lampasas, Llano, Mason, Medina, Menard, Reagan, Real, Refugio, Robertson, San Saba, Schleicher, Sutton, Uvalde, Val Verde, and Zavala counties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1222, ch. 456, § 21, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1256, ch. 484, § 2, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 524, ch. 247, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1004, ch. 440, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1013, ch. 447, § 2, eff. June 6, 1979.]

§ 61.203. Trotlines and Crab Traps in Aransas County

(a) The commission shall regulate the use of trotlines and crab traps outside the net-free zone in Aransas County to protect persons engaged in fishing, boating, and other water sports.

(b) The regulations may require spacing and marking of trotlines and crab traps and may authorize the seizure of abandoned trotlines and traps.

(c) The regulations under this section shall be adopted in the same manner as other regulations under this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.204. Repealed by Acts 1977, 65th Leg., p. 802, ch. 279, § 1, eff. Aug. 29, 1977

The repealed section, relating to limitations in Trans-Pecos Counties, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

§ 61.205. Deer in Dimmit, Uvalde, and Zavala Counties

(a) The commission shall maintain in Dimmit, Uvalde, and Zavala counties a deer herd and breeding stock of productive excellence that will assure harvest of buck deer of the size and quality for which these counties are noted.

(b) When investigations and findings of fact disclose that there is a danger of losing quality deer because of waste, depletion, or other controllable factors, the commission shall regulate the season, harvest limits, and the type, size, and sex of deer to maintain and recover the standard of excellence.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.206. Storage and Processing of Deer in Lampasas County

(a) The commission may regulate the making and maintenance of records by a bailee for hire accepting deer for storage or for processing. This section applies to Lampasas County only.

(b) A bailee for hire shall record the name and address of each bailor of deer, the date of the bailment, the name and address of every person who

removes deer from storage (if processing is not done by the bailee), and the date of removal of the unprocessed deer. If the bailee processes the deer, he shall remove the deer tag, if any, at the time of processing. The records required by this section may be entered in the usual and customary books of account, or in a simple journal if no other records are maintained by the bailee.

(c) The records required by this section and the tags removed from processed deer shall be kept for at least four months after the record is made or the tag removed. After the four-month period, the bailee may destroy the records and tags.

(d) An authorized representative of the commission may inspect deer held for storage and deer tags held by the bailee during normal business hours and without causing undue interference of the bailee's business. A bailee for hire shall give to an authorized representative of the commission any deer tag held by the bailee, the name and address of any person removing deer from storage, and the date of any removal if the authorized representative makes a request for the tag or information during the four-month period after a bailment and the delivery of a proper receipt for the bailment. A bailee who complies with a proper request by giving a deer tag or information to an authorized representative is not liable to any person damaged as a result of compliance.

(e) Regulations of the commission under this section may not require a more onerous standard of conduct or duty than the minimum requirements of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.207. Trailing Deer With Dogs in Panola County

The commission may regulate or prohibit the hunting and trailing of buck deer on any tract of 10,000 or more contiguous acres of land in Panola County which is designated as a preserve for restocking deer under the regulations of the commission and the Department of Interior of the United States and by state and federal law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.208. Special Archery Season for Certain Tract

(a) This section applies only to the tract of land described by Section 1, Chapter 646, Acts of the 59th Legislature, Regular Session, 1965.

(b) The commission shall:

(1) provide an archery season for the taking of buck and doe deer from October 1 through October 31; and

(2) require a special nonresident hunting license for the taking of deer and javelina by bow and arrow during the archery season required by this section.

(c) The nonresident hunting license fee is $5 and the license is valid for five days only.

(d) It is lawful to:

(1) hunt javelina with bow and arrow of legal specifications at any time;

(2) hunt javelina with firearms during the archery season for deer; and

(3) hunt deer of either sex during the archery season.

(e) No person may use a crossbow at any time.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.209 to 61.900 reserved for expansion]

SUBCHAPTER F. PENALTIES

§ 61.901. Penalties

(a) Except as provided in this section, a person who violates any provision of this chapter or any proclamation or regulation of the commission issued under the authority of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each game animal, game bird, fur-bearing animal, or fish taken in violation of this chapter or of a proclamation or regulation of the commission constitutes a separate offense.

(b) A person who violates a proclamation or regulation of the commission by the use of artificial lights in Hardin, Jasper, Newton, Orange, or Tyler counties is guilty of a misdemeanor and on conviction is punishable by confinement in jail for not less than 3 nor more than 90 days, or by a fine of not less than $50 nor more than $200, or by both.

(c) A person who violates a proclamation or regulation of the commission regulating the use and possession of nets, seines, trawls, traps, or other devices used for catching aquatic life, except shrimp, in the inside water of this state is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than $25 nor more than $200 and on a second or subsequent conviction is punishable by a fine of not less than $50 nor more than $500.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 381, ch. 190, §§ 1, 2, eff. May 20, 1977.]

§ 61.902. Penalties: Red Drum Violations

A person who violates a proclamation issued under Subchapter C–1 of this chapter or Sections 61.067 or 61.068 of this code shall on a first offense be punished as provided in Section 61.901 of this code. On

a second or subsequent conviction of a violation of a proclamation issued under Subchapter C–1 of this chapter or of a violation of Sections 61.067 or 61.068 of this chapter, the person is guilty of a misdemeanor and is punishable by a fine of not less than $200 nor more than $500 and each commercial fishing license held by the person shall be forfeited.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 7, eff. Sept. 1, 1977.]

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SUBCHAPTER A. GENERAL PROVISIONS

§ 62.001. Definitions

For the purpose of enforcement of the game laws of this state:

(1) "Closed season" means the period of time during which it is unlawful to hunt a game animal, wild fowl, or bird.

(2) "Open season" means the period of time during which it is lawful to hunt a specified animal, game animal, wild fowl, or bird.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.002. Hunting With Certain Weapons

(a) No person may use a .22 caliber jetgun, rocketgun, or firearm that uses rimfire ammunition in hunting wild deer, wild elk, wild antelope, wild Aoudad sheep, or wild desert bighorn sheep.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each animal hunted in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.003. Hunting From Vehicles

(a) Except as provided in Subsection (b) of this section, no person may hunt from any type of aircraft or airborne device, motor vehicle, powerboat, or sailboat, or from any floating device towed by powerboat or sailboat any wild game bird, wild game fowl, or wild game animal protected by this code.

(b) Game animals and game birds not classified as migratory may be hunted from a motor vehicle within the boundaries of private property by a person who is legally on the property for the purpose of hunting if no attempt is made to hunt any wild game bird, wild game fowl, or wild game animal on any part of the road system of this state.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.004. Hunting at Night

(a) No person may hunt any wild bird, wild game bird, wild fowl, or wild game animal protected by this code at any season of the year between one-half hour after sunset and one-half hour before sunrise.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100. Each bird or animal killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.005. Hunting With Light

(a) No person may hunt an animal or bird protected by this code with the aid of a headlight, hunting lamp, or other artificial light, including an artificial light attached to a motor vehicle.

(b) The possession of a headlight or hunting lamp used on or about the head when hunting at night between sunset and one-half hour before sunrise by a person hunting in an area where deer are known to range constitutes prima facie evidence that the person was violating this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $50, by confinement in the county jail for not less than 30 days nor more than 90 days, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.006. Hunting for Hire

(a) No person may employ another person or be employed by another person for compensation or promise of compensation to hunt any bird, wild fowl, or game animal protected by this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

(c) If a person testifies against another person who employed him in violation of this section, all prosecutions against him in the case in which he testifies shall be dismissed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.007. Stopping for Search

(a) An authorized employee of the department may search the game bag, receptacle, automobile, or other vehicle if he has reason to believe that the bag, receptacle, automobile, or vehicle contains game unlawfully killed or taken.

(b) A person who refuses to allow a search or refuses to stop a vehicle when requested to do so by an authorized employee is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.008. Prima Facie Evidence

Except as provided in Subchapter B of this chapter, possession of a wild game bird, wild game animal, or other species of protected wildlife, whether dead or alive, during a time when the hunting of the animal, bird, or species is prohibited is prima facie evidence of the guilt of the person in possession.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.009. Purchase for Evidence

A person who, for the purpose of establishing testimony, purchases a game bird or animal whose sale is prohibited by this code, is immune from prosecution for the purchase. A conviction for the unlawful sale of game may be sustained on the uncorroborated testimony of the purchaser.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.010. Exceeding Bag Limits, Hunting During Closed Season, etc.; Penalty

(a) No person may kill or take more than the daily, weekly, or seasonal bag limits for game birds or animals as set out in this code.

(b) No person may hunt any game bird or animal at any time of the year other than during the open season provided by this code.

(c) No person may kill, take, capture, wound, or shoot at any game bird or animal for which no open season is set out by this code.

(d) No person may possess an illegally killed game bird or animal.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each game bird or animal taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.011. Retrieval and Waste of Game

(a) It is an offense if a person while lawfully hunting kills or wounds a game bird or game animal and intentionally or knowingly fails to make a reasonable effort to retrieve the animal or bird and include it in the person's daily or seasonal bag limit.

(b) It is an offense if a person intentionally takes a game bird, game animal, or a fish, other than a rough fish, and intentionally, knowingly, or recklessly, or with criminal negligence, fails to keep the edible portions of the bird, animal, or fish in an edible condition.

(c) An offense under this section is a misdemeanor the punishment for which is a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1214, ch. 456, § 15, eff. Sept. 1, 1975.]

[Sections 62.012 to 62.020 reserved for expansion]

SUBCHAPTER B. SALE, TRANSPORTATION, AND STORAGE OF GAME

§ 62.021. Sale or Purchase of Game.

(a) No person may sell, offer for sale, purchase, offer to purchase, or possess after purchase a wild bird, wild game bird, or wild game animal, dead or alive, or part of the bird or animal except deer hides and antlers.

(b) This section applies only to a bird or animal protected by this code without regard to whether the bird or animal is taken or killed in this state.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.022. Sale or Purchase of Certain Game

(a) No person may sell, offer for sale, or possess after purchase a wild deer, wild antelope, or Rocky Mountain sheep killed in this state; or the carcass, hide, or antlers of wild antelope or Rocky Mountain sheep; or the carcass of wild deer, excluding wild deer hides and antlers.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.023. Sale by Taxidermist

(a) If the owner of heads or hides that have been mounted or tanned has not claimed them within 90 days after notification by a taxidermist or tanner, the taxidermist or tanner may sell the head or hides for the amount due for labor performed.

(b) Heads or hides sold under this section must have attached the original transportation affidavit required under this subchapter.

(c) A taxidermist or tanner selling heads or hides under this section shall report immediately the sale to the department. The report must include the name of the person purchasing the head or hides and a copy of the transportation affidavit regarding the manner in which the head or hides were obtained.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.024. Importation of Game

(a) No person may bring into this state any bird or animal protected by this code during the closed season for that bird or animal except as provided by this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each bird or animal imported in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.025. Importation of Game

(a) No person may bring into this state a bird or animal protected by this code for sale, barter, exchange, or shipment for sale during the open season for that bird or animal except as provided in Section 62.026 of this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each bird or animal imported in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.026. Importation of Protected Wildlife From Mexico

(a) It is lawful to ship or bring any wild game birds, wild game animals, or other protected species of wildlife from the Republic of Mexico into this state at any season if the person importing the wildlife has obtained:

(1) Repealed by Acts 1979, 66th Leg., ch. 260, art. 5, § 1(1), eff. Sept. 1, 1979.

(2) a statement from the United States Customs Officer at the port of entry showing that the wildlife was brought from the Republic of Mexico.

(b) to (d) Repealed by Acts 1979, 66th Leg., p. 550, ch. 260, art. 5, § 1(1), eff. Sept. 1, 1979.

(e) The department may prescribe reasonable rules and regulations for the importation of wild game birds, wild game animals, and other protected species of wildlife, and the number of each species that may be imported during a calendar week under this section.

(f) A person who violates a provision of this section or a rule or regulation issued under this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 550, ch. 260, art. 5, § 1, eff. Sept. 1, 1979.]

§ 62.0265. Transportation of Wild Animals and Birds

(a) A person may transport or ship to and from a taxidermist or tannery for mounting or preserving purposes or to his home, a specimen or part of a specimen of a wild bird or wild animal of this state, if the bird or animal was lawfully taken by the person, and if the specimen is not for sale.

(b) This section does not prohibit the transportation of a specimen and parts of a specimen as permitted under Sections 62.021 and 62.022 of this code.

[Added by Acts 1977, 65th Leg., p. 610, ch. 221, § 1, eff. May 24, 1977.]

§ 62.027. Affidavit for Transporting Specimens

(a) A person may not ship by common carrier a specimen or part of a specimen as permitted by Section 62.0265 of this code unless he has executed the transportation affidavit set out in this section.

(b) The transportation affidavit must be made before an officer authorized to administer oaths and must be in the following form:

State of Texas }
County of _____ }

Before me, the undersigned authority, on this day personally appeared _____, who after being duly sworn, upon oath says: I live at _____ in the County of _____, State of _____; I have personally killed _____, which I desire to ship from _____ to _____ County, to _____, State of _____, which I lawfully killed for lawful use; that I have not killed during the present hunting season more than the bag limit of any of the wild game birds, wild fowl, or wild animals.

Signature _____

Sworn to and subscribed before me this _____ day of _____ A.D. 19__.

_____

Office held _____

Before me, the undersigned authority, on this day personally appeared _____, who after being duly sworn, upon oath says: I live at _____ in the County of _____, State of _____; I have personally killed _____, which I desire to ship from _____ to _____ County, to _____, State of _____, which I lawfully killed for lawful use; that I have not killed during the present hunting season more than the bag limit of any of the wild game birds, wild fowl, or wild animals.

Signature _____

Sworn to and subscribed before me this _____ day of _____ A.D. 19__.

_____

Office held _____

(c) The affidavit must be attached to the shipment and delivered to the common carrier transporting the shipment, and may not be removed during the period of transportation. If the specimen is carried by the person who killed it, the affidavit does not have to be attached to the shipment.

(d) Express agents, conductors, auditors of trains, captains of boats, and employees of the department may administer oaths for the affidavit required under this section. The person administering the oath may collect 25 cents for this service.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 611, ch. 221, § 2, eff. May 24, 1977.]

§ 62.028. Failure to Obtain Affidavit

A person is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100 if he:

(1) ships game from any place in this state without making the transportation affidavit;

(2) is an agent of an express company or common carrier and receives shipment of game without an attached transportation affidavit; or

(3) is an auditor, conductor, or person in charge of a railroad train and knowingly permits a person to carry game without having made a transportation affidavit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.029. Records of Game in Storage

(a) As used in this section, a "public cold storage plant" is any plant in which game is stored for a person other than the owner of the plant.

(b) The owner or operator of a public cold storage plant shall maintain a book containing a record of:

(1) the name of each person placing a game bird or game animal in storage;

(2) the number and kind of game birds or game animals placed in storage; and

(3) the date on which each game bird or game animal is placed in storage.

(c) The record book kept by the owner or operator of a public cold storage plant may be inspected by an authorized employee of the department at any time.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.030. Possession of Game in Storage

A person may place and maintain, or possess, in a public or private storage plant, refrigerator, or locker lawfully taken or killed game birds, game animals, waterfowl, or migratory waterfowl not in excess of the number permitted to be possessed by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.031. Inspections of Storage Facilities

(a) Authorized employees of the department may enter and inspect a public cold storage plant or other place, including taxidermist shops and tanneries, where protected wildlife are stored.

(b) In this section "protected wildlife" means game animals and game birds and nongame animals and birds that are the subject of any protective law or regulation of this state or the United States.

(c) Inspections under this section may be made during normal business hours when the facilities are open to the public generally but may include areas within a facility not generally open to the public.
[Added by Acts 1977, 65th Leg., p. 611, ch. 221, § 3, eff. May 24, 1977.]

[Sections 62.032 to 62.050 reserved for expansion]

SUBCHAPTER C. ARCHERY SEASON

§ 62.051. Application of Subchapter

The provisions of this subchapter do not apply to the following counties: Angelina, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brewster, Briscoe, Burnet, Caldwell, Calhoun, Callahan, Camp, Carson, Cass, Castro, Childress, Collingsworth, Colorado, Comanche, Comal, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Deaf Smith, Delta, DeWitt, Dickens, Dimmit, Donley, Eastland, Ector, Edwards, Ellis, Erath, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harrison, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Hopkins, Houston, Howard, Hutchinson, Irion, Jackson, Jasper, Johnson, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kleberg, Kimble, King, Kinney, Knox, Lamar, Lamb, Lampasas, LaSalle, Lavaca, Lipscomb, Live Oak, Llano, McCulloch, McMullen, Marion, Martin, Mason, Matagorda, Maverick, Medina, Menard, Mitchell, Montgomery, Moore, Morris, Motley, Nacogdoches, Newton, Nolan, Nueces, Ochiltree, Oldham, Panola, Parmer, Polk, Rains, Reagan, Real, Red River, Roberts, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Throckmorton, Titus, Tom Green, Trinity, Tyler, Upshur, Val Verde, Victoria, Walker, Waller, Washington, Wharton, Wilbarger, Wilson, Wood, and Zavala.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1257, ch. 484, § 3(a), eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1793, ch. 721, § 1, eff. Aug. 29, 1977.]

§ 62.052. Definition

As used in this subchapter, "buck deer" means a wild buck deer with three points or more.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.053. Archery Season

The open archery season for hunting buck deer, wild bear, wild turkey gobblers, and collared peccary or javelina with bow and arrow is October 1 through October 31 of each year.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.054. Possession of Firearms or Crossbow

(a) While hunting buck deer, wild bear, wild turkey gobblers, or collared peccary or javelina during the open archery season, no person possessing a bow and arrow may have any type of firearm or crossbow on his person, in an automobile, or in a hunting camp, except as permitted in Subsection (b) of this section.

(b) Subsection (a) of this section does not prohibit the possession of a shotgun on the person of the hunter, in a hunting camp, or in an automobile if:

(1) the shotgun is not used for the taking or in assisting in the taking of deer, bear, turkey, or javelina; and

(2) the person possesses on his person or in the camp or automobile no shotgun shells having shot larger than Number 4 shot.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 107, ch. 51, § 1, eff. Aug. 29, 1977.]

§ 62.055. Equipment

(a) No person may hunt buck deer, wild bear, wild turkey gobblers, or collared peccary or javelina during the open archery season with:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths inch in width and not over one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) arrows that are poisoned, drugged, or explosive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.056. Archery Season in Certain Counties

In counties covered by this subchapter where the hunting season on buck deer, wild bear, wild turkey gobblers, and collared peccary or javelina is less than 31 days, the department shall determine the length of the season to hunt these animals with bows and arrows. This archery season may not be longer than the open season for taking these game with firearms.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 62.057 to 62.060 reserved for expansion]

SUBCHAPTER D. HUNTING IN STATE PARKS

§ 62.061. Prohibited Acts

Except as authorized by the commission under this subchapter, no person may hunt a wild animal, wild bird, or wild fowl in a state park, fort, or historic site under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.062. Season

As sound biological management practices warrant, the commission may prescribe an open season for hunting in state parks, forts, or sites where size, location, and other physical conditions permit hunting. The open season may be only during the period beginning on the first day of November in one year and extending through the last day of February of the following year. However, no open season is authorized for the hunting of deer in any state park, the purposes and uses for which are primarily recreational.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.063. Regulatory Authority

The commission may prescribe the number, size, kind, and sex and the means and methods of taking any wildlife during an open season in a state park, fort, or historic site.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.064. Fee for Hunting

The commission may set a reasonable fee to be collected for hunting in state parks, forts, and sites.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.065. Disposition of Funds

Revenue received under this subchapter shall be deposited in the state treasury to the credit of the state parks fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.066. Management of Resources

The commission may direct the service or division of the department charged with the management of wildlife resources to manage the aquatic and wildlife resources found in state parks, forts, or historic sites.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.067. General Hunting License

The provisions of this subchapter do not waive the requirement of a hunting license under this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.068. Arrest

A peace officer, game management officer, or commissioned state park employee may arrest without warrant a person found committing a violation of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.069. Penalty

A person who violates a provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 62.070 to 62.080 reserved for expansion]

SUBCHAPTER E. WEAPONS ON LOWER COLORADO RIVER AUTHORITY LAND

§ 62.081. Weapons Prohibited

Except as provided in Section 62.082 of this code, no person may hunt with, possess, or shoot a firearm, bow, crossbow, slingshot, or any other weapon on or across the land of the Lower Colorado River Authority.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.082. Target Ranges

(a) The Board of Directors of the Lower Colorado River Authority may lease river authority land to be used on a nonprofit basis for a target rifle or archery range only and not for hunting.

(b) A member of the boy scouts or the girl scouts or other nonprofit public service group or organization may possess and shoot a firearm, bow, and crossbow for target or instructional purposes under the supervision of a qualified instructor registered with and approved by the Lower Colorado River Authority on ranges designated by the Lower Colorado River Authority. This subsection does not permit hunting by any person.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.083. Approved Instructor and Range Records

The Lower Colorado River Authority shall maintain in its Austin office a current listing of approved and registered instructors and a map indicating the location of the designated ranges. The records shall be made available on request to enforcement officers and county attorneys.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.084. Penalty

A person who violates Section 62.081 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 63. GAME AND NONGAME ANIMALS

SUBCHAPTER A. GAME ANIMALS

Section
63.001. Game Animals.
63.002. Bag Limit for Certain Game.
63.003. Collared Peccary (Javelina).
63.004. Squirrel Season.
63.005. Squirrel Limit.
63.006. Deer and Bear Season.
63.007. White-Tailed Deer Permits.
63.008. Female Deer, Fawn, Young Buck.
63.009. Deer Call.
63.010. Hunting Deer With Dogs.

SUBCHAPTER B. NONGAME ANIMALS

63.101. Coypu (Nutria).
63.102. Wolves.
63.103. Sale of Certain Live Animals.

SUBCHAPTER A. GAME ANIMALS

§ 63.001. Game Animals

(a) The following animals are game animals: wild deer, wild elk, wild antelope, wild desert bighorn sheep, wild black bear, wild gray or cat squirrels, wild fox squirrels or red squirrels, and collared peccary or javelina.

(b) No species of any animal set out in Subsection (a) of this section or any other animal is a game animal if it is not indigenous to this state.

(c) Aoudad sheep are game animals in Armstrong, Briscoe, Donley, Floyd, Hall, Motley, Randall, and Swisher counties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.002. Bag Limit for Certain Game

No person may hunt or possess game animals in greater number than the daily, weekly, or seasonal bag limit as follows:

(1) two wild buck deer during the open season of any one year;

(2) one wild bear during the open season of any one year; and

(3) ten wild squirrels in any one day.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.003. Collared Peccary (Javelina)

(a) No person may hunt collared peccary (javelina) at any time except during the open season which is the period beginning November 16 and extending through January 1.

(b) No person may take more than two collared peccary (javelina) in one open season.

(c) No person may take, sell, offer to sell, or have in possession for the purpose of sale or barter any collared peccary (javelina).

(d) This section does not apply to collared peccary (javelina) or their hides imported from another state or foreign country.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50. Each collared peccary (javelina) taken, possessed, sold, offered for sale, or possessed for sale in violation of this section is a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.004. Squirrel Season

(a) Except as provided in Subsection (b) of this section, the open season for the hunting of wild gray squirrels and wild red or fox squirrels is the months of May, June, July, October, November, and December.

(b) Squirrels may be kept in cages as domestic pets at any time.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.005. Squirrel Limit

(a) Except as provided in Subsection (b) of this section, no person may take or kill more than 10 squirrels in one day or have in possession more than 20 squirrels at one time.

(b) This section does not apply to the following counties: Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Blanco, Brown, Bosque, Brazoria, Burnet, Caldwell, Calhoun, Callahan, Chambers, Colorado, Cooke, Coryell, Comanche, Comal, Concho, Delta, DeWitt, Dimmit, Eastland, Edwards, Erath, Fayette, Fort Bend, Franklin, Galveston, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Hamilton, Hill, Hopkins, Jackson, Karnes, Kerr, Kendall, Kimble, Lamar, Lampasas, Lavaca, Live Oak, Llano, Mason, Matagorda, McCulloch, Menard, Medina, Mills, Montague, Real, Red River, Refugio, San Patricio, San Saba, Schleicher, Stephens, Tarrant, Throckmorton, Travis, Uvalde, Victoria, Waller, Washington, Wharton, Wilson, Wise, and Zavala.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.006. Deer and Bear Season

The open season for the hunting of wild buck deer and wild bear is the period beginning November 16 and extending through December 31.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.007. White-Tailed Deer Permits

(a) The department shall issue permits for the trapping, transporting, and transplanting of wild white-tailed deer to persons presenting a satisfactory showing that there is an overpopulation of the deer in an area where harvest provisions are inadequate for maintaining a balanced supply of the deer and that the deer will be removed and transplanted to an area of adaptable habitat for appropriate harvest.

(b) The trapping, transporting, and transplanting of wild white-tailed deer under a permit issued by the department shall be done at no expense to the state.

(c) No person may hunt wild white-tailed deer transplanted under this section except as allowed by law for the hunting of native wild white-tailed deer in the county to which the deer are transplanted.

(d) Permits issued under this section do not entitle a person to take, trap, or possess wild white-tailed deer on any privately owned land without the landowner's written permission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.008. Female Deer, Fawn, Young Buck

(a) No person may hunt a wild female deer, wild fawn deer, or wild buck deer without a pronged horn.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.009. Deer Call

(a) No person may use a deer call, whistle, decoy, call pipe, reed, or other mechanical or natural device to call or attract deer, except the rattling of deer horns.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $500 or by confinement in the county jail for not less than 20 days nor more than 90 days, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.010. Hunting Deer With Dogs

(a) Except as provided in Subsection (b) of this section, no person may use or permit the use of a dog in the hunting of deer.

(b) This section does not apply to Brazoria, San Augustine, and Fort Bend counties.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

(d) Nothing in this section affects Chapter 61 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 63.011 to 63.100 reserved for expansion]

SUBCHAPTER B. NONGAME ANIMALS

§ 63.101. Coypu (Nutria)

(a) No person may possess, transport, or sell live coypu (nutria) unless he has obtained a written permit from the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.102. Wolves

(a) No person may possess, transport, receive, or release a live wolf in this state.

(b) Subsection (a) does not apply to the transportation of a wolf by a state or county official while performing an official duty or to the possession or transportation of a wolf by the owner or agent of a licensed circus, zoo, or menagerie for exhibition or scientific purposes.

(c) A person who violates this section is guilty of a felony and on conviction is punishable by imprisonment in the penitentiary for not less than six months nor more than five years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.103. Sale of Certain Live Animals

(a) No person may sell or possess for the purpose of sale in this state a living armadillo or skunk.

(b) This section does not apply to:

(1) the sale of an animal by or to a zoo;

(2) the sale of an animal to an educational institution or a medical or research center for scientific purposes as authorized by a permit issued under Subchapter C, Chapter 43, of this code; [1] or

(3) the sale to a commercial dealer who in turn resells for purposes authorized in Subdivisions (1) and (2) of this subsection.

(c) In this section, "zoo" means a publicly or privately owned establishment that has a permanent place of business open to the public and that displays 15 or more different species of wildlife.

(d) A person who violates Subsection (a) of this section is guilty of a Class B misdemeanor.

(e) A peace officer who has probable cause to believe that an animal has been sold or held for sale in violation of Subsection (a) of this section may seize the animal and hold it for observation to determine if the animal has rabies or any other communicable disease harmful to man or other animals. If the animal is free from disease, the officer may release the animal or, if the animal is otherwise dangerous or harmful, may destroy it. If the animal is diseased, it shall be destroyed. An officer exercising the duties under this section is immune from liability.

(f) A person who violates Subsection (a) of this section, in addition to the penalties under Subsection (d) of this section, on conviction shall pay all costs and expenses incurred under Subsection (e) of this section.

[Added by Acts 1979, 66th Leg., p. 386, ch. 177, § 1, eff. Aug. 27, 1979.]

[1] Section 43.021 et seq.

CHAPTER 64. BIRDS

SUBCHAPTER A. GENERAL PROVISIONS

Section
64.001. Game Birds.
64.002. Protection of Nongame Birds.
64.003. Destroying Nests or Eggs.
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SUBCHAPTER B. SEASONS AND LIMITS

64.011. Eagle.
64.012. Hunting Turkey Hens.
64.013. Turkey Gobblers.
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64.015. Prairie Chicken.

SUBCHAPTER C. MIGRATORY GAME BIRDS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 64.001. Game Birds

Wild turkey, wild ducks of all varieties, wild geese of all varieties, wild brant, wild grouse, wild prairie chickens, wild pheasants of all varieties, wild partridge, wild bobwhite quail, wild scaled quail, wild Mearn's quail, wild Gambel's quail, wild red-billed pigeons, wild band-tailed pigeons, wild mourning doves, wild white-winged doves, wild snipe of all varieties, wild shore birds of all varieties, chachalacas, wild plover of all varieties, and wild sandhill cranes are game birds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.002. Protection of Nongame Birds

(a) Except as provided in this section, Chapter 67, or Section 12.013 of this code, no person may:

(1) catch, kill, injure, pursue, or possess, dead or alive, or purchase, sell, expose for sale, transport, ship, or receive or deliver for transportation, a bird that is not a game bird;

(2) possess any part of the plumage, skin, or body of a bird that is not a game bird; or

(3) disturb or destroy the eggs, nest, or young of a bird that is not a game bird.

(b) European starlings, English sparrows, grackles, ravens, red-winged blackbirds, cowbirds, and crows may be killed at any time and their nests or eggs may be destroyed.

(c) Canaries, parrots, and other exotic nongame birds may be sold, purchased, and kept as domestic pets.

(d) A person may defend and protect his domestic animals from predators.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each bird or part of a bird taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.003. Destroying Nests or Eggs

(a) No person may destroy or take the nest, eggs, or young of any wild game bird, wild bird, or wild fowl protected by this code except as provided in this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.004. Trapping Game Birds

(a) No person may set a trap, net, or other device for taking game birds or take or snare a game bird by a device without obtaining a permit from the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 64.005 to 64.010 reserved for expansion]

SUBCHAPTER B. SEASONS AND LIMITS

§ 64.011. Eagle

Golden eagle or Mexican brown eagle may be hunted or trapped in this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.012. Hunting Turkey Hens

(a) No person may hunt or possess, dead or alive, a wild turkey hen at any time except as provided in this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.013. Turkey Gobblers

(a) No person may hunt wild turkey gobblers except during the open season, which is the period beginning November 16 and extending through December 31.

(b) No person may take, kill, or possess more than two turkey gobblers in one open season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 611, ch. 222, § 1, eff. Aug. 29, 1977.]

§ 64.014. Quail and Chachalaca

(a) No person may hunt quail or chachalaca except during the open season, which is the period beginning December 1 and extending through January 16.

(b) No person may kill more than 12 quail in one day, kill more than 36 quail in a seven-day period, or possess more than 36 quail at one time.

(c) No person may kill more than 5 chachalacas in one day, kill more than 10 chachalacas in a seven-day period, or possess more than 10 chachalacas at one time.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. Each bird killed or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.015. Prairie Chicken

(a) No person may hunt or possess prairie chicken in this state.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100. Each prairie chicken taken, killed, or possessed in violation of this section constitutes a separate offense and shall be seized and disposed of as provided in Section 12.110 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 64.016 to 64.020 reserved for expansion]

SUBCHAPTER C. MIGRATORY GAME BIRDS

§ 64.021. Definitions

In this subchapter:

(1) "Migratory game bird" means wild ducks of all species, wild geese and wild brant of all species, wild coot, wild rail, wild gallinules, wild plovers, Wilson's snipe or jacksnipe, woodcock, mourning doves, white-winged doves, and sandhill cranes.

(2) "Open season" means the period of time when it is lawful to take, kill, or pursue, or attempt to take or kill migratory game birds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.022. Authority of Department

The department shall provide the open season, and means, methods, and devices for the taking and possessing of migratory game birds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.023. Open Season

An open season may be provided only for the length of time justified by the supply of the species of migratory game bird affected in this state or in the zone or section of this state where the open season applies.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.024. Regulations

(a) The department shall conduct investigations prior to the issuance of regulations on an open season for a migratory game bird. The regulation may be issued if the supply of the migratory game bird is sufficient.

(b) The effective date of a regulation shall be stated in the regulation but may not be less than 10 days after the regulation is issued.

(c) A regulation is valid until the time specified in the regulation unless it is suspended or amended by the department in the same manner as in issuing the original regulation.

(d) A regulation issued by the department must be incorporated in the minutes of the meeting at which it was adopted, and a copy of the regulation must be filed with the secretary of state and each county clerk and county attorney.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.025. Suit

A party affected by and dissatisfied with a regulation issued under this subchapter may file suit against the department to test the validity of the regulation in a court of competent jurisdiction in Travis County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.026. Prohibited Acts

(a) No person may hunt or possess a migratory game bird by any method or device except as provided by regulation issued under this subchapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100. Each migratory game bird killed or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 65. REPTILES [REPEALED]

Chapter 65, Reptiles, was repealed by Acts 1979, 66th Leg., ch. 260, art. 5, § 1(2).

§§ 65.001 to 65.006. Repealed by Acts 1979, 66th Leg., p. 550, ch. 260, art. 5, § 1(2), eff. Sept. 1, 1979

The repealed sections, relating to turtles and terrapin, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

§§ 65.101 to 65.104. Repealed by Acts 1979, 66th Leg., p. 550, ch. 260, art. 5, § 1(2), eff. Sept. 1, 1979

The repealed sections, relating to horned toads, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

CHAPTER 66. FISH

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SUBCHAPTER A. PROVISIONS APPLICABLE TO FRESHWATER AND SALTWATER FISHING

§ 66.001. Salt and Fresh Water Defined

In this chapter:

(1) "Fresh water" means all lakes, lagoons, rivers, and streams to their mouths, but does not include coastal or tidal water.

(2) "Salt water" means all coastal or tidal water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.002. Consent to Take Fish From Private Water

(a) No person may catch fish by the use of a net or seine or explosive or by poisoning, polluting, muddying, ditching, or draining in any privately owned lake, pool, or pond without the consent of the owner.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

(c) In a prosecution under this section, the burden of proof to show consent is on the person charged.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.003. Placing Explosives or Harmful Substances in Water

(a) No person may place in the water of this state an explosive, poison, or other substance or thing deleterious to fish.

(b) Subsection (a) of this section does not apply to the use of explosives necessary for construction purposes when the use is authorized in writing by the county judge of the county where the work is to be done.

(c) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $100 and by confinement in the county jail for not less than 60 nor more than 90 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.004. Taking of Fish by Electric Shock Prohibited; Exception

(a) Except as provided by Subsection (d) of this section, no person may catch fish by using an electricity-producing device designed to shock fish.

(b) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

(c) The possession of an electricity-producing device designed to shock fish, in a boat or along the shore or bank of any water of this state, is prima facie evidence of a violation of this section by the person in possession of the device.

(d) This section does not prohibit the use of an electricity-producing device of not more than three volts connected to a shrimp trawl used by an operator of a licensed commercial gulf shrimp boat in the outside water of this state at depths of more than seven fathoms. To qualify under this exemption, the commercial gulf shrimp boat and the trawl must be operating in compliance with the provisions of Chapter 77 of this code relating to the taking of shrimp.

(e) An electricity-producing device used in violation of this section is a nuisance, and an officer or employee of the department who has probable cause to believe that a device is used in violation of this section shall seize the device and hold it as evidence for the trial of the person in possession of the device. If the person is found guilty of a violation of this section, the department shall be responsible for the destruction of the device unless it can be utilized by the department for research purposes, or upon request the device may be released to a state-supported college or university for use in marine or aquatic research. An officer or employee of the department who seizes or destroys a device is immune from liability for any damages resulting from seizure or destruction, and the department is likewise immune from liability for any damages resulting from seizure, destruction, or disposition thereof.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1662, ch. 656, § 1, eff. Aug. 29, 1977.]

§ 66.005. Wilful Destruction of Boat, Seine, or Net

(a) No person may wilfully, with the intent to injure the owner, take a boat, seine, net, or other device for fishing into prohibited water, or use a boat, seine, net, or other device for fishing to take fish unlawfully, so as to cause the destruction of the boat, seine, net, or device.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200 and confinement in the county jail for not less than 30 nor more than 90 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.006. Returning Small Fish Taken by Net or Seine

(a) No person who catches fish by the use of a seine or set net may fail to return to the water all fish under or over the size or weight limitations established in this chapter and all other fish for which no limitation is provided.

(b) Subsection (a) of this section does not apply to shark, gar, ray, turtle, sawfish, or catfish, except that it does apply to the gaff-topsail catfish.

(c) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.007. Harmful Tropical Fish

(a) No person may import, possess, sell, or release into water of this state harmful or potentially harmful tropical fish or fish eggs unless he has acquired from the department a written permit.

(b) The department shall determine and publish a list of tropical fish that are harmful or potentially harmful to human or other animal life.

(c) The department shall make rules to carry out the provisions of this section.

(d) A person who violates Subsection (a) of this section or a rule of the department made under Subsection (c) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.008. Fishing From Bridge

(a) No person may fish from the deck or road surface of any bridge or causeway on a road maintained by the State Highway Department.

(b) No person may deposit or leave any dead fish, crab, or bait on the deck or road surface of any

bridge or causeway on a road maintained by the State Highway Department.

(c) The State Highway Department shall post appropriate signs on all bridges and causeways affected by this section.

(d) A person who violates Subsection (a) or (b) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $1 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.009. Navigation Districts

(a) No person may use a seine or net of any type, trotline, or other mechanical or physical device, except hook and line, to catch fish in a channel, turning basin, or other water of a navigation district operating under Chapter 63, Water Code.

(b) The possession of a mechanical device referred to in Subsection (a) of this section within a navigation district operating under Chapter 63, Water Code, is prima facie evidence of a violation of Subsection (a) of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100, by confinement in the county jail for not less than 5 days nor more than 30 days, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.010. Bait Fish

(a) No person may possess more than 250 bait fish taken from the public water for personal use.

(b) No person may catch, possess, or transport, as bait fish any of the following species or their hybrids:

(1) black bass of any type;

(2) crappie;

(3) catfish, except bullheads;

(4) walleye;

(5) striped bass;

(6) trout;

(7) white bass; or

(8) northern pike.

(c) No person may catch bait fish except by the use of dip nets, lift nets, cast nets, and umbrella nets of nonmetallic material, minnow seines of nonmetallic material not exceeding 20 feet long, and common fruit jar traps or similar devices not longer than 24 inches and with a throat not more than one inch in diameter.

(d) A person who violates a provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Added by Acts 1977, 65th Leg., p. 213, ch. 105, § 1, eff. Sept. 1, 1977.]

Acts 1977, 65th Leg., ch. 105, which by §§ 1 to 42 added this section and amended and repealed various other sections of the Parks and Wildlife Code, provided in § 43: "This Act takes effect September 1, 1977."

[Sections 66.011 to 66.100 reserved for expansion]

SUBCHAPTER B. FRESH WATER FISHING

§ 66.101. Methods of Fishing

(a) No person may catch fish in public fresh water by any method or by the use of any device except as authorized by this section.

(b) The following methods and uses are authorized:

(1) the use of the ordinary hook and line or trotline;

(2) the use of a minnow seine not longer than 20 feet for the taking of bait only;

(3) the use of a minnow seine not longer than 20 feet, a shad trawl having a mouth no larger than 36 inches in diameter and being no longer than 6 feet, dip net, cast net, and umbrella net of meshes of any size for the purpose of catching bream, shad, carp, suckers, gar, and buffalo fish only;

(4) the use of a trammel net, a drag or set net, or seine having meshes the sides of which are at least three inches long;

(5) the use of a spear gun and spear or bow and arrow for the purpose of catching carp, buffalo fish, gaspergou, garfish, and Rio Grande perch only; and

(6) the use of a common funnel fruit jar type trap and its metallic counterpart for the taking of minnows only for bait, but only if the trap is no longer than two feet and has a throat no larger than one inch in diameter.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1794, ch. 728, § 1, eff. June 13, 1979.]

§ 66.102. Placing Prohibited Devices in Public Water

(a) No person may place in the public fresh water of this state for the purpose of catching fish any device prohibited by Section 66.101 of this code or any net or seine made of wire or other metallic substance, except the metallic counterpart of a common funnel fruit jar type trap conforming to the requirements of Section 66.101(b)(6) of this code.

(b) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

(c) A device in the public fresh water of this state in violation of this section is a nuisance, and officers and employees of the department shall destroy the device. An officer or employee of the department is immune from liability for the destruction of devices found in violation of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.103. Water Closed to Nets and Seines

(a) The commission may close any public fresh water to the use of nets and seines or to any type of net or seine if the commission finds that the closing is necessary to protect or conserve fish.

(b) Notice of the closing must be posted for two weeks in at least three stores or other locations near the water to be closed prior to the effective date of the closing.

(c) No person may use a net or seine or any type of net or seine prohibited by the commission in public fresh water closed by the commission under this section.

(d) A person who violates Subsection (c) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100. The failure to post notice is a defense against a charge of violating Subsection (c) of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.104. Seasons for Taking Fish

There is no period of time when the taking of fish from public fresh water is prohibited.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.105. Taking of Fish: Minimum Size

(a) No person may take from public fresh water and retain, or place in a boat, creel, live-box, or other container or on a fish stringer, a largemouth black bass, a smallmouth black bass, a spotted bass, or any subspecies of these bass that is less than 10 inches long.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1207, ch. 456, § 6(a), eff. Sept. 1, 1975.]

§ 66.106. Catch Limits

(a) Except as provided in Subsections (b) and (c) of this section, no person may catch and retain in any one day, or place in or on any container or device used for holding fish while in the process of fishing, fish taken from public fresh water in excess of the following limitations:

	Species	Limit
(1)	large-mouth black bass, small-mouth black bass, spotted bass, or any of their subspecies, singly or in the aggregate	10
(2)	striped bass	1
(3)	blue, channel, or yellow flathead catfish, singly or in the aggregate	25
(4)	crappie or white perch	25
(5)	Walleye or sauger, singly or in the aggregate	5
(6)	northern pike and muskellunge, singly or in the aggregate	3
(7)	trout of the family Salmonidae, including but not limited to rainbow trout, brown trout, and coho salmon, singly or in the aggregate	5

(b) A person may possess at one time not more than 50 blue, channel, or yellow flathead catfish, singly or in the aggregate.

(c) The retention limit in this section for catfish does not apply to a person holding a commercial fishing license issued under Section 47.002 of this code.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1207, ch. 456, § 6(b), eff. Sept. 1, 1975.]

§ 66.107. Possession of Certain Fish While Using Spear Gun or Bow and Arrow

No person may possess fish other than carp, buffalo fish, gaspergou, garfish, and Rio Grande perch while using a spear gun and spear or a bow and arrow.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.108. Injuring Small Fish Prohibited

(a) No person may fail to return immediately to the water any crappie or bass under the minimum size taken from public fresh water.

(b) No person may unnecessarily injure crappie or bass under the minimum size taken from public fresh water.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.109. Fish Ladders

(a) The commissioners court of each county, by written order, may require the owner of a public or private dam or other obstruction on a regularly

flowing public freshwater stream to construct or repair fishways or fish ladders sufficient to allow fish in all seasons to ascend the dam or other obstruction for the purpose of depositing spawn.

(b) An owner who fails to construct or repair a fishway or fish ladder within 90 days after receiving the written order is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $500. Each week of violation following the 90-day period constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.110. Screens to Protect Fish

(a) The department may direct a person or corporation taking fresh water of the state to cover the entrance of the intake canal, pipe, or other device used for taking water with a screen to protect fish.

(b) The department may regulate the manner of installation and the specifications of screens and other obstructions required under this section.

(c) No person may fail to comply with a direction of the department made in writing under Subsection (a) of this section.

(d) A person who violates Subsection (c) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200. Each day's failure to comply constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.111. Sale and Purchase of Certain Fish

(a) No person may buy or offer to buy, sell or offer to sell, possess for the purpose of sale, transport or ship for the purpose of sale, or barter or exchange freshwater crappie, bass of the genus Micropterus, striped bass and hybrids of striped bass, white bass, walleye, sauger, northern pike, muskellunge, trout of the family Salmonidae, or flathead catfish.

(b) No person may sell or offer to sell any freshwater fish taken from the water of any county west of the Pecos River.

(c) Subsection (a) of this section does not apply to a fish reared in private water and marketed for the purpose of stocking the water of this state, nor to a fish shipped into this state and offered for sale for consumption.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of:

(1) not more than $200 if Subsection (a) is violated; or

(2) not less than $10 nor more than $100 if Subsection (b) is violated.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, § 2, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 908, ch. 416, § 1, eff. Aug. 27, 1979.]

§ 66.112. Brood Fish

Employees of the department under the direction of the commission and the United States Fish and Wildlife Service of the Department of Interior may take brood fish from public fresh water at any time and in any manner to supply the needs of state and federal fish hatcheries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.113. Removal of Rough Fish and Turtles From Fresh Water

(a) The department may take rough fish and turtles from public fresh water by means of crews under the supervision of the department, using methods of removal approved by the department.

(b) When the department determines that rough fish and turtles exist in public fresh water in numbers detrimental to the propagation and preservation of game fish, it may issue permits to applicants for rough fish and turtle removal.

(c) The department may not issue a permit to an applicant whose record within the knowledge of the department shows repeated violations of the fishing laws of the state to an extent that the department finds that [1] the applicant's conduct to be in flagrant disregard of fish conservation laws, or if the applicant has previously had a permit issued under this section revoked for a violation of the law or a regulation of the commission.

(d) A permit issued under this section, unless revoked, is valid for a period set by the commission, not less than three months.

(e) Each permit applies to a single lake, or portion of a lake, stream, or river as determined by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[1] So in enrolled bill.

§ 66.114. Rough and Game Fish Defined

In this subchapter:

(1) "Rough fish" means fish having no sporting value, the predatory fish, bony or rough-fleshed fish, or any other fish whose numbers should be controlled to protect and encourage the propagation of game fish. A game fish may not be classified as a rough fish.

(2) "Game fish" means black bass, white bass, crappie, bream, sunfish, and channel and yellow catfish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.115. Rough Fish: Regulations

The commission shall make regulations on the types of equipment that may be used by persons

holding a permit under Section 66.113 of this code according to the lake, stream, river, or portion of lake, stream, or river.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.116. Rough Fish: Fees, Bonds

(a) The commission shall set a fee which persons holding a permit to remove rough fish and turtles shall pay to the department for each pound of fish and turtles removed under the permit. The commission shall set the minimum total poundage each permit holder must take under the terms of the permit, which may vary according to the place where removal is authorized.

(b) Each holder of a permit to remove rough fish and turtles shall execute a bond in an amount set by the department and payable to the director. The bond shall be conditioned on the payment of the fee required by Subsection (a) of this section, on the removal of the minimum poundage required under the permit, and on the faithful compliance with the regulations of the commission and the law. The bond must be approved by the director.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.117. Revocation of Rough Fish Permit; Commercial License Required

(a) The department shall revoke the permit of any person who takes rough fish or turtles in violation of the law or of the regulations of the commission.

(b) No person may take rough fish or turtles unless he has acquired the appropriate commercial fishing license or may use nets and seines unless complying with tagging requirements.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.118. Rough Fish: Disposition

(a) Rough fish and turtles taken by a contractor under Section 66.113 of this code may be sold by the contractor.

(b) Rough fish and turtles taken by the department shall be used for feed for hatchery fish, and the surplus not used for feed shall be sold at the highest price obtainable. The receipts from the sale of rough fish shall be used for the removal of rough fish and turtles by the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 66.119 to 66.200 reserved for expansion]

SUBCHAPTER C. SALTWATER FISHING

§ 66.201. Redfish

(a) No person may take from public water and retain, or place in a boat, creel, live-box, or other container or on a stringer, a redfish less than 14 inches long.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.2011. Red Drum: Daily Catch and Retention Limits

(a) No person may:

(1) catch and retain in one day more than 10 red drum;

(2) possess at one time more than 20 red drum;

(3) possess at one time more than two red drum longer than 35 inches.

(b) This section does not apply to the holder of a commercial red drum license. Subdivisions (2) and (3) of Subsection (a) of this section do not apply to the holder of a fish dealer's license as to fish at the place of business or in a vehicle of the fish dealer.

(c) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than $25 nor more than $200. On a second or subsequent conviction, the person is punishable by a fine of not less than $200 nor more than $500 and shall forfeit the fishing license under which he is fishing.

(d) In addition to the penalty provided in Subsection (c) of this section, a person who violates this section shall have all equipment, other than vessels, in his possession used for the taking of red drum confiscated. This subsection expires on October 31, 1978.

[Added by Acts 1977, 65th Leg., p. 722, ch. 270, § 5, eff. Sept. 1, 1977.]

§ 66.202. Nets and Seines in Inside Water: Noncommercial Fishing

(a) No person engaged in noncommercial fishing in the inside water of this state may use for the purpose of catching fish a seine or drag seine or any other device except:

(1) an ordinary pole and line;

(2) a casting rod;

(3) a rod and reel;

(4) artificial bait;

(5) a trotline or set line;

(6) a cast net;

(7) a minnow seine of not more than 20 feet in length for catching bait only; and

(8) a set net, trammel net, or strike net, the meshes of which may not be less than one and one-half inches from knot to knot.

(b) In this section, inside water is that water defined as "inside water" in Chapter 77 of this code and "noncommercial fishing" means the catching of fish for a purpose other than for pay, barter, sale, or exchange.

(c) A person who violates this section is guilty of a misdemeanor and on the first conviction is punishable by a fine of not less than $25 nor more than $100. On a second or subsequent conviction, the person is punishable by a fine of not less than $100 nor more than $200, and the person's fishing license is subject to cancellation. If the person's license is cancelled, he is not entitled to receive another fishing license for one year from the date of his conviction.

(d) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(1), eff. May 20, 1977.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(1), eff. May 20, 1977.]

§ 66.203. Nets and Seines in Outside Water: Noncommercial Fishing

(a) No person engaged in noncommercial fishing in the outside water of this state may use a net or seine that fails to meet the requirements of Subsection (b) of this section.

(b) The mesh of a net or seine, not including the bag and 50 feet on each side of the bag, must have sides of not less than one and one-half inches. The bag and that part of the net or seine 50 feet on each side of the bag must have meshes the sides of which are not less than one inch. No net or seine or combination of nets and seines connected together may be longer than 2,000 feet.

(c) In this section, outside water is that water defined as "outside water" in Chapter 77 of this code, and "noncommercial fishing" means the catching of fish for a purpose other than for pay, barter, sale, or exchange.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than $20 nor more than $100. On a second conviction the person is punishable by a fine of not less than $50 nor more than $200 and may have his license suspended for a period of not less than 30 nor more than 90 days. On a third or subsequent conviction the person is punishable by confinement in the county jail for not less than 30 nor more than 90 days and may have his license suspended for a period of not less than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.204. Vessels and Obstructions in Fish Passes

(a) No person may operate, possess, or moor a vessel or other floating device, or may place any piling, wire, rope, cable, net, trap, or other obstruction, in a natural or artificial pass opened, reopened, dredged, excavated, constructed, or maintained by the department as a fish pass between the Gulf of Mexico and an inland bay, within a distance of 2,800 feet inside the pass measured from the mouth of the pass where it empties into or opens on the Gulf of Mexico.

(b) The department shall erect permanent iron or concrete monuments showing the restricted area.

(c) This section does not restrict the power of the United States to regulate navigation.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than $1 nor more than $100. On a second or subsequent conviction the person is punishable by a fine of not less than $1 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.205. Drum Seining Permits

(a) A person who has a lease for taking oysters in water where seining is prohibited may apply to the department for a permit to seine for drum.

(b) The application shall be under oath and must include a statement that drum are seriously damaging the applicant's oysters and that if the permit is issued he will not take and retain or destroy other food fish but will return them to the water.

(c) If the department finds that drum are seriously damaging the oysters of the applicant, the permit shall be issued. The permit must state the period of validity and must specify the area of its applicability.

(d) The department shall assign an employee of the department to supervise the seining.

(e) Seining for drum in prohibited water is lawful when done under the authority of a permit issued under this section and when done in the presence of the assigned employee.

(f) The holder of a permit shall pay $2.50 for each day of seining under the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.206. Trotline Tags

(a) The department shall issue numbered tags for trotlines used in public salt water.

(b) The commission may make regulations for the safe use of trotlines and to carry out the provisions of this section.

(c) A trotline tag shall be attached to each 300 feet of trotline or fractional part of 300 feet, and the

department shall collect a fee of $1 for each tag issued.

(d) No person may use a trotline in public salt water unless the trotline has attached to it the proper number of trotline tags.

(e) A person who violates this section or a rule of the commission relating to safe trotline usage is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

(f) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(2), eff. May 20, 1977.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(2), eff. May 20, 1977.]

§ 66.207. Fish Pound Net Prohibited

(a) No person may use a fish pound net in the water of the Gulf of Mexico within three nautical miles of the coastline.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.208. Commercial Joint Fishing Ventures

(a) No person who is engaged in taking seafood in a commercial joint venture may sell or offer to sell the products of the joint venture except in the regular course of the joint venture with the express or implied consent of the co-venturer.

(b) No person who is employed to take seafood may sell or offer to sell the products taken in the course of his employment without the express or implied consent of his employer.

(c) No person may purchase seafood with the knowledge that it is sold in violation of Subsection (a) or (b) of this section.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than $100 nor more than $200. On a second or subsequent conviction the person is punishable by a fine of not less than $500 nor more than $2,000 or by confinement in the county jail for not less than five days nor more than six months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.209. Statistical Reports

(a) The department shall gather statistical information on the harvest of fish, shrimp, oysters, and other forms of edible marine life of the Texas coast.

(b) The department shall prescribe and distribute the report form. The form shall be designed to allow for statistical information concerning the numbers and quantity by weight of seafood taken, the species taken, the kinds of equipment used, and the water from which the catch is made.

(c) No dealer who purchases fish, shrimp, oysters, or other forms of edible marine life directly from the fisherman may fail to file the report with the department each month on or before the 10th day of the month. No dealer required to report may wilfully file an incorrect report.

(d) Any dealer who violates Subsection (c) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.210. Rough Fish

(a) The commission shall investigate saltwater species of fish. It shall classify and reclassify, when necessary, saltwater fish as game fish and nongame fish.

(b) In this subchapter:

(1) "Game fish" means species that are desirable because of their sport and recreational value and that strike or bite at bait or artificial lures.

(2) "Nongame fish" means species that have no sporting value, predatory fish, bony or rough-fleshed fish, and other species whose numbers should be controlled to protect and encourage the propagation of game fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.211. Permits for Taking Rough Fish

(a) The commission shall issue permits for the taking of nongame fish in salt water to control nongame fish and to provide for their use when the commission finds that the taking will not adversely affect the conservation of game fish.

(b) The permit may authorize the use of nets, seines, and other devices that are otherwise prohibited, except that the commission may not authorize the use of a net or other device, the use of which was unlawful on May 26, 1941, in water in which the use of a trammel net, set net, or gill net was unlawful on that date. The permit shall specify the species of fish permitted to be taken.

(c) An applicant for a permit must:

(1) be a citizen of the United States and have resided in this state continuously for a period of at least six months before the date of the application; and

(2) not have been convicted of a violation of any fishing law of this state for a period of two years before the date of the application.

(d) The department shall collect a fee of $5 for the issuance of the permit.

(e) The permit is valid for one year from the date of its issuance unless it is revoked prior to its expiration.

(f) The department shall inspect, approve, and attach metal identification tags to all devices used under this section for taking fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.212. Holders of Rough Fish Permits: Offenses

(a) No person holding a permit to take rough saltwater fish may:

(1) use a net or other device that the commission may not authorize for use in water covered by the exception in Section 66.211 of this code;

(2) use for the taking of fish any device without there being attached to it a metal identification tag issued by the department;

(3) use any device that would be prohibited except for the permit to take any game fish or any other species of fish not authorized to be taken by the permit; or

(4) use any device that would be prohibited except for the permit in any manner that will or does carelessly or needlessly injure marine life other than those species authorized to be taken by the permit.

(b) A holder of a permit who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. On conviction he may also have the permit revoked.

(c) An officer of the department who finds a device authorized by permit being used in violation of this section shall immediately seize the device and hold it until after the trial. During the prosecution for an offense under this section, the holder of the permit may not use any device authorized by the permit but otherwise prohibited by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.213. Possession of Illegal Nets and Seines

(a) No person may possess a seine, strike net, gill net, or trammel net in or on the tidal water of this state where the use of the seine or net for the catching of fish is prohibited unless the seine or net is on board a vessel in port or in a channel and going to or from the Gulf of Mexico or actually going to or from other waters where the use of seines or nets is not prohibited. No person may possess or use for the purpose of catching finfish any seine, strike net, trammel net, or gill net in or on any waters of this state unless said seine, strike net, gill net, or trammel net is equipped with floats at intervals of six feet or less and of sufficient buoyancy to maintain the seine, strike net, gill net, or trammel net in an upright position in the water thereby avoiding a hazard to motor boat traffic.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200, and the person's commercial fishing license is subject to cancellation. A person whose license is cancelled under this section may not receive another license for one year from the date of the conviction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 382, ch. 190, § 4, eff. May 20, 1977; Acts 1979, 66th Leg., p. 439, ch. 199, § 1, eff. Aug. 27, 1979.]

§ 66.214. Monofilament Nets: Use for Catching Finfish

Text of section added effective July 1, 1980

(a) In those coastal waters to which the Uniform Wildlife Regulatory Act (Chapter 61 of this code) is not applicable, no person may use a monofilament net for the purpose of catching finfish.

(b) A person who violates this section is guilty of a Class C misdemeanor.

[Added by Acts 1979, 66th Leg., p. 1166, ch. 565, § 1, eff. July 1, 1980.]

§ 66.215. Tags for Noncommercial Nets and Seines

Text of section added effective July 1, 1980

(a) Except as provided in Subsection (b) of this section, no person may place or use in the coastal water of this state a net or seine unless there is attached to the net or seine a tag that discloses the name and address of the owner of the net or seine.

(b) This section does not apply to a person who holds a commercial fishing license under Chapter 47 of this code or to a net or seine on which there is attached the license required by Section 47.015 of this code.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

(d) Authorized employees of the department may seize a net or seine in coastal water in violation of this section and retain the net or seine as evidence. If the owner of the net or seine seized under this subsection is not identified before the expiration of 90 days after its seizure, the net or seine may be disposed of under Section 12.011 of this code or as provided by other law.

[Added by Acts 1979, 66th Leg., p. 1166, ch. 565, § 1, eff. July 1, 1980.]

[Sections 66.216 to 66.300 reserved for expansion]

SUBCHAPTER D. TEXAS TERRITORIAL WATER

§ 66.301. Definition

In this subchapter, "coastal water" means all of the salt water of this state, including that portion of the Gulf of Mexico within the jurisdiction of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.302. Licenses

(a) Except as provided in Subsections (b) and (c) of this section, the department shall grant to or withhold from alien vessels licenses required for boats or vessels used in fishing or shrimping in the coastal water of this state on the basis of reciprocity or retortion.

(b) The department shall issue licenses to a vessel of a nation designated as a friendly ally or neutral on receipt of a formal suggestion transmitted to the governor by the Secretary of State of the United States.

(c) The department shall not issue a license to any boat or vessel owned in whole or in part by any alien power, or a subject or national of an alien power, or any individual who subscribes to the doctrine of international communism or who has signed a treaty of trade, friendship, and alliance or a nonaggression pact with any communist power.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.303. Prohibited Acts

(a) No unlicensed alien vessel may take or attempt to take by any means or possess any natural resource of the coastal water of this state.

(b) A captain, master, or owner of any unlicensed alien vessel or boat who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $1,000 or by confinement in the county jail for not more than one year, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.304. Port Authorities and Navigation Districts

It is the duty of the port authorities and navigation districts of this state to prevent the use of any port facility in a manner that they reasonably suspect may assist in the violation of this subchapter. They shall use all reasonable means, including the inspection of nautical logs, to ascertain from masters of newly arrived vessels of all types, other than warships of the United States, the presence of alien commercial fishing vessels within the coastal water of this state and shall promptly transmit the information to the department and to law enforcement agencies of this state as the situation may indicate. They shall request assistance from the United States Coast Guard in appropriate cases to prevent unauthorized departure from any port facility.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.305. Harbor Pilots

All harbor pilots shall promptly transmit any knowledge coming to their attention regarding possible violations of this subchapter to the appropriate navigation district or port authority or the appropriate law enforcement officials.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.306. Enforcement

All law enforcement agencies of the state, including agents of the department, are empowered and directed to arrest the masters and crews of vessels that are reasonably believed to be in violation of this chapter and to seize and detain the vessels and their equipment and catch. The arresting officer shall take the offending crews or property before the court having jurisdiction of the offense. The agencies are directed to request assistance from the United States Coast Guard in the enforcement of this Act when the agencies are without means to effectuate arrest and restraint of vessels and their crews operating in violation or probable violation of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.307. Political Asylum

No crew member or master seeking bona fide political asylum shall be fined or imprisoned under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 67. NONGAME SPECIES

Section
67.001. Regulations.
67.002. Management of Nongame Species.
67.003. Continuing Scientific Investigations.
67.004. Issuance of Regulations.
67.005. Penalty.

§ 67.001. Regulations

The department by regulation shall establish any limitations on the taking, possession, transportation, exportation, sale, and offering for sale of nongame fish and wildlife that the department considers necessary to manage these species.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 67.002. Management of Nongame Species

The department shall develop and administer management programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves successfully.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 67.003. Continuing Scientific Investigations

The department shall conduct ongoing investigations of nongame fish and wildlife to develop information on populations, distribution, habitat needs, limiting factors, and any other biological or ecological data to determine appropriate management and regulatory information.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 67.004. Issuance of Regulations

(a) The regulations shall state the name of the species or subspecies, by common and scientific name, that the department determines to be in need of management under this chapter.

(b) The department shall conduct a public hearing on all proposed regulations and shall publish notice of the hearing in at least three major newspapers of general circulation in this state at least one week before the date of the hearing.

(c) The department shall solicit comments on the proposed regulations at the public hearing and by other means.

(d) On the basis of the information received at the hearing or by other means, the department may modify a proposed regulation.

(e) Regulations become effective 60 days after the date they are proposed unless withdrawn by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 67.005. Penalty

(a) A person who violates a regulation of the commission issued under this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $200.

(b) A person who violates a regulation of the commission issued under this chapter and who has been convicted on one previous occasion of a violation of a commission regulation under this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $200 nor more than $500, or by confinement in jail for not less than 30 nor more than 90 days, or by both.

(c) A person who violates a regulation of the commission issued under this chapter and who has been convicted on two or more previous occasions of a violation of commission regulations under this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $500 nor more than $2,000 and by confinement in jail for not less than six months nor more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 68. ENDANGERED SPECIES

Section

68.001. Definitions.
68.002. Endangered Species.
68.003. Statewide Extinction List.
68.004. Amendments to List by Director.
68.005. Petition of Reclassification.
68.006. Permit for Taking Endangered Species.
68.007. Propagation Permit Required.
68.008. Original Propagation Permit.
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68.010. Reports by Permittee.
68.011. Refusal or Cancellation of Permit.
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68.018. Disposition of Funds; Appropriations.
68.019. Applicability of Chapter.
68.020. Exceptions.
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§ 68.001. Definitions

In this chapter:

(1) "Fish or wildlife" means any wild mammal, aquatic animal, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, product, egg, or offspring, of any of these, dead or alive.

(2) "Management" means:

(A) the collection and application of biological information for the purpose of increasing the number of individuals within species or populations of fish or wildlife up to the optimum carrying capacity of their habitat and maintaining these numbers;

(B) the entire range of activities constituting a full scientific research program, including census studies, law enforcement, habitat acquisition and improvement, and education; and

(C) when and where appropriate, the protection of and regulation of the taking of fish and wildlife species and populations.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.002. Endangered Species

Species of fish or wildlife are endangered if listed on:

(1) the United States List of Endangered Foreign Fish and Wildlife as in effect on August 27, 1973 (50 C.F.R. Part 17, Appendix A);

(2) the United States List of Endangered Native Fish and Wildlife as in effect on August 27, 1973 (50 C.F.R. Part 17, Appendix D); or

(3) the list of fish or wildlife threatened with statewide extinction as filed by the director of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.003. Statewide Extinction List

(a) The director shall file with the secretary of state a list of fish or wildlife threatened with statewide extinction.

(b) Fish or wildlife may be classified by the director as threatened with statewide extinction if the department finds that the continued existence of the fish or wildlife is endangered due to:

(1) the destruction, drastic modification, or severe curtailment of its habitat;

(2) its overutilization for commercial or sporting purposes;

(3) disease or predation; or

(4) other natural or man-made factors.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.004. Amendments to List by Director

(a) If the lists of endangered species issued by the United States are modified, the director shall file an order with the secretary of state accepting the modification. The order is effective immediately.

(b) The director may amend the list of species threatened with statewide extinction by filing an order with the secretary of state. The order is effective on filing.

(c) The director shall give notice of the intention to file a modification order under Subsection (b) of this section at least 60 days before the order is filed. The notice must contain the contents of the proposed order.

(d) If a reclassification petition is filed during the 60-day notice period required by Subsection (c) of this section, the order may not be filed until the conclusion of the proceeding on reclassification.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.005. Petition of Reclassification

(a) Three or more persons may petition the department to add or delete species of fish or wildlife from the statewide extinction list.

(b) The petition must present substantial evidence for the addition or deletion.

(c) If fewer than 50 people join in the petition, the department may refuse to review the classification list, but if 50 or more persons join in the petition, the department shall conduct a hearing to review the classification list. The hearing shall be open to the public, and notice of the hearing shall be given in at least three major newspapers of general circulation in the state at least one week before the date of the hearing.

(d) Based on the findings at the hearing, the department may file an order with the secretary of state altering the list of fish or wildlife threatened with statewide extinction. The order takes effect on filing.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.006. Permit for Taking Endangered Species

The provisions of Subchapter C, Chapter 43, of this code are applicable to all fish or wildlife classified as endangered, and it is a violation of this chapter to possess, take, or transport endangered fish or wildlife for zoological gardens or scientific purposes or to take or transport endangered fish or wildlife from their natural habitat for propagation for commercial purposes without the permit required by Section 43.022 of this code or a federal permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.007. Propagation Permit Required

No person may possess endangered fish or wildlife for the purpose of propagating them for sale unless he has first acquired a commercial propagation permit issued by the department under this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.008. Original Propagation Permit

(a) A person may apply for an original propagation permit by submitting an application containing information or statements as required by the department and by submitting an original propagation permit fee of $300.

(b) The department shall issue the permit if it determines that the applicant has complied with Subsection (a) of this section, that the initial breeding stock was acquired under a permit issued under Section 43.022 of this code or was otherwise legally acquired, and that the applicant has not violated the laws of the United States, this state, or another state with respect to the acquisition of breeding stock.

(c) An original propagation permit must contain a description of endangered fish and wildlife authorized to be possessed under the permit.

(d) An original propagation permit is valid for one year from the date of its issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.009. Renewal Propagation Permit

(a) A person holding an original propagation permit or a renewal propagation permit is entitled to receive from the department a renewal propagation permit on application to the department and on the payment of a renewal propagation permit fee of $550 if the application and fee are received by the department during the period beginning 10 days before the expiration date of the outstanding permit and extending through the expiration date of the permit.

(b) A renewal propagation permit is valid for a period of three years beginning on the date of its issuance.

(c) The department may refuse to renew any permit if it determines that it would be in the best interest of the species of fish or wildlife described in the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.010. Reports by Permittee

A person holding a commercial propagation permit shall send to the department annually:

(1) a written evaluation by a veterinarian licensed to practice in this state of the physical conditions of the propagation facilities and the conditions of the fish or wildlife held under the permit; and

(2) a written report on forms prepared by the department relating to propagation activities during the previous year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.011. Refusal or Cancellation of Permit

(a) If, on the basis of the reports required by Section 68.010 of this code or an investigation or inspection by an authorized employee of the department, the department finds that a permit holder is improperly caring for or handling the fish or wildlife held under the permit, the department shall give written notice of the objectionable actions or conditions to the permit holder.

(b) If the department finds that the improper caring for or handling of the fish or wildlife is detrimental to the fish or wildlife and immediate protection is needed, the department may seize the fish or wildlife and authorize proper care pending the correction of the improper conditions or actions.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.012. Appeal

(a) A person aggrieved by the action of the department in refusing to grant or renew a commercial propagation permit or in cancelling a permit may appeal within 20 days of the final action of the department to a district court of Travis County or the county of his residence.

(b) The appeal shall be by trial de novo as are appeals from the justice court to the county court.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.013. Disposition of Fish or Wildlife

A person who ceases to hold a commercial propagation permit under this chapter shall dispose of endangered fish or wildlife held after the expiration or cancellation of the permit in the manner required by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.014. Regulations

The department shall make regulations necessary to administer the provisions of this chapter and to attain its objectives, including regulations to govern:

(1) permit application forms, fees, and procedures;

(2) hearing procedures;

(3) procedures for identifying endangered fish and wildlife or goods made from endangered fish or wildlife which may be possessed, propagated, or sold under this chapter; and

(4) publication and distribution of lists of species and subspecies of endangered fish or wildlife and their products.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.015. Prohibited Acts

(a) No person may possess, sell, distribute, or offer or advertise for sale endangered fish or wildlife unless the fish or wildlife have been lawfully born and raised in captivity for commercial purposes under the provisions of this chapter or federal law.

(b) No person may possess, sell, distribute, or offer or advertise for sale any goods made from endangered fish or wildlife unless the goods were made from fish or wildlife that were born and raised in captivity for commercial purposes under the provisions of this chapter or federal law.

(c) No person may sell, advertise, or offer for sale any species of fish or wildlife not classified as endangered under the name of any endangered fish or wildlife.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.016. Sold Species to be Tagged

No person may sell endangered fish or wildlife or goods made from endangered fish or wildlife unless the fish or wildlife or goods are tagged or labeled in a manner to indicate compliance with Section 68.015(a) and (b) of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.017. Seizure of Fish or Wildlife

(a) A peace officer who has arrested a person for a violation of this chapter may seize fish or wildlife or goods made from fish or wildlife taken, possessed, or made in violation of this chapter.

(b) Property taken under this section shall be delivered to the department for holding pending disposition of the court proceedings. If the court determines that the property was taken, possessed, or made in violation of the provisions of this chapter, the department may dispose of the property under its regulations. The costs of the department in holding seized fish or wildlife during the pendency of the proceedings may, in appropriate cases, be assessed against the defendant.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.018. Disposition of Funds; Appropriations

(a) All revenue received under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

(b) Funds for the administration of this chapter may be appropriated from the general revenue fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.019. Applicability of Chapter

All species and subspecies of wildlife classified as endangered are governed by this chapter to the exclusion of other regulatory and licensing laws.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.020. Exceptions

(a) This chapter does not apply to:

(1) coyotes (prairie wolves);

(2) cougars;

(3) bobcats;

(4) prairie dogs;

(5) red foxes; or

(6) animals, fish, or fowl that are privately owned or to the management or taking of privately owned animals, fish, or fowl by the private owners.

(b) This chapter does not apply to the possession of mounted or preserved endangered fish or wildlife acquired before August 31, 1973, by public or private nonprofit educational, zoological, or research institutions. The department may require an institution to furnish a list of mounted or preserved fish or wildlife possessed and proof of the time of acquisition.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.021. Penalty

(a) A person who violates any provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $200.

(b) A person who violates any provision of this chapter and who has been convicted on one previous occasion of a violation of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $200 nor more than $500, or by confinement in jail for not less than 30 nor more than 90 days, or by both.

(c) A person who violates any provision of this chapter and who has been convicted on two or more previous occasions of a violation of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $500 nor more than $2,000 and by confinement in jail for not less than six months nor more than one year.

(d) A violation of a regulation of the department issued under the authority of this chapter is a violation of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBTITLE C. FUR-BEARING ANIMALS

CHAPTER 71. LICENSES

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71.001. Definitions.
71.002. Trapper's License Required.
71.003. Propagation License.
71.004. Beaver and Otter Trapping License.
71.005. Wholesale and Retail Fur Buyer's Licenses.
71.006. Purchases by Retail Fur Buyer.
71.007. Purchases by Wholesale Fur Buyer.
71.008. Issuance of Licenses.
71.009. License Fees.
71.010. License Period.
71.011. Possession and Display of Licenses.
71.012. Inspections.
71.013. Fees of Issuing Agents.
71.014. Taking of Fur-Bearing Animals for Propagation; Reports.
71.015. Penalties.

§ 71.001. Definitions

In this subtitle:

(1) "Fur-bearing animal" means wild beaver, otter, mink, ringtailed cat, badger, skunk, raccoon, muskrat, opossum, fox, nutria, or civet cat.

(2) "Trapper" means a person who takes the pelt of a fur-bearing animal for the purpose of sale and who sells or offers for sale the pelt of a fur-bearing animal of this state.

(3) "Retail fur buyer" means a person who purchases the pelt of a fur-bearing animal of this state from trappers only.

(4) "Wholesale fur buyer" means a person who purchases for himself or for another person

the pelt of a fur-bearing animal of this state from a trapper or from a retail fur buyer.

(5) "Resident" means a person who has resided in this state for at least two years prior to the time an application for a trapper's license is made.

(6) "Nonresident" means any person applying for a trapper's license other than a resident.

(7) "Sale" includes barter and other transfers of ownership for consideration.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 2047, ch. 801, § 1, eff. Aug. 27, 1979.]

§ 71.002. Trapper's License Required

No person may take the pelt of a fur-bearing animal for the purpose of sale without first having acquired a trapper's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.003. Propagation License

No person may take alive a wild fur-bearing animal for the purpose of sale without first having acquired a propagation license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.004. Beaver and Otter Trapping License

In addition to the other licenses required in this chapter, no person may trap beaver or otter outside the county of his residence without first having acquired a beaver-otter trapping license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.005. Wholesale and Retail Fur Buyer's Licenses

No person may purchase the pelt of a fur-bearing animal in this state unless he has acquired and possesses a valid wholesale fur buyer's license or a valid retail fur buyer's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.006. Purchases by Retail Fur Buyer

No retail fur buyer may purchase in this state the pelt of a fur-bearing animal except from a licensed trapper.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.007. Purchases by Wholesale Fur Buyer

No wholesale fur buyer may purchase in this state the pelt of a fur-bearing animal except from a licensed trapper, a licensed retail fur buyer, or another licensed wholesale fur buyer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.008. Issuance of Licenses

The licenses authorized by this chapter shall be issued by the department, or an authorized agent of the department, to applicants on the payment of the license fees.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.009. License Fees

(a) The fee for a trapper's license is $5 if the applicant is a resident and $200 if the applicant is a nonresident.

(b) The fee for a propagation license is $10.

(c) The fee for a beaver-otter trapping license is $50.

(d) The fee for a retail fur buyer's license is $5.

(e) The fee for a wholesale fur buyer's license is $25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.010. License Period

The license period for licenses issued under this chapter is September 1 of one year through August 31 of the following year, and a license is current and valid only for the license period for which it is issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.011. Possession and Display of Licenses

(a) A trapper shall carry the trapper's license on his person while taking fur-bearing animals.

(b) A wholesale fur buyer or a retail fur buyer shall carry on his person the required license while conducting business at a place other than an established place of business.

(c) A wholesale fur buyer or a retail fur buyer shall display the required license at all times at the established place of business for which the license is issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.012. Inspections

The established place of business of any wholesale or retail fur buyer and any vehicle being used by a trapper or a wholesale or retail fur buyer for the collection or transportation of pelts of fur-bearing animals is subject to inspection without a warrant by game management officers at any time.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.013. Fees of Issuing Agents

County clerks and other authorized agents of the department may retain 20 cents of the fee for the

issuance of a trapper's license or a retail or wholesale fur buyer's license and 50 cents of the fee for the issuance of a beaver-otter trapper's license as a collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.014. Taking of Fur-Bearing Animals for Propagation; Reports

(a) A person holding a propagation license permit may take alive fur-bearing animals only during the open season for the taking of fur-bearing animals.

(b) The holder of a propagation license shall report to the department on or before March 16 each year. The report must show the number and kind of fur-bearing animals held in captivity and the number and kind of fur-bearing animals and pelts disposed of during the previous year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.015. Penalties

(a) Except as provided in another subsection of this section, a person who violates any provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

(b) A person who violates Section 71.004 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $200.

(c) A person who violates Section 71.003 of this code or who fails to comply with Section 71.014 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

(d) A person subject to sentencing under Subsection (a) or (c) of this section forfeits his license and becomes ineligible to acquire another until one year after the date of his conviction, if the jury, or the court in the absence of a jury, assesses forfeiture.

(e) A person who is sentenced under Subsection (c) of this section forfeits his license under Subsection (d) of this section, and if he takes, sells, offers for sale, buys, or offers to buy a fur-bearing animal or pelt during the period he is ineligible to acquire another license, he is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100 and is ineligible to acquire a license for a period of one year from the date of his conviction if so assessed by the jury or court.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 72. LIMITATIONS ON TAKING FUR-BEARING ANIMALS

Section
72.001. Taking During Open Season.
72.002. Open Seasons.
72.003. Possession of Green Pelt.
72.0035. Sale of Fur-Bearing Animal Carcass.
72.004. Hunting Mink With Dogs.
72.005. Trapping Without Consent of Landowner.
72.006. Protection of Muskrats.
72.007. Penalties.

§ 72.001. Taking During Open Season

No person may take or attempt to take the pelt of a fur-bearing animal for the purpose of sale at any time except during the open season. A person may take fur-bearing animals at any time if the taking is for any purpose other than the sale of the pelt.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.002. Open Seasons

The open seasons for the taking of pelts of fur-bearing animals are:

(1) muskrat, from November 15 of one year through March 15 of the following year;

(2) mink, from November 15 of one year through January 15 of the following year; and

(3) all other fur-bearing animals, during all of January and December of each year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.003. Possession of Green Pelt

(a) The possession of a green or undried pelt of a fur-bearing animal after the time specified by this section by a trapper or a retail fur buyer is prima facie evidence of a violation of Section 72.001 of this code.

(b) The times are:

(1) for all fur-bearing animals except muskrat:

(A) February 5 of any year by a licensed resident or nonresident trapper;

(B) February 15 of any year by a licensed retail fur buyer; and

(2) for muskrat:

(A) March 20 of any year for a licensed resident or nonresident trapper;

(B) March 30 of any year by a licensed retail fur buyer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.0035. Sale of Fur-Bearing Animal Carcass

(a) No person may sell or offer for sale in Grimes, Walker, and Madison counties the carcass of a rac-

coon, fox, or bobcat during the period beginning on February 1 and extending through November 30 of each year.

(b) In this section, "carcass" means the body of a dead animal with the skin attached.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each animal sold or offered for sale in violation of this section constitutes a separate offense.

[Added by Acts 1977, 65th Leg., p. 1419, ch. 576, § 1, eff. Aug. 29, 1977.]

§ 72.004. Hunting Mink With Dogs

(a) No person may hunt or take wild mink with dogs.

(b) No person may possess the pelt of a mink while hunting with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.005. Trapping Without Consent of Landowner

No person may set a trap or deadfall on any enclosed land without the consent of the owner. Enclosed land is land enclosed by a fence, water, or other natural or artificial barrier, or a combination of barriers used by the owner as a method of enclosure.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.006. Protection of Muskrats

(a) No person may destroy the bed, nest, or breeding place of a muskrat or take a muskrat by any means except trapping.

(b) No person may trap, kill, or set a trap for a muskrat on land of another without the consent of the owner or lessee of the land.

(c) No person may possess the hide of a muskrat on land of another without the consent of the owner or lessee of the land unless the hide was lawfully taken and legally belongs to the person having possession of it.

(d) No person may purchase the hide or fur of a muskrat on the land of another.

(e) This section does not prevent the owner of land from taking muskrats at any time by any means.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.007. Penalties

(a) A person who violates Section 72.001 or 72.003 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

(b) A person who violates Section 72.004, 72.005, or 72.006 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBTITLE D. CRUSTACEANS AND MOLLUSKS

CHAPTER 76. OYSTERS

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76.003. Beds Subject to Location.
76.004. Riparian Rights.
76.005. Affidavit of Riparian Rights.
76.006. Application for Location; Fee.
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76.214. Disposition of Unfit or Unlawful Shellfish.
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SUBCHAPTER A. PUBLIC AND PRIVATE OYSTER BEDS

§ 76.001. Natural Oyster Bed

(a) A natural oyster bed exists when at least five barrels of oysters are found within 2,500 square feet of any position on a reef or bed.

(b) In this section, a barrel of oysters is equal to three boxes of oysters in the shell. The dimensions of a box are 10 inches by 20 inches by 13-½ inches. In filling a box for measurement, the oysters may not be piled more than 2-½ inches above the height of the box at the center. Two gallons of shucked oysters without shells equals one barrel of oysters in the shell.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.002. Designation of Public and Private Beds

(a) All natural oyster beds are public.

(b) All oyster beds not designated as private are public.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.003. Beds Subject to Location

Except as provided in Section 76.004 of this code, an oyster bed or reef, other than a natural oyster bed, is subject to location by the department. This section does not apply to a bed or reef that has been exhausted within an eight-year period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.004. Riparian Rights

(a) The lawful occupant of a grant of land in this state has the exclusive right to use any creek, bayou, lake, or cove included within the metes and bounds of the original grant for the planting or sowing of oysters.

(b) If the creek, bayou, lake, or cove is not included in the original grant, a riparian owner has an exclusive right in the creek, bayou, lake, or cove for the planting and sowing of oysters to the middle of the creek, bayou, lake, or cove or to 100 yards from the shore, whichever distance is shorter.

(c) The right of a riparian owner of land along any bay shore in this state to plant oysters extends 100 yards into the bay from the high-water mark or from where the land survey ceases. The right to a natural oyster bed under this subsection is not exclusive.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.005. Affidavit of Riparian Rights

(a) The department may require the owner of riparian rights described in Section 76.004 of this code when offering oysters for sale to make an affidavit stating that the oysters were produced on his property.

(b) The failure of an owner of riparian rights described in Section 76.004(a) of this code to have an affidavit when required by the department or to show it to a game management officer on request or to the person to whom the oysters are offered for sale when required by the department is prima facie evidence that the oysters were produced from public beds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.006. Application for Location; Fee

(a) Any citizen of the United States or any domestic corporation may file a written application with the department for a certificate authorizing the applicant to plant oysters and make a private oyster bed in the public water of the state.

(b) The application must describe the location desired.

(c) The application must be accompanied by a fee of $20.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.007. Maximum Acreage Under Location

No person may own, lease, or control more than 100 acres of land covered by water under certificates of location.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.008. Lease or Control by Foreign Corporation Prohibited

No corporation other than those incorporated under the laws of this state may lease or control land under a certificate of location.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.009. Examination and Survey of Location

(a) On receipt of an application for a location, the department shall examine the proposed location as soon as practicable by any efficient means.

(b) If the location is subject to certification, the department shall have the location surveyed by a competent surveyor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.010. Areas Not Subject to Location

The following areas are not subject to location:

(1) a natural oyster bed;

(2) a bay shore area within 100 yards of the shore;

(3) an area subject to an exclusive riparian right; and

(4) an area already under certification as a location.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.011. Survey Markings and Buoys

(a) In making a location, the surveyor shall plant two iron stakes or pipes having a diameter of not less than two inches on the shoreline nearest to the proposed location, so that one stake or pipe is at each end of the location. The stakes or pipes shall be set at least three feet in the ground and with reference to bearings of at least three permanent objects or natural landmarks.

(b) The locator shall place and maintain, under the direction of the department, a buoy at each corner of the location farthest from the land.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.012. Locator's Certificate

(a) The department shall issue to each locator a certificate signed and sealed by the director.

(b) The certificate must contain:

(1) the date of the application;

(2) the date of the survey; and

(3) a description of the location by metes and bounds with reference to points of the compass and natural objects by which the location may be found and verified.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.013. Survey Fee

(a) Before delivery of the certificate, the locator shall pay to the department the surveyor's fee and other costs of establishing the location.

(b) The amount of the fee required by Section 76.006(c) of this code may be deducted from the amount owed to the department under this section.

(c) If the amount paid under Section 76.006(c) of this code exceeds the amount owed under this section, the difference shall be returned to the locator.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.014. Filing of Certificate

(a) Before the expiration of 60 days following the date of the certificate, the locator shall file the certificate with the county clerk of the county of the location.

(b) The clerk shall file the certificate in a well-bound book kept for that purpose and shall return the original certificate and a registration receipt to the locator. The clerk is entitled to receive as a fee for filing the certificate the same fee as for recording deeds.

(c) The original certificate and certified copies of it are admissible in court under the same rules governing the admissibility of deeds and certified copies of deeds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.015. Rights of Locator

(a) The holder of a certificate of location as provided for in Section 76.012 of this code is protected in his possession of the location against trespass in the same manner as are freeholders.

(b) This section applies only as long as the stakes or pipes and buoys required by this chapter are maintained in their correct positions and the locator complies with the law and the regulations governing the fish and oyster industries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.016. Fencing of Location

A locator or his assignee may fence all or part of his location if the fence does not obstruct navigation into or through a regular channel or cut leading to other public water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.017. Location Rental

(a) No rental fee is owed on any location when oysters are not sold or marketed from the location for a period of five years after the date of the establishment of the location.

(b) When oysters are sold or marketed from the location and thereafter, the holder of the certificate shall pay to the department $2.25 per acre of location per year and 10 cents for each barrel of oysters from the location sold.

(c) Rental fees are due annually by March 1.

(d) The failure to pay any rental when due terminates the lease.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 908, ch. 416, § 2, eff. Aug. 27, 1979.]

§ 76.018. Oyster Production Required

If oysters from the location are not sold or marketed within five years from the date of the establishment of the location, the lease is void.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 76.019 to 76.030 reserved for expansion]

SUBCHAPTER B. OYSTER PERMITS

§ 76.031. Application for Permit

(a) A person desiring to plant oysters on his own location or to take oysters from oyster reefs and public water shall apply to the department for an oyster permit.

(b) Only those persons who are citizens of Texas or corporations composed of American citizens and chartered by this state to engage in the culture of oysters or to transact business in the purchase and sale of fish and oysters may apply for a permit.

(c) The application must:

(1) state the purpose for taking oysters; and

(2) give the quantity of oysters to be taken from designated areas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.032. Discretion to Issue Permit

The department may issue or refuse to issue a permit to any applicant.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.033. Conditions of Permit

(a) The department shall require the permittee to take only the oysters authorized in the permit from beds or reefs designated in the permit.

(b) The department shall:

(1) mark off the exact area of beds or reefs from which oysters may be taken;

(2) designate the bottoms on which oysters may be deposited if they are taken to be prepared for market;

(3) require the permittee to cull the oysters on the grounds where they are to be located; and

(4) specify what implements may be used in taking oysters.

(c) The department may make other conditions or regulations to protect and conserve oysters on public reefs and beds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.034. Minimum Size

No permittee may take oysters of a smaller size than 3-½ inches from hinge to mouth unless authorized by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.035. Oysters Property of Permittee

All oysters taken or deposited in public water by the holder of an oyster permit under the terms of a permit are the personal property of the permit holder.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.036. Marking Beds

(a) The holder of a permit shall clearly and distinctly mark, by buoys, stakes, or fences, the boundaries of the areas designated in the permit from which he may take or in which he may deposit oysters.

(b) No person may be prosecuted for taking oysters from the bed of a permittee unless the boundaries are established and maintained as provided in this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.037. Theft of Oysters From Private Bed

(a) No person may fraudulently take oysters placed on private beds without the consent of the owner of the private bed or from beds or deposits made for the purpose of preparing oysters for market without the consent of the owner of the oysters who lawfully deposited them.

(b) A person who violates this section is guilty of a felony and on conviction is punishable by imprisonment in the penitentiary for not less than one nor more than two years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.038. Interference With Buoys or Markers

(a) No person may deface, injure, destroy, or remove a buoy, marker, or fence used to designate or enclose a private oyster bed or location where oysters have been deposited for preparation for market without the consent of the owner of the bed or location.

(b) No person may deface, injure, destroy, or remove a buoy, marker, or sign of the department used for designating water closed for the taking of fish or oysters without the consent of the department.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.039. Prohibited Sales

(a) No person gathering oysters for planting or for depositing for market preparation on locations or on private oyster beds may sell, market, or dispose of the oysters gathered, at the time they are gathered, for any other purpose than planting or preparing for market.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

(c) This section does not affect the right of a person to sell or assign an oyster location or private bed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 76.040 to 76.100 reserved for expansion]

SUBCHAPTER C. OYSTER DREDGE LICENSE

§ 76.101. Oyster Dredge License Required

No person may take or attempt to take oysters from the public water of this state by the use of a dredge without first having acquired an oyster dredge license from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.102. Exemptions From License

An oyster dredge license is not required if the boat taking the oysters is licensed as a commercial bay or bait shrimp boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.103. Types of Licenses; Period of Validity

(a) The department may issue commercial oyster dredge licenses and sports oyster dredge licenses.

(b) An oyster dredge license expires on August 31 following the date of its issuance or on August 31 of the yearly period for which it is issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.104. License Fees

(a) The fee for a commercial oyster dredge license is $25.

(b) The fee for a sports oyster dredge license is $5.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.105. Commercial License: Dredge Size

No holder of a commercial oyster dredge license may use more than one dredge which may not exceed 36 inches in width.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.106. Sports License: Dredge Size

No holder of a sports oyster dredge license may use more than one dredge which may not exceed 14 inches in width.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.107. Sale of Sports Oysters Prohibited

No person may sell oysters taken under the authority of a sports oyster dredge license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.108. Open Season

(a) No person may take oysters from public beds or reefs except during the open season or except by permit issued by the department.

(b) The open season is the period beginning on November 1 of one year and extending through April 30 of the following year.

(c) There is no closed season in that part of Laguna Madre and abutting water south of the Port Mansfield Channel.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.109. Night Dredging Prohibited

During the open season, no person may take oysters from public water during the period between sunset and sunrise.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.110. Number and Description of Dredges

(a) No person may possess on board any commercial fishing boat, barge, float, or other vessel more than one oyster dredge. If a vessel is towing another vessel, the towing and towed vessels combined may not have on board more than one dredge.

(b) No person may possess on board any commercial fishing boat, barge, float, or other vessel, or any combination of vessels in tow, a dredge:

(1) exceeding 36 inches in width across the mouth; or

(2) having a capacity of more than two bushels.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.111. Retention Limits

(a) No person may have on board any vessel in the public water of this state, or on any combination of vessels in tow, more than 50 barrels of culled oysters of the legal size.

(b) A barrel is equal to three bushels.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.112. Oyster Size Limits

(a) No person may take or possess a cargo of oysters more than five percent of which are between three-fourths inch and three inches measured from beak to bill or along an imaginary line through the long axis of the shell.

(b) A cargo of undersized oysters shall be determined by taking at random five percent of the total cargo of oysters as a sample, of which not more than five percent may measure less than three inches along an imaginary straight line through the long axis of the shell.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.113. Culling Oysters

(a) No person may fail or refuse to cull oysters between three-fourths inches and three inches measured as provided in Section 76.112 of this code at the time the oysters are taken or to fail or refuse to return culled oysters to the reef immediately.

(b) No person may possess more than one bushel of unculled oysters during the period he is on the reef.

(c) Unculled oysters shall be kept separate from culled oysters.

(d) If returning undersized oysters to the bed from which they were taken is impractical, the department may sell them.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.114. Exception to Size and Retention Limits

(a) The commission by permit may allow the use of one or more dredges of any size and cargoes in excess of 50 barrels in transplanting to or harvesting from private leases.

(b) The commission by permit may allow the taking and retention of cargoes having oysters between three-fourths inch and three inches in a greater percentage than five percent.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.115. Closing Areas

(a) The commission may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked.

(b) The commission may open closed areas when appropriate.

(c) Before closing any area, the commissioner shall post notices of the closing in fish and oyster houses in two towns nearest the area to be closed and shall publish notice in a daily newspaper of general circulation in the area to be closed. The notices shall be posted and published at least three days before the effective date of the closing.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1220, ch. 456, § 18, eff. Sept. 1, 1975.]

§ 76.116. Oysters From Polluted Areas

(a) There is no open season for taking oysters from areas declared to be polluted by the State Department of Health.

(b) The department may authorize by permit the transplanting of oysters from polluted areas to private oyster leases.

(c) A person removing oysters from polluted areas without a permit shall replace the oysters in the beds from which they were taken as directed by authorized employees of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.117. Obedience to Orders

No person may fail or refuse to obey a lawful order of a commissioned game management officer of the department issued under the authority of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.118. Penalty

A person who violates a provision of this subchapter or a regulation of the commission issued under this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each day of a continuing violation constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 76.119 to 76.200 reserved for expansion]

SUBCHAPTER D. SHELLFISH IN POLLUTED WATER

§ 76.201. Definitions

In this subchapter:

(1) "Shellfish" means oysters, clams, and mussels, either fresh or frozen and either shucked or in the shell.

(2) "Polluted area" means an area that is continuously or intermittently subject to the discharge of sewage or other wastes, or to the presence of coliform organisms in quantities likely to indicate that shellfish taken from the area are unfit for human consumption.

(3) "Commissioner" means the State Commissioner of Health.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.202. Declaration of Polluted Areas

(a) The commissioner shall declare any area within the jurisdiction of the state to be polluted if he finds that it is a polluted area.

(b) The commissioner shall close to the taking of shellfish for a period he deems advisable any water to which shellfish from polluted areas may have been transferred.

(c) The commissioner shall establish by order the areas which he declares to be polluted and shall modify or revoke the orders in accordance with the results of sanitary and bacteriological surveys conducted by the State Department of Health. The commissioner shall file the orders in the office of the State Department of Health and shall furnish copies of the orders describing polluted areas to any interested person without charge.

(d) The commissioner shall conspicuously outline polluted areas on maps, which he shall furnish without charge to any interested person. The failure of any person or persons to avail themselves of this information does not relieve them from a violation of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.203. Rules and Regulations

(a) The commissioner, with the approval of the State Board of Health, shall make rules and regulations establishing specifications for plant facilities and for the harvesting, transporting, storing, handling, and packaging of shellfish.

(b) The commissioner shall file the rules and regulations in the office of the secretary of state.

(c) The rules and regulations are effective three months from the date of their promulgation.

(d) The commissioner shall furnish without charge printed copies of the rules and regulations to any interested person on request.

(e) The commissioner may make reasonable and necessary regulations, not inconsistent with any provision of this subchapter, for the efficient enforcement of this subchapter.

(f) The violation of any regulation made under this subchapter is a violation of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.204. Inspection of Shellfish Plants

(a) The commissioner or his authorized agent shall inspect all shellfish plants and the practices followed in the handling and packaging of shellfish. If it is found that the operator is complying with the rules and regulations promulgated under this subchapter, the commissioner shall issue a certificate attesting to the compliance.

(b) The commissioner or his authorized agent may reinspect a plant at any time and shall revoke the certificate on refusal of the operator to permit an inspection or free access at reasonable hours, or on a finding that the plant is not being operated in compliance with the rules and regulations promulgated under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.205. Taking Shellfish From Polluted Areas

No person may take, sell, or offer or hold for sale any shellfish from an area declared by the commissioner to be polluted without complying with all rules and regulations made by the commissioner to insure that the shellfish have been purified.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.206. Transplanting Shellfish From Polluted Areas

(a) Section 76.205 of this code does not prohibit the transplanting of shellfish from polluted water when permission for the transplanting is first obtained from the Parks and Wildlife Department and the transplanting is supervised by the department.

(b) The department shall furnish a copy of the transplant permit to the commissioner prior to the commencement of transplanting activity.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.207. Purification of Shellfish

The commissioner may allow purification of shellfish taken from polluted areas by artificial means, subject to the rules and regulations of the commissioner and subject to supervision deemed necessary by the commissioner in the interest of public health.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.208. Sale of Shellfish Improperly Handled

No person may sell or offer or hold for sale any shell stock or shucked shellfish that have not been handled and packaged in accordance with specifications fixed by the commissioner under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.209. Sale of Shellfish From Improper Facilities

No person may sell or offer or hold for sale any shellfish where the facilities for packaging and handling the shellfish do not comply with specifications fixed by the commissioner under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.210. Unlawfully Operating a Shellfish Plant

No person may operate a shellfish plant engaged in the handling and packaging of shellfish, either

shucked or in the shell, without a valid certificate issued by the commissioner for each plant or place of business.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.211. Sale of Shellfish Without a Certificate Number

No person may sell or offer for sale any shellfish that are not in a container bearing a valid certificate number from a state or a nation whose shellfish certification program conforms to the current Manual of Recommended Practice for Sanitary Control of the Shellfish Industry, issued by the United States Public Health Service. The provisions of this section do not apply to the sale for on-premises consumption of shellfish removed from a certified container.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.212. Compliance With Regulations

(a) The commissioner shall give any plant a reasonable time to comply with regulations issued under this subchapter after the date of promulgation, but not longer than six months unless an extension is granted.

(b) On a showing that more time is reasonably required, the commissioner may extend the time for compliance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.213. Enforcement

Commissioned officers of the Parks and Wildlife Department shall enforce the provisions of Section 76.205 of this code. Other provisions of this subchapter shall be enforced by the commissioner and his authorized representatives with assistance from the officers of the department as determined by the director.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.214. Disposition of Unfit or Unlawful Shellfish

Any shellfish that are held or offered for sale at retail or for human consumption, and that have not been handled and packaged in accordance with the specifications fixed by the commissioner under this subchapter, or that are not in a certified container as provided in this subchapter or are otherwise found by the commissioner to be unfit for human consumption, are subject to immediate condemnation, seizure, and confiscation by the commissioner or his agents. The shellfish shall be held, destroyed, or otherwise disposed of as directed by the commissioner.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.215. Performance Bond

In order to insure that the certificate holder will comply with all legal requirements imposed under this subchapter, the commissioner, when reasonably necessary for the enforcement of this subchapter, may require each person holding a plant certificate to post and maintain with him a good and sufficient bond with a corporate surety or two personal sureties approved by the commissioner, or a cash deposit in a form acceptable to the commissioner. Any failure to comply with the legal requirements of this subchapter will result in the certificate holder or his surety paying as forfeiture to the commissioner a sum not to exceed $1,000.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.216. Penalty

A person who violates any provision of this subchapter or a regulation of the commissioner is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $200 nor more than $500. Each day of a continuing violation constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 77. SHRIMP

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SUBCHAPTER A. GENERAL PROVISIONS

§ 77.001. Definitions

In this chapter:

(1) "Coastal water" means all the salt water of this state, including that portion of the Gulf of Mexico within the jurisdiction of the state.

(2) "Inside water" means all bays, inlets, outlets, passes, rivers, streams, and other bodies of water landward from the shoreline of the state along the Gulf of Mexico and contiguous to, or connected with, but not a part of, the Gulf of Mexico and within which the tide regularly rises and falls and in which saltwater shrimp are found or into which saltwater shrimp migrate.

(3) "Outside water" means the salt water of the state contiguous to and seaward from the shoreline of the state along the Gulf of Mexico as the shoreline is projected and extended in a continuous and unbroken line, following the contours of the shoreline, across bays, inlets, outlets, passes, rivers, streams, and other bodies of water; and that portion of the Gulf of Mexico extending from the shoreline seaward and within the jurisdiction of the state.

(4) "Major bays" means the deeper, major bay areas of the inside water, including Sabine Lake north of Cameron Causeway, Trinity Bay, Galveston Bay, East Galveston Bay, West Galveston Bay, Matagorda Bay (including East Matagorda Bay), Tres Palacios Bay south of a line from Grassy Point to the mouth of Pilkerton Bayou, Espiritu Santo Bay, Lavaca Bay seaward of State Highway 35, San Antonio Bay seaward of a line from McDowell Point to Grassy Point to Marker 32 on the Victoria Barge Canal, Ayres Bay, Carlos Bay, Aransas Bay, Mesquite Bay, and Corpus Christi Bay, all exclusive of tributary bays, bayous, and inlets, lakes, and rivers.

(5) "Possess" means the act of having in possession or control, keeping, detaining, restraining, or holding as owner, or under a fishing ley, or as agent, bailee, or custodian of another.

(6) "Commercial gulf shrimp boat" means any boat that is required to be numbered or registered under the laws of the United States or of this state and that is used for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the outside water of the state for pay or for the purpose of sale, barter, or exchange, or from salt water outside the state for pay or for the purpose of sale, barter, or exchange, and that unloads at a port or other point in the state without having been previously unloaded in another state or foreign country.

(7) "Commercial bay shrimp boat" means a boat that is required to be numbered or registered under the laws of the United States or this state and that is used for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the inside water of this state for pay or for the purpose of sale, barter, or exchange.

(8) "Commercial bait shrimp boat" means a boat that is required to be numbered or registered under the laws of the United States or of this state and that is used for the purpose of catching or assisting in catching shrimp for use as bait and other edible aquatic products from the inside water of the state for pay or for the purpose of sale, barter, or exchange.

(9) "Shrimp house operator" means a person who operates a shrimp house, plant, or other establishment for compensation or profit for the purpose of unloading and handling, from commercial gulf shrimp boats or commercial bay shrimp boats, fresh shrimp and other edible aquatic products caught or taken from the coastal water of the state or from salt water outside the state and brought into the state without having been previously unloaded in another state or foreign country, but does not include a person holding a wholesale fish dealer's license under Section 47.009 of this code.

(10) "Bait-shrimp dealer" means a person who operates an established place of business in a coastal county of the state for compensation or profit for the purpose of handling shrimp caught for use as bait from the inside water of this state, but does not include a person holding a wholesale fish dealer's license under Section 47.009 of this code.

(11) "Individual bait-shrimp trawl" means a trawl, net, or rig used for the purpose of catching shrimp for one's own personal use.

(12) "Second offense" and "third and subsequent offenses" mean offenses for which convictions have been obtained within three years prior to the date of the offense charged.

(13) "Contiguous zone," means that area of the Gulf of Mexico lying adjacent to and offshore of the jurisdiction of the State of Texas and in which shrimp of the genus Penaeus are found.

(14) "Bait bays" includes major bays, Copano Bay east of a line running from Rattlesnake Point to the northeastern boundary of the Bayside township, Nueces Bay from the bridge at State Highway 181 west to the second overhead power line dissecting the bay, Upper Laguna Madre, Baffin Bay, Alazan Bay, Carlos Bay, Baroom Bay, Lower Laguna Madre, and the Gulf Intracoastal Waterway exclusive of all tributaries.

(15) "Nursery areas" includes tributary bays, bayous, inlets, lakes, and rivers, which are proven to serve as significant growth and development environments for postlarval and juvenile shrimp not including the outside waters, major bays, or bait bays as defined in this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1220, ch. 456, § 20(a), eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1297, ch. 600, §§ 1, 2, eff. Aug. 27, 1979.]

§ 77.002. License Fees

License fees provided in this chapter are a privilege tax on catching, buying, selling, unloading, transporting, or handling shrimp within the jurisdiction of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.003. Disposition of Funds

Money received for licenses issued under this chapter or fines for violations of this chapter shall be remitted to the department by the 10th day of the month following the date of collection.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.004. Research Program

(a) The department shall conduct continuous research and study of:

(1) the supply, economic value, environment, and breeding habits of the various species of shrimp;

(2) factors affecting the increase or decrease in shrimp;

(3) the use of trawls, nets, and other devices for the taking of shrimp;

(4) industrial and other pollution of the water naturally frequented by shrimp; and

(5) statistical information gathered by the department on the marketing, harvesting, processing, and catching of shrimp landed at points in the state.

(b) The research may be conducted by the department or an agency designated by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.005. Reporting by Licensee

A licensee under this chapter who lands shrimp in the state shall submit to the department by the 10th day of each month, on forms furnished by the department, a report stating:

(1) the number of pounds of shrimp landed at points in the state by the licensee during the reporting period;

(2) the water from which the shrimp were taken; and

(3) the names of the species of shrimp.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.006. Department Findings and Report

(a) Based on the study and reports obtained under Sections 77.004 and 77.005 of this code, the department shall make findings of fact and enter the findings in the permanent records of the department.

(b) The findings of fact shall be published as a report and presented to the governor and each member of the legislature before each regular session of the legislature.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 77.007 to 77.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO SHRIMPING

§ 77.011. License Requirement

No person may operate in the coastal water without obtaining the appropriate license, if required, as prescribed in this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.012. Foreign Shrimp

Provisions of this chapter prohibiting possession, sale, purchase, unloading, or other handling of shrimp apply to shrimp caught in this state and shrimp coming from another state or country unless specifically provided otherwise.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.013. Size

Except as provided by this chapter, no person may catch, possess, or have on board a boat within coastal water, or buy, sell, unload, transport, or handle, an amount of fresh shrimp, except sea bobs, which average in count of individual specimens more than 65 headless fresh shrimp to the pound or more than 39 heads-on fresh shrimp to the pound, with the exception in major bays the maximum heads-on count average from August 15 to October 31 each year shall be no more than 50 heads-on fresh shrimp to the pound and in such bays there shall be no count size required from November 1 to December 15 each year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 2012, ch. 789, § 1, eff. Aug. 27, 1979.]

§ 77.014. Method of Taking Count

(a) An authorized employee of the department shall take the count of shrimp in the presence of the person possessing the shrimp.

(b) The employee shall select a minimum of three representative samples for each 1,000 pounds or fraction of 1,000 pounds of headless or heads-on shrimp being sampled.

(c) Each sample must weigh five pounds after draining at least three minutes.

(d) The count per pound for the sample is determined by dividing the number of specimens in the sample by five.

(e) The average count per pound for the entire quantity being sampled is determined by totalling the count per pound for each sample and dividing that total by the number of samples.

(f) The average count per pound as determined under this section is prima facie evidence of the average count per pound of the shrimp in the entire cargo or quantity of shrimp sampled.

(g) Headless and heads-on shrimp shall be sampled, weighed, and counted separately.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.015. Gradation and Processing

Shrimp found to be of legal size under this chapter may subsequently be graded for size for packaging, processing, or sale.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.016. Restrictions on Individual Bait-Shrimp Trawl

No person may use, possess, or have on board a boat in coastal water more than one individual bait-shrimp trawl, or an individual bait-shrimp trawl:

(1) with a mesh size of less than eight and three-fourths inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl is placed in use;

(2) exceeding 20 feet in length between the doors or boards or other spreading device; or

(3) with doors or boards exceeding 15 inches by 30 inches each, or a total of 450 square inches each.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.017. Possession After Season

No person may retain saltwater shrimp in their fresh state legally taken in the coastal water of this state for more than five days after the end of an open season for the taking of shrimp unless he is a licensed bait dealer or sports fisherman.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.018. Foreign Trawl or Shrimp

(a) A person may possess or have on board a boat in the coastal water of Orange or Jefferson county a trawl and spreading device that may lawfully be used in the coastal water of another state if:

(1) the trawl and equipment are immediately en route to or from a home port or destination on land;

(2) the trawl and equipment have been used during the open season for shrimp in another state; and

(3) the trawl and equipment are not used or intended for use in the coastal water of this state in violation of this chapter.

(b) A person may possess or have on board a boat in the coastal water of Orange or Jefferson county shrimp that are lawfully caught in the coastal water of another state if the catch is immediately en route to or from a home port or destination on land.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.019. Prohibited Handling of Shrimp

No shrimp house operator, wholesale fish dealer, retail fish dealer, wholesale truck dealer, retail truck dealer, or other person holding a license issued by the department may knowingly unload, buy, or handle in any way shrimp or bait shrimp:

(1) from an unlicensed gulf shrimp boat or unlicensed commercial bay shrimp boat;

(2) of a prohibited size;

(3) caught in the inside water or outside water during the closed season for the water; or

(4) in violation of a provision of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.020. Penalty

(a) A person who violates a provision of this chapter except Section 77.024 of this code, or those sections specified in Subsection (b) below, is guilty of a misdemeanor and on conviction is punishable:

(1) by a fine of not less than $50 nor more than $200 for the first offense;

(2) by a fine of not less than $100 nor more than $500, or confinement in the county jail for not less than 10 days nor more than 60 days, or both, for the second offense; and

(3) by a fine of not less than $500 nor more than $2,000 and confinement in the county jail for not less than 30 days nor more than six months for the third offense.

(b) A person who violates Section 77.011, 77.013, 77.016, 77.017, 77.018, 77.019, 77.047, 77.061, 77.063, 77.064, 77.065, 77.066, 77.067, 77.068, 77.069, 77.070, 77.081, 77.082, 77.085, 77.086, 77.087, 77.088, 77.089, 77.090, 77.091, 77.092, 77.093, 77.095(a), 77.096, 77.097, 77.098, or 77.099 of this code is guilty of a misdemeanor and on conviction is punishable:

(1) by a fine of $200 for the first offense;

(2) by a fine of not less than $300 nor more than $700 or confinement in the county jail for not less than 10 days nor more than 60 days or both for the second offense;

(3) by a fine of not less than $750 nor more than $2,500 and confinement in the county jail for not less than 30 days nor more than six months for the third offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1465, ch. 641, § 1, eff. Sept. 1, 1979.]

Section 2 of the 1979 amendatory act provided:

"(a) Except as provided by Subsection (b) of this section, this Act applies only to offenses committed on or after the effective date of this Act, and an offense committed before the effective date of this Act is governed by the law in existence before this Act took effect, and that law is continued in force for that purpose as if this Act were not in effect.

"(b) In a criminal action pending on or commenced on or after the effective date of this Act for an offense committed before this Act took effect, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins."

§ 77.021. Separate Offense

Each day on which a violation occurs constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.022. Responsibility for Violation

(a) When a vessel is involved in a violation of this chapter, the captain of the vessel shall be considered primarily responsible for the violation. A member of the crew of a vessel shall not be guilty of a violation unless it also be charged that the member of the crew acted in violation of the orders of the captain of the vessel.

(b) The owner of a vessel involved in a violation of this chapter may not be found guilty of the violation unless it is charged and proved that the owner knowingly directed, authorized, permitted, agreed to, aided, or acquiesced in the violation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(i), eff. Sept. 1, 1975.]

§ 77.023. License Forfeiture

(a) On conviction for a third and subsequent offense under this chapter, a license under which operations involved in the violation are being conducted is subject to forfeiture.

(b) A license that is forfeited under this section may not be reissued for a period of 12 months from the date of forfeiture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.024. Operation Without License

(a) No person whose license has been forfeited under Section 77.023 of this code may do business without a new license or possess another license for the period of forfeiture.

(b) A person violating this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $2,500 nor more than $5,000 and confinement in the county jail for not less than six months nor more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.025. Period of Limitation

Text as added by § 13(j) of Acts 1975, 64th Leg., p. 1213, ch. 456

Except as provided in Article 12.05, Code of Criminal Procedure, 1965, as amended, an indictment or information for a violation of this chapter may be presented within one year after the date of the commission of the offense and not afterward.

[Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(j), eff. Sept. 1, 1975.]

For text as added by § 20(g) of Acts 1975, 64th Leg., p. 1222, ch. 456, see Section 77.025, post

§ 77.025. Confiscation and Disposal of Shrimp

Text as added by § 20(g) of Acts 1975, 64th Leg., p. 1222, ch. 456

When an enforcement officer of the department believes that a person has unlawful possession of any shrimp taken in violation of this chapter, all shrimp aboard any vessel involved or in the trawl, whether in storage, on deck, and whether alive or dead, whole or headed, frozen or fresh, shall be deemed to have been taken in violation of the chapter and shall be confiscated by the arresting officer. The cargo of shrimp shall be sold to the highest of three bidders by the officer. The proceeds of the sale shall be deposited in the state treasury to the credit of suspense fund number 900, pending the outcome of the action taken against the person charged with the illegal possession. Unless the person is found guilty, all the proceeds shall be paid to the defendant.
[Acts 1975, 64th Leg., p. 1222, ch. 456, § 20(g), eff. Sept. 1, 1975.]

For text as added by § 13(j) of Acts 1975, 64th Leg., p. 1213, ch. 456, see Section 77.025, ante

[Sections 77.026 to 77.030 reserved for expansion]

SUBCHAPTER C. SHRIMP LICENSES

§ 77.031. Commercial Bay Shrimp Boat License

(a) No person may operate a commercial bay shrimp boat for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the inside water unless the owner has obtained a commercial bay shrimp boat license.

(b) The fee for a commercial bay shrimp boat license is $40.

(c) A commercial bay shrimp boat license expires on March 1 of the year following the date of issuance.

(d) An applicant for a commercial bay shrimp boat license must submit to the department an affidavit that the applicant intends to derive the major portion of his livelihood from commercial fishery and that he will maintain adequate facilities to conduct the business.

(e) Except as provided in Section 77.0371 of this code, not more than one commercial bay shrimp boat license may be issued to a boat during the licensing period.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(g), eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 2012, ch. 789, § 2, eff. Aug. 27, 1979.]

§ 77.032. Issuance of Commercial Bay Shrimp Boat License

A commercial bay shrimp boat license may be issued only in the months of January and February unless the applicant has acquired title to the shrimp boat by purchase or new construction after the last day of February of the year for which the license is sought, in which case the applicant must submit an affidavit that the boat was acquired after the last day of February and that prior to the last day of February the applicant had not entered into an agreement to acquire the boat.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.033. Commercial Bait-Shrimp Boat License

(a) No person may operate a commercial bait-shrimp boat for the purpose of catching or assisting in catching shrimp for use as bait only and other edible aquatic products from the inside water unless the owner of the boat has obtained a commercial bait-shrimp boat license.

(b) The fee for a commercial bait-shrimp boat license is $40.

(c) A commercial bait-shrimp boat license expires August 31 following the date of issuance.

(d) Not more than one commercial bait-shrimp boat license may be issued to a boat for each licensing period.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.034. Repealed by Acts 1979, 66th Leg., p. 550, ch. 260, art. 5, § 1(3), eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1094, ch. 511, § 2, eff. June 11, 1979

The repealed section, relating to inspection for commercial bait-shrimp boat license, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

§ 77.035. Commercial Gulf Shrimp Boat License

(a) No person may operate a commercial gulf shrimp boat for catching or assisting in catching shrimp and other edible aquatic products from the outside water, or have on board a boat, or unload, or allow to be unloaded at a port or point in this state, shrimp and other edible aquatic products caught or taken from the outside water or from salt water outside the state without having been previously unloaded in some other state or foreign country, unless the owner of the boat has obtained a commercial gulf shrimp boat license.

(b) The fee for a commercial gulf shrimp boat license is $50.

(c) The commercial gulf shrimp boat license expires August 31 following the date of issuance.

(d) Except as provided in Section 77.0371 of this code, not more than one commercial gulf shrimp boat license may be issued to a boat during the licensing period.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(h), eff. Sept. 1, 1975.]

§ 77.036. Official Registration

(a) An applicant for a commercial shrimp boat license issued under this subchapter must submit to the department the boat's United States Bureau of Customs official document or the Texas certificate of number for a motorboat.

(b) The certificate of license issued by the department for a commercial shrimp boat must contain the name of the boat and the number appearing on the United States Bureau of Customs official document or the Texas certificate of number.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.037. Transfer of License

A commercial shrimp boat license issued under this subchapter may be transferred on the application of the licensee only from a boat that has been destroyed or lost to a boat acquired by the licensee as a replacement.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.0371. Duplicate License of Transfer of Vessel

On the sale of any boat licensed under this subchapter, the department, on receipt of an application from the new owner and the surrender of the original license, shall issue, without charge, a duplicate license reflecting the change of ownership.

[Acts 1975, 64th Leg., p. 1212, ch. 456, § 13(a), eff. Sept. 1, 1975.]

§ 77.038. Display of Licenses

A commercial shrimp boat license issued under this subchapter must be prominently displayed on the bow, outside the wheelhouse, or at another point outside the boat designated by the department, and on each side of the boat, evidencing payment of the license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.039. License Design

(a) A commercial shrimp boat license issued under this subchapter must be a metal or plastic sign or emblem at least 32 square inches in size, and have a different color or design for each license period.

(b) The character, color, and design of each class of commercial shrimp boat license issued under this subchapter must be distinguishable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.040. Other Licenses Required

(a) A person holding a commercial shrimp boat license under this subchapter is not required to obtain a commercial fishing boat license under Section 47.007 of this code.

(b) The captain and each paid member of the crew of a boat having a commercial shrimp boat license issued under this subchapter must have a general commercial fisherman's license issued under Section 47.002 of this code, but these licenses may be purchased in the name of the vessel. The license form provided by the department for a vessel may be a single license covering the number of persons licensed as captain and crew, and the fee for the total number of persons licensed is the amount provided in Section 47.002 of this code times the number of persons comprising the captain and crew.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 550, ch. 260, art. 4, § 4, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1399, ch. 623, § 9, eff. Aug. 27, 1979.]

§ 77.041. Gear on Commercial Shrimp Boat

All shrimp trawls and fishing gear, except fishnets or seines, with which a boat having a commercial shrimp boat license issued under this subchapter is equipped may be used unless the use is otherwise prohibited by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.042. Shrimp House Operator License

(a) No person may engage in business as a shrimp house operator unless he has obtained a shrimp house operator's license issued by the department.

(b) The fee for a shrimp house operator's license is $150.

(c) A shrimp house operator's license expires August 31 following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.043. Bait-Shrimp Dealer License

(a) No person may engage in business as a bait-shrimp dealer unless he has obtained a bait-shrimp dealer's license from the department for each bait stand or place of business he maintains.

(b) The fee for a bait-shrimp dealer's license is $40.

(c) A bait-shrimp dealer's license expires August 31 following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.044. Issuance of Bait-Shrimp Dealer's License

(a) The department shall issue a bait-shrimp dealer's license only after it has determined that the applicant for the license is a bona fide bait-shrimp dealer.

(b) A bait-shrimp dealer's license may not be held by a person who also holds a shrimp house operator's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.045. Rights and Duties of Bait-Shrimp Dealer

(a) The holder of a bait-shrimp dealer's license may sell, purchase, and handle shrimp, minnows, fish, and other forms of aquatic life for sale or resale for fish bait purposes in the coastal counties of this state.

(b) The holder of a bait-shrimp dealer's license is not required to obtain a bait dealer's license issued under Section 47.014 of this code unless he engages in the business in a county other than a coastal county.

(c) Frozen dead bait held under a bait-shrimp dealer's license must be packaged and labeled "Bait Shrimp" in block letters at least one inch in height.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.046. Exemptions From Bait-Shrimp Dealer's License

A bait-shrimp dealer's license is not required for:

(1) grocery stores in coastal counties which do not unload or purchase shrimp directly from commercial bait-shrimp boats;

(2) bait dealers in coastal counties who do not sell or offer for sale or handle shrimp for sale or resale for bait purposes, but these dealers must have a bait-dealer's license issued under Section 47.014 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.047. Prohibited Handling of Shrimp by Bait-Shrimp Dealer

No bait-shrimp dealer may knowingly unload, buy, or handle in any way bait shrimp from an unlicensed commercial bait-shrimp boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.048. Individual Bait-Shrimp Trawl License

(a) No person may possess or have on board a boat in coastal water an individual bait-shrimp trawl unless the owner of the trawl has obtained an individual bait-shrimp trawl license from the department.

(b) The fee for the individual bait-shrimp trawl license is $5.

(c) The individual bait-shrimp trawl license expires on August 31 following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 77.049 to 77.060 reserved for expansion]

SUBCHAPTER D. SHRIMPING IN OUTSIDE WATER

§ 77.061. General Closed Season

Except as specifically provided in this subchapter, no person may catch shrimp in outside water:

(1) from June 1 to July 15, both dates inclusive, or during a period provided under Section 77.062 of this code, as applicable; or

(2) extending from the coastline of Texas up to and including seven fathoms in depth from December 16 of each year to February 1 of the following year, both dates inclusive, unless taking sea bobs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1220, ch. 456, § 20(b), eff. Sept. 1, 1975.]

§ 77.062. Change in General Closed Season

Based on sound biological data, the commission may change the opening and closing dates of the June 1 to July 15 closed season to provide for an earlier, later, or longer season not to exceed 60 days. The commission may change the closing date with 72 hours public notice and may reopen the season with 24 hours notice. The commission may delegate to the director the duties and responsibilities of opening and closing the shrimping season under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1220, ch. 456, § 20(b), eff. Sept. 1, 1975.]

§ 77.0621. Contiguous Zone Season

Except as specifically provided in this subchapter, no citizen of this state may catch from the contiguous zone shrimp during a closed season as provided in Subdivision (1) of Section 77.061 of this code, including a closed season modified as provided in Section 77.062 of this code.

[Acts 1975, 64th Leg., p. 1221, ch. 456, § 20(c), eff. Sept. 1, 1975.]

§ 77.063. General Limitation on Nets

(a) Except as specifically provided in this subchapter, no person may catch shrimp in the outside water with, or possess or have on board a boat in the coastal water for use in outside water, a trawl, except a try net or test net, with a mesh size of less than eight and three-fourths inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl has been put in use. Measurement shall be made in the section of the trawl which is normally under tension when in use.

(b) When restrictions are imposed on either or both the size and number of main trawls, no person may use a try net in outside water exceeding 21 feet

in width as measured along an uninterrupted corkline from leading tip of door to leading tip of door and having doors or boards that exceed 450 square inches each or a beam trawl exceeding 10 feet in width as measured along the beam of a beam trawl in its fully extended position.

(c) This section does not apply to the taking of sea bobs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1092, ch. 511, § 1, eff. June 11, 1979.]

§ 77.064. Night Shrimping

No person may catch shrimp of any size or species in the outside water extending from the coastline of Texas up to and including seven fathoms in depth during the period beginning 30 minutes after sunset and ending 30 minutes before sunrise.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.065. White Shrimp

(a) A licensed commercial gulf shrimp boat operator may catch white shrimp in the outside water not exceeding four fathoms in depth from June 1 to July 15, both dates inclusive, or during the period prescribed under Section 77.062 of this code.

(b) No more than one net may be used at a time, except a try net, and when such net is an otter trawl, the trawl may not consist of doors less than three feet in length as measured along the door centerline from the leading tip to the trailing edge of the door, excluding any add-on devices of any type, and the total measurement of doors and trawl may not exceed the measurement as described in Subsection (c) below as measured along an uninterrupted corkline from leading tip of door to leading tip of door. When the trawl used is a beam trawl, the trawl may not exceed 25 feet in width as measured along the beam in its fully extended position.

(c) The total measurement for an otter trawl and doors under this section shall not exceed the following:

(1) doors three feet or more but less than four feet–40 feet;

(2) doors four feet or more but less than five feet–42 feet;

(3) doors five feet or more but less than six feet–44 feet;

(4) doors six feet or more but less than seven feet–46 feet;

(5) doors seven feet or more but less than eight feet–48 feet;

(6) doors eight feet or more but less than nine feet–50 feet;

(7) doors nine feet or more but less than 10 feet–52 feet;

(8) doors 10 feet or more–54 feet.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1221, ch. 456, § 20(e), eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1092, ch. 511, § 1, eff. June 11, 1979.]

§ 77.066. Sea Bobs

(a) No commercial gulf shrimp boat operator may catch sea bobs with a trawl exceeding 25 feet in width measured along the corkline from board to board or between the extremes of any other spreading device or with a trawl having a mesh size in excess of six and one-half inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl has been placed in use. Not more than one trawl may be used at a time.

(b) No person catching sea bobs may catch or have on board a boat any other species of shrimp which exceed ten percent, in weight or number, of the entire catch.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.067. Noncommercial Bait-Shrimping

(a) A person may catch shrimp for use as bait only at any time of the year in the outside water with an individual bait-shrimp trawl, cast net, dip net, bait trap, or minnow seine not larger than 20 feet in length manually operated on foot only without the use of any mechanical means or devices.

(b) No person catching shrimp with an individual bait-shrimp trawl may possess or have on board a boat in the outside water more than two quarts of shrimp per person or four quarts of shrimp per boat for use as bait.

(c) Shrimp caught under this section are not subject to the size requirements set out in Section 77.013 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.068. Noncommercial Shrimping

(a) Subject to the limitations prescribed in this section, during the open season in outside water a person may catch shrimp for personal use by means of:

(1) a cast net, dip net, bait trap, or minnow seine that is not more than 20 feet long and that is manually operated on foot only without the use of any mechanical means or devices;

(2) an individual bait-shrimp trawl; or

(3) a manually operated seine not exceeding 400 feet in length with a mesh of not less than one and one-half inch square, except for the bag and 50 feet on each side of the bag, the mesh of which may not be larger than one inch square.

(b) A person may catch for personal use not more than 100 pounds of shrimp (in their natural state with heads attached) each day during the open season in outside water.

(c) The seine described in Subsection (a)(3) of this section may not be used within one mile of any natural or man-made pass leading from inside water to outside water, and any shrimp or marine life caught with the seine but not kept by the person using the seine shall be returned to the water. Shrimp caught with this seine may not be sold.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.069. Sale of Noncommercial Shrimp

No person may buy, sell, offer for sale, or handle in any way for profit shrimp caught in outside water with an individual bait-shrimp trawl, dip net, cast net, bait trap, or minnow seine not larger than 20 feet in length.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.070. Possession of Shrimp

Except as permitted by Section 77.065 and Section 77.067 of this code, no person may possess or have on board a boat in coastal water, or buy, sell, unload, transport, or handle in any way, shrimp caught in the outside water during the closed season or shrimp taken unlawfully from the contiguous zone during the closed season.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1221, ch. 456, § 20(d), eff. Sept. 1, 1975.]

§ 77.071. Regulations in Contiguous Zone

(a) The department shall not enforce any regulations in the contiguous zone if it determines that the shrimp it desires to manage are being harvested on a meaningful basis by vessels not subject to the same or similar regulations.

(b) The department may negotiate reciprocal agreements with another state with respect to the application of one state's shrimping regulations in its contiguous zone to citizens of the other state.
[Acts 1975, 64th Leg., p. 1221, ch. 456, § 20(f), eff. Sept. 1, 1975.]

[Sections 77.072 to 77.080 reserved for expansion]

SUBCHAPTER E. SHRIMPING IN INSIDE WATER

§ 77.081. Application

No person may catch shrimp of any size or species within the inside water except as provided in this subchapter.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.082. Shrimping in Passes

No person may catch shrimp of any size or species within the natural or man-made passes leading from the inside water to the outside water.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.083. Heading Shrimp

No person may head shrimp aboard a boat in the inside water or dump or deposit shrimp heads in the inside water except in artificial passes, canals, or basins.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.084. Trawl Doors

No person may have on board a boat in the inside water for use on the inside water more than one set of trawl doors or other spreading devices nor more than one set of try-net doors not to exceed 450 square inches per door.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 2012, ch. 789, § 3, eff. Aug. 27, 1979.]

§ 77.085. Try Nets

No person may use, possess, or have on board a boat in inside water a try net or test net (1) exceeding 21 feet in width as measured along an uninterrupted corkline from leading tip of door to leading tip of door and having doors or boards that exceed 450 square inches each, or (2) a beam trawl 10 feet in width as measured along the beam of a beam trawl in its fully extended position.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1212, ch. 456, § 13(b), eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1092, ch. 511, § 1, eff. June 11, 1979.]

§ 77.086. Mesh Size

(a) Except as provided in this subchapter, no person may catch shrimp in the inside water with, or possess or have on board a boat in the coastal water for use in inside water, a trawl and bag or trawl liner having a mesh size of less than eight and three-fourths inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl or bag has been placed in use. The measurement shall be made in the section of the trawl which is normally under tension when in use.

(b) This section does not apply to try nets or test nets.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1212, ch. 456, § 13(c), eff. Sept. 1, 1975.]

§ 77.087. Net Width

During the period from August 15 to December 15 of each year, both dates inclusive, no person may catch shrimp of any size or species in the major bays with more than one otter trawl or an otter trawl exceeding 95 feet in width as measured along an uninterrupted corkline, from leading tip of door to leading tip of door. This section does not apply to try nets or test nets.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1212, ch. 456, § 13(d), eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1092, ch. 511, § 1, eff. June 11, 1979.]

§ 77.088. Night Shrimping Prohibited

Except as provided in this subchapter, no person may catch shrimp or use or operate a net or trawl to catch shrimp of any size or species in the inside water except during the period beginning 30 minutes before sunrise and ending 30 minutes after sunset.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.089. Noncommercial Bait-Shrimping

(a) A person may catch shrimp for use as bait only at any time of the year in bait bays with an individual bait-shrimp trawl, cast net, dip net, bait trap, or minnow seine not larger than 20 feet in length manually operated without the use of any mechanical means or devices.

(b) No person catching shrimp with an individual bait-shrimp trawl may possess or have on board a boat in the inside water more than two quarts of shrimp per person or four quarts of shrimp per boat for use as bait.

(c) Shrimp caught under this section are not subject to the size requirement set out in Section 77.013 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1297, ch. 600, § 3, eff. Aug. 27, 1979.]

§ 77.090. Noncommercial Shrimping

Text of subsection as amended by Acts 1979, 66th Leg., p. 1297, ch. 600, § 4

(a) A person may catch shrimp for personal use with an individual bait-shrimp trawl, cast net, dip net, bait trap, or minnow seine not larger than 20 feet in length manually operated on foot only and without the use of any mechanical means or devices:

(1) in major bays of inside water during the open season ending on December 15 as provided in Section 77.091 of this code in an amount not to exceed 100 pounds of shrimp per day; and

(2) in major bays of inside water from May 15 to July 15, both dates inclusive, in an amount not to exceed 15 pounds of shrimp per day.

Text of subsection as amended by Acts 1979, 66th Leg., p. 2012, ch. 789, § 4

(a) A person may catch shrimp for personal use with an individual bait-shrimp trawl, cast net, dip net, bait trap, or minnow seine not larger than 20 feet in length manually operated on foot only and without the use of any mechanical means or devices in major bays of inside water from August 15 to December 15 and from May 15 to July 15 in an amount not to exceed 15 pounds of shrimp per day.

(b) The weight of shrimp taken or caught under this section is determined in their natural state with heads attached.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 340, ch. 167, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1297, ch. 600, § 4, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2012, ch. 789, § 4, eff. Aug. 27, 1979.]

§ 77.091. Commercial Shrimp Season

A licensed commercial bay shrimp boat operator may catch shrimp of lawful size in the major bays during the periods from August 15 to December 15, both dates inclusive, and May 15 to July 15, both dates inclusive.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.092. Commercial Shrimp Limit

(a) During the period from May 15 to July 15, both dates inclusive, a licensed commercial bay shrimp boat operator may catch not more than 300 pounds of shrimp per boat per calendar day, and may possess or have on board a boat in the inside water or unload or attempt to unload at a point in this state not more than 300 pounds of shrimp.

(b) The weight of shrimp must be determined in their natural state with heads attached.

(c) Shrimp caught or taken under this section are not subject to the size requirement set out in Section 77.013 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.093. Commercial Shrimp Nets

In major bays of inside water during the period from May 15 to July 15, no licensed commercial bay shrimp boat operator may catch shrimp with more than one net at a time, except a try net, or with a net:

(1) in the case of an otter trawl, exceeding a total measurement as described in Subsection (2) below as measured along an uninterrupted corkline from leading tip of door to leading tip of door or with doors less than three feet in length as measured along the door centerline from the leading tip to the trailing edge of the door, excluding any add-on devices of any type; and

(2) the total measurement for the otter trawl and doors under Subsection (1) above shall not exceed the following:

(A) doors three feet or more but less than four feet–40 feet;

(B) doors four feet or more but less than five feet–42 feet;

(C) doors five feet or more but less than six feet–44 feet;

(D) doors six feet or more but less than seven feet–46 feet;

(E) doors seven feet or more but less than eight feet–48 feet;

(F) doors eight feet or more but less than nine feet–50 feet;

(G) doors nine feet or more but less than 10 feet–52 feet;

(H) doors 10 feet or more–54 feet; or

(3) in the case of a beam trawl, the beam trawl shall not exceed 25 feet in width as measured along the beam in its fully extended position; or

(4) having meshes, including the meshes of the bag or liner, less than six and one-half inches between the most widely separated knots in any consecutive series of five stretched meshes after the net or bag has been placed in use.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(e), eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1092, ch. 511, § 1, eff. June 11, 1979.]

§ 77.094. Commercial Bait-Shrimp Season

(a) A licensed commercial bait-shrimp boat operator in the inside water may catch shrimp of any size or species in bait bays for use as bait only at any time of the year.

(b) Persons holding a valid bait-shrimp dealer's license and maintaining a fixed place of business immediately adjacent to a nursery area, prior to designation of the area as a nursery area, shall be authorized to operate not more than two licensed bait-shrimp boats during any given day within the area adjacent to their facility wherein bait-shrimping has otherwise been prohibited. This authorization will terminate 12 years after designation of the prohibition on shrimping in the area and is subject to the limitations of this chapter and within the period of validity of the bait-shrimp dealer's license. Authorized vessels must be reported to the department prior to period of operation within the specific area authorized. This report must include vessel identification, bait-shrimp dealer's license number under which authorization is granted, body of water to be shrimped, and other information deemed necessary for proper enforcement by the department. This provision does not apply to bait-shrimp dealers not harvesting bait shrimp from nursery areas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1298, ch. 600, § 5, eff. Aug. 27, 1979.]

§ 77.095. Commercial Bait-Shrimp Limit

(a) No licensed commercial bait-shrimp boat operator may catch more than 150 pounds of shrimp per boat per calendar day, or possess or have on board a boat, or unload or attempt to unload at a point in the state more than 150 pounds of shrimp.

(b) The weight of the shrimp must be determined in their natural state with heads attached. Not more than 50 percent of the shrimp may be dead and 50 percent of the shrimp must be kept in a live condition on board the vessel taking the bait shrimp.

(c) Shrimp caught or taken under this section are not subject to the size requirement set out in Section 77.013 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.096. Commercial Bait-Shrimp Nets

No licensed commercial bait-shrimp boat operator may catch shrimp in bait bays with:

(1) more than one net at a time, except one try net not exceeding 12 feet in total measurement as measured along an uninterrupted corkline from leading tip of door to leading tip of door and having doors or boards that do not exceed 450 square inches each, or a beam trawl exceeding five feet in width as measured along the beam of a beam trawl in its fully extended position;

(2) an otter trawl and doors not exceeding the total measurement as described in Subdivision (3) below as measured along an uninterrupted corkline from leading tip of door to leading tip of door; and

(3) the total measurement for the otter trawl and doors under Subdivision (2) above shall not exceed the following:

(A) doors three feet or more but less than four feet–40 feet;

(B) doors four feet or more but less than five feet–42 feet;

(C) doors five feet or more but less than six feet–44 feet;

(D) doors six feet or more but less than seven feet–46 feet;

(E) doors seven feet or more but less than eight feet–48 feet;

(F) doors eight feet or more but less than nine feet–50 feet;

(G) doors nine feet or more but less than 10 feet–52 feet;

(H) doors 10 feet or more–54 feet; or

(4) a beam trawl that does not exceed 25 feet as measured along the beam in its fully extended position; or

(5) a net or bag having a mesh size of not less than six and one-half inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the net or bag has been placed in use.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(f), eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1092, ch. 511, § 1, eff. June 11, 1979; Acts 1979, 66th Leg., p. 1298, ch. 600, § 6, eff. Aug. 27, 1979.]

§ 77.097. Commercial Bait-Shrimping at Night

(a) No licensed commercial bait-shrimp boat operator may catch shrimp for use as bait between sunset and sunrise except during the period beginning December 16 of one year and ending August 14 of the following year, both dates inclusive.

(b) Bait-shrimp may be taken at any time of the day or night in the water of the Laguna Madre.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.098. Bait-Shrimp Sale

No licensed commercial bait-shrimp boat operator may sell or unload shrimp caught under this subchapter at any time except to a bona fide bait-shrimp dealer or a sports fisherman operating a boat in inside water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.099. Sale of Noncommercial Shrimp

No person may buy, sell, offer for sale, or handle in any way for profit shrimp caught in inside water with an individual bait-shrimp trawl, dip net, cast net, bait trap, or minnow seine not larger than 20 feet in length.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.100. Retention of Certain Fish

During the period beginning on December 16 of a year and extending through February 28 of the following year, no person may retain redfish or spotted sea trout caught in inside water with a trawl.

[Added by Acts 1979, 66th Leg., p. 195, ch. 105, § 1, eff. Aug. 27, 1979.]

CHAPTER 78. CLAMS, MUSSELS, SPONGE CRABS, AND BLUE CRABS

SUBCHAPTER A. MUSSELS, CLAMS, OR NAIADS

Section
78.001. License Required.
78.002. License Form; Expiration.
78.003. License Fee.
78.004. Unlawful Acts.

SUBCHAPTER B. SPONGE CRABS

Section
78.101. Definitions.
78.102. Unlawful Taking of Sponge Crabs.

SUBCHAPTER C. BLUE CRABS

78.201. Unlawful Taking of Blue Crabs.

SUBCHAPTER A. MUSSELS, CLAMS, OR NAIADS

§ 78.001. License Required

No person may take any mussels, clams, or naiads or their shells from the public water of the state without a license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 78.002. License Form; Expiration

The license form shall be prescribed by the department and shall designate the water in which the licensee may operate. The license expires one year after the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 78.003. License Fee

The license fee is $10, payable to the department, with an additional $25 fee for permission to use a dredge.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 78.004. Unlawful Acts

A person who violates the provisions of Section 78.001 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 78.005 to 78.100 reserved for expansion]

SUBCHAPTER B. SPONGE CRABS

§ 78.101. Definitions

"Coastal water" has the same meaning as is given to the term by the Texas Shrimp Conservation Act (Chapter 77 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 78.102. Unlawful Taking of Sponge Crabs

(a) No person may take sponge crabs from the coastal water of the state by any means.

(b) No person may buy or sell a female crab that:

(1) has its abdominal apron detached; and

(2) was taken from coastal water.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1765, ch. 714, § 2, eff. Aug. 27, 1979.]

SUBCHAPTER C. BLUE CRABS

§ 78.201. Unlawful Taking of Blue Crabs

(a) Except as provided in Subsections (b) and (c) of this section, no person may possess or may catch and retain a blue crab smaller than five inches across the shell from tip to tip.

(b) During the period from March 1 through April 30, a person may catch and retain blue crabs of any size for use as bait if bait blue crabs smaller than the minimum size are kept alive in a container separate from nonbait blue crabs.

(c) The holder of a commercial fishing license may catch and retain a number of blue crabs smaller than the minumum size that equals or is less than five percent of the total number of blue crabs caught and retained by the licensee, excluding bait blue crabs.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.
[Added by Acts 1979, 66th Leg., p. 1765, ch. 714, § 1, eff. Aug. 27, 1979.]

CHAPTER 79. EXTENDED FISHERY JURISDICTION

Section
79.001. Compliance.
79.002. Authority.
79.003. Suspension of Other Laws.

§ 79.001. Compliance

The department is authorized to cooperate with the Gulf of Mexico Fishery Management Council established pursuant to the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.), in developing state management programs which are consistent with plans proposed by the council and approved by the secretary of commerce.
[Added by Acts 1977, 65th Leg., p. 1280, ch. 501, § 2, eff. June 15, 1977.]

§ 79.002. Authority

New regulatory authority by the department may occur only if federal regulation in state waters is proposed and under no other circumstances. When necessary to retain jurisdiction of resources in the state, and only then, the department may follow procedures outlined in Chapter 61 of this code in promulgating rules for harvest of any and all species of marine life subject to the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.).
[Added by Acts 1977, 65th Leg., p. 1280, ch. 501, § 2, eff. June 15, 1977.]

§ 79.003. Suspension of Other Laws

Irrespective of exclusions or limited application of the Uniform Wildlife Regulatory Act (Chapter 61 of this code) or any chapter in Title 7 of this code the commission shall exercise the authority set out in Section 79.002 of this code and conflicting provisions limiting the area, species to which applicable, or special seasons, are hereby suspended when the proclamation of the commission becomes effective, but only for the period specified in such proclamation.
[Added by Acts 1977, 65th Leg., p. 1281, ch. 501, § 2, eff. June 15, 1977.]

SUBTITLE E. WILDLIFE MANAGEMENT AREAS, SANCTUARIES, AND PRESERVES

CHAPTER 81. MANAGEMENT AREAS AND PRESERVES: GENERAL AUTHORITY

SUBCHAPTER A. ACTS PROHIBITED IN WILDLIFE PROTECTION AREAS

Section
81.001. Taking of Wildlife From Hatcheries and Reservations Prohibited.
81.002. Predacious Animals on Hatcheries or Reservations.
81.003. Trespass on State Hatcheries and Reservations.
81.004. Fishing in Sanctuary.
81.005. Hunting on Game Preserves Prohibited.
81.006. Taking or Possessing Species From Wildlife Management Areas.

SUBCHAPTER B. FISH HATCHERIES

81.101. Saltwater Areas.
81.102. Freshwater Areas.
81.103. Property Acquisition; Manner and Means.
81.104. Condemnation Suits.

SUBCHAPTER C. FISH SANCTUARIES

81.201. Creation of Freshwater Sanctuaries.
81.202. Purposes of Sanctuaries.
81.203. Designation of Sanctuaries.
81.204. Sanctuary Duration.
81.205. Amount of Fresh Water Set Aside in One County.
81.206. Proclamation.
81.207. Notice.
81.208. Effective Date of Proclamation.
81.209. Excluded Counties.

SUBCHAPTER D. GAME PRESERVES [REPEALED]

81.301 to 81.307. Repealed.

SUBCHAPTER E. WILDLIFE MANAGEMENT AREAS

81.401. Management of Areas.
81.402. Regulation of Hunting and Fishing.
81.403. Permits.
81.404. Contracts for Renewal of Fur-Bearing Animals.

SUBCHAPTER F. SCIENTIFIC AREAS

81.501. Creation of Scientific Areas.
81.502. Powers and Duties.
81.503. Land of Public Entities.
81.504. Effect on Existing Areas.
81.505. Protected Status.
81.506. Funds to be Specifically Appropriated.

SUBCHAPTER A. ACTS PROHIBITED IN WILDLIFE PROTECTION AREAS

§ 81.001. Taking of Wildlife From Hatcheries and Reservations Prohibited

(a) No person may take, injure, or kill any fish kept by the state in its hatcheries, or any bird or animal kept by the state on its reservation grounds or elsewhere for propagation or exhibition purposes.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.002. Predacious Animals on Hatcheries or Reservations

(a) No person may bring into or keep any cat, dog, or other predacious animal on a fish hatchery or reservation for the propagation or exhibition of birds or animals.

(b) Any predacious animal found on the grounds of a hatchery or reservation is a nuisance and any authorized employee of the department shall destroy the animal. When an animal is destroyed under the authority of this subsection, no damage suit for the destruction of the animal may be brought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.003. Trespass on State Hatcheries and Reservations

(a) No person may enter without the permission of the department on the grounds of a state fish hatchery or on grounds set apart by the state for the propagation and keeping of birds and animals.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.004. Fishing in Sanctuary

(a) No person may fish or attempt to take fish from a fish sanctuary designated under Subchapter C of this chapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.005. Hunting on Game Preserves Prohibited

(a) No person may hunt, take, or molest a game bird or animal in a state game preserve created under Subchapter D of this chapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.006. Taking or Possessing Species From Wildlife Management Areas

(a) No person may take or attempt to take or possess any wildlife or fish from a wildlife management area except in the manner and during the times permitted by the department under Subchapter E of this chapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 81.007 to 81.100 reserved for expansion]

SUBCHAPTER B. FISH HATCHERIES

§ 81.101. Saltwater Areas

The commission may construct and maintain saltwater hatcheries and propagation farms for fish, oysters, and game on islands owned by the state in coastal water. Funds available to the department for the enforcement of game, fish, and oyster laws may be used for costs and expenses authorized under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.102. Freshwater Areas

The department may purchase land for the construction, maintenance, enlargement, and operation of freshwater fish hatcheries, and for the construction and maintenance of passes leading from one body of tidewater to another. On approval of the title by the attorney general, purchases may be made from funds appropriated to the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.103. Property Acquisition; Manner and Means

The department may enter on, condemn, and appropriate land, easements, rights-of-way, and property of any person or corporation in the state for the purpose of erecting, constructing, enlarging, and maintaining fish hatcheries, buildings, equipment, roads, and passageways to the hatcheries. The department may also enter on, condemn, and appropriate land, easements, rights-of-way, and property of any person or corporation in the state for the purpose of constructing, enlarging, and maintaining passes or channels from one body of tidewater to another body of tidewater in the state. The manner and method of condemnation, assessment, and payment of damages is the same as is provided for railroads.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.104. Condemnation Suits

Condemnation suits under this subchapter shall be brought in the name of the State of Texas by the attorney general at the request of the department and shall be held in Travis County. All costs in the proceedings shall be paid by the state or by the person against whom the proceedings are had, to be determined as in the case of railroad condemnation proceedings. All damages and pay or compensation for property awarded in the proceedings shall be paid by the comptroller against any fund in state treasury that is limited in use for fish or wildlife purposes and that is appropriated to the department.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 81.105 to 81.200 reserved for expansion]

SUBCHAPTER C. FISH SANCTUARIES

§ 81.201. Creation of Freshwater Sanctuaries

The department, with the approval of the commissioners court of the affected county, shall set aside and reserve portions of each public freshwater stream or other body of water as fish sanctuaries in the county for the propagation of freshwater fish in their natural state.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.202. Purposes of Sanctuaries

The department shall use fish sanctuaries to increase and preserve the supply of freshwater fish in all fresh water where the fish supply has been reduced from any cause below the maximum number of fish in their natural state that the water will support.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.203. Designation of Sanctuaries

When the department determines that any public fresh water in its natural state has a lesser supply of fish than it can support, the department, without delay, shall set aside and designate one or more portions of the water as a sanctuary for the propagation of freshwater fish in order to increase the supply of fish.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.204. Sanctuary Duration

An area set aside and designated as a sanctuary under Section 81.203 of this code may be used for a sanctuary for any period not longer than five years.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.205. Amount of Fresh Water Set Aside in One County

No more than 50 percent of the public fresh water in any county may be set aside or designated as a sanctuary or sanctuaries.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.206. Proclamation

(a) Sanctuaries shall be set aside and designated by proclamation of the commission signed by the chairman.

(b) The proclamation must contain:

(1) the area to be included in the sanctuary;

(2) the reason for creation of the sanctuary;

(3) the date on which the proclamation takes effect;

(4) the duration of the proclamation; and

(5) a statement that the sanctuary is set aside and designated under the authority of this subchapter, the citation of which must be included.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.207. Notice

The department shall give notice of the creation of a sanctuary by each of the following methods:

(1) by posting copies of the proclamation on the courthouse door of each county in which the sanctuary is located;

(2) by publishing a brief summary of the proclamation in a newspaper in the county in which the sanctuary is located, or in a newspaper of an adjoining county if the county where the sanctuary is located has no newspaper, once each week for five consecutive weeks; and

(3) by posting at least six signs bearing the conspicuous inscription "State Fish Sanctuary—No Fishing" around the boundary of the sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.208. Effective Date of Proclamation

The proclamation takes effect on the day of the last publication of the notice required by Section 81.207(2) of this code.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.209. Excluded Counties

This subchapter does not apply to Wichita, Clay, Baylor, and Wilbarger counties.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 81.210 to 81.300 reserved for expansion]

SUBCHAPTER D. GAME PRESERVES [REPEALED]

§§ 81.301 to 81.307. Repealed by Acts 1979, 66th Leg., p. 550, ch. 260, art. 5, § 1(4), eff. Sept. 1, 1979

The repealed sections, relating to game preserves, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

SUBCHAPTER E. WILDLIFE MANAGEMENT AREAS

§ 81.401. Management of Areas

The department may manage, along sound biological lines, wildlife and fish found on any land the department has or may acquire as a wildlife management area.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.402. Regulation of Hunting and Fishing

(a) The department may prohibit hunting and fishing in game management areas to protect any species of wildlife or fish.

(b) The department from time to time, as sound biological management permits, may allow open seasons for hunting or fishing.

(c) During an open season the department may prescribe the number, kind, sex, and size of game or fish that may be taken.

(d) The department may prescribe the means, methods, and conditions for the taking of game or fish during an open season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.403. Permits

(a) Except as provided in Subsection (b) of this section, special permits for hunting of wildlife on game management areas shall be issued by the department to applicants by means of an impartial method of distribution subject to limitations on the maximum number of permits to be issued.

(b) No person may receive a special permit for hunting on game management areas for two consecutive years unless all applications from persons who applied but did not receive a permit for the preceding year are filled.

(c) The department shall charge a permit fee in the amount set by the commission based on the costs of the department in issuing the permits, enforcing game laws, and protecting hunters during hunting periods on game management areas.

(d) This subchapter does not exempt any person from compliance with hunting license laws.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.404. Contracts for Removal of Fur-Bearing Animals

(a) The department may contract for the removal of fur-bearing animals and reptiles in wildlife management areas under the control of the department. The removal of fur-bearing animals and reptiles shall be according to sound biological management practices.

(b) Contracts for the removal of fur-bearing animals and reptiles shall be entered into under the direction of the State Board of Control in the manner provided by general law for the sale of state property, except that the department shall determine the means, methods, and quantities of fur-bearing animals and reptiles to be taken, and the department may accept or reject any bid received by the board of control.

(c) Fur-bearing animals may be removed only during the open season provided in Section 72.002 of this code. Reptiles may be removed at any time unless there is a proclamation relating to a specific species of reptiles in effect under Chapter 67 of this code, in which case that species of reptiles may be removed only during the open season provided for in the proclamation.

(d) Repealed by Acts 1979, 66th Leg., p. 549, ch. 260, art. 1, § 6, eff. Sept. 1, 1979.

[Acts 1975, 64th Leg., p. 1207, ch. 456, § 5, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 549, ch. 260, art. 1, § 6, eff. Sept. 1, 1979.]

[Sections 81.405 to 81.500 reserved for expansion]

SUBCHAPTER F. SCIENTIFIC AREAS

§ 81.501. Creation of Scientific Areas

The department may promote and establish a state system of scientific areas for the purposes of education, scientific research, and preservation of flora and fauna of scientific or educational value.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.502. Powers and Duties

To the extent necessary to carry out the purposes of this subchapter, the department may:

(1) determine the acceptance or rejection of state scientific areas proposed for incorporation into a state system of scientific areas;

(2) make and publish all rules and regulations necessary for the management and protection of scientific areas;

(3) cooperate and contract with any agencies, organizations, or individuals for the purposes of this subchapter;

(4) accept gifts, grants, devises, and bequests of money, securities, or property to be used in

accordance with the tenor of such gift, grant, devise, or bequest;

(5) formulate policies for the selection, acquisition, management, and protection of state scientific areas;

(6) negotiate for and approve the dedication of state scientific areas as part of the system;

(7) advocate research, investigations, interpretive programs, and publication and dissemination of information pertaining to state scientific areas and related areas of scientific value;

(8) acquire interests in real property by purchase; and

(9) hold and manage lands within the system.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.503. Land of Public Entities

All public entities and their agencies are authorized and urged to acquire, administer, and dedicate land as state scientific areas within the system under the policies of the commission authorized by this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.504. Effect on Existing Areas

Inclusion of a state or local park, preserve, wildlife refuge, or other area within the system established under this subchapter does not cancel, supersede, or interfere with any other law or provision of an instrument relating to the use, management, or development of the area for other purposes except that any agency administering an area within the system is responsible for preserving the natural character of the area under the policies of the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.505. Protected Status

Neither the designation of an area as a scientific area within the state system nor an intrusion, easement, or taking allowed by the commission under this subchapter voids or replaces a protected status under the law which the area would have if it were not included within the system.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.506. Funds to be Specifically Appropriated

The commission may not use any funds for the acquisition of scientific areas other than those specifically appropriated for use under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 82. STATUTORY SANCTUARIES AND PRESERVES

SUBCHAPTER A. GUS ENGELING WILDLIFE MANAGEMENT AREA

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82.001. Creation.
82.002. Prohibitions on Hunting, Fishing, Trapping, and Seasons.
82.003. Special Permits.
82.004. Unlawful Acts.
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SUBCHAPTER B. CONNIE HAGAR WILDLIFE SANCTUARY—ROCKPORT

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82.203. Land Purchase; School Lands.
82.204. Other Land; Title Approval.
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SUBCHAPTER E. GAME AND FISH RESERVE: MARION AND HARRISON COUNTIES

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82.402. Creation.
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82.651. Island Channel.

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SUBCHAPTER O. LIVE OAK COUNTY RIVERS SANCTUARY

82.761. Creation.
82.762. Prohibited Acts.
82.763. Penalty.

SUBCHAPTER A. GUS ENGELING WILDLIFE MANAGEMENT AREA

§ 82.001. Creation

The department may manage wildlife and fish species in the Gus Engeling Wildlife Management Area in Anderson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.002. Prohibitions on Hunting, Fishing, Trapping, and Seasons

(a) The department may prohibit all hunting, trapping, and fishing within the management area for any period of time necessary to safeguard any species of wildlife or fish found within the management area.

(b) The department, as sound biological management practices warrant, may prescribe open seasons for hunting, trapping, and fishing within the management area.

(c) The department may prescribe the number, kind, sex, and size of any wildlife and fish that may be taken from the area and may prescribe the means and methods for taking and the conditions under which any wildlife or fish species may be taken within the area.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.003. Special Permits

Any special permit issued for the taking of wildlife or fish species within the management area is available to all applicants on an impartial basis to the extent of the total number of permits issued. No person may receive a special permit for two consecutive years unless all applications from persons who applied but did not receive a special permit in the preceding year are filled. The provisions of this section do not waive the license requirements as provided by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.004. Unlawful Acts

No person may hunt or possess any wildlife or fish species taken from the area except as permitted by the department under the provision of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.005. Penalty

A person who violates any provision of this subchapter or who takes wildlife or fish at any time except as permitted by the department is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.006 to 82.100 reserved for expansion]

SUBCHAPTER B. CONNIE HAGAR WILDLIFE SANCTUARY—ROCKPORT

§ 82.101. Creation and Boundaries

The Connie Hagar Wildlife Sanctuary—Rockport in Aransas County is described as follows:

Being all of the water area of Aransas Bay and Little Bay between the shoreline of Live Oak Peninsula and a line described as follows:

BEGINNING at the point where the city limits of the City of Rockport intersects the shoreline of the Aransas Bay;

THENCE, one mile due east to a point in Aransas Bay;

THENCE, in a northeasterly direction approximately 1-⅜ miles to a point which is ½ mile due east of Nine Mile Point;

THENCE, in a north by northwesterly direction approximately 2 miles to a point which is ½ mile due east of the channel entrance to the Fulton Harbor;

THENCE, due west to the shoreline of Live Oak Peninsula.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.102. Boundary Markers

The department shall place suitable markers defining the boundaries of the wildlife sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.103. Unlawful Act

No person may hunt any bird or animal within the wildlife sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.104. Penalties

A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.105 to 82.200 reserved for expansion]

SUBCHAPTER C. BLACK GAP WILDLIFE MANAGEMENT AREA, CULBERSON AND HUDSPETH COUNTIES

§ 82.201. Creation

The department may set aside a fenced game management area in Culberson and Hudspeth counties for the protection and perpetuation of Texas Bighorn Mountain Sheep (Ovis canadensis texiana).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.202. Acceptance of Gifts; Game Fund

The department may accept gifts of land in Culberson and Hudspeth counties or money to be deposited in the special game and fish fund. The gifts shall be used for the Texas Bighorn Sheep management unit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.203. Land Purchase; School Lands

The department may purchase the surface rights in not more than eight sections of public school lands located in Culberson and Hudspeth counties in the following blocks: Blocks 65 and 66, T. & P. Ry. Co. land; Blocks 42-½, 43, 54-½, Public School Lands. The minerals on the land purchased shall be reserved to the school fund and managed by the school land board. The price to be paid for the land shall not exceed $1 per acre and shall be paid for by the department out of the special game and fish fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.204. Other Land; Title Approval

The department may purchase other land in Culberson and Hudspeth counties as necessary for the operation of the game management unit. The department may pay for the land out of the special game and fish fund on approval of the title by the attorney general.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.205. Land Purchase; Private

The department may enter on, condemn, and appropriate not more than 12 sections of land belonging to any person or corporation in Culberson and Hudspeth counties for the purpose stated in this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.206. Condemnation

The method of condemnation, assessment, and payment of damages is the same as is provided by law for railroads. Condemnation suits brought under this subchapter shall be brought in the name of the State of Texas by the attorney general at the request of the department. All costs in the proceedings shall be paid by the state or by the person against whom the proceedings are had, to be determined as in the case of railroad proceedings. All damages and pay or compensation for property awarded in the proceedings shall be paid by the state by warrant drawn on the special game and fish fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.207. Expenditures

All expenditures provided under this subchapter shall be made from the special game and fish fund. The expenditures shall not exceed $20,000 in one year. Three-fourths of the expenditures shall be reimbursed out of federal aid in wildlife restoration funds available to the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.208 to 82.300 reserved for expansion]

SUBCHAPTER D. WILDLIFE SANCTUARY: GALVESTON COUNTY

§ 82.301. Creation

The group of small islands located in Galveston Bay near Smith's Point and known as Vingt et Un Islands are a state wildlife sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.302. Unlawful Acts

No person may hunt or in any way molest any of the birds on any of the islands or within 50 yards of the islands, nor may any person enter on the islands for any purpose without first obtaining permission from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.303. Penalties

A person violating any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.304 to 82.400 reserved for expansion]

SUBCHAPTER E. GAME AND FISH RESERVE: MARION AND HARRISON COUNTIES

§ 82.401. Land Set Aside

All of the public land and school land situated in, under, and adjacent to the bed of Caddo Lake in the counties of Marion and Harrison are withdrawn from sale and preserved for public use as a state game and fish reserve.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.402. Creation

The department may establish one or more game sanctuaries in the water of Caddo Lake for the protection of wild ducks, geese, and all other migratory birds. The sanctuaries shall protect the birds from being pursued, hunted, taken, or disturbed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.403. Boundary Markers

The department shall designate and define the boundaries of the sanctuaries by placing markers or signs around the boundaries of each sanctuary with the words "Game Preserve" on each marker or sign. The markers or signs shall be placed not more than 500 yards apart.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.404. Amount of Area Set Aside

The sanctuaries shall not include more than 20 percent of the area of the lake.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.405. Public Hunting and Fishing

The public may hunt and fish on all of the water of the lake except that water set aside for sanctuaries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.406. Investigation of Feasibility of Timber Land Purchase

The department, in conjunction with the state forester, shall investigate the feasibility and desirability of acquiring title to a block of timbered land adjacent to the lake comprising from 5,000 to 10,000 acres, to be placed under the joint control of the state forester and the department, with the view of ultimately preserving a belt of native forest for the future and also for the propagation of game.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.407. Mineral Rights

The mineral rights under the land reserved for the sanctuaries are withdrawn from sale and the rights may not be offered for sale until the legislature directs the rights to be sold.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.408. Unlawful Acts

(a) No person may hunt any kind of game on the sanctuaries established under this subchapter.

(b) No person may hunt any birds, fowl, or game of any kind on the sanctuaries established under this subchapter.

(c) No person may pursue or frighten or attempt to pursue or frighten any birds, fowl, or game of any kind on the sanctuaries established under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.409. Penalty

A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $500, and in addition, the hunting license of the violator is subject to forfeiture for one year following the date of the conviction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.410 to 82.500 reserved for expansion]

SUBCHAPTER F. INGLESIDE COVE WILDLIFE SANCTUARY: SAN PATRICIO AND NUECES COUNTIES

§ 82.501. Creation

The Ingleside Cove Wildlife Sanctuary is composed of an area in San Patricio and Nueces counties described as follows:

BEGINNING at Kinney Bayou on the east shoreline of Ingleside Cove, also known as North Shore Channel;

THENCE, in a northwesterly direction along the shoreline to channel marker number "22" with a flashing red light every 4 seconds known as Donnel Point;

THENCE, due west crossing the Reynolds Channel to the east side of a spoil bank;

THENCE, following the eastern edge of this spoil bank in a southeasterly direction to its southern most point, continuing southeast crossing Ingleside cut to the north shore of Ingleside Point;

THENCE, in an easterly and southeasterly direction along the east shoreline following the

Reynolds Channel through Ingleside Point to the southern most portion of this cut;

THENCE, due east across the Reynolds Channel to the west shoreline of the mainland known as the southern most portion of Ingleside Cove;

THENCE, following the shoreline in a northerly direction being the east shoreline of Ingleside Cove to the point of beginning.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.502. Marking Boundaries

The department shall place suitable markers defining the boundary of the wildlife sanctuary as described in this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.503. Unlawful Acts

(a) No person may hunt any bird within the sanctuary.

(b) No person may fish by any means other than rod and reel within the sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.504. Penalties

A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.505 to 82.600 reserved for expansion]

SUBCHAPTER G. FISH HATCHERIES: SMITH COUNTY

§ 82.601. Creation

The department may construct, enlarge, and maintain fish hatcheries in Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.602. Property Acquisition

The department may enter on, condemn, and appropriate land, water rights, easements, rights-of-way, and property of any person or corporation in Smith County for the purposes designated in this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.603. Condemnation; Manner and Means

The method of condemnation, assessment, and payment of damages is the same as is provided for railroads. Condemnation suits brought under this subchapter shall be brought in the name of the State of Texas by the attorney general at the request of the department. All costs in the proceedings shall be paid by the state or by the person against whom the proceedings are had, to be determined as in the case of railroad condemnation proceedings. All damages and pay or compensation for property awarded in the proceedings shall be paid by the state by warrant drawn by the comptroller against any fund in the state treasury appropriated to the department for the use of constructing and maintaining fish hatcheries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.604 to 82.650 reserved for expansion]

SUBCHAPTER H. ISLAND CHANNEL

§ 82.651. Island Channel

(a) The department may construct and maintain a channel through Padre Island, Mustang Island, and St. Jo Island, or any of them.

(b) The department may contract for the construction of a channel under this section on approval by the commission and approval from the federal government of an application for authority to construct channels.

(c) The cost of the construction and maintenance of a channel constructed under this section may be paid from the special game and fish fund only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.652 to 82.700 reserved for expansion]

SUBCHAPTER I. LAKE CORPUS CHRISTI GAME SANCTUARY

§ 82.701. Game Sanctuary

All the water of Lake Corpus Christi in San Patricio and Live Oak counties is a game sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.702. Prohibited Acts

(a) Except as provided in Subsection (b) of this section, no person may enter on the portion of Lake Corpus Christi that is a game sanctuary with a gun or rifle, and no person may attempt to shoot a bird or animal in the portion of Lake Corpus Christi that is a game sanctuary.

(b) A person may hunt ducks and geese during the open seasons for ducks and geese with a shotgun in the portion of Lake Corpus Christi in San Patricio County. This exception does not apply to hunting within one mile of the boy scout camp, the girl scout camp, or Lake Corpus Christi Park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.703. Markers

The Parks and Wildlife Department shall erect appropriate markers at intervals adequately spaced to warn hunters of the one-mile limit around the boy scout camp, the girl scout camp, and Lake Corpus Christi Park in San Patricio County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.704. Penalty

A person who violates Section 82.702 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.705 to 82.710 reserved for expansion]

SUBCHAPTER J. LASALLE COUNTY RIVERS SANCTUARY

§ 82.711. Creation

All of the land area and public water in state-owned riverbeds in LaSalle County, including the Nueces and Frio rivers, is a game sanctuary.

[Added by Acts 1977, 65th Leg., p. 2072, ch. 823, § 1, eff. Aug. 29, 1977.]

§ 82.712. Prohibited Acts

(a) Except as permitted under Subsections (b) and (c) of this section, no person may possess, shoot, or hunt with a firearm, bow and arrow, or crossbow in the game sanctuary created by Section 82.711 of this code.

(b) Subsection (a) of this section does not apply to a peace officer of this state, a law enforcement officer of the United States, or a member of the armed forces of the United States or of this state during the time that the officer or member is in the actual discharge of official duties.

(c) Subsection (a) of this section does not apply to waterfowl hunting on any reservoir owned, operated, or maintained by a governmental entity now existing or to be constructed on said rivers.

[Added by Acts 1977, 65th Leg., p. 2072, ch. 823, § 1, eff. Aug. 29, 1977.]

§ 82.713. Penalty

A person who violates Section 82.712 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Added by Acts 1977, 65th Leg., p. 2072, ch. 823, § 1, eff. Aug. 29, 1977.]

[Sections 82.714 to 82.720 reserved for expansion]

SUBCHAPTER K. MCMULLEN COUNTY RIVERS SANCTUARY

§ 82.721. Creation

All of the land area and public water in state-owned riverbeds in McMullen County, including the Nueces and Frio rivers, is a game sanctuary.

[Added by Acts 1977, 65th Leg., p. 2072, ch. 823, § 2, eff. Aug. 29, 1977.]

§ 82.722. Prohibited Acts

(a) Except as permitted under Subsections (b) and (c) of this section, no person may possess, shoot, or hunt with a firearm, bow and arrow, or crossbow in the game sanctuary created by Section 82.721 of this code.

(b) Subsection (a) of this section does not apply to a peace officer of this state, a law enforcement officer of the United States, or a member of the armed forces of the United States or of this state during the time that the officer or member is in the actual discharge of official duties.

(c) Subsection (a) of this section does not apply to waterfowl hunting on any reservoir owned, operated, or maintained by a governmental entity now existing or to be constructed on said rivers.

[Added by Acts 1977, 65th Leg., p. 2072, ch. 823, § 2, eff. Aug. 29, 1977.]

§ 82.723. Penalty

A person who violates Section 82.722 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Added by Acts 1977, 65th Leg., p. 2073, ch. 823, § 2, eff. Aug. 29, 1977.]

SUBCHAPTER O. LIVE OAK COUNTY RIVERS SANCTUARY

§ 82.761. Creation.

All of the land area and public water in the state-owned beds of the Nueces, Frio, and Atascosa rivers in Live Oak County is a game sanctuary.

[Added by Acts 1979, 66th Leg., p. 2083, ch. 814, § 1, eff. Aug. 21, 1979.]

§ 82.762. Prohibited Acts

(a) Except as permitted by Subsections (b) and (c) of this section, no person may possess, shoot, or hunt with a firearm, bow and arrow, or crossbow in the game sanctuary created by Section 82.761 of this code.

(b) Subsection (a) of this section does not apply to a peace officer of this state, a law enforcement officer of the United States, or a member of the armed forces of the United States or of this state during the time that the officer or member is in the actual discharge of official duties.

(c) Subsection (a) of this section does not apply to waterfowl hunting on any reservoir owned, operated, or maintained by a governmental entity now existing or to be constructed on the listed rivers.
[Added by Acts 1979, 66th Leg., p. 2083, ch. 814, § 1, eff. Aug. 27, 1979.]

§ 82.763. Penalty

A person who violates Section 82.762 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.
[Added by Acts 1979, 66th Leg., p. 2083, ch. 814, § 1, eff. Aug. 27, 1979.]

CHAPTER 83. FEDERAL-STATE AGREEMENTS

Section
83.001. Fish Restoration Projects.
83.002. Commercial Fisheries Research.
83.003. Wildlife-Restoration Projects.
83.004. Migratory Game Bird Reservations.

§ 83.001. Fish Restoration Projects

The department shall conduct and establish cooperative fish restoration projects under an Act of Congress entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects" (Public Law No. 681, 81st Congress). The department shall comply with the act and rules and regulations promulgated under the act by the secretary of the interior.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 83.002. Commercial Fisheries Research

(a) The department shall conduct research in and develop commercial fisheries under an Act of Congress entitled "Commercial Fisheries Research and Development Act of 1964" (Title 16, Sections 779–779f, U.S.C.A.). The department shall comply with the act and the rules and regulations promulgated under the act by the secretary of the interior.

(b) Funds received from the federal government and appropriated by the state for research and development of commercial fisheries shall be deposited in the state treasury to the credit of the special game and fish fund.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 83.003. Wildlife-Restoration Projects

The department shall establish and conduct cooperative wildlife-restoration projects under an Act of Congress entitled "An Act to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes" (Public Law No. 415, 75th Congress). The department shall comply with the act and rules and regulations promulgated under the act by the secretary of agriculture.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 83.004. Migratory Game Bird Reservations

(a) The United States of America may acquire by purchase, gift, devise, or lease areas of land or water in this state necessary for the establishment of migratory bird reservations under an Act of Congress entitled "An Act to more effectively meet the obligations of the United States under the Migratory Bird Treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and of water to furnish in perpetuity reservations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes."

(b) The state retains jurisdiction and authority over the areas which are not incompatible with the administration, maintenance, protection, and control of the areas by the United States under the act.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBTITLE F. MARL, SAND, GRAVEL, SHELL, AND MUDSHELL

CHAPTER 86. MARL, SAND, GRAVEL, SHELL, AND MUDSHELL

Section
86.001. Management and Protection.
86.002. Permit Required; Penalty.
86.003. Application for Permit.
86.004. Granting of Permit.
86.005. Economic Considerations.
86.006. Permit.
86.007. Permits Not Assignable.
86.008. Denial of Permit.
86.009. Termination and Revocation.
86.010. Removal and Replanting of Oysters and Oyster Beds.
86.011. No Special Privileges.
86.012. Sales of Materials.
86.013. Use on Roads.
86.014. Use for Seawalls, etc.
86.015. Sand From Corpus Christi and Nueces Bays.
86.0151. Use to Open Brown Cedar Cut.
86.016. Deposit of Funds.
86.017. Use of Funds.
86.018. Taking From Certain Areas Prohibited.
86.019. Oil and Gas Lessees.

§ 86.001. Management and Protection

The commission shall manage, control, and protect marl and sand of commercial value and all gravel, shell, and mudshell located within the tidewater limits of the state, and on islands within those limits, and within the freshwater areas of the state not embraced by a survey or private land, and on islands within those areas.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.002. Permit Required; Penalty

(a) No person may disturb or take marl, sand, gravel, shell, or mudshell under the management and protection of the commission or operate in or disturb any oyster bed or fishing water for any purpose other than that necessary or incidental to navigation or dredging under state or federal authority without first having acquired from the commission a permit authorizing the activity.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each day's operation in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.003. Application for Permit

(a) A person desiring a permit may apply to the commission.

(b) The application must be in writing and must describe the area in which authorization to operate is sought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.004. Granting of Permit

The commission may grant a permit to an applicant who has complied with all requirements of the commission if the commission finds that the disturbing, taking, and carrying away of marl, sand, gravel, shell, or mudshell will not:

(1) damage or injuriously affect any island, reef, bar, channel, river, creek, or bayou used for navigation, or any oysters, oyster beds, or fish in or near the water used in the operation; and

(2) change or injuriously affect any current that would affect navigation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.005. Economic Considerations

In determining whether or not a permit should be granted, the commission shall consider the injurious effect on oysters, oyster beds, and fish in or near the water used in the operation as well as the needs of industry for marl, sand, gravel, shell, and mudshell and its relative value to the state for commercial use.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.006. Permit

(a) The permit shall identify the person authorized to disturb, take, or carry away marl, sand, gravel, shell, or mudshell and shall describe the nature of the material that may be disturbed, taken, or carried away.

(b) The permit shall describe the area where the operation may occur and shall state the purpose of the operation.

(c) The permit may contain other terms and conditions.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.007. Permits Not Assignable

A permit issued under this chapter is not assignable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.008. Denial of Permit

If the commission refuses to grant a permit to an applicant, it shall make a full written finding of facts explaining the reason for the refusal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.009. Termination and Revocation

The failure or refusal by the holder of a permit to comply with any term or condition of the permit operates as an immediate termination and revocation of all rights conferred or claimed under the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.010. Removal and Replanting of Oysters and Oyster Beds

(a) The commission may remove oysters and oyster beds and replant them in other natural or artificial reefs if the commission finds that the removal and replanting will benefit the growth and propagation or the betterment of oysters and oyster beds or fishing conditions.

(b) The removal and replanting of oysters and oyster beds shall be at the expense of the person holding a permit or of an applicant for a permit and not the state.

(c) Before authorizing the removal and replanting of oysters or oyster beds the commission shall give notice to interested parties and hold a hearing on the subject.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.011. No Special Privileges

No special privileges or exclusive rights may be granted to any person to take marl, sand, gravel, shell, or mudshell or to operate in or on any place under this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.012. Sales of Materials

(a) The commission, with the approval of the governor, may sell marl, sand, gravel, shell, and mudshell for not less than four cents a ton.

(b) The commission may require other terms and conditions for the sale of marl, sand, gravel, shell, and mudshell.

(c) Payment for sales shall be made to the commission.

(d) Marl, sand, gravel, shell, and mudshell may be removed without payment to the commission if removed from land or flats patented to a navigation district by the state for any use on the land or flats or on any adjoining land or flats for any purpose for which the land or flats may be used under the authority of the patent to the district, or if removed to provide access to a boat ramp under Section 31.141(c) of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1069, ch. 499, § 2, eff. Aug. 27, 1979.]

§ 86.013. Use on Roads

(a) A county, subdivision of a county, city, or town that has a permit to take marl, sand, gravel, shell, or mudshell is not required to purchase marl, sand, gravel, shell, or mudshell taken and used for roads and streets.

(b) A county, subdivision of a county, city, or town that purchases marl, sand, gravel, shell, or mudshell for use on roads and streets from a holder of a permit who has purchased the material from the commission may receive a refund of the amount paid by the permit holder by submitting a sworn itemized account of an official of the county, subdivision of the county, city, or town. All refunds under this subsection must be approved by the commission and be paid by the comptroller by warrant.

(c) The State Highway Commission may receive a refund of the amount paid to the commission for the purchase of marl, sand, gravel, shell, or mudshell used by the highway commission on public roads.

(d) The commission may make regulations for the payment of refunds under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.014. Use for Seawalls, etc.

(a) The commission shall grant to any county, city, or town that is authorized under Title 118, Revised Civil Statutes of Texas, 1925, to build and maintain seawalls a permit for the taking of marl, sand, gravel, shell, or mudshell to be used for the building, extending, protecting, maintaining, or improving any seawall, breakwater, levee, dike, floodway, or drainway.

(b) Permits under this section shall be issued under regulations established by the commission.

(c) A county, city, or town taking marl, sand, gravel, shell, or mudshell under this section is not required to purchase the marl, sand, gravel, shell, or mudshell.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.015. Sand From Corpus Christi and Nueces Bays

Sand and other deposits having no commercial value may be taken from Corpus Christi and Nueces bays for filling and raising the grade of the salt flats in the northern part of the city of Corpus Christi and the lowlands lying north of the north boundary line of the city of Corpus Christi, in Nueces County, and south of the south boundary line of the city of Portland, in San Patricio County, without making payments for it to the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.0151. Use to Open Brown Cedar Cut

(a) A nonprofit corporation, fund, or foundation exempted from federal income taxes under Section 503(c)(3), Internal Revenue Code of 1954, as amended (26 U.S.C. Sec. 503(c)(3)), may take sand, gravel, marl, shell, and mudshell from Brown Cedar Cut in Matagorda County for the sole purpose of opening and reopening that passage between the Gulf of Mexico and East Matagorda Bay.

(b) The fee required by Section 86.012 of this code does not apply to sand, gravel, marl, shell, or mudshell taken under Subsection (a) of this section, and that sand, gravel, marl, shell, and mudshell may be deposited on private land.

[Added by Acts 1979, 66th Leg., p. 911, ch. 419, § 1, eff. Aug. 27, 1979.]

§ 86.016. Deposit of Funds

The proceeds from the sale of marl, sand, gravel, shell, and mudshell shall be deposited in the special game and fish fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.017. Use of Funds

Funds collected by the commission from the sale of marl, sand, gravel, shell, and mudshell may be used for the enforcement of the provisions of this chapter, the payment of refunds, and the construction and maintenance of fish hatcheries. No less than three-fourths of the proceeds from the sale of marl, sand, gravel, shell, and mudshell, after the payment of refunds, shall be used for the construction and maintenance of fish hatcheries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.018. Taking From Certain Areas Prohibited

(a) No person may take marl, sand, gravel, shell, or other material from any place between a seawall and the water's edge, from a beach or shoreline within 300 feet of the mean low tide, or within one-half mile of the end of any seawall, for any purpose other than that necessary or incidental to navigation or dredging under state or federal authority.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.019. Oil and Gas Lessees

This chapter does not require the holder of an oil and gas lease executed by the state to obtain a permit from the commission to exercise any right granted under the lease or other laws of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

TITLE 6. COMPACTS

CHAPTER 91. GULF STATES COMPACT

Section
91.001. Members of Commission.
91.0011. Application of Sunset Act.
91.002. Terms of Commission Members.
91.003. Delegate of Commissioner.
91.004. Powers and Duties.
91.005. Cooperation of State Agencies.
91.006. Reports.
91.007. Auditor.
91.008. Text of Compact.

§ 91.001. Members of Commission

The three members of the Gulf States Marine Fisheries Commission from the state authorized under Article III of the Gulf States Marine Fisheries Compact are:

(1) the executive director of the department;

(2) a legislator appointed jointly by the lieutenant governor and speaker of the house of representatives; and

(3) a citizen with a knowledge of the marine fisheries problems appointed by the governor with the advice and consent of the senate.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.0011. Application of Sunset Act

The office of Gulf States Marine Fisheries Compact Commissioner for Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.087, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

§ 91.002. Terms of Commission Members

(a) The executive director of the department shall serve on the Gulf States Marine Fisheries Commission in an ex-officio capacity, and his term expires when he ceases to hold the office of executive director of the department. His successor as a member of the Gulf States Marine Fisheries Commission is his successor as executive director of the department.

(b) The legislator appointed as a member of the Gulf States Marine Fisheries Commission shall serve in an ex-officio capacity, and his term expires at the time he ceases to hold his legislative office. His successor as a member of the Gulf States Marine Fisheries Commission shall be appointed as provided by Section 91.001(2) of this code.

(c) The citizen appointed as a member of the Gulf States Marine Fisheries Commission shall serve a term of three years or until his successor has been appointed and has qualified. A vacancy in this position shall be filled for the unexpired term by appointment by the governor with the advice and consent of the senate.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.003. Delegate of Commissioner

The executive director of the department as ex-officio member of the Gulf States Marine Fisheries Commission may delegate to an authorized employee of the department the power to be present and participate, including the right to vote for the executive director, at any meeting, hearing, or proceeding of the Gulf States Marine Fisheries Commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.004. Powers and Duties

All the powers provided for in the compact and all the powers necessary or incidental to the carrying out of the compact are granted to the Gulf States Marine Fisheries Commission and members of the commission. These powers are in aid of and supplemental to but not a limitation on the powers vested in the Gulf States Marine Fisheries Commission by other laws of this state or by the terms of the compact.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.005. Cooperation of State Agencies

(a) All officers of the state shall do all things falling within their respective jurisdictions necessary or incidental to the carrying out of the compact.

(b) All officers, bureaus, departments, and persons in state government shall furnish the Gulf States Marine Fisheries Commission information and data requested by the commission and aid the commission

by loan of personnel or other means lying within their legal rights.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.006. Reports

The Gulf States Marine Fisheries Commission shall keep accurate accounts of receipts and disbursements and shall submit on or before February 10 of each year a report to the governor and legislature of the state containing:

(1) a detailed description of the transactions conducted by the commission during the preceding calendar year;

(2) recommendations for any legislative action considered advisable or necessary to carry out the intent and purposes of the compact.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.007. Auditor

The state auditor from time to time shall examine the accounts and books of the Gulf States Marine Fisheries Commission, including receipts, disbursements, and other items relating to its financial standing. The auditor shall report the results of the examination to the governor of each state that is a party to the compact.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.008. Text of Compact

The Gulf States Marine Fisheries Compact reads as follows:

GULF STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

ARTICLE I

Whereas the Gulf Coast States have the proprietary interest in and jurisdiction over fisheries in the waters within their respective boundaries, it is the purpose of this compact to promote the better utilization of the fisheries, marine, shell and anadromous, of the seaboard of the Gulf of Mexico, by the development of a joint program for the promotion and protection of such fisheries and the prevention of the physical waste of the fisheries from any cause.

ARTICLE II

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Florida, Alabama, Mississippi, Louisiana and Texas have ratified it and the Congress has given its consent, pursuant to Article I, Section 10 of the Constitution of the United States. Any state contiguous to any of the aforementioned states or riparian upon waters which flow into waters under the jurisdiction of any of the aforementioned States and which are frequented by anadromous fish or marine species, may become a party hereto as hereinafter provided.

ARTICLE III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Gulf States Marine Fisheries Commission. One shall be the head of the administrative agency of such State charged with the conservation of the fishery resources to which this compact pertains; or, if there be more than one officer or agency, the official of that State named by the Governor thereof. The second shall be a member of the Legislature of such State designated by such Legislature, or in the absence of such designation, such legislator shall be designated by the Governor thereof; provided that if it is constitutionally impossible to appoint a legislator as a commissioner from such State, the second member shall be appointed in such manner as may be established by law. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries, to be appointed by the Governor. This commission shall be a body corporate with the powers and duties set forth herein.

ARTICLE IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Gulf Coast. The commission shall have power to recommend the coordination of the exercise of the police powers of the several States within their respective jurisdictions to promote the preservation of these fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever, and to assure a continuing yield from the fishery resources of the aforementioned States. To that end the commission shall draft and recommend to the Governors and Legislatures of the various signatory States, legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Gulf seaboard. The commission shall from time to time present to the Governor of each compacting State its recommendations relating to enactments to be presented to the Legislature of that State in furthering the interest and purposes of this compact. The commission shall consult with and advise the pertinent administrative agencies in the States party hereto with regard to problems connected with the fisheries, and recommend the adoption of such regulations as it deems advisable. The commission shall have power to recommend to the States party hereto

the stocking of the waters of such States with fish and fish eggs or joint stocking by some or all of the States party hereto, and when two or more States shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

ARTICLE V

The commission shall elect from its number a chairman and vice-chairman and shall appoint, and at its pleasure remove or discharge, such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business, and may meet at any time or place; but must meet at least once a year.

ARTICLE VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting States. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting States which have an interest in such species. The commission shall define what shall be an interest.

ARTICLE VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Gulf States Marine Fisheries Commission, cooperating with the research agencies in each State for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the commission. An advisory committee to be representative of the commercial salt water fishermen and the salt water anglers and such other interests of each State as the commissioners deem advisable may be established by the commissioners from each State for the purpose of advising those commissioners upon such recommendations as it may desire to make.

ARTICLE VIII

When any State, other than those named specifically in Article II of this compact, shall become a party hereto for the purpose of conserving its anadromous fish or marine species in accordance with the provisions of Article II, the participation of such State in the action of the commission shall be limited to such species of fish.

ARTICLE IX

Nothing in this compact shall be construed to limit the powers of the proprietary interest of any signatory State, or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by a signatory State, imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE X

It is agreed that any two or more States party hereto may further amend this compact by acts of their respective Legislatures, subject to approval of Congress as provided in Article I, Section X, of the Constitution of the United States, to designate the Gulf States Marine Fisheries Commission as a joint regulating authority for the joint regulation of specific fisheries affecting only such States as shall so compact, and at their joint expense. The representatives of such States shall constitute a separate section of the Gulf States Marine Fisheries Commission for the exercise of the additional powers so granted, but the creation of such section shall not be deemed to deprive the States so compacting of any of their privileges or powers in the Gulf States Marine Fisheries Commission as constituted under the other Articles of this compact.

ARTICLE XI

Continued absence of representation or of any representative on the commission from any State party hereto, shall be brought to the attention of the Governor thereof.

ARTICLE XII

The operating expenses of the Gulf States Marine Fisheries Commission shall be borne by the States party hereto. Such initial appropriation as set forth below shall be made available yearly until modified as hereinafter provided:

Florida	$3,500.00
Alabama	1,000.00
Mississippi	1,000.00
Louisiana	5,000.00
Texas	2,500.00
Total	$13,000.00

The proration and total cost per annum of Thirteen Thousand ($13,000.00) Dollars, above mentioned, is estimative only, for initial operations, and may be changed when found necessary by the commission and approved by the Legislatures of the respective States. Each State party hereto agrees to provide in the manner most acceptable to it, the travel costs and necessary expenses of its commissioners and other representatives to and from meetings of the commission or its duly constituted sections or committees.

Article XIII

This compact shall continue in force and remain binding upon each compacting State until renounced by Act of the Legislature of such State, in such form as it may choose; provided that such renunciation shall not become effective until six months after the effective date of the action taken by the Legislature. Notice of such renunciation shall be given the other States party hereto by the Secretary of State of compacting State so renouncing upon passage of the Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

TITLE 7. LOCAL AND SPECIAL LAWS

Chapter

101. Anderson County.
102. Andrews County.
103. Angelina County.
104. Aransas County.
105. Archer County.
106. Armstrong County.
107. Atascosa County.
108. Austin County.
109. Bailey County.
110. Bandera County.
111. Bastrop County.
112. Baylor County.
113. Bee County.
114. Bell County.
115. Bexar County.
116. Blanco County.
117. Borden County.
118. Bosque County.
119. Bowie County.
120. Brazoria County.
121. Brazos County.
122. Brewster County.
123. Briscoe County.
124. Brooks County.
125. Brown County.
126. Burleson County.
127. Burnet County.
128. Caldwell County.
129. Calhoun County.
130. Callahan County.
131. Cameron County.
132. Camp County.
133. Carson County.
134. Cass County.
135. Castro County.
136. Chambers County.
137. Childress County.
138. Cherokee County.
139. Clay County.
140. Cochran County.
141. Coke County.
142. Coleman County.
143. Collin County.
144. Collingsworth County.
145. Colorado County.
146. Comal County.
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158. Dawson County.
159. Deaf Smith County.
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164. Dimmit County.
165. Donley County.
166. Duval County.
167. Eastland County.
168. Ector County.
169. Edwards County.
170. Ellis County.
171. El Paso County.
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173. Falls County.
174. Fannin County.
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176. Fisher County.
177. Floyd County.
178. Foard County.
179. Fort Bend County.
180. Franklin County.
181. Freestone County.
182. Frio County.
183. Gaines County.
184. Galveston County.
185. Garza County.
186. Gillespie County.
187. Glasscock County.
188. Goliad County.
189. Gonzales County.
190. Gray County.
191. Grayson County.
192. Gregg County.
193. Grimes County.
194. Guadalupe County.
195. Hale County.
196. Hall County.
197. Hamilton County.
198. Hansford County.
199. Hardeman County.
200. Hardin County.
201. Harris County.
202. Harrison County.
203. Hartley County.
204. Haskell County.
205. Hays County.
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210. Hockley County.
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222. Jeff Davis County.
223. Jefferson County.
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225. Jim Wells County.
226. Johnson County.
227. Jones County.
228. Karnes County.
229. Kaufman County.
230. Kendall County.
231. Kenedy County.
232. Kent County.
233. Kerr County.
234. Kimble County.
235. King County.
236. Kinney County.
237. Kleberg County.
238. Knox County.
239. Lamar County.
240. Lamb County.
241. Lampasas County.
242. La Salle County.
243. Lavaca County.
244. Lee County.
245. Leon County.
246. Liberty County.
247. Limestone County.
248. Lipscomb County.
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251. Loving County.
252. Lubbock County.
253. Lynn County.
254. McCulloch County.
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291. Randall County.
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293. Real County.
294. Red River County.
295. Reeves County.
296. Refugio County.
297. Roberts County.
298. Robertson County.
299. Rockwall County.
300. Runnels County.
301. Rusk County.
302. Sabine County.
303. San Augustine County.
304. San Jacinto County.
305. San Patricio County.
306. San Saba County.
307. Schleicher County.
308. Scurry County.
309. Shackelford County.
310. Shelby County.
311. Sherman County.
312. Smith County.
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317. Stonewall County.
318. Sutton County.
319. Swisher County.
320. Tarrant County.
321. Taylor County.
322. Terrell County.
323. Terry County.
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326. Tom Green County.
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328. Trinity County.
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330. Upshur County.
331. Upton County.
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336. Walker County.
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340. Webb County.
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CHAPTER 101. ANDERSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
101.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

101.011. Fish Sale.
101.012. Nets.
101.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 101.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Anderson County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 101.002 to 101.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 101.011. Fish Sale

(a) No person, firm, or corporation may fish for, take, catch, or have in possession for sale, or carry, transport, or ship for sale, or buy or sell, or offer to buy or sell, barter, or exchange any fish, except bait fish, caught from the water of the Neches River in Anderson County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $100. Each fish caught and each sale or shipment in violation of this section constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 214, ch. 105, § 4, eff. Sept. 1, 1977.]

§ 101.012. Nets

(a) During the months of June, July, August, September, October, November, December, and January, no person may place or use a set or drag net or seine in the water of the Neches River in Anderson County, or take or catch fish from this water with a set or drag net or seine.

(b) This section does not prohibit the use of minnow seines as provided by law.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 400, ch. 187, § 1, eff. May 15, 1979.]

§ 101.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit any catfish, perch, crappie, white perch, bass, trout, or other edible fish on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Anderson County and leave the fish to die without the intention to eat the fish or use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left in violation of this section is a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 102. ANDREWS COUNTY

§ 102.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Andrews County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 103. ANGELINA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
103.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

103.011. Squirrel Season.
103.012. Repealed.
103.013. Trailing Wounded Deer With Dogs.

SUBCHAPTER C. BIRDS

103.021. Quail.
103.022. Turkey.

SUBCHAPTER D. FISH

103.031. Fish.

SUBCHAPTER E. FUR-BEARING ANIMALS

103.041. Fox.
103.042. Fur-Bearing Animals.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 103.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies in Angelina County only to freshwater fish in Sam Rayburn Reservoir.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 103.002 to 103.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 103.011. Squirrel Season

(a) No person may hunt squirrel in Angelina County at any time except during the period beginning on October 1 and extending through January 15.

(b) A person who violates a provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 103.012. Repealed by Acts 1977, 65th Leg., p. 37, ch. 21, § 1, eff. March 24, 1977

The repealed section, relating to a squirrel limit, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

§ 103.013. Trailing Wounded Deer With Dogs

A person may use dogs to trail a wounded deer in Angelina County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 103.014 to 103.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 103.021. Quail

(a) No person may hunt wild quail in Angelina County except during the period beginning on December 1 and extending through January 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. The taking or killing of each bird in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 103.022. Turkey

(a) No person may hunt wild turkey in Angelina County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $300.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 103.023 to 103.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 103.031. Fish

(a) No person may use a net with less than three inches square mesh to take fish in the water of Angelina County, excluding Sam Rayburn Reservoir.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $500, or confinement in the county jail for not less than 10 days nor more than 30 days, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 103.032 to 103.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 103.041. Fox

(a) No person may shoot or attempt to shoot or trap wild fox in Angelina County on land other than that which he owns, leases, or holds under an agreement to work the land unless:

(1) the fox is rabid; or

(2) prior written consent to kill fox from the owner or lessee of the land on which he is hunting has been obtained.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 103.042. Fur-Bearing Animals

(a) No person may take the pelt of a fur-bearing animal in Angelina County except during the months of January and December.

(b) Only during the season set out in Subsection (a) of this section, a person may take fur-bearing animals by a trap or other mechanical device on property that he owns or on property for which a written permit has been given by the owner for trapping purposes.

(c) Pelts of fur-bearing animals taken under this section may be sold or offered for sale.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 104. ARANSAS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
104.001. Regulatory Act: Applicability.
104.002. Partial Exclusion of Certain Area.

SUBCHAPTER B. FISH

104.011. Shrimp.
104.012. Net-Free Zone.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 104.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources of Aransas County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 104.002. Partial Exclusion of Certain Area

For that part of San Antonio Bay lying within the northeast part of Aransas County, the Aransas River where it forms the boundary with Refugio County, and Copano Creek where it forms the boundary with Calhoun County, wildlife resources under the Uniform Wildlife Regulatory Act includes only fish, aquatic life, and marine animals and does not include oysters.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 104.003 to 104.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 104.011. Shrimp

In Aransas County shrimp are not covered under the Uniform Wildlife Regulatory Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 104.012. Net-Free Zone

(a) The net-free zone in Aransas County is comprised of Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-mile Point, past the town of Rockport to a point at the east end of Talley Island. The net-free zone also includes that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(b) No person may set or drag a net or seine except a minnow seine not exceeding 20 feet in length for taking bait in the net-free zone.

(c) No person may place or set a trotline or crab trap in the net-free zone.

(d) A person who violates a provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 105. ARCHER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
105.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

105.011. Fish Sale.
105.012. Leaving Fish to Die.
105.013. Injuring Fish.
105.014. Special Charge.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 105.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Archer County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 105.002 to 105.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 105.011. Fish Sale

(a) No person, firm, or corporation may barter, sell, offer for barter or sale, or buy any bass, perch, crappie, catfish, or any other fish, except minnows, taken from the water located in the valley of the Big Wichita River from the diversion dam on the Big Wichita River in the northeast corner of Archer County, above the dam and up the valley of the Big Wichita River to the storage dam on the river in Baylor County, up the river from the storage dam as far as the water is impounded in the river by the storage dam in Archer County, or from any water in Lake Wichita in Archer County, or from Diversion Lake formed in Archer County, or from the water in laterals leading off of irrigation canals connected with Lake Kemp or the diversion dam, or from any water in Archer County in the lateral, canal, or drainage ditch leading from what is known as the

South Side Canal out of Diversion Lake from a point in the South Side Canal in Section No. 16, of Denton County school lands, League No. 4, Wichita County, to Holliday Creek and down Holliday Creek to Lake Wichita in Archer County, or from the water of Lake Arrowhead located in Archer County or any water in Lake Kickapoo in Archer County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50 for each violation.

(c) Each fish caught, sold, or purchased in violation of this section constitutes a separate offense.

(d) A person alleged to have violated this section may be prosecuted in the county where the fish are caught, where he is found with them in his possession, or the county where the fish are sold, bartered, offered for sale or barter, or bought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 105.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the water described in Subsection (a), Section 105.011 of this code, any bass, crappie, white perch, sunfish, drum, catfish, or other edible fish and leave the fish to die without any intent to eat the fish, or leave any minnows without any intent to use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $1 nor more than $25. Each fish allowed to die constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 105.013. Injuring Fish

(a) No person may injure or destroy any fish by using dynamite, powder, other explosive, or poison in any of the water described in Subsection (a), Section 105.011 of this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $1,000, and may be confined in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 105.014. Special Charge

District judges of Archer County shall give a special charge on this subchapter to the grand juries of Archer County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 106. ARMSTRONG COUNTY

§ 106.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Armstrong County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 107. ATASCOSA COUNTY

§ 107.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Atascosa County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 108. AUSTIN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
108.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

108.011. Squirrel Season.
108.012. Squirrel Retention Limits.

SUBCHAPTER C. FISH

108.021. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 108.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies only to the following wildlife resources in Austin County:

(1) deer;

(2) quail; and

(3) turkey.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 108.002 to 108.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 108.011. Squirrel Season

(a) No person may hunt squirrel in Austin County except during the open season.

(b) The open season for squirrel in Austin County is during May, June, July, October, November, and December of each year.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 108.012. Squirrel Retention Limits

(a) No person may take or kill more than 10 squirrels in one day in Austin County.

(b) No person may possess at one time more than 20 squirrels taken or killed in Austin County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50. Each squirrel taken or possessed in violation of this section is a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 108.013 to 108.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 108.021. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 109. BAILEY COUNTY

§ 109.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bailey County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 110. BANDERA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
110.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

110.011. Injuring Fish.
110.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 110.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bandera County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 110.002 to 110.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 110.011. Injuring Fish

(a) No person may destroy fish in the freshwater streams of Bandera County by the use of any dynamite, powder, or other explosive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $1,000 and may be confined in the county jail for not more than one year.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 110.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Bandera County any catfish, crappie, perch, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 111. BASTROP COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
111.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

111.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 111.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bastrop County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 111.002 to 111.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 111.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 112. BAYLOR COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
112.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

112.011. Fish Sale.
112.012. Leaving Fish to Die.
112.013. Injuring Fish.
112.014. Special Charge.
112.015. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 112.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Baylor County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 112.002 to 112.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 112.011. Fish Sale

(a) No person, firm, or corporation may barter, sell, offer for barter or sale, or buy any bass, perch, crappie, catfish, or any other fish, except minnows, taken from the water located in the valley of the Big Wichita River from where the lower or diversion dam on the Big Wichita River is located, above the dam, up the valley of the river to the storage dam on the river in Baylor County, up the valley of the river from the storage dam as far as the water is impounded by the dam in the river in Baylor County, or from any water impounded in Baylor County by the diversion dam, or from any water impounded in Baylor County by the storage dam, or from any water in the Big Wichita River in Baylor County connecting with the big reservoir or Lake Kemp created by the storage dam with the diversion reservoir or Diversion Lake formed in Baylor County by the diversion dam, or from any water of the irrigation canals connected with Lake Kemp or the diversion dam, or from any water in laterals leading off of the canals in Baylor County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50 for each violation.

(c) Each fish caught, sold, or purchased in violation of this section constitutes a separate offense.

(d) A person alleged to have violated this section may be prosecuted in the county where the fish are caught, where he is found with them in possession, or where the fish are sold, bartered, offered for sale or barter, or bought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 112.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the water described in Subsection (a), Section 112.011 of this code, any bass, crappie, white perch, sunfish, drum, catfish, or other edible fish and leave the fish to die without any intent to eat the fish or leave any minnows without any intent to use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $1 nor more than $25. Each fish allowed to die constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 112.013. Injuring Fish

(a) No person may injure or destroy any fish by using dynamite, powder, other explosive, or poison in any of the water described in Subsection (a), Section 112.011 of this chapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $1,000 and by confinement in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 112.014. Special Charge

District judges of the judicial districts of Baylor County shall give a special charge on Sections 112.011 through 112.013 of this code to the grand juries of Baylor County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 112.015. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow sale and transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 113. BEE COUNTY

§ 113.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bee County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 114. BELL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
114.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

114.011, 114.012. Repealed.

SUBCHAPTER A. APPLICATION OF UNIFORM WILDLIFE REGULATORY ACT

§ 114.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bell County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 114.002 to 114.010 reserved for expansion]

SUBCHAPTER B. FISH

§§ 114.011, 114.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed sections, relating to minnow sale and transporting minnows, respectively, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.
Sale, transportation, and taking of bait, see, now, § 66.010.

CHAPTER 115. BEXAR COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
115.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

115.011. Axis Deer.
115.012. Axis Deer; Treated as Other Deer.

SUBCHAPTER C. FISH

115.021. Fish Sale.
115.022. Leaving Fish to Die.
115.023. Injuring Fish.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 115.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bexar County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 115.002 to 115.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 115.011. Axis Deer

In Bexar County, wild axis deer not individually owned are included under the term "wildlife resources" for regulatory purposes under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 115.012. Axis Deer: Treated as Other Deer

(a) The regulations on the taking of axis deer not individually owned in Bexar County shall be the same as for other deer.

(b) The licensing and tagging requirements of Chapter 42 of this code shall be uniformly applied to axis deer not individually owned, and no extra deer tags may be issued for axis deer.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 115.013 to 115.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 115.021. Fish Sale

(a) No person may barter, sell, or offer to barter or sell any bass, white perch, crappie, catfish taken from the streams of Bexar County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 and not more than $50.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 115.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Bexar County any catfish, crappie, perch, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 115.023. Injuring Fish

(a) No person may destroy fish in the freshwater streams of Bexar County by the use of any dynamite, powder, or other explosive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $1,000 and

may be confined in the county jail for not more than one year.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 116. BLANCO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
116.001. Regulatory Act: Applicability.
116.002. Regulatory Act: Archery Season Exclusion.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING [REPEALED]

116.011 to 116.017. Repealed.

SUBCHAPTER C. FISH

116.021. Fish Sale.
116.022. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 116.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Blanco County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 116.002. Regulatory Act: Archery Season Exclusion

The Parks and Wildlife Commission may not authorize for Blanco County a special open season for the taking of deer, turkey, or javelina by means of bow and arrow only.
[Added by Acts 1977, 65th Leg., p. 1621, ch. 635, § 1, eff. Aug. 29, 1977.]

[Sections 116.003 to 116.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING [REPEALED]

§§ 116.011 to 116.017. Repealed by Acts 1977, 65th Leg., p. 1258, ch. 484, § 3(b), eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1621, ch. 635, § 2, eff. Aug. 29, 1977

Repealed §§ 116.011 and 116.014 to 116.016, relating to definitions, deer permits, limit and possession of deer, and penalties, respectively, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1. Repealed §§ 116.012, 116.013, and 116.017, relating to an open archery season, prohibited archery equipment, and possession of firearms, respectively, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, as amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16.

SUBCHAPTER C. FISH

§ 116.021. Fish Sale

(a) No person may take, offer, or possess for the purpose of sale any catfish, perch, crappie, bream, or bass in Blanco County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 116.022. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.
Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 117. BORDEN COUNTY

§ 117.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Borden County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 118. BOSQUE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
118.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

118.011. Sale of Fish From Lake Waco or Bosque River.
118.012. Sale of Fish From the Brazos River or Lake Whitney.
118.013. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 118.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bosque County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 118.002 to 118.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 118.011. Sale of Fish From Lake Waco or Bosque River

(a) No person may barter or sell, offer to barter or sell, or buy any bass, crappie, perch, channel or Opelousas catfish, or any other fish, except bait fish,

taken from the water of Lake Waco or the Bosque Rivers and their tributaries in Bosque County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50. Each fish caught, possessed, sold, offered for sale, or purchased in violation of this section constitutes a separate offense.

(c) A person alleged to have violated this section may be prosecuted in the county where the offense is committed, where he is found with the fish, or where the fish are sold or offered for sale.

(d) The district judges of the judicial districts of Bosque County shall give a special charge on this section to the grand juries of Bosque County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 214, ch. 105, § 5, eff. Sept. 1, 1977.]

§ 118.012. Sale of Fish From the Brazos River or Lake Whitney

(a) No person may offer, expose, or possess for sale or sell any fish taken from the water of the Brazos River, Lake Whitney, or their tributaries in Bosque County except as authorized by the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. The possession of each fish in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 118.013. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 119. BOWIE COUNTY

§ 119.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bowie County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 120. BRAZORIA COUNTY

§ 120.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Brazoria County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 121. BRAZOS COUNTY

§ 121.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Brazos County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 122. BREWSTER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
122.001. Regulatory Act: Applicability

SUBCHAPTER B. FISH

122.011. Regulatory Act: Exemption.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 122.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Brewster County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 122.002 to 122.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 122.011. Regulatory Act: Exemption

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in Brewster County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 123. BRISCOE COUNTY

§ 123.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Briscoe County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 124. BROOKS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
124.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS [REPEALED]
124.011, 124.012. Repealed.

SUBCHAPTER C. BIRDS [REPEALED]
124.021. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 124.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Brooks County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1004, ch. 440, § 1, eff. Aug. 27, 1979.]

[Sections 124.002 to 124.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS [REPEALED]

§§ 124.011, 124.012. Repealed by Acts 1979, 66th Leg., p. 1005, ch. 440, § 3, eff. Aug. 27, 1979

Repealed section 124.011, relating to collared peccary, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Repealed section 124.012, relating to buck deer, was added by Acts 1977, 65th Leg., p. 1342, ch. 533, § 1.

SUBCHAPTER C. BIRDS [REPEALED]

§ 124.021. Repealed by Acts 1979, 66th Leg., p. 1005, ch. 440, § 3, eff. Aug. 27, 1979

The repealed section, relating to quail, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

CHAPTER 125. BROWN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
125.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH
125.011. Fish Sale.
125.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 125.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Brown County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 125.002 to 125.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 125.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, channel catfish, or catfish caught, trapped, or ensnared in the streams of Brown County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 125.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Brown County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 126. BURLESON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
126.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH
126.011. Regulatory Act: Exemption.
126.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 126.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Burleson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 126.002 to 126.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 126.011. Regulatory Act: Exemption

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in Burleson

County except those fish in the Somerville Reservoir.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 126.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 127. BURNET COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
127.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

127.011. Definitions.
127.012. Open Archery Season.
127.013. Prohibited Archery Equipment.
127.014. Deer Permits.
127.015. Limit and Possession of Deer.
127.016. Penalty.
127.017. Possession of Firearms.

SUBCHAPTER C. FISH

127.021. Fish Sale.
127.022. Leaving Fish to Die.
127.023. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 127.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Burnet County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 127.002 to 127.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 127.011. Definitions

As used in this subchapter:

(1) "Buck deer" means a deer that has a hardened antler protruding through the skin.

(2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.012. Open Archery Season

(a) The open archery season in Burnet County begins on October 1 and extends through October 31 each year.

(b) During the open archery season, a person may hunt, take, and kill wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 127.013. Prohibited Archery Equipment

No person may hunt, take, or kill wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in Burnet County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 127.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Burnet County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season.

(b) No person may possess an antlerless deer in Burnet County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Burnet County that does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Burnet County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.016. Penalty

A person who violates Section 127.012 through Section 127.015 of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.017. Possession of Firearms

(a) No person may hunt, kill, or take wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Burnet County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 127.018 to 127.020 reserved for expansion]

SUBCHAPTER C. FISH.

§ 127.021. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught, trapped, or ensnared in the streams of Burnet County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Burnet County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.023. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 128. CALDWELL COUNTY

§ 128.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Caldwell County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 129. CALHOUN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
129.001. Regulatory Act: Applicability.
129.002. Wildlife Act Applicability: Exclusions.

SUBCHAPTER B. FISH

129.011. Guadalupe River: Fishing Methods.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 129.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Calhoun County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 129.002. Wildlife Act Applicability: Exclusions

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to oysters and shrimp in Calhoun County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 129.003 to 129.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 129.011. Guadalupe River: Fishing Methods

(a) No person may catch fish from the Guadalupe River in Calhoun County except by:

(1) hook and line;

(2) trotline;

(3) flounder gig and light; or

(4) cast net or minnow seine not exceeding 20 feet in length to be used for catching bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 130. CALLAHAN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
130.001. Regulatory Act: Applicability.

SUBCHAPTER B. LAKE BAIRD

130.011. Repealed.
130.012. Fish Sale.
130.013. Discharge of Firearm.
130.014. Penalty.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 130.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Callahan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 130.002 to 130.010 reserved for expansion]

SUBCHAPTER B. LAKE BAIRD

§ 130.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 130.012. Fish Sale

No person may sell, buy, offer to sell or buy, or take or possess for commercial purposes fish, except bait fish, taken from Lake Baird in Callahan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 214, ch. 105, § 6, eff. Sept. 1, 1977.]

§ 130.013. Discharge of Firearm

(a) Except as provided in this section, no person may shoot, fire, or discharge any pistol or rifle in, on, along, or across Lake Baird in Callahan County.

(b) This section does not apply to peace officers or other representatives of the department in the conduct of their official duties.

(c) This section does not apply to a person hunting with a shotgun during an open season in Callahan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 130.014. Penalty

A person who violates this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each fish taken or possessed in violation of this subchapter constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 131. CAMERON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
131.001. Regulatory Act: Applicability.
131.002. Regulatory Act: Shrimp and Oysters in Outside Water Excluded.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

131.011. Audubon Society Land.

SUBCHAPTER C. FISH

131.021. Flounder, Speckled Trout, and Redfish Size Limits.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 131.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Cameron County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 131.002. Regulatory Act: Shrimp and Oysters in Outside Water Excluded

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to shrimp and oysters in the outside water of the Gulf of Mexico in Cameron County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 131.003 to 131.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 131.011. Audubon Society Land

(a) This section applies to Green Island and the group of three islands in Big Bay and the flats, reefs, and shallow water near those islands in Cameron County during the period that the National Association of the Audubon Societies is the lessee of those islands.

(b) No person, other than an agent, representative, or employee of the National Association of Audubon Societies or an officer of this state or the United States may enter on the land without the knowledge or consent of the association for the purpose of hunting a bird or for the purpose of taking or destroying a bird egg or nest.

(c) No person may hunt or molest a bird on the described land whether the person is on or off the described land.

(d) No person may discharge a firearm or explosive on or above the described land.

(e) No person may land, tie, or anchor a fishing boat in the described land.

(f) This section does not prohibit an agent, representative, or employee of the association from:

(1) hunting birds known to be a prey on other birds or eggs; or

(2) taking birds and eggs for propagation, conservation, or scientific purposes.

(g) This section does not prohibit a person from taking refuge on the described land because of storms.

(h) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $500 or by confinement in jail for not less than 10 days nor more than 6 months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 131.012 to 131.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 131.021. Flounder, Speckled Trout, and Redfish Size Limits

(a) No person in Cameron County may retain or place in a container or boat or on a stringer a speckled trout less than 12 inches long, a flounder less than 12 inches long, or a redfish less than 14 inches long.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each fish retained in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 132. CAMP COUNTY

SUBCHAPTER A. APPLICABILITY TO UNIFORM WILDLIFE REGULATORY ACT

Section

132.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS [REPEALED]

132.011 to 132.015. Repealed.

SUBCHAPTER C. BIRDS [REPEALED]

132.021, 132.022. Repealed.

SUBCHAPTER D. FUR-BEARING ANIMALS [REPEALED]

132.031, 132.032. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 132.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources of Camp County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 598, ch. 214, § 1, eff. Aug. 29, 1977.]

[Sections 132.002 to 132.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS [REPEALED]

§§ 132.011 to 132.015. Repealed by Acts 1977, 65th Leg., p. 598, ch. 214, § 2, eff. Aug. 29, 1977

The repealed sections, relating to game animals, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

SUBCHAPTER C. BIRDS [REPEALED]

§§ 132.021, 132.022. Repealed by Acts 1977, 65th Leg., p. 598, ch. 214, § 2, eff. Aug. 29, 1977

The repealed sections, relating to quail and turkey, respectively, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

SUBCHAPTER D. FUR-BEARING ANIMALS [REPEALED]

§§ 132.031, 132.032. Repealed by Acts 1977, 65th Leg., p. 598, ch. 214, § 2, eff. Aug. 29, 1977

The repealed sections, relating to fox and hunting mink with dogs, respectively, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

CHAPTER 133. CARSON COUNTY

§ 133.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Carson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 134. CASS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
134.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

134.011. Deer Season.
134.012. Deer Limit.
134.013. Use of Firearms.
134.014. Penalty.
134.015. Squirrel.

SUBCHAPTER C. BIRDS

134.021. Turkey.
134.022. Quail.

SUBCHAPTER D. FISH

134.031. Methods of Fishing.
134.032. Crappie.

SUBCHAPTER E. LAKE TEXARKANA

134.041. Discharge of Firearm.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 134.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Cass County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 134.002 to 134.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 134.011. Deer Season

No person may hunt deer in Cass County except during the open season, which is November 16 through November 21 and December 26 through December 31.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.012. Deer Limit

(a) No person may take or kill more than two deer during an open season in Cass County.

(b) No person may take, kill, or possess any deer except a buck deer with a pronged antler or a spike deer in Cass County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1011, ch. 445, § 1, eff. Aug. 27, 1979.]

§ 134.013. Use of firearms

(a) No person may use .22 caliber rimfire ammunition to hunt deer in Cass County.

(b) No person may hunt wild deer in Cass County by any means other than with a rifle or shotgun capable of being fired from the shoulder.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.014. Penalty

A person who violates Sections 134.011 through 134.013 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each deer taken, killed, or possessed in violation of this subchapter constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.015. Squirrel

(a) No person may take or kill squirrel in Cass County except during the months of October, November, and December.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $1 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 134.016 to 134.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 134.021. Turkey

(a) No person may possess wild turkey killed or caught in Cass County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.022. Quail

(a) No person may hunt wild quail in Cass County except during the open season, which is December 1 through February 15.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. Each bird taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 134.023 to 134.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 134.031. Methods of Fishing

(a) No person may take or catch fish in the public fresh water of Cass County by any means other than an ordinary hook and line, set hook and line, gig, or artificial bait.

(b) Except as provided in Subsections (c) and (d) of this section, no person may place in the public fresh water of Cass County any seine, net, or other device or trap for taking or catching fish.

(c) A minnow seine not longer than 20 feet may be used to catch minnows for bait.

(d) A hoop, trammel, or gill net with meshes not less than three inches square may be used in the fresh water of Cass County for taking or catching buffalo fish, carp, and catfish except during the months of March and April.

(e) No person may use a pond net.

(f) All fish and minnows more than two and one-half inches long taken in seining for minnows must be returned to the water alive.

(g) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.032. Crappie

There is no daily catch or retention limit on crappie or white perch in Cass County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 134.033 to 134.040 reserved for expansion]

SUBCHAPTER E. LAKE TEXARKANA

§ 134.041. Discharge of Firearm

(a) Except as provided in this section, no person may shoot a pistol or rifle in, on, along, or across Lake Texarkana.

(b) Subsection (a) of this section does not apply to peace officers, game wardens, or representatives of the department in the lawful discharge of their duties.

(c) Subsection (a) of this section does not apply to a person hunting with a shotgun during an open season or when it is lawful to hunt in or on Lake Texarkana.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 135. CASTRO COUNTY

§ 135.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Castro County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 136. CHAMBERS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
136.001. Regulatory Act: Applicability.
136.002. Regulatory Act: Red Drum.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

136.011. Hunting With Certain Weapons.
136.012. Shooting in Certain Places.
136.013. Enforcement; Penalties.

SUBCHAPTER C. GAME ANIMALS

136.021. Squirrel.
136.022. Deer.

SUBCHAPTER D. BIRDS

136.031. Turkey.
136.032. Quail.

SUBCHAPTER E. FISH

136.041. Catfish Size Limits.
136.042. Net Size for Rough Fish and Catfish.
136.043. Seining Near Cities Prohibited.
136.044. Galveston and Trinity Bays: Nets.
136.045. East Galveston Bay: Nets.
136.046. Other Water: Fishing Methods.
136.047. Commission May Close Certain Water.
136.048. Nets and Trotlines: Use.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 136.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources of Chambers County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 724, ch. 270, § 8, eff. Oct. 1, 1978.]

§ 136.002. Regulatory Act: Red Drum

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to red drum in Chambers County.
[Added by Acts 1977, 65th Leg., p. 724, ch. 270, § 8, eff. Oct. 1, 1978.]

[Sections 136.003 to 136.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 136.011. Hunting With Certain Weapons

(a) No person in Chambers County may hunt with a shotgun using a shell larger than No. four squirrel shot or with a rifle larger than a rimfire .22 caliber rifle where deer are known to roam, except during the open season for deer.

(b) The evidence of possession of a shotgun and shell containing larger than No. four squirrel shot or a rifle larger than a rimfire .22 caliber rifle in or through woods where deer are known to roam constitutes prima facie evidence of a violation of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.012. Shooting in Certain Places

(a) No person may shoot a pistol or rifle in, on, along, or across the water of the Trinity River, Wallisville Reservoir, and Lake Anahuac in Chambers County.

(b) No person may shoot a pistol, crossbow, bow and arrow, shotgun, or rifle in, on, along, or across the water of Oyster Bayou in Chambers County from State Highway 65 south to the mouth of Oyster Bayou in East Bay.

(c) The water described in Subsections (a) and (b) of this section are part of the public fresh water of this state suited and adapted to the preservation, protection, and propagation of game and fish, and this section is to aid in the preservation, protection, and propagation of game and fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.013. Enforcement; Penalties

(a) Section 136.012 of this code does not apply to a person hunting migratory waterfowl with a shotgun during a prescribed open season in and on the Trinity River and the Wallisville Reservoir.

(b) Sections 136.011 and 136.012 of this code do not apply to peace officers, or representatives of the department in the lawful discharge of their duties.

(c) It is the duty of the department to enforce the provisions of this subchapter, and enforcement officers may arrest without a warrant a person violating a provision in his presence.

(d) A person who violates Section 136.011 or Section 136.012 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 136.014 to 136.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 136.021. Squirrel

(a) No person may hunt squirrel in Chambers County except during the open seasons beginning on May 1 and extending through July 31 and beginning on October 15 and extending through January 15.

(b) No person in Chambers County may take or kill more than 10 squirrels during a day or possess more than 20 squirrels at a time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each squirrel killed, taken, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.022. Deer

(a) No person may hunt wild deer in Chambers County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $500.

(c) This section expires on November 16, 1980.

[Acts 1975, 64th Leg., p. 1220, ch. 456, § 19(a), eff. Sept. 1, 1975.]

[Sections 136.023 to 136.030 reserved for expansion]

SUBCHAPTER D. BIRDS

§ 136.031. Turkey

(a) No person may hunt wild turkey in Chambers County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.032. Quail

(a) No person may hunt quail in Chambers County except during the open season beginning on December 1 and extending through February 15.

(b) No person in Chambers County may kill or take more than 12 quail of all varieties during a day or possess more than 24 quail of all varieties at a time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each quail taken, killed, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 43, ch. 27, § 1, eff. Aug. 29, 1977.]

[Sections 136.033 to 136.040 reserved for expansion]

SUBCHAPTER E. FISH

§ 136.041. Catfish Size Limits

(a) No person may retain or place in a container or boat or on a stringer a catfish caught from the public water of Chambers County which is less than 11 inches long.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50. Each fish retained in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.042. Net Size for Rough Fish and Catfish

(a) In Chambers County, except in the water of Trinity Bay, Lake Anahuac, and Turtle Bay Bayou, a hoop net, gill net, and trammel net may be used for the catching of rough fish and catfish only.

(b) No person may use in the water described in Subsection (a) of this section for the purpose of taking rough fish or catfish a hoop net, gill net, or trammel net having meshes smaller than three inches.

(c) No person may take bass or crappie with a net authorized by this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.043. Seining Near Cities Prohibited

(a) No person may attempt to take any fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in Chambers County within one mile of the limits of a city.

(b) In this section, "city" means any community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes, or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. In a prosecution under this section, identification of the boat from which a violation occurred, if any, is prima facie evidence against the owner, lessee, person in charge, or master of the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.044. Galveston and Trinity Bays: Nets

(a) No person may possess, use, or place in or on that portion of Galveston Bay or Trinity Bay in Chambers County lying north of a line from Eagle Point to Smith Point a setnet, gill net, trap, or other device for the catching of fish.

(b) A person may possess and use in the water described in Subsection (a) of this section a trammel net not exceeding 1,200 feet in length and having mesh of not less than three and one-half inches when stretched.

(c) This section does not prohibit the possession of a device the use of which is prohibited in the water described in Subsection (a) of this section when the device is on board a vessel in port or in a channel while under way to a place where the use of the device is not prohibited.

(d), (e) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(3), eff. May 20, 1977.

(f) A person who violates this section is guilty of a misdemeanor and on a first conviction shall be punished by a fine of not less than $50 nor more than $250. On a second or subsequent conviction he may be punished by a fine of not less than $50 nor more than $250, and his commercial fishing license is subject to forfeiture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(3), eff. May 20, 1977.]

§ 136.045. East Galveston Bay: Nets

(a) Except as provided in Subsection (b) of this section, it is lawful to use strike nets, gill nets, trammel nets, and shrimp trawls for the purpose of taking fish in the water of East Galveston Bay in Chambers County during the period beginning on August 15 and extending through May 15 of the following year.

(b) No person may use a strike net, gill net, trammel net, or shrimp trawl for the purpose of taking fish in any of the following water of Chambers County at any time:

(1) water lying northwest of a line from Kemah in Galveston County to Mesquite Knoll in Chambers County; and

(2) water of Galveston Bay lying east of a line from the extreme western point of Smith's Point in Chambers County to the west bank of Siever's Cut where East Bay intersects with the north bank of the Intracoastal Canal on Bolivar Peninsula in Galveston County at Siever's Fish Camp, which cut is between Elm Grove Point and Baffle Point, both points being on the north shore of Bolivar Peninsula.

(c) No person operating under the authority of Subsection (a) of this section may use a strike net, gill net, trammel net, or shrimp trawl for catching

fish if the meshes are less than one and one-half inches from knot to knot.

(d), (e) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(4), eff. May 20, 1977.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200, and his commercial fishing license is subject to revocation for one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(4), eff. May 20, 1977.]

§ 136.046. Other Water: Fishing Methods

(a) No person may place or use a seine, net, or other device for catching fish in any of the bays, streams, bayous, or canals of Chambers County not covered by Sections 136.042, 136.043, and 136.044 of this code except:

(1) an ordinary pole and line;

(2) a casting rod and reel;

(3) artificial bait;

(4) a trotline;

(5) a setline;

(6) a flounder gig and light; and

(7) a cast net or minnow seine not more than 20 feet long and used only for catching bait.

(b) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(5), eff. May 20, 1977.

(c) The identification of a boat, vehicle, seine, or net from or by which a violation of this section occurs is prima facie evidence against the owner of the boat, vehicle, net, or seine, or against the party last in charge of the boat.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100. On a second or subsequent conviction, the person is punishable by a fine of not less than $100 nor more than $200 and his commercial fishing license is subject to forfeiture for a period of one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(5), eff. May 20, 1977.]

§ 136.047. Commission May Close Certain Water

(a) The commission may close tidal water in Chambers County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent its destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

(1) the reason for the closing;

(2) a designation of the area to be closed;

(3) the effective date and duration of the closing;

(4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may open the area to seining, netting, gigging, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant, and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 136.043, 136.044, and 136.045 apply.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.048. Nets and Trotlines: Use

(a) In that portion of Galveston Bay or Trinity Bay in Chambers County where nets, seines, and saltwater trotlines are permitted, during the period beginning the Saturday of Memorial Day weekend through sunset on Labor Day, nets and saltwater trotlines may not be used from sunset Friday to sunset Sunday.

(b) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than $25 nor more than $200. On a second or subsequent conviction, the person is punishable by a fine of not less than $200 nor more than $500 and shall forfeit the license under which the person is fishing.

[Added by Acts 1977, 65th Leg., p. 724, ch. 270, § 9, eff. Oct. 1, 1978.]

CHAPTER 137. CHILDRESS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
137.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH [REPEALED]

137.011, 137.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 137.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Childress County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 137.002 to 137.010 reserved for expansion]

SUBCHAPTER B. FISH [REPEALED]

§§ 137.011, 137.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed sections, relating to a definition of "minnow hatchery" and minnow transport, respectively, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 138. CHEROKEE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
138.001. Regulatory Act: Applicability.
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138.032. Nets and Seines.
138.033. Prohibited Methods of Fishing.

SUBCHAPTER E. FUR-BEARING ANIMALS [REPEALED]

138.041. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 138.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Cherokee County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 138.002. Lake Palestine

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to all of the water area of Lake Palestine located in Cherokee County. The provisions of this chapter do not apply to the water area of Lake Palestine in Cherokee County, except as specifically noted.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 138.003 to 138.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 138.011. Deer

(a) No person may hunt wild deer north of U. S. Highway 84 in Cherokee County except during the open season for the taking of deer beginning on November 16 and extending through November 30 of each year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1223, ch. 456, § 24, eff. Sept. 1, 1975.]

§ 138.012. Hunting Deer With Dogs: Evidence

Possession of a high-powered rifle or a shotgun with buckshot while in control of a dog, or while accompanying a person in control of a dog, in any area in Cherokee County where deer are known to range is prima facie evidence of a violation of Section 63.010 of this code, relating to hunting deer with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 138.013. Squirrel

(a) No person may hunt, take, or kill any squirrel in Cherokee County except during the period beginning October 1 and extending through December 31 of each year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 138.014 to 138.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 138.021. Turkey

(a) No person may hunt wild turkey in Cherokee County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $300.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 138.022. Quail

(a) No person may hunt, take, or kill any wild quail in Cherokee County except during the period beginning on December 1 of one year and extending through February 15 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each quail taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 138.023 to 138.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 138.031. Fish Sale

(a) No person may sell, offer for sale, or possess for the purpose of sale any fish, except bait fish, caught or taken from the public fresh water of Cherokee County, including that portion of Lake Palestine located within the county, or from the portion of the Angelina River that is the boundary line between Cherokee and Nacogdoches counties north of Texas Highway 21.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 214, ch. 105, § 7, eff. Sept. 1, 1977.]

§ 138.032. Nets and Seines

(a) During the months of June, July, August, September, October, November, December, and January, no person may place or use a set or drag net or seine in the public fresh water of Cherokee County or in the water of the Neches River in Cherokee County, or take or catch fish from these waters with a set or drag net or seine.

(b) This section does not prohibit the use of minnow seines as provided by general law.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 400, ch. 187, § 2, eff. May 15, 1979.]

§ 138.033. Prohibited Methods of Fishing

(a) This section applies to the Angelina River and Mud Creek in Cherokee County.

(b) No person may catch or attempt to catch fish by placing any lime, poison, drug, dynamite, nitroglycerin, giant powder, or any other explosive or substance harmful to fish in the water of the river or creek.

(c) No person may catch or attempt to catch fish by the aid of what is commonly known as "telephoning," or by using any other electricity-producing apparatus designed for shocking fish. Possession of any such equipment in a boat or along the bank or shore of the river or creek is prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on first conviction is punishable by a fine of not less than $300 nor more than $750. On second conviction of a violation of this section, a person is punishable by a fine of not less than $500 nor more than $1,000 and by confinement in the county jail for not less than 30 days nor more than six months. On a third or subsequent conviction of a violation of this section, a person is punishable by a fine of not less than $1,000 nor more than $2,000 and by confinement in the county jail for not less than six months nor more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 138.034 to 138.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS [REPEALED]

§ 138.041. Repealed by Acts 1977, 65th Leg. p. 86, ch. 42, § 1, eff. April 5, 1977

The repealed section, relating to steel traps, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

CHAPTER 139. CLAY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
139.001. Regulatory Act: Applicability.

SUBCHAPTER B. LAKE ARROWHEAD

139.011. Fish Sale.
139.012. Injuring Fish.
139.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 139.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Clay County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 139.002 to 139.010 reserved for expansion]

SUBCHAPTER B. LAKE ARROWHEAD

§ 139.011. Fish Sale

(a) No person may barter, sell, offer for barter or sale, or buy any bass, perch, crappie, or catfish or any other fish except minnows taken from Lake Arrowhead in Clay County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50. Each fish sold or bought in violation of this section is a separate offense.

(c) A person alleged to have violated this section may be prosecuted in the county where the fish are caught, where he is found with them in possession, or where the fish are sold, bartered, offered for sale or barter, or bought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 139.012. Injuring Fish

(a) No person may injure or destroy fish by the use of dynamite, powder, other explosive, or poison in the water of Lake Arrowhead in Clay County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $1,000 and may be confined in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 139.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to the water of Lake Arrowhead in Clay County any bass, crappie, white perch, sunfish, drum, catfish, or other edible fish or minnows and leave the fish to die without any intention to eat the fish or use the minnows for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $1 nor more than $25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 140. COCHRAN COUNTY

§ 140.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Cochran County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 141. COKE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
141.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

141.011. Fish Sale.
141.012. Repealed.
141.013. Trespass.
141.014. Penalty.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 141.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Coke County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 141.002 to 141.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 141.011. Fish Sale

No person may sell, buy, offer to sell or buy, take, or possess for commercial purposes fish, except bait fish, taken from the water of Sweetwater Oak Creek Lake in Coke County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 215, ch. 105, § 8, eff. Sept. 1, 1977.]

§ 141.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 141.013. Trespass

This subchapter does not license, permit, or authorize any person to go on the land of another person to catch fish or minnows without the consent of the owner of the land or water. In any prosecution for a violation of this subchapter, the burden to prove consent of the owner of the land is on the alleged trespasser.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 141.014. Penalty

A person who violates a provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $100. Each

fish taken or possessed in violation of this subchapter constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 142. COLEMAN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
142.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

142.011. Fish Sale.
142.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 142.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Coleman County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 142.002 to 142.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 142.011. Fish Sale

(a) No person may sell or offer for sale any bass or crappie (white perch) caught, trapped, or ensnared in the water of Coleman County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 142.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Coleman County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention of eating the fish or using it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die in violation of this section constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 143. COLLIN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
143.001. Regulatory Act: Applicability.

SUBCHAPTER B. MINNOWS

143.011. Repealed.

SUBCHAPTER C. LAKE LAVON

143.021. Fish Sale.
143.022. Harmful Refuse.
143.023. Discharge of Firearm.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 143.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Collin County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 143.002 to 143.010 reserved for expansion]

SUBCHAPTER B. MINNOWS

§ 143.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.
Sale, transportation, and taking of bait fish, see, now, § 66.010.

[Sections 143.012 to 143.020 reserved for expansion]

SUBCHAPTER C. LAKE LAVON

§ 143.021. Fish Sale

(a) No person may sell, barter, offer to sell or barter, take, or possess fish, except bait fish, taken from the water of Lake Lavon in Collin County for commercial purposes.

(b) A person violating this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each fish taken or possessed in violation of this section constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 215, ch. 105, § 9, eff. Sept. 1, 1977.]

§ 143.022. Harmful Refuse

(a) No person may throw, leave, or cause to be thrown or left any wastepaper, glass, metal, tin can, refuse, garbage, waste, discarded or soiled personal property, or any other noxious or poisonous substance in the water of or in close proximity to Lake

Lavon in Collin County if the substance is detrimental to fish or persons fishing in Lake Lavon.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 143.023. Discharge of Firearm

(a) Except as provided in Subsections (b) and (c) of this section, no person may shoot, fire, or discharge any firearm in, on, along, or across Lake Lavon in Collin County.

(b) This section does not apply to peace officers, game wardens, or other representatives of the department in the lawful discharge of their duties.

(c) This section does not apply to a person hunting with a shotgun during an open season or when it is lawful to hunt in or on Lake Lavon.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200 plus costs, or confinement in the county jail for not more than one year, or both.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 144. COLLINGSWORTH COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
144.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

144.011. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 144.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Collingsworth County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 144.002 to 144.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 144.011. Quail

(a) No person may hunt quail in Collingsworth County except during the open season, which is December 1 through January 31, both dates inclusive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each bird taken in violation of this section constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 145. COLORADO COUNTY

§ 145.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Colorado County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 146. COMAL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
146.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

146.011. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 146.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Comal County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 146.002 to 146.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 146.011. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Comal County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die in violation of this section constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 147. COMANCHE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
147.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

147.011. Fish Sale.
147.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 147.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Comanche County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 147.002 to 147.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 147.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, channel catfish, or catfish caught, trapped, or ensnared in the water of Comanche County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 147.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 148. CONCHO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
148.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

148.011. Fish Sale.
148.012. Leaving Fish to Die.
148.013. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 148.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Concho County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 148.002 to 148.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 148.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught, trapped, or ensnared in the streams of Concho County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 148.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Concho County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use the fish for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 148.013. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 149. COOKE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
149.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

149.011. Fish Sale.
149.012. Lake Texoma: Fish Sale.
149.013. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 149.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Cooke County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 149.002 to 149.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 149.011. Fish Sale

(a) No person may take or possess for the purpose of sale any fish, except bait fish, from the fresh water in Cooke County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine not to exceed $100. Each act of taking, and each fish taken or possessed, in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 215, ch. 105, § 10, eff. Sept. 1, 1977.]

§ 149.012. Lake Texoma: Fish Sale

A person may buy or sell any sucker, buffalo, carp, shad, or gar taken from Lake Texoma in Cooke County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 149.013. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 61.010.

CHAPTER 150. CORYELL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

150.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

150.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 150.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Coryell County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 150.002 to 150.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 150.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 151. COTTLE COUNTY

Section

151.001. Regulatory Act: Applicability.

151.002. Regulatory Act: Special Quail Season.

§ 151.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Cottle County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 151.002. Regulatory Act: Special Quail Season

The proclamations of the commission under the Uniform Wildlife Regulatory Act (Chapter 61 of this code) shall provide for an open season for the hunting of wild quail of all varieties in Cottle County beginning on December 1 of one year and extending through January 31 of the following year.

[Acts 1975, 64th Leg., p. 1214, ch. 456, § 14, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 34, ch. 17, § 1, eff. Aug. 29, 1977.]

CHAPTER 152. CRANE COUNTY

§ 152.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Crane County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 153. CROSBY COUNTY

§ 153.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Crosby County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 154. CROCKETT COUNTY

§ 154.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Crockett County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 155. CULBERSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
155.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH
155.011. Regulatory Act: Exemption.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 155.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Culberson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 155.002 to 155.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 155.011. Regulatory Act: Exemption

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in Culberson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 156. DALLAM COUNTY

§ 156.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Dallam County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 157. DALLAS COUNTY

§ 157.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Dallas County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 158. DAWSON COUNTY

§ 158.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Dawson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 159. DEAF SMITH COUNTY

§ 159.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Deaf Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 160. DELTA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
160.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS
160.011. Deer.
160.012. Squirrels.

SUBCHAPTER C. BIRDS
160.021. Turkey.
160.022. Quail

SUBCHAPTER D. FISH
160.031. Nets and Seines.

SUBCHAPTER E. FUR-BEARING ANIMALS
160.041. Hunting Mink With Dogs.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 160.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Delta County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 160.002 to 160.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 160.011. Deer

(a) No person may hunt deer in Delta County except during the open season beginning on November 22 and extending through December 1.

(b) During the open season, no person may take, kill, or have in his possession a deer other than a buck with pronged horn. No person may take or kill more than one buck deer in one season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 160.012. Squirrels

(a) No person may hunt squirrel in Delta County except during the open seasons beginning on May 1 and extending through July 31, and beginning on October 1 and extending through December 31. During the open seasons no person may kill, take, or have in his possession more than eight squirrels a day.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50. Each squirrel killed, taken, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 160.013 to 160.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 160.021. Turkey

(a) No person may hunt wild turkey in Delta County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200 or confinement in the county jail for not less than 1 day nor more than 30 days, or both. Each turkey killed or possessed in violation of this section constitutes a separate offense and shall be seized and disposed of as provided in Section 12.110 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 160.022. Quail

(a) No person may hunt wild quail in Delta County except during the open season beginning on December 1 and extending through January 16. During the open season, no person may hunt wild quail in Delta County on Sunday.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 160.023 to 160.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 160.031. Nets and Seines

No person may take or catch catfish, perch, buffalo fish, or drum in Delta County by hand or with a seine or net having meshes one inch square, except during the open season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 160.032 to 160.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 160.041. Hunting Mink With Dogs

A person may hunt, take, or kill or attempt to hunt, take, or kill wild mink in Delta County with dogs. A person may have in his possession a mink pelt while hunting with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 161. DENTON COUNTY

§ 161.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Denton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 162. DEWITT COUNTY

§ 162.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in DeWitt County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 163. DICKENS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
163.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

163.011. Quail Season.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 163.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Dickens County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 34, ch. 17, § 3, eff. Aug. 29, 1977.]

SUBCHAPTER B. BIRDS

§ 163.011. Quail Season

(a) No person may hunt quail in Dickens County except during the open season.

(b) The open season for quail in Dickens County begins on December 1 of one year and extends through January 31 of the following year.

(c) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Added by Acts 1977, 65th Leg., p. 34, ch. 17, § 3, eff. Aug. 29, 1977.]

CHAPTER 164. DIMMIT COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
164.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

164.011. Fish Sale.
164.012. Leaving Fish to Die.
164.013. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 164.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Dimmit County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 164.002 to 164.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 164.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught, trapped, or ensnared in the streams of Dimmit County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 164.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Dimmit County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die, unless the person intends to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. The allowing of each fish to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 164.013. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow sale and transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 165. DONLEY COUNTY

§ 165.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Donley County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 166. DUVAL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
166.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

166.011. Regulatory Act: Exclusion.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 166.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Duval County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 166.002 to 166.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 166.011. Regulatory Act: Exclusion

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to deer without antlers in Duval County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 167. EASTLAND COUNTY

§ 167.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Eastland County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 168. ECTOR COUNTY

§ 168.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Ector County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 169. EDWARDS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
169.001. Regulatory Act: Applicability.
169.002. Expired.

SUBCHAPTER B. FISH

169.011. Fish Sale.
169.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 169.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Edwards County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 169.002. Expired

This section, relating to a mandatory proclamation as to hunting of doe, was added by Acts 1975, 64th Leg., p. 1222, ch. 456, § 22, and expired of its own terms on January 1, 1977.

[Sections 169.003 to 169.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 169.011. Fish Sale

(a) No person may take, offer, or possess, for the purpose of sale, any bass, crappie, perch, or bream in Edwards County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 169.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Edwards County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die in violation of this section constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 170. ELLIS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
170.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

170.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 170.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Ellis County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 170.002 to 170.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 170.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.
Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 171. EL PASO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
171.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

171.011. Regulatory Act: Exemption.
171.012. Method of Taking Fish.
171.013. Fish Limit.
171.014. Importation and Sale of Black Bass.
171.015. Importation Tags.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 171.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in El Paso County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 171.002 to 171.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 171.011. Regulatory Act: Exemption

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in El Paso County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 171.012. Method of Taking Fish

(a) No person may use a method or device to catch fish other than a hook and line, pole and line, or trotline or setline in El Paso County.

(b) No person may use a minnows seine longer than 10 feet or a seine with meshes larger than three-eighths of an inch square to catch bait in El Paso County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. Each fish taken in violation of this chapter constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 171.013. Fish Limit

(a) Except as provided in Subsection (b) of this section, no person may catch or possess more than 10 fish in one day or more than 30 fish in one week in El Paso County.

(b) No person may catch or possess more than 20 perch in one day or more than 60 perch in one week in El Paso County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 171.014. Importation and Sale of Black Bass

(a) Black bass imported from another country may be sold in El Paso County if:

(1) the fish were caught in inland water of a foreign country which is not international water of the United States and the foreign country;

(2) the country from which the fish were imported permits the taking of the fish for sale; and

(3) an importation tag is attached to the gill, dorsal fin, or tail of each black bass sold.

(b) A person who sells or attempts to sell a black bass in El Paso County which does not have properly attached an importation tag is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 171.015. Importation Tags

(a) A licensed customhouse broker who wishes to handle the importation of black bass for sale in El Paso County shall notify the commission. The commission shall assign the broker a permanent record number and provide the number of metal importation tags requested by the broker.

(b) The cost of the importation tags shall be paid by the broker, and each tag shall contain the permanent record number of the broker and a separate number to identify the tag.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 172. ERATH COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
172.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

172.011. Fish Sale.
172.012. Minnow Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 172.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Erath County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 172.002 to 172.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 172.011. Fish Sale

(a) No person may barter, buy, or sell or offer to barter or sell any bass, crappie, perch, channel or Opelousas catfish, or any other fish, except bait fish, taken from the Bosque River or its tributaries in Erath County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50. Each fish bartered, bought, or sold or offered for barter or sale constitutes a separate offense. A person who violates this section may be prosecuted in the county where the offense is committed, where he is found with the fish in his possession, or where the fish are sold or offered for sale.

(c) It is the duty of the district judge of the judicial district in Erath County to give a special

charge on this law to the grand juries of Erath County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 215, ch. 105, § 11, eff. Sept. 1, 1977.]

§ 172.012. Minnow Sale

In Erath County a person may raise and propagate minnows on his own premises or on premises under his control for personal use or for commercial purposes, and for sale inside or outside the county, at any time.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 173. FALLS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
173.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

173.011. Instruments to Call or Attract Animals.

SUBCHAPTER C. FISH

173.021. Fish Sale.
173.022. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 173.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Falls County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 173.002 to 173.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 173.011. Instruments to Call or Attract Animals

(a) No person may use any device or instrument used to call or attract animals to aid in the hunting of any wild animal on state-owned land in Falls County.

(b) The Commissioners Court of Falls County may extend the prohibition expressed in Subsection (a) to any privately owned land in Falls County, any designated portion or section of the county, or to all of the county. The commissioners court shall notify the Texas Parks and Wildlife Commission of its desire to broaden the coverage of Subsection (a) of this section. After receiving a return from the commission, the commissioners court shall specify what land or portion of the county is added to the coverage of Subsection (a) of this section on forms prescribed by the Texas Parks and Wildlife Commission. The court shall return the forms to the commission, properly attested to as the official act of the Commissioners Court of Falls County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 173.012 to 173.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 173.021. Fish Sale

(a) No person may barter, buy, or sell or offer to barter or sell any bass, crappie, perch, catfish, or any other fish, except bait fish, taken from the water of the Brazos River in Falls County or from the water within one mile from the mouth of any tributary of the Brazos River in Falls County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $1 nor more than $25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 215, ch. 105, § 12, eff. Sept. 1, 1977.]

§ 173.022. Minnow Transport

(a) No person may transport at any one time beyond the borders of Falls County more than 125 minnows taken from any stream, pond, lake, or lagoon in Falls County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 174. FANNIN COUNTY

§ 174.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Fannin County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 175. FAYETTE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
175.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH
175.011. Minnow Transport and Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 175.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Fayette County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 175.002 to 175.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 175.011. Minnow Transport and Sale

(a) No person may transport any minnows taken from the water of Fayette County out of the county for the purpose of sale, nor transport more than 200 minnows out of the county for any purpose.

(b) Possession of more than 200 minnows is prima facie evidence of a violation of this section.

(c) This section does not apply to the transportation of minnows by the state and federal fish hatcheries in Fayette County.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 176. FISHER COUNTY

§ 176.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Fisher County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 177. FLOYD COUNTY

§ 177.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Floyd County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 178. FOARD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
178.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS
178.011. Deer.

SUBCHAPTER C. BIRDS
178.021. Turkey.
178.022. Quail.

SUBCHAPTER D. FISH
178.031. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 178.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Foard County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 178.002 to 178.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 178.011. Deer

(a) No person may hunt deer in Foard County except during the open season between November 30 and December 15, both dates inclusive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 178.012 to 178.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 178.021. Turkey

(a) No person may hunt wild turkey in Foard County except during the open season between November 5 and December 5, both dates inclusive.

(b) A person may take not more than one turkey gobbler or bearded hen in Foard County during the open season.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 145, ch. 77, § 1, eff. Aug. 27, 1979.]

§ 178.022. Quail

(a) No person may hunt quail in Foard County except during the open season between December 1 and January 31, both dates inclusive. No person may kill more than 12 quail in any one day in Foard County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 178.023 to 178.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 178.031. Minnow Transport

(a) No person may transport into another county any minnows caught, seined, or taken from the water of Foard County, except that a person may transport into another county no more than 150 minnows for personal use or any minnows raised in a minnow hatchery in this state.

(b) For the purpose of this section, a "minnow hatchery" is a pond or series of ponds situated wholly on private, enclosed property and not connected with nor a part of any stream, and used either in whole or in part for the propagation of minnows.

(c) Possession of more than 500 minnows by any person at one time is prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 179. FORT BEND COUNTY

§ 179.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Fort Bend County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 180. FRANKLIN COUNTY

§ 180.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Franklin County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 181. FREESTONE COUNTY

§ 181.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Freestone County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 182. FRIO COUNTY

§ 182.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Frio County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 183. GAINES COUNTY

§ 183.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Gaines County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 184. GALVESTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
184.001. Regulatory Act: Applicability.
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SUBCHAPTER B. BIRDS

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184.021. Galveston Bay: Seines.
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184.023. Seining Near Cities Prohibited.
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184.025. Nets and Trotlines: Use.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 184.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Galveston County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 724, ch. 270, § 10, eff. Oct. 1, 1978.]

§ 184.002. Regulatory Act: Saltwater Marine Life

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to all marine life except shrimp in Galveston County.

[Added by Acts 1977, 65th Leg., p. 724, ch. 270, § 10, eff. Oct. 1, 1978. Amended by Acts 1979, 66th Leg., p. 719, ch. 315, § 1, eff. Aug. 27, 1979.]

[Sections 184.003 to 184.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 184.011. Turkey

(a) No person may hunt wild turkey in Galveston County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 184.012 to 184.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 184.021. Galveston Bay: Seines

(a) Except as provided in Subsection (b) of this section, it is lawful to use strike nets, gill nets, trammel nets, and shrimp trawls for the purpose of taking fish in the water of East Galveston Bay in Galveston County during the period beginning on August 15 of one year and extending through May 15 of the following year.

(b) No person may use a strike net, gill net, trammel net, or shrimp trawl for the purpose of taking fish in any of the following water of Galveston County at any time:

(1) Swan Lake;

(2) Moses Lake;

(3) Clear Lake;

(4) Dickinson Bayou or Bay west of a line from Miller's Point to April Fool Point;

(5) water lying northwest of a line from Kemah in Galveston County to Mesquite Knoll in Chambers County; and

(6) water of Galveston Bay lying east of a line from the extreme western point of Smith's Point in Chambers County to the west bank of Siever's Cut where East Bay intersects with the north bank of the Intracoastal Canal on Bolivar Peninsula in Galveston County at Siever's Fish Camp, which cut is between Elm Grove Point and Baffle Point, both points being on the north shore of Bolivar Peninsula.

(c) No person operating under the authority of Subsection (a) of this section may use a strike net, gill net, trammel net, or shrimp trawl for catching fish if the meshes are less than one and one-half inches from knot to knot.

(d), (e) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(6), eff. May 20, 1977.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200, and his commercial fishing license is subject to revocation for one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(6), eff. May 20, 1977.]

§ 184.022. Other Water: Net and Seines

(a) No person may place or use a seine, net, or other device for catching fish, except an ordinary pole and line, casting rod and reel, artificial bait, trotline, setline, flounder gig and light, or cast net or minnow seine of not more than 20 feet long for catching bait only, in any of the bays, streams, bayous, or canals of Galveston County not covered by Section 184.021 of this code, or in San Luis Pass in Galveston County.

(b) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(7), eff. May 20, 1977.

(c) The identification of a boat, vehicle, seine, or net from or by which a violation of this section occurred is prima facie evidence against the owner of the boat, vehicle, net, or seine or against the person last in charge of the boat.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than $25 nor more than $100. On a second or subsequent conviction, the person is punishable by a fine of not less than $100 nor more than $200, and his commercial fishing license is subject to forfeiture for a period of one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(7), eff. May 20, 1977.]

§ 184.023. Seining Near Cities Prohibited

(a) No person may attempt to take any fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in Galveston County within one mile of the limits of a city.

(b) In this section, "city" means any community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes, or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. In a prosecution under this section, identification of the boat from which a violation occurred, if any, is prima facie evidence against the owner, lessee, person in charge, or master of the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 184.024. Commission May Close Certain Water

(a) The commission may close tidal water in Galveston County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent their destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

(1) the reason for the closing;

(2) a designation of the area to be closed;

(3) the effective date and duration of the closing;

(4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may open the area to seining, netting, gigging, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant, and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 184.021, 184.022, and 184.023 apply.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 184.025. Nets and Trotlines: Use

(a) In that portion of Galveston Bay or Trinity Bay in Galveston County where nets, seines, and saltwater trotlines are permitted, during that period beginning the Saturday of Memorial Day weekend through sunset on Labor Day, nets and saltwater trotlines may not be used from sunset Friday to sunset Sunday.

(b) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than $25 nor more than $200. On a second or subsequent conviction, the person is punishable by a fine of not less than $200 nor more than $500 and shall forfeit the license under which the person is fishing.

[Added by Acts 1977, 65th Leg., p. 724, ch. 270, § 11, eff. Sept. 1, 1977.]

CHAPTER 185. GARZA COUNTY

§ 185.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Garza County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 186. GILLESPIE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

186.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

186.011. Definitions.
186.012. Open Archery Season.
186.013. Prohibited Archery Equipment.
186.014. Deer Permits.
186.015. Limit and Possession of Deer.
186.016. Penalty.
186.017. Possession of Firearms.

SUBCHAPTER C. FISH

186.021. Fish Sale.
186.022. Repealed.
186.023. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 186.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Gillespie County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 186.002 to 186.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 186.011. Definitions

As used in this subchapter:

(1) "Buck deer" means a deer that has a hardened antler protruding through the skin.

(2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.012. Open Archery Season

(a) The open archery season in Gillespie County begins on October 1 and extends through October 31 each year.

(b) During the open archery season a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 186.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 186.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Gillespie County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season in Gillespie County.

(b) No person may possess an antlerless deer in Gillespie County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Gillespie County which does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Gillespie County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.016. Penalty

A person who violates Section 186.012 through Section 186.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Gillespie County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 186.018 to 186.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 186.021. Fish Sale

(a) No person may catch or possess for the purpose of sale any catfish, perch, crappie, bream, or bass in Gillespie County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.022. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 186.023. Leaving Fish to Die

(a) No person may knowingly place, throw, deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Gillespie County any catfish, perch, crappie, white perch, bass, trout, or other edible fish, and leave the fish to die without any intention of eating the fish or using them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 187. GLASSCOCK COUNTY

§ 187.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Glasscock County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 188. GOLIAD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
188.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

188.011. Squirrel.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 188.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Goliad County except for deer, quail, turkey, and alligators.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 188.002 to 188.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 188.011. Squirrel

Squirrel may by killed at any time in Goliad County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 189. GONZALES COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
189.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

189.011. Fishing Methods.
189.012. Fish Sale.
189.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 189.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Gonzales County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 189.002 to 189.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 189.011. Fishing Methods

(a) No person may catch any fish from the public water of Gonzales County by any means other than an ordinary hook and line or artificial bait or trotline not more than 300 feet in length, but a net or seine not more than 20 feet in length may be used to take minnows or perch for bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 189.012. Fish Sale

(a) No person may sell, offer for sale, or possess for the purpose of sale any fish, except minnows and perch used for bait, taken from the public water of Gonzales County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 189.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to the water of Gonzales County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 190. GRAY COUNTY

§ 190.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Gray County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 191. GRAYSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
191.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

191.011. Repealed.
191.012. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 191.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Grayson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 191.002 to 191.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 191.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking bait fish, see, now, § 66.010.

§ 191.012. Fish Sale

(a) Except as provided in Subsection (b) of this section, no person may catch fish from the fresh water of Grayson County for the purpose of sale or possess for the purpose of sale fish caught from the fresh water of Grayson County.

(b) A person may sell or buy bait fish, sucker, buffalo fish, carp, shad, and gar caught from the fresh water of Grayson County, including Lake Texoma in Grayson County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10. Each fish caught or possessed for the purpose of sale constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 215, ch. 105, § 13, eff. Sept. 1, 1977.]

CHAPTER 192. GREGG COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
192.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

192.011. Deer.

SUBCHAPTER C. BIRDS

192.021. Turkeys.

SUBCHAPTER D. FUR-BEARING ANIMALS

192.031. Hunting Mink With Dogs.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 192.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Gregg County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 192.002 to 192.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 192.011. Deer

(a) No person may take or kill any deer in Gregg County, except that a person may take or kill buck deer with pronged horns during the open season between November 15 and November 30, both dates inclusive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $500 or by confinement in the county jail for not less than ten days nor more than six months, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 192.012 to 192.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 192.021. Turkeys

(a) No person may hunt any wild turkeys in Gregg County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 192.022 to 192.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 192.031. Hunting Mink With Dogs

(a) No person may hunt wild mink in Gregg County with dogs.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each mink found in possession in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 193. GRIMES COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
193.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

193.011. Deer Season.
193.012. Deer: Bag Limits.
193.013. Repealed.
193.014. Penalty.

SUBCHAPTER C. FISH

193.021. Nets and Seines: Rough Fish.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 193.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources other than deer, of Grimes County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1742, ch. 694, § 1, eff. Aug. 29, 1977.]

[Sections 193.002 to 193.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 193.011. Deer Season

(a) No person may hunt deer in Grimes County except during the open season for deer.

(b) The open season for deer in Grimes County begins on the Saturday nearest to November 15 and extends through December 31 of each year.

[Added by Acts 1977, 65th Leg., p. 1742, ch. 694, § 1, eff. Aug. 29, 1977.]

§ 193.012. Deer: Bag Limits

(a) No person may take more than two buck deer during an open season in Grimes County.

(b) No person may hunt spike or antlerless deer in Grimes County.

(c) In this section:

(1) "Buck deer" means a deer having a forked antler.

(2) "Spike deer" and "antlerless deer" include all deer other than buck deer.

[Added by Acts 1977, 65th Leg., p. 1742, ch. 694, § 1, eff. Aug. 29, 1977.]

§ 193.013. Repealed by Acts 1979, 66th Leg., p. 1006, ch. 442, § 1, eff. June 6, 1979

The repealed section, relating to weapons used while hunting deer, was added by Acts 1977, 65th Leg., p. 1742, ch. 694, § 1.

§ 193.014. Penalty

A person who violates a provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Added by Acts 1977, 65th Leg., p. 1743, ch. 694, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER C. FISH

§ 193.021. Nets and Seines: Rough Fish

Nets and seines with meshes three inches square and larger may be used to take rough fish from the rivers and streams in Grimes County.

[Added by Acts 1979, 66th Leg., p. 956, ch. 430, § 1, eff. June 6, 1979.]

CHAPTER 194. GUADALUPE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
194.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

194.011. Fish Sale.
194.012. Explosives.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 194.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Guadalupe County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 194.002 to 194.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 194.011. Fish Sale

(a) No person may barter, buy, or sell, or offer to barter or sell, any bass, crappie, perch, catfish, or any other fish, except bait fish, taken from the fresh water of Guadalupe County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 215, ch. 105, § 14, eff. Sept. 1, 1977.]

§ 194.012. Explosives

(a) No person may destroy fish by using any dynamite, powder, or any other explosive in any freshwater stream in Guadalupe County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $1,000 or by confinement in the county jail for no more than one year, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 195. HALE COUNTY

§ 195.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hale County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 196. HALL COUNTY

§ 196.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hall County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 197. HAMILTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
197.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

197.011. Fish Sale.
197.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 197.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hamilton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 197.002 to 197.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 197.011. Fish Sale

(a) No person may barter, buy, or sell or offer to barter or sell any bass, crappie, perch, channel or Opelousas catfish, or any other fish, except bait fish, taken from the Bosque River or its tributaries in Hamilton County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50. Each fish bartered, bought, or sold or offered for barter or sale constitutes a separate offense. A person who violates this section may be prosecuted in the county where the offense is committed, where he is found with the fish in his possession, or where the fish are sold or offered for sale.

(c) It is the duty of the district judge of the judicial district in Hamilton County to give a special charge on this law to the grand juries of Hamilton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 215, ch. 105, § 15, eff. Sept. 1, 1977.]

§ 197.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow sale, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 198. HANSFORD COUNTY

§ 198.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hansford County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 199. HARDEMAN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
199.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

199.011. Repealed.

SUBCHAPTER C. BIRDS

199.021. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 199.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hardeman County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 199.002 to 199.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 199.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

SUBCHAPTER C. BIRDS

§ 199.021. Quail

The proclamations of the commission under the Uniform Wildlife Regulatory Act (Chapter 61 of this code) shall provide for an open season for the hunting of quail in Hardeman County beginning on December 1 of one year and extending through January 31 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 200. HARDIN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
200.001. Regulatory Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

200.011. Hunting With Dogs.

SUBCHAPTER C. GAME ANIMALS

200.021. Hunting Deer With Dogs.
200.022. Possession of Deer.

SUBCHAPTER D. FUR-BEARING ANIMALS

Section
200.031. Attracting Foxes With Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 200.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hardin County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 200.002 to 200.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 200.011. Hunting With Dogs

A person may use dogs to hunt game birds and game animals in Hardin County, but only during the open season for the game bird or game animal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 200.012 to 200.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 200.021. Hunting Deer With Dogs

(a) No person may allow or permit a dog under his control to hunt, chase, or molest any wild deer in Hardin County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 200.022. Possession of Deer

(a) No person may possess the freshly killed carcass of a wild deer, or part of one, in Hardin County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 200.023 to 200.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 200.031. Attracting Foxes With Calling Devices

(a) No person may use any horn, recording, or other device to call or attract a wild fox in Hardin County, except that a person may use the devices for scientific research or in making wildlife movies after obtaining a permit to use them from the Parks and Wildlife Department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 201. HARRIS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
201.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

201.011. Regulatory Act: Saltwater Marine Life Excluded.
201.012. Seining Near Cities Prohibited.
201.013. Galveston Bay: Nets and Seines.
201.014. Other Water: Nets and Seines.
201.015. Commission May Close Certain Water.
201.016. Nets and Trotlines: Use.
201.016. Crab Traps and Pots; Certain Bays.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 201.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Harris County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 201.002 to 201.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 201.011. Regulatory Act: Marine Life Excluded

In Harris County, saltwater species of marine life, except red drum, are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 725, ch. 270, § 12, eff. Oct. 1, 1978.]

§ 201.012. Seining Near Cities Prohibited

(a) No person may attempt to take any fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in Harris County within one mile of the limits of a city.

(b) In this section, "city" means any community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes, or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. In a prosecution under this section, identification of the boat from which a violation occurred, if any, is prima facie evidence against the owner, lessee, person in charge, or master of the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 201.013. Galveston Bay: Nets and Seines

(a) No person may possess, use, or place in or on that portion of Galveston Bay lying in Harris County a setnet, gill net, trap, or other similar device for the catching of fish.

(b) A person may possess and use in the water described in Subsection (a) of this section a trammel net not exceeding 1,200 feet in length and having mesh of not less than three and one-half inches when stretched.

(c) This section does not prohibit the possession of a device the use of which is prohibited in the water described in Subsection (a) of this section when the device is on board a vessel in port or in a channel while under way to a place where the use of the device is not prohibited.

(d), (e) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(8), eff. May 20, 1977.

(f) A person who violates this section is guilty of a misdemeanor and on a first conviction shall be punished by a fine of not less than $50 nor more than $250. On a second or subsequent conviction, he may be punished by a fine of not less than $50 nor more than $250, and his commercial fishing license is subject to forfeiture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(8), eff. May 20, 1977.]

§ 201.014. Other Water: Nets and Seines

(a) No person may place or use a seine, net, or other device for catching fish, except an ordinary pole and line, casting rod and reel, artificial bait, trotline, setline, flounder gig and light, or cast net or minnow seine of not more than 20 feet long for catching bait only, in any of the saltwater bays, streams, bayous, or canals of Harris County other than Galveston Bay.

(b) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(9), eff. May 20, 1977.

(c) The identification of a boat, vehicle, net, or seine from or by which a violation of this section occurred is prima facie evidence against the owner of the boat, vehicle, net, or seine or against the person last in charge of the boat.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than $25 nor more than $100. On a second or subsequent conviction, the person is punishable by a fine of not less than $100 nor more than $200 and his commercial fishing license is subject to forfeiture for a period of one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(9), eff. May 20, 1977.]

§ 201.015. Commission May Close Certain Water

(a) The commission may close tidal water in Harris County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent their destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

(1) the reason for the closing;

(2) a designation of the area to be closed;

(3) the effective date and duration of the closing;

(4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may open the area to seining, netting, gigging, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 201.012, 201.013, and 201.014 apply.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 201.016. Nets and Trotlines: Use

Text as added by Acts 1977, 65th Leg., p. 725, ch. 270, § 13

(a) No person may use a net, seine, or trotline within a saltwater bay or lake in Harris County:

(1) during the period beginning on Saturday of Memorial Day weekend and extending through sunset on Labor Day; and

(2) during the period beginning at sunset on Friday and extending through sunset on Sunday of each week.

(b) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than $25 nor more than $200. On a second or subsequent conviction, the person is punishable by a fine of not less than $200 nor more than $500 and shall forfeit the license under which the person is fishing.

[Added by Acts 1977, 65th Leg., p. 725, ch. 270, § 13, eff. Sept. 1, 1977.]

For text as added by Acts 1977, 65th Leg., p. 1258, ch. 484, § 5, see Section 201.016, post.

§ 201.016. Crab Traps and Pots; Certain Bays

Text as added by Acts 1977, 65th Leg., p. 1258, ch. 484, § 5

(a) This section applies only to the water of Burnett Bay, Crystal Bay, Scott Bay, and Black Duck Bay in Harris County.

(b) No person may possess, use, or place more than three crab traps, crab pots, or other similar devices used for the catching of crabs on or in the water described in Subsection (a) of this section. This prohibition does not include crab lines, hooks or lines, or trotlines normally employed for the catching of crabs.

(c) It is an affirmative defense to a prosecution under this section that the person possessed the trap, pot, or device prohibited by Subsection (b) of this section on board a vessel while en route to water where the use of the trap, pot, or device is not prohibited and that the trap, pot, or other device was not used for the purpose of catching crabs in the water to which this section applies.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

(e) Peace officers and other authorized employees of the department may seize crab traps, crab pots, and other devices used in violation of this section. Items seized under this section shall be held for evidence and may be destroyed or disposed of as required by law if used in violation of this section. No suit may be maintained against an officer or an authorized employee of the department for the seizure of items as authorized by this section.

[Added by Acts 1977, 65th Leg., p. 1258, ch. 484, § 5, eff. Sept. 1, 1977.]

For text as added by Acts 1977, 65th Leg., p. 725, ch. 270, § 13, see Section 201.016, ante.

CHAPTER 202. HARRISON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
202.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS
202.011. Hunting Deer With Dogs.

SUBCHAPTER C. FISH
202.021. Fish Sale.

SUBCHAPTER D. CADDO LAKE
202.031. Firing Weapons.

SUBCHAPTER E. BIRDS
202.041. Blinds.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 202.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Harrison County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 202.002 to 202.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 202.011. Hunting Deer With Dogs

No person may pursue or take deer with dogs in Harrison County except in that portion of the county south of Interstate Highway 20 and east of State Highway 43.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 202.012 to 202.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 202.021. Fish Sale

(a) No person may buy or sell, offer to buy or sell, possess for sale, or carry, transport, or ship for sale, barter, or exchange any white bass or striped bass (barfish) in Harrison County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of no more than $100. Each sale, shipment, or other act in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 202.022 to 202.030 reserved for expansion]

SUBCHAPTER D. CADDO LAKE

§ 202.031. Firing Weapons

(a) No person may shoot a pistol or rifle in, on, along, or across Caddo Lake in Harrison County.

(b) This section does not apply to peace officers, game management officers, or representatives of the Parks and Wildlife Commission in the discharge of their official duties, nor does it prevent a person from hunting with a shotgun during an open season or when it is lawful to hunt in or upon Caddo Lake in Harrison County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

(d) Venue for prosecutions for violations of this section is in Harrison or Marion counties. Prosecutions may be brought and maintained in either county without regard to the county where the offense was committed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER E. BIRDS

§ 202.041. Blinds

(a) No person may construct a blind to be leased for the hunting of waterfowl within 200 yards of the shoreline of or on Caddo Lake in Harrison County without first having obtained from the department a permit.

(b) No person may lease a blind to be used within 200 yards of the shoreline of or on Caddo Lake in Harrison County for the hunting of waterfowl without first having obtained from the department a permit for each blind.

(c) The department shall issue the permits required by this section for an annual fee of $5 for each blind leased.

(d) No person may construct or use a blind within 200 yards of the shoreline of or on Caddo Lake in Harrison County for the hunting of waterfowl if the blind is nearer than 300 yards to another blind used for the hunting of waterfowl. This section applies to any blind whether leased or used privately.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

(f) In a prosecution for using a blind nearer than 300 yards to another blind, it is an affirmative defense that the blind being used by the accused was located, built, and ready for use before the other blind was constructed.

(g) "Blind" means a concealing enclosure from which a person may shoot game or observe wildlife.

[Added by Acts 1979, 66th Leg., p. 517, ch. 241, § 1, eff. Aug. 27, 1979.]

CHAPTER 203. HARTLEY COUNTY

§ 203.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hartley County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 204. HASKELL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
204.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

204.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 204.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Haskell County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 204.002 to 204.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 204.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.
Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 205. HAYS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
205.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

205.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 205.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hays County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 205.002 to 205.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 205.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport and sale, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.
Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 206. HEMPHILL COUNTY

§ 206.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hemphill County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 207. HENDERSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
207.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

207.011. Cedar Creek Reservoir: Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 207.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Henderson County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 207.002 to 207.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 207.011. Cedar Creek Reservoir: Fish Sale

(a) Except as provided by Subsection (b) of this section no person may sell or offer to sell any fish, except bait fish, taken from that portion of the Joe B. Hogsett Reservoir known as the Cedar Creek Reservoir situated in Henderson County.

(b) This section does not prohibit the selling of rough fish taken by seine or net under contract with the Parks and Wildlife Department as provided by general law.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 216, ch. 105, § 16, eff. Sept. 1, 1977.]

CHAPTER 208. HIDALGO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
208.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

208.011. Pheasants.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 208.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hidalgo County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 208.002 to 208.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 208.011. Pheasants

(a) No person may hunt wild pheasants in Hidalgo County except during the open season, which is the months of October, November, December, January, February, and March. During the open season wild pheasants may be hunted in Hidalgo County only on enclosed tracts of land consisting of not less than 250 acres that have been stocked with wild pheasants raised by a licensed game breeder in this state.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each pheasant taken or killed in violation of this section constitutes a separate offense.

(c) This section does not permit the hunting of pheasants on private land without consent of the person owning or having control of the land.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 209. HILL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
209.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

209.011. Fish Sale.
209.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 209.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hill County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 209.002 to 209.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 209.011. Fish Sale

(a) No person may offer, expose, or possess for sale or sell any fish caught or taken from the Brazos River, Lake Whitney, or their tributaries in Hill County except as authorized by the Parks and Wildlife Department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. Possession of each fish taken in violation of this section constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 209.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.
Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 210. HOCKLEY COUNTY

§ 210.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hockley County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 211. HOOD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
211.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

211.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 211.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hood County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 211.002 to 211.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 211.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport and sale, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 212. HOPKINS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
212.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

212.011. Deer.
212.012. Squirrel.

SUBCHAPTER C. BIRDS

212.021. Turkey.
212.022. Quail.

SUBCHAPTER D. FUR-BEARING ANIMALS

212.031. Hunting Mink With Dogs.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 212.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Hopkins County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 212.002 to 212.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 212.011. Deer

(a) No person may hunt deer in Hopkins County except during the open season beginning on November 22 and extending through December 1.

(b) During the open season, no person may take, kill, or have in his possession a deer other than a buck with pronged horn. No person may take or kill more than one buck deer in one season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 212.012. Squirrel

(a) No person may hunt squirrel in Hopkins County except during the open seasons beginning on May 1 and extending through July 31, and beginning on October 1 and extending through December 31. During the open seasons no person may kill, take, or have in his possession more than eight squirrels a day.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50. Each squirrel killed, taken, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 212.013 to 212.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 212.021. Turkey

(a) No person may hunt any wild turkey in Hopkins County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200 or confinement in the county jail for not less than 1 day nor more than 30 days, or both. Each turkey killed or possessed in violation of this section constitutes a separate offense and shall be seized and disposed of as provided in Section 12.110 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 212.022. Quail

(a) No person may hunt wild quail in Hopkins County except during the open season beginning on December 1 and extending through January 31. During the open season, no person may hunt wild quail in Hopkins County on Sunday.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 212.023 to 212.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 212.031. Hunting Mink With Dogs

A person may hunt wild mink in Hopkins County with dogs. A person may have in his possession a mink pelt while hunting with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 213. HOUSTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
213.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

213.011. Deer.
213.012. Special Archery Season.

SUBCHAPTER C. FISH

213.021. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 213.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Houston County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 213.002 to 213.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 213.011. Deer

(a) No person may hunt wild deer in Houston County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. Each deer taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 213.012. Special Archery Season

The commission shall provide for an archery season for the taking of deer in Houston County beginning on October 1 and extending through October 31 of each year.

[Added by Acts 1977, 65th Leg., p. 1258, ch. 484, § 4(b), eff. Sept. 1, 1977.]

[Sections 213.013 to 213.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 213.021. Fish Sale

(a) No person may sell, offer for sale, or possess for sale any fish, except bait fish, caught or taken from the public fresh water of Houston County, except fish taken from those parts of the Trinity and Neches rivers which are in Houston County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 216, ch. 105, § 17, eff. Sept. 1, 1977.]

CHAPTER 214. HOWARD COUNTY

§ 214.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Howard County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 215. HUDSPETH COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
215.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

215.011. Regulatory Act: Exemption.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 215.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hudspeth County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 215.002 to 215.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 215.011. Regulatory Act: Exemption

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in Hudspeth County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 216. HUNT COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
216.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

216.011. Fish Sale.
216.012. Sale of Fish From Lake Tawakoni.
216.013. Leaving Fish to Die.

SUBCHAPTER C. SABINE RIVER

216.021. Sabine River: Navigability.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 216.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hunt County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 216.002 to 216.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 216.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught in the streams of Hunt County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 216.012. Sale of Fish From Lake Tawakoni

(a) Except as provided in this section, no person may sell or offer to sell any fish, except bait fish, taken from Lake Tawakoni in Hunt County.

(b) This section does not prohibit the sale of rough fish taken by net or seine under contract with the department as provided in this code.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 216, ch. 105, § 18, eff. Sept. 1, 1977.]

§ 216.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Hunt County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die in violation of this section constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 216.014 to 216.020 reserved for expansion]

SUBCHAPTER C. SABINE RIVER

§ 216.021. Sabine River: Navigability

(a) That part of the Sabine River located between its source and its juncture with the east boundary line of Hunt County is not a navigable stream for the purpose of hunting and fishing rights on and along the stream. This section does not divest the state of whatever title it may have to the bed or water of the stream.

(b) Article 5302, Revised Civil Statutes of Texas, 1925, does not apply to that portion of the Sabine River described in Subsection (a) of this section.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 217. HUTCHINSON COUNTY

§ 217.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hutchinson County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 218. IRION COUNTY

§ 218.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Irion County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 219. JACK COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
219.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

219.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 219.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jack County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 219.002 to 219.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 219.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 220. JACKSON COUNTY

§ 220.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jackson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 221. JASPER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
221.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

221.011. Hunting With Dogs.
221.012. Hunting Deer With Dogs.
221.013. Possession of Deer.

SUBCHAPTER C. FISH

221.021. Fish Sale.

SUBCHAPTER D. FUR-BEARING ANIMALS

221.031. Regulatory Act: Exclusion.
221.032. Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 221.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jasper County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 221.002 to 221.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 221.011. Hunting With Dogs

A person may use dogs to hunt game birds and game animals in Jasper County only during the open season for the game bird or game animal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 221.012. Hunting Deer With Dogs

(a) No person may knowingly allow a dog under his control to hunt wild deer in Jasper County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 221.013. Possession of Deer

(a) No person may possess the freshly killed carcass of a wild deer in Jasper County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200 and confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 221.014 to 221.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 221.021. Fish Sale

(a) No person may sell, offer for sale, or possess for sale any black bass, trout, white perch, or catfish of less than 18 inches in length taken from the water of the Sabine, Attoyoc, Angelina, and Neches rivers or any of their tributaries or lakes through which the flood streams of the rivers or their tributaries flow in Jasper County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $500, or confinement in the county jail for not less than 10 days nor more than 30 days, or both. Each fish sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 221.022 to 221.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 221.031. Regulatory Act: Exclusion

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fox in Jasper County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 221.032. Calling Devices

(a) No person may use a horn, recording, or other device to call or attract wild fox in Jasper County unless he has obtained a permit from the department allowing him to use the devices for scientific research or making wildlife movies.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 222. JEFF DAVIS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
222.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

222.011. Regulatory Act: Exemption.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 222.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jeff Davis County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 222.002 to 222.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 222.011. Regulatory Act: Exemption

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in Jeff Davis County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 223. JEFFERSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
223.001. Regulatory Act: Applicability.

SUBCHAPTER B. SHRIMP

223.011. Regulatory Act: Exclusion.
223.012. Shrimp Regulations.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 223.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jefferson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 223.002 to 223.010 reserved for expansion]

SUBCHAPTER B. SHRIMP

§ 223.011. Regulatory Act: Exclusion

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to shrimp in Jefferson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 223.012. Shrimp Regulations

(a) The commission may regulate the taking of shrimp from the coastal water of Jefferson County to provide for the most profitable and equitable harvest of shrimp from year to year and to conserve and protect the shrimp resources of Jefferson County from depletion and waste.

(b) The commission may make regulations to carry out the policy of this section including regulating:

(1) the size of shrimp that may be taken;

(2) open and closed shrimp seasons;

(3) the means of taking shrimp;

(4) the size and type of boats and equipment that may be used for taking shrimp;

(5) the length and mesh size of nets and trawls and their spreading devices; and

(6) the possession, transportation, sale, and other handling of shrimp in the coastal water of Jefferson County.

(c) The commission, by regulation adopted in accordance with this section, may provide for the licensing of all persons taking, selling, or handling shrimp in Jefferson County and may license boats and equipment used for the taking, selling, or han-

dling of shrimp in Jefferson County. The commission may adopt the licensing provisions of the Texas Shrimp Conservation Act (Chapter 77 of this code).

(d) The commission shall conduct continuous research, investigations, and studies of the shrimp resources in Jefferson County in the same manner as required by Sections 77.004, 77.005, and 77.006 of this code. Based on the information obtained and after hearings, the commission shall promulgate the regulations authorized by this section. The hearings, the methods of adoption of the regulations, the effective date of the regulations, and the procedure for appeal shall be governed by the provisions of Chapter 125, Acts of the 52nd Legislature, Regular Session, 1951, as amended.

(e) "Coastal water" is defined by Section 77.001(1) of this code.

(f) A person who violates a regulation of the commission adopted under this section shall be punished as provided in Section 77.020 of this code. The commission has all powers of enforcement granted to it under Chapter 77 of this code for the enforcement of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 224. JIM HOGG COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
224.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

224.011. Deer Season.
224.012. Collared Peccary.

SUBCHAPTER C. BIRDS

224.021. Quail Season.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 224.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Jim Hogg County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 224.002 to 224.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 224.011. Deer Season

(a) No person may hunt deer in Jim Hogg County except during the open season beginning on the second Saturday in November and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 224.012. Collared Peccary

(a) Collared peccary (javelina) may be hunted at any time in Jim Hogg County.

(b) No person may sell, offer for sale, or take or possess for the purpose of barter or sale any collared peccary (javelina) or any part of a collared peccary (javelina).

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50. Each collared peccary (javelina) or part of a collared peccary (javelina) possessed for sale, sold, or offered for sale in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 224.013 to 224.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 224.021. Quail Season

(a) No person may hunt wild quail in Jim Hogg County except during the open season beginning on November 15 of one year and extending through January 31 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each quail taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1825, ch. 733, § 1, eff. Aug. 29, 1977.]

CHAPTER 225. JIM WELLS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
225.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

225.011. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 225.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jim Wells County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 225.002 to 225.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 225.011. Fish Sale

(a) No person may take for sale any fish, except bait fish, from Lake Corpus Christi formerly known as Lake Lovenskiold in Jim Wells County.

(b) No person may take for sale any fish from the water of the Nueces River in Jim Wells County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 216, ch. 105, § 19, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1401, ch. 565, § 1, eff. Aug. 29, 1977.]

CHAPTER 226. JOHNSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
226.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

226.011. Fish Sale.
226.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 226.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Johnson County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 226.002 to 226.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 226.011. Fish Sale

(a) No person may sell, offer for sale, or possess for sale any fish caught or taken from the Brazos River, Lake Whitney, or their tributaries in Johnson County except as authorized by the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. Each fish possessed in violation of this section constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 226.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.
Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 227. JONES COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
227.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

227.011. Fish Sale.
227.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 227.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jones County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 227.002 to 227.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 227.011. Fish Sale

(a) No person may catch fish, except bait fish, in the public water of Jones County for commercial purposes.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $250. Each day a person violates this section constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 216, ch. 105, § 20, eff. Sept. 1, 1977.]

§ 227.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.
Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 228. KARNES COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
228.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

228.011. Sale of Collared Peccary (Javelina).

SUBCHAPTER C. FISH

228.021. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 228.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Karnes County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 228.002 to 228.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 228.011. Sale of Collared Peccary (Javelina)

(a) No person may take, kill, or possess for the purpose of sale or sell or offer for sale any collared peccary (javelina) or any part of a collared peccary (javelina) in Karnes County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50. Each collared peccary (javelina) or part of a collared peccary (javelina) taken, possessed, or offered for sale or sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 228.012 to 228.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 228.021. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow sale and transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 229. KAUFMAN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
229.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

229.011. Fish Sale.
229.012. Sale of Certain Fish.

SUBCHAPTER C. ANIMALS

229.021. Sale of Certain Live Animals.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 229.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Kaufman County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 229.002 to 229.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 229.011. Fish Sale

(a) No person may take or possess for sale, sell, or offer for sale any bass, trout, crappie, white perch, bream or other perch or channel catfish measuring less than 12 inches in length, taken from the fresh water of Kaufman County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 229.012. Sale of Certain Fish

(a) No person may sell or offer to sell any fish, except bait fish, taken from Lake Tawakoni in Kaufman County or from Joe B. Hogsett Reservoir (Cedar Creek Reservoir) in Kaufman County.

(b) This section does not prohibit the selling of rough fish taken by seine or net under contract with the department as provided in this code.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 216, ch. 105, § 21, eff. Sept. 1, 1977.]

SUBCHAPTER C. ANIMALS

§ 229.021. Sale of Certain Live Animals

(a) No person may sell or possess for the purpose of sale in Kaufman County a living armadillo, squirrel, skunk, bobcat, porcupine, raccoon, wolf, coyote, bear, fox, or opossum.

(b) This section does not apply to:

(1) the sale of an animal by or to a zoo; or

(2) the sale of an animal to an educational institution or a medical or research center for scientific purposes as authorized by a permit issued under Subchapter C, Chapter 43, of this code.[1]

(c) In this section, "zoo" means a publicly or privately owned establishment that has a permanent place of business open to the public and that displays 15 or more different species of wildlife.

(d) A person who violates Subsection (a) of this section is guilty of a Class B misdemeanor.

(e) A peace officer who has probable cause to believe that an animal has been sold or held for sale in violation of Subsection (a) of this section may seize the animal and hold it for observation to determine if the animal has rabies or any other communicable disease harmful to man or other animals. If the animal is free from disease, the officer may release the animal or, if the animal is otherwise dangerous or harmful, may destroy it. If the animal is diseased, it shall be destroyed. An officer exercising the duties under this section is immune from liability.

(f) A person who violates Subsection (a) of this section, in addition to the penalties under Subsection (d) of this section, on conviction shall pay all costs and expenses incurred under Subsection (e) of this section.

[Added by Acts 1979, 66th Leg., p. 261, ch. 136, § 1, eff. Aug. 27, 1979.]

[1] Section 43.021 et seq.

CHAPTER 230. KENDALL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
230.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

230.011. Definitions.
230.012. Open Archery Season.
230.013. Prohibited Archery Equipment.
230.014. Deer Permits.
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SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 230.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Kendall County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 230.002 to 230.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 230.011. Definitions

As used in this subchapter:

(1) "Buck deer" means a deer that has a hardened antler protruding through the skin.

(2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.012. Open Archery Season

(a) The open archery season in Kendall County begins on October 1 and extends through October 31 each year.

(b) During the open archery season, a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers, or bearded hens and collared peccary (javelina) by means of bows and arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 230.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in Kendall County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 230.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Kendall County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with a bow and arrow during the open archery season in Kendall County.

(b) No person may possess an antlerless deer in Kendall County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Kendall County that does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Kendall County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.016. Penalty

A person who violates Sections 230.012 through Section 230.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Kendall County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 230.018. Axis Deer Hunting

(a) No person may hunt axis deer by any means in Kendall County outside of property enclosed by a deer-proof fence.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200. Each axis deer taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 230.019 to 230.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 230.021. Turkey Gobblers

(a) No person may take or attempt to take more than two turkey gobblers during the open season in Kendall County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50. Each turkey gobbler taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 230.022 to 230.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 230.031. Setlines

No person may catch fish in Kendall County with a trotline or setline having more than 25 hooks or having hooks spaced less than four feet apart.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.032. Balcones Creek

No person may catch fish in Kendall County from February 1 to May 1 in that portion of Balcones Creek which forms the boundary between Bexar and Kendall counties.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.033. Penalty

A person who violates Section 230.031 or 230.032 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.034. Fish Sale

(a) No person may take, offer, or possess for sale any catfish, perch, crappie, bream, or bass in Kendall County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 230.035 to 230.040 reserved for expansion]

SUBCHAPTER E. SPECIAL REGULATORY PROVISIONS

§ 230.041. Regulatory Authority

(a) The Parks and Wildlife Commission has regulatory authority over the wildlife resources in Kendall County as provided in this subchapter.

(b) All general laws relating to Kendall County and the provisions of this chapter remain applicable until superseded or suspended by regulation of the commission issued under this subchapter.

(c) On the expiration of any regulation issued by the commission under this subchapter, or on the expiration of this subchapter, the general law or provision of this subchapter superseded or suspended by a regulation shall apply.

(d) This subchapter expires on December 31, 1983.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1791, ch. 719, § 1, eff. Aug. 29, 1977.]

§ 230.042. Definitions

In this subchapter:

(1) "Depletion" means the reduction of a species below immediate recuperative potentials by any deleterious cause or causes.

(2) "Waste" means supply of a species or sex of a species sufficient that a seasonal harvest of the species will not prevent or, in the case of overpopulation, that will aid in the reestablishment of normal numbers of the species.

(3) "Wildlife resources" means all game birds, game animals, fur-bearing animals, collared peccary (javelina), and all freshwater fish.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.043. Investigations

The commission shall conduct investigations on the wildlife resources in Kendall County as provided in Section 61.051 of this code.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.044. Open Seasons

The commission shall provide open seasons for the hunting and catching of wildlife resources in Kendall County if the investigations and findings of fact reveal that it is safe to provide an open season.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.045. Consent of Landowner

No person may hunt or catch wildlife resources in Kendall County by any means during an open season established by the commission unless the owner of the land or water, or his agent, has given his consent.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.046. Regulations

(a) The regulation of the taking of wildlife resources in Kendall County under this subchapter shall be by regulation issued by the commission.

(b) A regulation of the commission authorizing the hunting or catching of wildlife resources in Kendall County must specifically provide for:

(1) the species, quantity, age or size, and sex of the wildlife resource authorized to be taken;

(2) the means or method that may be used to take the wildlife resource; and

(3) the area or portion of the county where the wildlife resource may be taken.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.047. Amendments and Revocation

(a) If the commission finds that there is a danger of depletion or waste of wildlife resources in Kendall County, it shall amend or revoke its regulations to prevent the depletion or waste and to provide the people the most equitable and reasonable privilege to hunt wildlife resources in Kendall County.

(b) The commission may amend or revoke its regulations in accordance with this subchapter at any time it finds the facts warrant a change.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.048. Regulations for Antlerless Deer

A regulation of the commission authorizing the taking of antlerless deer is not effective for a tract of land unless the owner or other person in charge of the land agrees in writing to the regulation and to the number of antlerless deer authorized to be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.049. Antlerless Deer Permits

(a) No person may hunt antlerless deer in Kendall County without first having obtained an antlerless deer permit issued by the commission on a form provided by the commission under rules established by the commission.

(b) No person may sell any permit received from the commission for the hunting and taking of antlerless deer if:

(1) payment for the permit is contingent on the purchaser killing and taking the antlerless deer; or

(2) retention of the purchase price by the seller is contingent on the purchaser killing and taking the antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.050. Adoption of Regulations

Regulations governing the hunting or catching of wildlife resources in Kendall County shall be adopted by the commission after notice and hearing as provided in Sections 61.101, 61.102, and 61.103 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.051. Approval of Commissioners Court

(a) The Commissioners Court of Kendall County shall approve or disapprove of a regulation of the commission, in whole or in part, at the first regular meeting occurring more than five days after notification of the adoption by the commission.

(b) If the commissioners court disapproves a regulation, the taking of the wildlife resource in Kendall County is governed by the appropriate general law or provision of this chapter.

(c) After disapproval of a regulation, no public hearing on a similar proposed regulation may be held within six months of the disapproval unless the commissioners court certifies to the commission that there has occurred a material change in the surrounding circumstances which requires a public hearing before the end of the six-month period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.052. Effective Date and Duration of Regulations

(a) Except as provided in Subsection (b) of this section, a regulation takes effect within 15 days after the day the regulation was approved by the commissioners court.

(b) If the commission finds that there is an immediate danger of depletion in any area of Kendall County as to a species because of an act of God, it may declare a state of emergency, and a regulation issued under the state of emergency takes effect on approval of the commissioners court.

(c) A regulation of the commission continues in effect until it expires of its own terms or until it is amended or repealed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.053. Copies of Regulations

On approval of a regulation by the Commissioners Court of Kendall County, the commission shall file, copy, and circulate the regulation as provided in Section 61.105 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.054. Penalty

A person who violates a provision of this subchapter or a regulation issued under this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each wildlife resource taken in violation of this subchapter or a regulation issued under this subchapter constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 231. KENEDY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
231.001. Regulatory Act: Applicability.

SUBCHAPTER B. ANIMALS

231.011. Precinct No. 1: Deer and Javelina.

SUBCHAPTER C. BIRDS

231.021. Precinct No. 1: Turkey.
231.022. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 231.001. Regulatory Act: Applicability

(a) The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the coastal water of Kenedy County with respect to fish, aquatic life, and marine animals except shrimp and oysters.

(b) Except as provided in Subsection (a) of this section, the Uniform Wildlife Act (Chapter 61 of this code) does not apply to wildlife resources in Kenedy County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 231.002 to 231.010 reserved for expansion]

SUBCHAPTER B. ANIMALS

§ 231.011. Precinct No. 1: Deer and Javelina

(a) No person may hunt deer or javelina (collared peccary) in justice precinct No. 1 in Kenedy County except during the open season beginning on November 15 and extending through December 1.

(b) No person may take more than one buck deer or more than one javelina (collared peccary) in precinct No. 1 in Kenedy County during a year.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 231.012 to 231.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 231.021. Precinct No. 1: Turkey

(a) No person may hunt wild turkey gobbler in justice precinct No. 1 in Kenedy County except during the open season beginning on November 15 and extending through December 1.

(b) No person may take more than one wild turkey gobbler in precinct No. 1 in Kenedy County during a year.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 231.022. Quail

(a) No person may hunt wild quail in Kenedy County except during the open season beginning on December 1 of one year and extending through January 31 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each quail taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 232. KENT COUNTY

§ 232.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Kent County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 233. KERR COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
233.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

233.011. Collared Peccary (Javelina) Sale.

SUBCHAPTER C. FISH

233.021. Injuring Fish.
233.022. Leaving Fish to Die.

SUBCHAPTER D. NONGAME ANIMALS

233.031. Exotic Animals Defined.
233.032. Hunting Exotic Game on Road.
233.033. Hunting Exotic Animals Without Consent of Landowner.
233.034. Possession of Carcass of Exotic Animal.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 233.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Kerr County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 233.002 to 233.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 233.011. Collared Peccary (Javelina) Sale

(a) No person may take or possess for barter or sale, sell, or offer for sale any collared peccary (javelina), or any part of one, in Kerr County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50. Each collared peccary (javelina), or part of one, taken, possessed, sold, or offered for sale in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 233.012 to 233.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 233.021. Injuring Fish

(a) No person may destroy fish in any freshwater stream in Kerr County by the use of dynamite, powder, or other explosives.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $1,000 and may be confined in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 233.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Kerr County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER D. NONGAME ANIMALS

§ 233.031. Exotic Animals Defined

In this chapter, "exotic animal" means axis deer, fallow deer, blackbuck antelope, sika deer, aoudad sheep, mouflon sheep, barbado sheep, European red deer, Corsican sheep, four-horned sheep, sambar deer, eland antelope, sable antelope, white-tailed gnu, impala, greater kudu, blesbok, gazelle, oryx, guanaco, llama, thar, nilgai antelope, or ibex.

[Added by Acts 1979, 66th Leg., p. 2121, ch. 821, § 1, eff. June 13, 1979.]

§ 233.032. Hunting Exotic Game on Road

(a) No person on a public road or on the right-of-way of a public road in Kerr County may hunt an exotic animal.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $500.

[Added by Acts 1979, 66th Leg., p. 2121, ch. 821, § 1, eff. June 13, 1979.]

§ 233.033. Hunting Exotic Animals Without Consent of Landowner

(a) No person may hunt on the land of another in Kerr County for an exotic animal without the express consent of the owner of the land to hunt for exotic animals.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $500.

[Added by Acts 1979, 66th Leg., p. 2121, ch. 821, § 1, eff. June 13, 1979.]

§ 233.034. Possession of Carcass of Exotic Animal

(a) Except as provided in Subsections (b) and (c) of this section, no person may possess the carcass of an exotic animal in Kerr County.

(b) Subsection (a) of this section does not apply to the owner or employee of the owner of the exotic animal, a public health officer, a law enforcement officer, or a veterinarian.

(c) It is an affirmative defense to a prosecution under Subsection (a) of this section that the person possessed the carcass of the exotic animal with the knowledge and consent of the owner.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $500.

[Added by Acts 1979, 66th Leg., p. 2121, ch. 821, § 1, eff. June 13, 1979.]

CHAPTER 234. KIMBLE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
234.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

234.011. Doe Archery Season.

SUBCHAPTER C. FISH

234.021. Fish Sale.
234.022. Repealed.
234.023. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 234.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Kimble County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 234.002 to 234.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 234.011. Doe Archery Season

In Kimble County, does may be taken by longbow and arrow during the open season for buck deer.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 234.012 to 234.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 234.021. Fish Sale

(a) No person may offer, take, or possess for sale any catfish, perch, crappie, bream, or bass taken from the water of Kimble County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 234.022. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, sale, and possession, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.
Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 234.023. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Kimble County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 235. KING COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
235.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

235.011. Repealed.

SUBCHAPTER C. BIRDS

235.021. Quail Season.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 235.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in King County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 235.002 to 235.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 235.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.
Sale, transportation, and taking of bait fish, see, now, § 66.010.

SUBCHAPTER C. BIRDS

§ 235.021. Quail Season

(a) No person may hunt quail in King County except during the open season.

(b) The open season for quail in King County begins on December 1 of one year and extends through January 31 of the following year.

(c) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.
[Acts 1977, 65th Leg., p. 34, ch. 17, § 2, eff. Aug. 29, 1977.]

CHAPTER 236. KINNEY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
236.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

236.011. Fish Sale.
236.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 236.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Kinney County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 236.002 to 236.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 236.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught in the streams of Kinney County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 236.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Kinney County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 237. KLEBERG COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
237.001. Regulatory Act: Applicability.

SUBCHAPTER B. ANIMALS [REPEALED]

237.011. Repealed.

SUBCHAPTER C. BIRDS

237.021. Repealed.
237.022. Audubon Society Land.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 237.001. Regulatory Act: Applicability

Except as provided by this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources, except shrimp and oysters, in Kleberg County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1052, ch. 482, § 1, eff. June 7, 1979.]

[Sections 237.002 to 237.010 reserved for expansion]

SUBCHAPTER B. ANIMALS [REPEALED]

§ 237.011. Repealed by Acts 1979, 66th Leg., p. 1052, ch. 482, § 2

This section is repealed effective as provided by § 61.004.

The repealed section was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1. The section read:

"§ 237.011. Javelina

"(a) This section applies to the following land in Kleberg County:

"All lands within the Kleberg Town and Improvement Company's Subdivision (except those lands lying within the confines of the city of Kingsville, the town of Ricardo, and the United States Naval Auxiliary Air Station);

"All lands lying within King Addition, except farm lots one, three, and the West one-half and the Northeast one-fourth of lot five; and

"All lands lying within King Addition No. 3, King Addition No. 4, and King Addition No. 2.

"(b) There is no closed season during which javelina may not be hunted in the area described in Subsection (a) of this section.

"(c) No person may take or possess for sale, sell, barter, or offer for sale in the area described in Subsection (a) of this section a javelina or a part of a javelina.

"(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50. Each javelina taken, possessed, sold, or offered for sale in violation of this section constitutes a separate offense."

SUBCHAPTER C. BIRDS

§ 237.021. Repealed by Acts 1979, 66th Leg., p. 1052, ch. 482, § 2

This section is repealed effective as provided by § 61.004.

The repealed section was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1. The section read:

"§ 237.021. Quail

"(a) No person may hunt wild quail in Kleberg County except during the open season beginning on December 1 of one year and extending through January 31 of the following year.

"(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less $10 nor more than $200. Each quail taken in violation of this section constitutes a separate offense."

§ 237.022. Audubon Society Land

(a) This section applies to North Bird Island and South Bird Island and the flats, reefs, and shallow water near those islands in Kleberg County during the period that the National Association of the Audubon Societies is the lessee of those islands.

(b) No person, other than an agent, representative, or employee of the National Association of Audubon Societies or an officer of this state or the United States, may enter on the land without the knowledge or consent of the association for the purpose of hunting a bird or for the purpose of taking or destroying a bird egg or nest.

(c) No person may hunt or molest a bird on the described land whether the person is on or off the described land.

(d) No person may discharge a firearm or explosive on or above the described land.

(e) No person may land, tie, or anchor a fishing boat in the described land.

(f) This section does not prohibit an agent, representative, or employee of the association from:

(1) hunting birds known to be a prey on other birds or eggs; or

(2) taking birds and eggs for propagation, conservation, or scientific purposes.

(g) This section does not prohibit a person from taking refuge on the described land because of storms.

(h) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $500 or by confinement in jail for not less than 10 days nor more than 6 months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

Acts 1979, 66th Leg., p. 1052, ch. 482, §§ 1, 2, amended § 237.001 and repealed subchapter B of this chapter and § 237.021. Section 3 of said Act provided:

"Section 237.022, Parks and Wildlife Code, is not repealed as provided by Section 61.004, Parks and Wildlife Code."

CHAPTER 238. KNOX COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
238.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

238.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 238.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Knox County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 238.002 to 238.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 238.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 239. LAMAR COUNTY

§ 239.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lamar County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 240. LAMB COUNTY

§ 240.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lamb County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 241. LAMPASAS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
241.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

241.011. Fish Sale.
241.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 241.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lampasas County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 241.002 to 241.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 241.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught in the streams of Lampasas County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 241.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Lampasas County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention of eating the fish or using it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 242. LA SALLE COUNTY

SUBCHAPTER A. APPLICABILITY TO UNIFORM WILDLIFE REGULATORY ACT

Section
242.001. Regulatory Act: Applicability.
242.002. Certain Methods of Taking Game Prohibited.

SUBCHAPTER B. GAME ANIMALS [REPEALED]

242.011, 242.012. Repealed.

SUBCHAPTER C. BIRDS [REPEALED]

242.021 to 242.023. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 242.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in La Salle County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1184, ch. 575, § 1, eff. Aug. 27, 1979.]

§ 242.002. Certain Methods of Taking Game Prohibited

Section 62.005 of this code applies in La Salle County and the provisions of that section prevail over provisions of the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Added by Acts 1979, 66th Leg., p. 1184, ch. 575, § 2, eff. Aug. 27, 1979.]

[Sections 242.003 to 242.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS [REPEALED]

§ 242.011, 242.012. Repealed by Acts 1979, 66th Leg., p. 1184, ch. 575, § 3

These sections were repealed effective as provided by § 61.004.

The repealed sections were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, as amended by Acts 1977, 65th Leg., p. 567, ch. 201, §§ 1 and 2, respectively. The sections read:

"§ 242.011. Deer Season

"(a) No person may hunt buck deer in La Salle County except during the open season beginning on the Saturday nearest November 15 of one year and extending through the first Sunday in January of the following year, unless the first Sunday in January is later than January 4, in which case the season extends through January 1.

"(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. Each deer killed, taken, or possessed in violation of this section constitutes a separate offense.

"§ 242.012. Collared Peccary (Javelina)

"(a) No person may hunt collared peccary (javelina) in La Salle County except during the open season beginning on November 1 and extending through the first Sunday in January of the following year, unless the first Sunday in January is later than January 4, in which case the season extends through January 1.

"(b) No person may take or possess collared peccary (javelina) or any part of a collared peccary (javelina) for barter or sale or barter or sell collared peccary (javelina) in La Salle County.

"(c) No person may take more than two collared peccary (javelina) in one open season.

"(d) This section does not apply to collared peccary (javelina) or their hides imported from another state or country.

"(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50. Each collared peccary (javelina) taken, possessed, sold, offered for sale, or possessed for sale in violation of this section is a separate offense."

SUBCHAPTER C. BIRDS [REPEALED]

§§ 242.021 to 242.023. Repealed by Acts 1979, 66th Leg., p. 1184, ch. 575, § 3

These sections were repealed effective as provided by § 61.004.

Sections 242.021 and 242.022 were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, as amended by Acts 1977, 65th Leg., p. 567, ch. 201, §§ 3 and 4, respectively. Section 242.023 was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1. The sections read:

"§ 242.021. Turkey

"(a) No person may hunt turkey in La Salle County except during the open season beginning on November 1 and extending through the first Sunday in January of the following year, unless the first Sunday in January is later than January 4, in which case the season extends through January 1.

"(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. Each turkey killed, taken, or possessed in violation of this section constitutes a separate offense.

"§ 242.022. Quail

"(a) No person may hunt quail in La Salle County except during the open season beginning on November 1 and extending through the first Sunday in January of the following year, unless the first Sunday in January is later than January 4, in which case the season extends through January 1.

"(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. Each quail taken, killed, or possessed in violation of this section constitutes a separate offense.

"§ 242.023. Pheasant

"Wild pheasant of all varieties may be hunted at any time in La Salle County."

CHAPTER 243. LAVACA COUNTY

§ 243.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lavaca County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 244. LEE COUNTY

§ 244.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lee County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 245. LEON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
245.001. Regulatory Act: Applicability.
245.002. Lake Limestone.

SUBCHAPTER B. GAME ANIMALS

245.011. Deer.
245.012. Squirrel.

SUBCHAPTER C. BIRDS

245.021. Quail.
245.022. Turkey.

SUBCHAPTER D. FISH

245.031. Fish Limit.

SUBCHAPTER E. FUR-BEARING ANIMALS

245.041. Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 245.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Leon County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 391, ch. 182, § 1, eff. May 15, 1979.]

§ 245.002. Lake Limestone

The Uniform Wildlife Regulatory Act applies to the wildlife resources in all of the water area of Lake Limestone located in Leon County.

[Added by Acts 1979, 66th Leg., p. 391, ch. 182, § 2, eff. May 15, 1979.]

[Sections 245.003 to 245.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 245.011. Deer

(a) No person may hunt deer in Leon County except during the open season beginning on the Saturday nearest to November 15 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 245.012. Squirrel

(a) No person may hunt or possess squirrel in Leon County except during the open seasons beginning on May 16th and extending through July 31, and beginning on October 1 and extending through December 31.

(b) No person may take, kill, or possess more than 5 squirrels in one day or more than 15 squirrels in one calendar week during the open seasons in Leon County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 245.013 to 245.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 245.021. Quail

(a) No person may hunt wild quail in Leon County except during the open season beginning on December 15 of one year and extending through the last day of February the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. Each quail taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 245.022. Turkey

(a) No person may hunt turkey in Leon County at any time.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 245.023 to 245.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 245.031. Fish Limit

There is no daily catch or retention limit on crappie or white perch in Leon County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 245.032 to 245.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 245.041. Calling Devices

(a) No person may use any horn, recording, or other device to call or attract wild fox in Leon County unless he has obtained a permit from the department for the use of the device for scientific research or making wildlife movies.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 246. LIBERTY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
246.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

246.011. Hunting With Certain Weapons.
246.012. Discharge of Firearms.
246.013. Penalty.

SUBCHAPTER C. GAME ANIMALS

246.021. Squirrel Transport.

SUBCHAPTER D. FUR-BEARING ANIMALS

246.031. Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 246.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Liberty County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 246.002 to 246.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 246.011. Hunting With Certain Weapons

(a) No person may hunt with a shotgun using a shell containing larger than Number Four squirrel shot or with a rifle larger than a rimfire 22-caliber rifle in an area of Liberty County where deer roam unless it is the open season for taking deer in Liberty County.

(b) Possession of a shotgun and shell containing larger than Number Four squirrel shot or a rifle larger than a rimfire 22-caliber rifle in, through, or at woods where deer roam in Liberty County is prima facie evidence of a violation of this section.

(c) This section does not apply to peace officers or representatives of the commission in the lawful discharge of their official duties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 246.012. Discharge of Firearms

(a) Except as provided in Subsection (b) of this section, no person may shoot a pistol or rifle in, on, along, and across the water of the Trinity River or Wallisville Reservoir in Liberty County.

(b) This section does not apply to peace officers or representatives of the department in the lawful discharge of their duties or to a person hunting migratory waterfowl during an open season in and on the Trinity River and Wallisville Reservoir.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 246.013. Penalty

A person who violates a provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 246.014 to 246.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 246.021. Squirrel Transport

(a) No person may ship or cause to be shipped, receive for the purpose of transportation, transport, or carry beyond the limits of Liberty County wild squirrels.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 246.022 to 246.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 246.031. Calling Devices

(a) No person may use any horn, recording, or other device to call or attract wild fox in Liberty County unless he has first obtained a permit from the department to use the devices for making wildlife movies or scientific research.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 247. LIMESTONE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
247.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING
247.011. Calling Devices.

SUBCHAPTER C. GAME ANIMALS
247.021. Squirrel.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 247.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Limestone County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 247.002 to 247.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 247.011. Calling Devices

(a) No person may use any type of squealer, call, or other device or instrument used to call or attract animals to aid in the hunting of any wild animal on state-owned land in Limestone County.

(b) The Commissioners Court of Limestone County may extend the prohibition set out in Subsection (a) of this section to any privately owned land in Limestone County or to all or part of Limestone County. The commissioners court must notify the commission of their intent to broaden the prohibition. On receipt of a return from the commission, the commissioners court shall specify the land to which the prohibition is to be applied on forms prescribed by the commission. The forms shall be returned to the commission and be properly attested to as the official act of the Commissioners Court of Limestone County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 247.012 to 247.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 247.021. Squirrel

(a) No person may hunt squirrel in Limestone County except during the open seasons beginning on May 1 and extending through July 31 and beginning on October 1 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 248. LIPSCOMB COUNTY

§ 248.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lipscomb County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 249. LIVE OAK COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
249.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH
249.011. Fish Sale.
249.012. Fishing Methods.
249.013. Trotlines.
249.014. Nets and Seines.
249.015. Penalties.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 249.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Live Oak County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 249.002 to 249.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 249.011. Fish Sale

No person may barter or sell, offer to barter or sell, or buy any fish, except bait fish, taken from the public fresh water of Live Oak County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 216, ch. 105, § 22, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 2082, ch. 813, § 1, eff. Aug. 27, 1979.]

§ 249.012. Fishing Methods

Except as provided by Section 249.014 of this code, no person may catch fish from the public fresh water of Live Oak County by any means other than ordinary hook and line, rod and reel, jugline, throwline, trotline, or artificial bait.

[Added by Acts 1979, 66th Leg., p. 2082, ch. 813, § 2, eff. Aug. 27, 1979.]

§ 249.013. Trotlines

No trotline used in the public fresh water of Live Oak County may be metallic or have more than 50 hooks or have hooks placed less than three feet apart. No person may set out more than two trotlines. Each trotline shall bear a tag, of a material as durable as the trotline, which states legibly the name and address of the fisherman and the date when the trotline was set out. No trotline may be set out for more than 90 days unless the identifying tag is redated at the end of each 90-day period.

[Added by Acts 1979, 66th Leg., p. 2082, ch. 813, § 2, eff. Aug. 27, 1979.]

§ 249.014. Nets and Seines

(a) Minnow seines not more than 20 feet in length, cast nets, dip nets, and umbrella nets of meshes of any size may be used to catch bream, minnows, gar, shad, and suckers.

(b) A common funnel fruit jar type trap, or its metallic counterpart, may be used to catch minnows for bait if the trap is no longer than 24 inches and has a throat no larger than one inch in diameter.

[Added by Acts 1979, 66th Leg., p. 2082, ch. 813, § 2, eff. Aug. 27, 1979.]

§ 249.015. Penalties

A person who violates this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each fish taken or possessed in violation of Section 249.011 or 249.012 and each device used in violation of Section 249.013 or 249.014 constitutes a separate offense.

[Added by Acts 1979, 66th Leg., p. 2082, ch. 813, § 2, eff. Aug. 27, 1979.]

CHAPTER 250. LLANO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
250.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

250.011. Definitions.
250.012. Open Archery Season.
250.013. Prohibited Archery Equipment.
250.014. Deer Permits.
250.015. Limit and Possession of Deer.
250.016. Penalty.
250.017. Possession of Firearms.

SUBCHAPTER C. FISH

250.021. Fish Sale.
250.022. Injuring Fish.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 250.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Llano County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 250.002 to 250.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 250.011. Definitions

In this subchapter:

(1) "Buck deer" means a deer that has a hardened antler protruding through the skin.

(2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 250.012. Open Archery Season

(a) The open archery season in Llano County begins on October 1 and extends through October 31 each year.

(b) During the open archery season a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 250.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild bear, wild antlerless deer, wild turkey gobblers or bearded hens, and collared peccary (javelina) in Llano County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 250.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Llano County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from the used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 250.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season in Llano County.

(b) No person may possess an antlerless deer in Llano County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Llano County if it does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Llano County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 250.016. Penalty

A person who violates Section 250.012 through Section 250.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 250.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp in Llano County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 250.018 to 250.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 250.021. Fish Sale

(a) No person may take, offer, or possess for sale any catfish, perch, crappie, bream, or bass from the water of Llano County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 250.022. Injuring Fish

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Llano County any catfish, perch, crappie, white perch, bass, trout, or other edible fish, and leave the fish to die without any intention of eating the fish or using it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 251. LOVING COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

251.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

251.011. Fish Sale.
251.012. Fishing Methods.
251.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 251.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Loving County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 251.002 to 251.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 251.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught in the streams of Loving County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 251.012. Fishing Methods

(a) Except as provided in Subsection (b) of this section, no person may take or catch any fish in the freshwater rivers, creeks, lakes, bayous, pools, or lagoons of Loving County by any means other than an ordinary hook and line, trotline, or artificial bait, and no person may place in that water any seine, net or other device, or trap for taking or catching fish.

(b) A person may use a minnow seine not more than 20 feet long to catch minnows for bait.

(c) In seining for bait as permitted by this section, all minnows more than three inches long shall be returned to the water at once while alive.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 251.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Loving County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 252. LUBBOCK COUNTY

§ 252.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lubbock County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 253. LYNN COUNTY

§ 253.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lynn County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 254. McCULLOCH COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
254.001. Regulatory Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

254.011. Definitions.
254.012. Open Archery Season.
254.013. Prohibited Archery Equipment.
254.014. Deer Permits.
254.015. Limit and Possession of Deer.
254.016. Penalty.
254.017. Possession of Firearms.

SUBCHAPTER C. FISH

254.021. Fish Sale.
254.022. Leaving Fish to Die.
254.023, 254.024. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 254.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in McCulloch County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 254.002 to 254.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 254.011. Definitions

In this subchapter:

(1) "Buck deer" means a deer that has a hardened antler protruding through the skin.

(2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.012. Open Archery Season

(a) The open archery season in McCulloch County begins on October 1 and extends through October 31 each year.

(b) During the open archery season a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers, or bearded hens and collared peccary (javelina) by means of bows and arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 254.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in McCulloch County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 254.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in McCulloch County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season.

(b) No person may possess an antlerless deer in McCulloch County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in McCulloch County that does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In McCulloch County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.016. Penalty

A person who violates Section 254.012 through Section 254.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in McCulloch County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 254.018 to 254.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 254.021. Fish Sale

(a) No person may sell or offer to sell any bass, white perch, crappie, or catfish caught in the streams of McCulloch County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in McCulloch County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§§ 254.023, 254.024. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed sections, relating to minnow transport and minnow sale, respectively, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 255. McLENNAN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
255.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

255.011. Fish Sale.
255.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 255.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in McLennan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 255.002 to 255.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 255.011. Fish Sale

(a) No person may buy, barter, or sell or offer to barter or sell any bass, crappie, perch, channel or Opelousas catfish, or any other fish, except bait fish, taken from Lake Waco, the Bosque River, or their tributaries in McLennan County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50. Each fish bought, sold, bartered or offered for sale or barter in violation of this section constitutes a separate offense. A person may be prosecuted for a violation of this section in the county where the offense is committed, where he is found possessing the fish, or where the fish are sold or offered for sale.

(c) It is the duty of the district judge of the judicial district in McLennan County to give a special charge on this law to the grand juries of McLennan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 216, ch. 105, § 23, eff. Sept. 1, 1977.]

§ 255.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport and sale, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 256. McMULLEN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
256.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

256.011. Deer.
256.012. Collared Peccary (Javelina).

SUBCHAPTER C. BIRDS

256.021. Turkeys.
256.022. Quail.

SUBCHAPTER D. FISH

256.031. Fish Sale.
256.032. Fishing Methods.
256.033. Trotlines.
256.034. Nets and Seines.
256.035. Penalties.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 256.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in McMullen County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 256.002 to 256.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 256.011. Deer

A person may hunt deer in McMullen County during the open season beginning on November 1 and extending through December 15.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 256.012. Collared Peccary (Javelina)

(a) This section applies to all collared peccary (javelina) and their hides except those imported from another state or foreign country.

(b) No person may hunt collared peccary (javelina) in McMullen County except during the open season beginning on November 1 and extending through December 15.

(c) No person may take in one season in McMullen County more than two collared peccary (javelina).

(d) No person may take or possess for barter or sale, or offer for sale, or sell collared peccary (javelina), or part of one, in McMullen County at any time.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50. Each collared peccary (javelina) taken or possessed, or offered or possessed for sale, or sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 256.013 to 256.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 256.021. Turkeys

A person may hunt wild turkeys in McMullen County during the open season beginning on November 1 and extending through December 15.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 256.022. Quail

A person may hunt quail in McMullen County during the open season beginning on October 15 and extending through December 15.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1212, ch. 456, § 12, eff. Sept. 1, 1975.]

SUBCHAPTER D. FISH

§ 256.031. Fish Sale

No person may barter or sell, offer to barter or sell, or buy any fish, except bait fish, taken from the public fresh water of McMullen County.

[Added by Acts 1979, 66th Leg., p. 392, ch. 183, § 1, eff., Aug. 27, 1979.]

§ 256.032. Fishing Methods

Except as provided by Section 256.034 of this code, no person may catch fish from the public fresh water of McMullen County by any means other than ordinary hook and line, rod and reel, jugline, throwline, trotline, or artificial bait.

[Added by Acts 1979, 66th Leg., p. 392, ch. 183, § 1, eff. Aug. 27, 1979.]

§ 256.033. Trotlines

No trotline used in the public fresh water of McMullen County may be metallic or have more than 50 hooks or have hooks placed less than three feet apart. No person may set out more than two trotlines. Each trotline shall bear a tag, of a material as durable as the trotline, which states legibly the name and address of the fisherman and the date when the trotline was set out. No trotline may be set out for more than 90 days unless the identifying tag is redated at the end of each 90-day period.

[Added by Acts 1979, 66th Leg., p. 392, ch. 183, § 1, eff. Aug. 27, 1979.]

§ 256.034. Nets and Seines

(a) Minnow seines not more than 20 feet in length, cast nets, dip nets, and umbrella nets of meshes of any size may be used to catch bream, minnows, gar, shad, and suckers.

(b) A common funnel fruit jar type trap, or its metallic counterpart, may be used to catch minnows for bait if the trap is no longer than 24 inches and has a throat no larger than one inch in diameter.

[Added by Acts 1979, 66th Leg., p. 392, ch. 183, § 1, eff. Aug. 27, 1979.]

§ 256.035.[1] Penalties

A person who violates this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each fish taken or possessed in violation of Section 256.031 or 256.032 and each device used in violation of Section 256.033 or 256.034 constitutes a separate offense.

[Added by Acts 1979, 66th Leg., p. 392, ch. 183, § 1, eff. Aug. 27, 1979.]

[1] Enrolled bill read "236.035."

CHAPTER 257. MADISON COUNTY

§ 257.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Madison County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 258. MARION COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
258.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

258.011. Shooting Pistols on Caddo Lake.

SUBCHAPTER C. ANIMALS

258.021. Deer.
258.022. Squirrel.
258.023. Coypu.

SUBCHAPTER D. BIRDS

258.031. Quail.
258.032. Blinds.
258.033. Turkey.

SUBCHAPTER E. FISH

258.041. Fishing Methods.
258.042. Fish Size and Retention Limits.
258.043. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 258.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Marion County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 258.002 to 258.110 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 258.011. Shooting Pistols on Caddo Lake

(a) No person may shoot a pistol in, on, along, or across Caddo Lake in Marion County.

(b) This section does not apply to peace officers or employees of the department engaged in official duties, nor does this section prohibit hunting with a shotgun during an open season.

(c) Peace officers and authorized employees of the department may inspect boats and other watercraft for violations of this section without a warrant.

(d) A prosecution for a violation of this section may be maintained in Marion or Harrison County without regard to where the offense occurred.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 258.012 to 258.020 reserved for expansion]

SUBCHAPTER C. ANIMALS

§ 258.021. Deer

(a) No person may hunt deer in Marion County except during the open seasons beginning on November 16 and extending through November 21 and beginning on December 26 and extending through December 31.

(b) No person may take more than two buck deer with pronged antlers during a calendar year in Marion County.

(c) No person may hunt deer in Marion County during the period between sunset and sunrise.

(d) No person may hunt deer on the land of another without the permission of the owner or lessee.

(e) No person may hunt deer in Marion County by a method other than with a rifle or shotgun capable of being fired from the shoulder, and no person may hunt deer in Marion County with:

(1) .22 caliber rimfire ammunition; or

(2) a .22 caliber rifle, jet gun, or rocket gun.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $500, or by confinement in jail for not less than 10 days nor more than three months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.022. Squirrel

(a) No person may take or kill squirrel in Marion County except during the open season during the months of October, November, and December.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $1 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.023. Coypu

Coypu (nutria) may be hunted at any time in Marion County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 258.024 to 258.030 reserved for expansion]

SUBCHAPTER D. BIRDS

§ 258.031. Quail

(a) No person may hunt quail in Marion County except during the open season beginning on December 1 of one year and extending through February 15 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a

fine of not less than $10 nor more than $200. Each bird taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.032. Blinds

(a) No person may construct a blind to be leased for the hunting of waterfowl within 200 yards of the shoreline of or on Caddo Lake in Marion County without first having obtained from the department a permit.

(b) No person may lease a blind to be used within 200 yards of the shoreline of or on Caddo Lake in Marion County for the hunting of waterfowl without first having obtained from the department a permit for each blind.

(c) The department shall issue the permits required by this section for an annual fee of $5 for each blind leased.

(d) No person may construct or use a blind within 200 yards of the shoreline of or on Caddo Lake in Marion County for the hunting of waterfowl if the blind is nearer than 300 yards to another blind used for the hunting of waterfowl. This section applies to any blind whether leased or used privately.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

(f) In a prosecution for using a blind nearer than 300 yards of another blind, it is an affirmative defense that the blind being used by the accused was located, built, and ready for use before the other blind was constructed.

(g) "Blind" means a concealing enclosure from which a person may shoot game or observe wildlife.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 517, ch. 241, §§ 2, 3, eff. Aug. 27, 1979.]

§ 258.033. Turkey

Text of section effective until September 1, 1980

(a) No person may hunt or kill wild turkey in Marion County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

(c) This section expires on September 1, 1980.

[Acts 1975, 64th Leg., p. 1223, ch. 456, § 25, eff. Sept. 1, 1975.]

[Sections 258.034 to 258.040 reserved for expansion]

SUBCHAPTER E. FISH

§ 258.041. Fishing Methods

(a) No person may catch fish in Marion County except by the following methods:

(1) ordinary hook, rod and reel, set hook and line, trotline, or artificial bait;

(2) for minnows for bait only, a minnow seine not more than 20 feet long;

(3) for buffalo fish, gar, catfish, shad, and bowfin or grindle during any month of the year except February, March, April, and May, a hoop net, setnet, or trammel net the meshes of which are not less than three and one-half inches square; and

(4) for buffalo fish, gar, catfish, shad, and bowfin or grindle in Caddo Lake, a gig.

(b) No person using a net authorized by Subdivision (2) or (3) of Subsection (a) of this section may fail to return to the water any fish taken with the net that are not authorized to be caught with the net being used. No person may possess a fish not authorized to be taken with a net while the person is using a net.

(c) Nets, the use of which are not authorized by this section in Marion County, are a public nuisance, and peace officers and enforcement officers of the department are to destroy them. No suit may be maintained against an officer or employee of the department for carrying out the provisions of this subsection.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.042. Fish Size and Retention Limits

(a) No person may catch and keep a catfish from the water of Caddo Lake in Marion County if the fish is shorter than eight inches.

(b) No person may catch and keep more than 25 catfish from Caddo Lake in Marion County during one day.

(c) There is no daily limit or possession limit on crappie in Marion County.

(d) No person may possess or catch and keep in one day more than 25 white bass or striped bass in Marion County.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50, unless the person violates Subsection (d) of this section, in which case he is punishable by a fine of not less than $100. Each fish taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.043. Fish Sale

(a) No person may possess for sale, sell, buy, offer to sell or buy, transport or ship for the purpose of sale, or barter a white bass or a striped bass in Marion County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $100. Each fish sale or shipment in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 259. MARTIN COUNTY

§ 259.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Martin County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 260. MASON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
260.001. Regulatory Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

260.011. Definitions.
260.012. Open Archery Season.
260.013. Prohibited Archery Equipment.
260.014. Deer Permits.
260.015. Limit and Possession of Deer.
260.016. Penalty.
260.017. Possession of Firearms.

SUBCHAPTER C. FISH

260.021. Fish Sale.
260.022. Leaving Fish to Die.
260.023. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 260.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Mason County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 260.002 to 260.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 260.011. Definitions

In this subchapter:

(1) "Buck deer" means a deer that has a hardened antler protruding through the skin.

(2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.012. Open Archery Season

(a) The open archery season in Mason County begins on October 1 and extends through October 31 each year.

(b) During the open archery season, a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 260.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in Mason County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 260.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Mason County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season.

(b) No person may possess an antlerless deer in Mason County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Mason County that does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Mason County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.016. Penalty

A person who violates Section 260.012 through Section 260.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Mason County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 260.018 to 260.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 260.021. Fish Sale

(a) No person may take for sale, offer for sale, or possess for sale any catfish, perch, crappie, bream, or bass in Mason County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Mason County any catfish, perch, crappie, white perch, bass, trout, or other edible fish, and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.023. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 261. MATAGORDA COUNTY

Section
261.001. Regulatory Act: Applicability.
261.002. Regulatory Act: Shrimp Excluded.

§ 261.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Matagorda County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 261.002. Regulatory Act: Shrimp Excluded

In Matagorda County shrimp are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 262. MAVERICK COUNTY

§ 262.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Maverick County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 263. MEDINA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
263.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

263.011. Fish Sale.
263.012. Injuring Fish.
263.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 263.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Medina County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 263.002 to 263.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 263.011. Fish Sale

(a) No person may barter, sell, or offer for barter or sale any bass, perch, crappie, or catfish taken from the freshwater streams of Medina County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 263.012. Injuring Fish

(a) No person may use dynamite, powder, or other explosive in the freshwater streams of Medina County resulting in the destruction of fish.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $1,000 and confinement in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 263.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Medina County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention of eating the fish or using it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 264. MENARD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
264.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

264.011. Fish Sale.
264.012. Repealed.
264.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 264.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Menard County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 264.002 to 264.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 264.011. Fish Sale

(a) No person may take, offer, or possess for the purpose of sale any catfish, perch, crappie, bream, or bass in Menard County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 264.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 264.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Menard County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention of eating the fish or using it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 265. MIDLAND COUNTY

§ 265.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Midland County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 266. MILAM COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
266.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

266.011. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 266.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Milam County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 266.002 to 266.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 266.011. Fish Sale

(a) No person may barter, sell, offer for barter or sale, buy, or possess after purchase any fish taken from the water of Milam County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 267. MILLS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
267.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

267.011. Fish Sale.
267.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 267.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Mills County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 267.002 to 267.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 267.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught in the streams of Mills County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 267.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Mills County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 268. MITCHELL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
268.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

268.011. Fish Sale: Lake Colorado City.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 268.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Mitchell County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 268.002 to 268.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 268.011. Fish Sale: Lake Colorado City

(a) No person may catch fish, except bait fish, from Lake Colorado City in Mitchell County for the purpose of sale.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 217, ch. 105, § 24, eff. Sept. 1, 1977.]

CHAPTER 269. MONTAGUE COUNTY

§ 269.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Montague County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 270. MONTGOMERY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
270.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS
270.011. Squirrel Sale.

SUBCHAPTER C. FISH
270.021. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 270.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Montgomery County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 270.002 to 270.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 270.011. Squirrel Sale

(a) No person may sell, offer for sale, or ship for sale any squirrel in Montgomery County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 270.012 to 270.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 270.021. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow sale and transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 271. MOORE COUNTY

§ 271.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Moore County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 272. MORRIS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
272.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS
272.011. Deer Season.
272.012. Deer Limit.
272.013. Methods of Hunting Deer.
272.014. Permission of Owner.
272.015. Penalty.
272.016. Squirrel.
272.017. Special Archery Season.

SUBCHAPTER C. BIRDS
272.021. Quail.
272.022. Turkey.

SUBCHAPTER D. FISH
272.031. Nets.

SUBCHAPTER E. FUR-BEARING ANIMALS
272.041. Coypu.

SUBCHAPTER F. LAKE TEXARKANA AND DAINGERFIELD LAKE
272.051. Discharge of Firearms.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 272.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Morris County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 272.002 to 272.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 272.011. Deer Season

No person may hunt deer in Morris County except during the open seasons beginning on November 16 and extending through November 22 and beginning on December 25 and extending through December 31.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.012. Deer Limit

In Morris County, no person may take or kill more than one deer during an open season or take, kill, or possess any deer except a buck deer with a pronged horn of three points or more.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.013. Methods of Hunting Deer

(a) No person may use .22 caliber rimfire ammunition in hunting deer in Morris County.

(b) No person may hunt wild deer in Morris County with a .22 caliber rifle.

(c) No person may hunt wild deer in Morris County by any means other than a rifle, except a .22 caliber rifle, or a shotgun capable of being fired from the shoulder or bows and arrows conforming to the specifications described in Section 62.055 of this code.

(d) No person may use a dog to hunt deer or allow a dog to run, trail, or pursue a deer in Morris County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.014. Permission of Owner

No person may hunt deer on the land of another in Morris County without the permission of the owner or lessee of the land.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.015. Penalty

A person who violates Sections 272.011 through 272.014 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each deer taken, killed, or possessed in violation of these sections constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.016. Squirrel

(a) No person may hunt squirrel in Morris County except during the open season beginning on October 1 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.017. Special Archery Season

A person may hunt wild deer in Morris County with bow and arrow during the open season beginning on October 1 and extending through October 31.

[Added by Acts 1977, 65th Leg., p. 1790, ch. 718, § 1, eff. Aug. 29, 1977.]

[Sections 272.018 to 272.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 272.021. Quail

(a) No person may hunt wild quail in Morris County except during the open season beginning on December 1 of one year and extending through February 15 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. Each bird taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.022. Turkey

Text of section added effective until September 1, 1983

(a) No person may hunt wild turkey in Morris County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

(c) This section expires on September 1, 1983.

[Added by Acts 1979, 66th Leg., p. 2120, ch. 820, § 1, eff. Aug. 27, 1979.]

[Sections 272.023 to 272.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 272.031. Nets

(a) Except as provided in Subsections (b), (c), and (d) of this section, a person may use a seine or net with meshes of not less than three inches to catch fish from the water of Morris County.

(b) No person may use nets of any type in Daingerfield State Park Lake or Ellison Creek Reservoir (Lone Star Lake) in Morris County.

(c) No person may use a setnet or seine to catch white perch, crappie, or bass of any kind in Morris County.

(d) A person may use a minnow seine not more than 20 feet long to catch minnows for bait in Morris County.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 272.032 to 272.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 272.041. Coypu

A person may take or kill coypu (nutria) at any time in Morris County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 272.042 to 272.050 reserved for expansion]

SUBCHAPTER F. LAKE TEXARKANA AND DAINGERFIELD LAKE

§ 272.051. Discharge of Firearms

(a) Except as provided in Subsection (b) of this section, no person may shoot a pistol or rifle in, on, along, or across Daingerfield Lake or Lake Texarkana in Morris County.

(b) This section does not apply to peace officers, game wardens, or agents of the department in the lawful exercise of their duty or to persons hunting with a shotgun during an open season in or on Daingerfield Lake or Lake Texarkana.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 273. MOTLEY COUNTY

§ 273.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Motley County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 274. NACOGDOCHES COUNTY

§ 274.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Nacogdoches County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 275. NAVARRO COUNTY

§ 275.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Navarro County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 276. NEWTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
276.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

276.011. Hunting With Dogs.
276.012. Hunting Deer With Dogs.
276.013. Possession of Deer.

SUBCHAPTER C. FISH

276.021. Fish Sale.

SUBCHAPTER D. FUR-BEARING ANIMALS

276.031. Regulatory Act: Exclusion.
276.032. Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 276.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Newton County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 276.002 to 276.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 276.011. Hunting With Dogs

A person may use dogs to hunt game birds and game animals in Newton County only during the open season for the game bird or game animal.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 276.012. Hunting Deer With Dogs

(a) No person may knowingly allow a dog under his control to hunt wild deer in Newton County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200 and by confinement in the county jail for not less than 3 days nor more than 30 days.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 276.013. Possession of Deer

(a) No person may possess the freshly killed carcass of a wild deer in Newton County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200 and imprisonment in the county jail for not less than three days nor more than 30 days.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 276.014 to 276.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 276.021. Fish Sale

(a) No person may sell, offer for sale, or possess for sale any black bass, trout, white perch, or catfish of less than 18 inches in length taken from the water of the Sabine, Attoyoc, Angelina, and Neches rivers or any of their tributaries or lakes through which the flood streams of the rivers or their tributaries flow in Newton County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $500, or imprisonment in the county jail for not less than 10 days nor more than 30 days, or both. Each fish sold in violation of this section constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 276.022 to 276.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 276.031. Regulatory Act: Exclusion

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fox in Newton County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 276.032. Calling Devices

(a) No person may use a horn, recording, or other device to call or attract wild fox in Newton County unless he has obtained a permit from the department allowing him to use the device for scientific research or making wildlife movies.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 277. NOLAN COUNTY

§ 277.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Nolan County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 278. NUECES COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
278.001. Regulatory Act: Applicability.

SUBCHAPTER B. SHRIMP
278.011. Nets and Seines.

SUBCHAPTER C. FISH
278.021. Fish Sale: Nueces River.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 278.001. Regulatory Act: Applicability

(a) The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the coastal water of Nueces County with respect to fish, aquatic life, and marine animals, except shrimp and oysters.

(b) Except as provided in Subsection (a), the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to wildlife resources in Nueces County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 278.002 to 278.010 reserved for expansion]

SUBCHAPTER B. SHRIMP

§ 278.011. Nets and Seines

(a) No person may use for the purpose of catching shrimp a net or seine, except a cast net or minnow seine not more than 20 feet in length for catching bait only, in the water of the Gulf of Mexico within one mile of the Horace Caldwell pier located on Mustang Island and the Bob Hall pier located on Padre Island in Nueces County or within 1,000 feet of the shoreline of Padre Island in Nueces County.

(b) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than $25 nor more than $100, and on a second or subsequent conviction is punishable by a fine of not less than $100 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER C. FISH

§ 278.021. Fish Sale: Nueces River

(a) No person may take for sale any fish from the portion of the Nueces River in Nueces County west and north of the Calallen Dam or from a tributary of the Nueces River in Nueces County the confluence of which with the Nueces River is west and north of the Calallen Dam.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

[Added by Acts 1977, 65th Leg., p. 1401, ch. 565, § 2, eff. Aug. 29, 1977.]

CHAPTER 279. OCHILTREE COUNTY

§ 279.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Ochiltree County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 280. OLDHAM COUNTY

§ 280.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Oldham County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 281. ORANGE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
281.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

281.011. Hunting With Dogs.

SUBCHAPTER C. SHRIMP

281.021. Regulatory Act: Shrimp Excluded.
281.022. Shrimp Regulations.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 281.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Orange County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 281.002 to 281.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 281.011. Hunting With Dogs

(a) In Orange County a person may use dogs in hunting game animals (including deer) and game birds during the open season when the animal may be hunted.

(b) In Orange County no person may allow or permit a dog under his control to hunt or molest a wild deer except during the open deer season.

(c) No person in Orange County may possess the freshly killed carcass or a part of the carcass of a wild deer except during the open deer season.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 281.012 to 281.020 reserved for expansion]

SUBCHAPTER C. SHRIMP

§ 281.021. Regulatory Act: Shrimp Excluded

In Orange County shrimp are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 281.022. Shrimp Regulations

(a) The commission may regulate the taking of shrimp from the coastal water of Orange County to

provide for the most profitable and equitable harvest of shrimp from year to year and to conserve and protect the shrimp resources of Orange County from depletion and waste.

(b) The commission may make regulations to carry out the policy of this section including regulating:

(1) the size of shrimp that may be taken;

(2) open and closed shrimp seasons;

(3) the means of taking shrimp;

(4) the size and type of boats and equipment that may be used for taking shrimp;

(5) the length and mesh size of net and trawls and their spreading devices; and

(6) the possession, transportation, sale, and other handling of shrimp in the coastal water of Orange County.

(c) The commission by regulation adopted in accordance with this section may provide for the licensing of all persons taking, selling, or handling shrimp in Orange County and may license boats and equipment used for the taking, selling, or handling of shrimp in Orange County. The commission may adopt the licensing provisions of the Texas Shrimp Conservation Act (Chapter 77 of this code).

(d) The commission shall conduct continuous research, investigations, and studies of the shrimp resources in Orange County in the same manner as required by Sections 77.004, 77.005, and 77.006 of this code. Based on the information obtained, and after hearings, the commission shall promulgate the regulations authorized by this section. The hearings, the method of adoption of the regulations, the effective date of the regulations, and the procedure for appeal shall be governed by the provisions of Chapter 125, Acts of the 52nd Legislature, Regular Session, 1951, as amended.

(e) "Coastal water" is defined by Section 77.001(1) of this code.

(f) A person who violates a regulation of the commission adopted under this section shall be punished as provided in Section 77.020 of this code. The commission has all powers of enforcement granted to it under Chapter 77 of this code for the enforcement of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 282. PALO PINTO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
282.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

282.011. Possum Kingdom Lake: Fish Sale.
282.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 282.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Palo Pinto County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 282.002 to 282.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 282.011. Possum Kingdom Lake: Fish Sale

(a) No person may barter or sell, offer to barter or sell, or buy any fish taken from Possum Kingdom Lake or any of its backwater in Palo Pinto County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 282.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport and sale, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 283. PANOLA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
283.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

283.011. Hunting Deer With Dogs.

SUBCHAPTER C. MURVAUL LAKE

283.021. Camping.
283.022. Firearms.
283.023. Certain Water Sports on Lake Murvaul.
283.024. Penalty.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 283.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Panola County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 283.002 to 283.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 283.011. Hunting Deer With Dogs

Except as prohibited by the commission under the Uniform Wildlife Regulatory Act (Chapter 61 of this code), it is lawful to hunt or trail buck deer in Panola County with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 283.012 to 283.020 reserved for expansion]

SUBCHAPTER C. MURVAUL LAKE

§ 283.021. Camping

No person may camp on the shores of Murvaul Lake in Panola County on land owned by the Panola County Fresh Water Supply District Number 1 except at places designated as campsites by the Board of Supervisors of the Panola County Fresh Water Supply District Number 1.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 283.022. Firearms

(a) Except as provided by Subsection (b) of this section, no person may possess for shooting a rifle or pistol of any kind on or over the water of Murvaul Lake in Panola County.

(b) This section does not apply to a peace officer or game management officer of this state or to a regular employee of the Panola County Fresh Water Supply District Number 1.

(c) Possession of a rifle or pistol of any kind within 500 feet from the water of Murvaul Lake is prima facie evidence of a violation of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 283.023. Certain Water Sports on Lake Murvaul

No person may swim, bathe, wade, or water ski in or on Lake Murvaul except within areas designated by the Board of Supervisors of the Panola County Fresh Water Supply District No. 1 as areas for swimming, bathing, wading, or water skiing.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 283.024. Penalty

A person who violates a provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200 and costs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 284. PARKER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
284.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH
284.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 284.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Parker County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 284.002 to 284.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 284.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 285. PARMER COUNTY

§ 285.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Parmer County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 286. PECOS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
286.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH
286.011. Regulatory Act: Exception.
286.012. Fishing Methods.
286.013. Fish Sale.
286.014. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 286.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Pecos County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 286.002 to 286.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 286.011. Regulatory Act: Exception

In Pecos County fish are not "wildlife resources" as that term is used in the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 286.012. Fishing Methods

(a) No person may catch fish in the freshwater rivers, creeks, lakes, bayous, pools, or lagoons of Pecos County by any means other than ordinary hook and line, trotline, or artificial bait.

(b) Except as provided in Subsection (c) of this section, no person may place in the water described in this section any seine, net or other device, or trap for taking or catching fish.

(c) A person may use a minnow seine not more than 20 feet long for the purpose of catching minnows for bait.

(d) In seining for bait as permitted in Subsection (c) of this section, all minnows more than three inches long shall be returned to the water at once while alive.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 286.013. Fish Sale

(a) No person may sell or offer to sell any bass, white perch, crappie, or catfish caught in the streams of Pecos County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 286.014. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Pecos County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 287. POLK COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
287.001. Regulatory Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

287.011. Hunting With Dogs.

SUBCHAPTER C. GAME ANIMALS

287.021. Hunting Deer With Dogs.
287.022. Possession of Deer.

SUBCHAPTER D. FISH

287.031. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 287.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Polk County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 287.002 to 287.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 287.011. Hunting With Dogs

A person may use dogs to hunt game birds or game animals in Polk County only during the open season for the game bird or game animal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 287.012 to 287.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 287.021. Hunting Deer With Dogs

(a) No person may knowingly allow or permit a dog under his control to hunt any wild deer in Polk County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 287.022. Possession of Deer

(a) No person may possess the freshly killed carcass of a wild deer, or part of one, in Polk County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 287.023 to 287.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 287.031. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport and sale, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 288. POTTER COUNTY

§ 288.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Potter County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 289. PRESIDIO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
289.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

289.011. Regulatory Act: Exception.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 289.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Presidio County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 289.002 to 289.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 289.011. Regulatory Act: Exception

In Presidio County fish are not "wildlife resources" as that term is used in the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 290. RAINS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
290.001. Regulatory Act: Applicability.
290.002. Regulatory Act: Lake Tawakoni.

SUBCHAPTER B. BIRDS

290.011. Quail.

SUBCHAPTER C. FISH

290.021. Lake Tawakoni: Fish Sale.
290.022. Leaving Fish to Die.

SUBCHAPTER D. FUR-BEARING ANIMALS

290.031. Hunting Mink With Dogs.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 290.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Rains County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 290.002. Regulatory Act: Lake Tawakoni

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in the water area of Lake Tawakoni in Rains County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 290.003 to 290.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 290.011. Quail

(a) No person may hunt wild quail in Rains County except during the open season beginning on December 1 of one year and extending through January 31 of the following year. During the open season no person may hunt wild quail in Rains County on Sundays.

(b) No person may kill more than 12 quail in one day or more than 36 quail during any seven-day period. No person may possess more than 36 quail at one time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. Each quail killed or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 2084, ch. 815, § 1, eff. June 13, 1979.]

Section 2 of the 1979 amendatory act provided:

"(a) No person may hunt black bear, deer, javelina, chachalaca, or turkey in Rains County during the period from September 1, 1979, to August 31, 1981, both dates inclusive.

"(b) This section expires August 31, 1981."

[Sections 290.012 to 290.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 290.021. Lake Tawakoni: Fish Sale

(a) No person may sell any fish, except bait fish, taken from that part of the water area of Lake Tawakoni located in Rains County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 217, ch. 105, § 25, eff. Sept. 1, 1977.]

§ 290.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Rains County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 290.023 to 290.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 290.031. Hunting Mink With Dogs

A person may hunt wild mink in Rains County with dogs. A person may have in his possession a mink pelt while hunting with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 291. RANDALL COUNTY

§ 291.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Randall County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 292. REAGAN COUNTY

§ 292.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Reagan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 293. REAL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
293.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

293.011. Fish Sale.
293.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 293.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Real County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 293.002 to 293.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 293.011. Fish Sale

(a) No person may offer, possess, or take for sale any catfish, perch, crappie, bream, or bass in Real County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 293.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any

of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Real County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 294. RED RIVER COUNTY

§ 294.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Red River County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 295. REEVES COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
295.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

295.011. Regulatory Act: Exception.
295.012. Fishing Methods.
295.013. Fish Sale.
295.014. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 295.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Reeves County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 295.002 to 295.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 295.011. Regulatory Act: Exception

In Reeves County, fish are not "wildlife resources" as that term is used in the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 295.012. Fishing Methods

(a) No person may catch fish in the freshwater rivers, creeks, lakes, bayous, pools, or lagoons of Reeves County by any means other than ordinary hook and line, trotline, or artificial bait.

(b) Except as provided in Subsection (c) of this section, no person may place in the water described in this section any seine, net or other device, or trap for catching fish.

(c) A person may use a minnow seine not more than 20 feet long for the purpose of catching minnows for bait.

(d) In seining for bait as permitted in Subsection (c) of this section, all minnows more than three inches long shall be returned to the water at once while alive.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 295.013. Fish Sale

(a) No person may sell or offer to sell any bass, white perch, crappie, or catfish caught in the streams of Reeves County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 295.014. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Reeves County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 296. REFUGIO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
296.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

296.011. Quail.

SUBCHAPTER C. FISH

296.021. Fishing Methods: Guadalupe River.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 296.001. Regulatory Act: Applicability

Except as provided by this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to deer, fur-bearing animals, and all aquatic life except shrimp and oysters in Refugio County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1012, ch. 447, § 1, eff. June 6, 1979.]

[Sections 296.002 to 296.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 296.011. Quail

The open season for wild quail in Refugio County when it is lawful to hunt wild quail begins on November 15 in one year and extends through February 15 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

Acts 1979, 66th Leg., p. 1012, ch. 447, §§ 1, 2, amended §§ 61.202 and 296.001. Section 3 of said Act provided:

"Sections 296.011 and 296.021 Parks and Wildlife Code, are not repealed by this Act or by Section 61.004, Parks and Wildlife Code."

[Sections 296.012 to 296.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 296.021. Fishing Methods: Guadalupe River

(a) No person may catch fish in the Guadalupe River in Refugio County except by:

(1) hook and line;

(2) trotline;

(3) flounder gig and light; and

(4) a cast net or minnow seine not exceeding 20 feet in length and used for catching bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

See note following § 296.011.

CHAPTER 297. ROBERTS COUNTY

§ 297.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Roberts County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 298. ROBERTSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
298.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

298.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 298.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Robertson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 298.002 to 298.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 298.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow sale, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 299. ROCKWALL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
299.001. Regulatory Act: Applicability.
299.002. Repealed.

SUBCHAPTER B. FISH

299.011. Repealed.
299.012 to 299.021. [Blank].
299.022. Fish Sale.
299.023. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 299.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Rockwall County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 181, ch. 88, § 1, eff. April 29, 1977.]

§ 299.002. Repealed by Acts 1977, 65th Leg., p. 181, ch. 88, § 2, eff. April 29, 1977

The repealed section, relating to Lake Ray Hubbard, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

[Sections 299.003 to 299.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 299.011. Repealed by Acts 1977, 65th Leg., p. 181, ch. 88, § 3

This section was repealed effective as provided in § 61.004.

The repealed section, relating to fishing methods, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

§§ 299.012 to 299.021. [Blank]

§ 299.022. Fish Sale

(a) No person may take for sale or possess for sale any fish, except bait fish, from the fresh water of Rockwall County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $200. Each fish taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 217, ch. 105, § 26, eff. Sept. 1, 1977.]

§ 299.023. Repealed by Acts 1977, 65th Leg., p. 181, ch. 88, § 3; Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repeal of this section by ch. 88 is effective as provided in § 61.004.

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 300. RUNNELS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

300.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

300.011. Fish Sale.
300.012. Leaving Fish to Die.
300.013. Repealed.
300.014. New Lake Winters; Fish Sale.
300.015. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 300.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Runnels County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 300.002 to 300.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 300.011. Fish Sale

(a) No person may sell or offer to sell any bass, white perch, crappie, or catfish caught in the streams of Runnels County.

(b) This section does not apply to New Lake Winters in Runnels County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 300.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Runnels County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 300.013. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 300.014. New Lake Winters; Fish Sale

(a) No person may buy, sell, offer to buy or sell, or take or possess for commercial purposes, except bait fish, fish from the water of New Lake Winters in Runnels County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each fish taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 217, ch. 105, § 27, eff. Sept. 1, 1977.]

§ 300.015. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to possession of minnows taken from New Lake Winters, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 301. RUSK COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
301.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

301.011. Fish Sale.
301.012. Prohibited Methods of Fishing.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 301.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Rusk County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 301.002 to 301.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 301.011. Fish Sale

(a) No person may sell, offer for sale, or possess for sale any fish, except bait fish, caught from the public fresh water of Rusk County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 217, ch. 105, § 28, eff. Sept. 1, 1977.]

§ 301.012. Prohibited Methods of Fishing

(a) This section applies only to the Angelina River and Mud Creek in Rusk County.

(b) No person may place any lime, poison, drug, dynamite, nitroglycerin, giant powder, or other explosive or substance harmful to fish in the water of the Angelina River or Mud Creek to catch or attempt to catch fish.

(c) No person may catch fish by the aid of "telephoning" or by using any other electricity-producing apparatus designed to shock fish.

(d) Possession of equipment described in Subsection (c) of this section in a boat or along the bank or shore of the Angelina River or Mud Creek in Rusk County is prima facie evidence of a violation of this section.

(e) A person who violates this section is guilty of a misdemeanor and on first conviction is punishable by a fine of not less than $300 nor more than $750. A second conviction of a violation of this section is punishable by a fine of not less than $500 nor more than $1,000 and by confinement in the county jail for not less than 30 days nor more than six months. A third or subsequent conviction of a violation of this section is punishable by a fine of not less than $1,000 nor more than $2,000 and by confinement in the county jail for not less than six months nor more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 302. SABINE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
302.001. Regulatory Act: Applicability.
302.002. Regulatory Act: Certain Tract.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

302.011. Open Season for Game Birds and Game Animals.

SUBCHAPTER C. GAME ANIMALS

302.021. Hunting Deer With Dogs.
302.022. Squirrel Limit.

SUBCHAPTER D. BIRDS

302.031. Turkey.

SUBCHAPTER E. FISH

302.041. Regulatory Act: Applicability.
302.042. [Blank].
302.043. Fish Sale.
302.044. Sabine River: Fish Sale.

SUBCHAPTER F. FUR-BEARING ANIMALS

302.051. Methods of Taking Opossum, Bobcats, and Catamounts.
302.052. Attracting Foxes With Calling Devices.
302.053. Fox.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 302.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Sabine County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 302.002. Regulatory Act: Certain Tract

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to all wildlife resources in that

portion of the following described land which is located in Sabine County:

A tract of land containing approximately 10,500 acres partly in Sabine County and partly in San Augustine County described as follows:

BEGINNING at the intersection of the north line of Farm to Market Highway 83 and the east line of Farm to Market Highway 1751;

THENCE in a northerly direction with the east line of Farm to Market Highway 1751, 34,300 feet to its point of intersection with the south line of the Armstead Chumney League;

THENCE easterly with the south line of the Armstead Chumney League 6,700 feet to the southeast corner of the Armstead Chumney League;

THENCE northerly with the east line of the Armstead Chumney League 1800 feet to the southwest corner of the Ben Clark Survey;

THENCE easterly with the south line of the Ben Clark Survey and easterly with the north line of the Nicholas Coleman Survey, 3,000 feet to the Nicholas Coleman Survey's northeast corner;

THENCE southerly with the east line of the Nicholas Coleman Survey and the west line of the Hulda Hollien Survey, 1,800 feet to the northwest corner of the Southern Pine Lumber Company tract in the Hulda Hollien Survey;

THENCE easterly with the north line of the Southern Pine Lumber Company tract, 7,500 feet to the east line of the Hulda Hollien Survey;

THENCE southerly with the east line of the Hulda Hollien Survey, 1,600 feet to the westerly northeast corner of the J. C. Dickerson Survey;

THENCE westerly with the north line of the J. C. Dickerson Survey, 2,100 feet to its northwest corner;

THENCE southerly with the west line of the J. C. Dickerson Survey, 2,000 feet to its southwest corner;

THENCE easterly with the south line of the J. C. Dickerson Survey, 2,500 feet to the west line of the county road;

THENCE southerly with the west line of the County Road 28,100 feet to the north line of Farm to Market Highway 83;

THENCE westerly with the north line of Farm to Market Highway 83, 15,000 feet to the place of beginning.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 302.003 to 302.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 302.011. Open Season for Game Birds and Game Animals

(a) No person may hunt or possess a game bird or game animal in Sabine County except during the open season, which is the same as the open season provided from time to time for game birds and game animals in Jasper, Newton, and Tyler counties under the Uniform Wildlife Regulatory Act.

(b) This section does not apply to wild turkeys in Sabine County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 302.012 to 302.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 302.021. Hunting Deer With Dogs

A person may hunt and trail wild buck deer in Sabine County with dogs during the open season for hunting deer in Sabine County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 302.022. Squirrel Limit

(a) During the open season for taking squirrel in Sabine County, no person may take, kill, or possess more than five squirrels in one day.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 302.023 to 302.030 reserved for expansion]

SUBCHAPTER D. BIRDS

§ 302.031. Turkey

(a) No person may take or kill or attempt to take or kill any wild turkey in Sabine County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $300.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 302.032 to 302.040 reserved for expansion]

SUBCHAPTER E. FISH

§ 302.041. Regulatory Act: Applicability

(a) The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in all of the water area of the Sam Rayburn Reservoir located in Sabine County and in all of the water area of Toledo Bend Reservoir located in Sabine County.

(b) In that part of the Sam Rayburn Reservoir located in Sabine County, only freshwater fish are included in the term "wildlife resources."

(c) In that part of Toledo Bend Reservoir located in Sabine County only fish are included in the term "wildlife resources."

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 302.042. [Blank]

§ 302.043. Fish Sale

(a) No person may offer or possess for sale or sell any fish, except bait fish, caught or taken from the public fresh water of Sabine County.

(b) This section does not apply to that part of the Sabine River (Toledo Bend Reservoir) in Sabine County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 217, ch. 105, § 29, eff. Sept. 1, 1977.]

§ 302.044. Sabine River: Fish Sale

(a) A person may sell fish, except bass and crappie, taken from that part of the Sabine River located in Sabine County.

(b) This section does not exempt a person from other laws regulating catching fish for commercial purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 302.045 to 302.050 reserved for expansion]

SUBCHAPTER F. FUR-BEARING ANIMALS

§ 302.051. Methods of Taking Opossum, Bobcats, and Catamounts

A person may take opossum, bobcats, and catamounts in Sabine County with a steel trap or any other type of trap or snare.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 302.052. Attracting Foxes With Calling Devices

(a) No person may use any horn, recording, or other device to call or attract a wild fox in Sabine County, except that a person may use the devices for scientific research or in making wildlife movies after obtaining a permit from the department to use them.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 302.053. Fox

(a) No person may trap fox in Sabine County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Added by Acts 1979, 66th Leg., p. 2122, ch. 822, § 1, eff. Aug. 27, 1979.]

CHAPTER 303. SAN AUGUSTINE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
303.001. Regulatory Act: Applicability.
303.002. Repealed.

SUBCHAPTER B. GAME ANIMALS [REPEALED]

303.011 to 303.013. Repealed.

SUBCHAPTER C. BIRDS [REPEALED]

303.021 to 303.022. Repealed.

SUBCHAPTER D. FISH [REPEALED]

303.031. Repealed.

SUBCHAPTER E. FUR-BEARING ANIMALS [REPEALED]

303.041 to 303.042. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 303.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in San Augustine County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 564, ch. 199, § 1, eff. Aug. 29, 1977.]

§ 303.002. Repealed by Acts 1977, 65th Leg., p. 564, ch. 199, § 2, eff. Aug. 29, 1977

The repealed section, relating to applicability of the Regulatory Act to a certain tract, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

[Sections 303.003 to 303.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS [REPEALED]

§§ 303.011 to 303.013. Repealed by Acts 1977, 65th Leg., p. 564, ch. 199, § 3, eff. Aug. 29, 1977

The repealed sections, relating to a deer season, a squirrel season, and a squirrel limit, respectively, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

SUBCHAPTER C. BIRDS [REPEALED]

§§ 303.021, 303.022. Repealed by Acts 1977, 65th Leg., p. 564, ch. 199, § 3, eff. Aug. 29, 1977

The repealed sections, relating to turkey and quail, respectively, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

SUBCHAPTER D. FISH [REPEALED]

§ 303.031. Repealed by Acts 1977, 65th Leg., p. 564, ch. 199, § 2, eff. Aug. 29, 1977

The repealed section, relating to applicability of the Regulatory Act to water area of the Sam Rayburn Reservoir, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

SUBCHAPTER E. FUR-BEARING ANIMALS [REPEALED]

§§ 303.041, 303.042. Repealed by Acts 1977, 65th Leg., p. 564, ch. 199, § 3, eff. Aug. 29, 1977

The repealed sections, relating to methods of taking opossum, bobcats, and catamounts, and attracting foxes with calling devices, respectively, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

CHAPTER 304. SAN JACINTO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

304.001. Regulatory Act: Applicability.
304.002. Regulatory Act: Lake Livingston.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

304.011. Hunting With Dogs.

SUBCHAPTER C. GAME ANIMALS

304.021. Hunting Deer With Dogs.
304.022. Possession of Deer.
304.023. Squirrels.

SUBCHAPTER D. BIRDS

304.031. Turkey.

SUBCHAPTER E. FUR-BEARING ANIMALS

304.041. Fox.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 304.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in San Jacinto County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 304.002. Regulatory Act: Lake Livingston

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to all of the public water area in San Jacinto County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1754, ch. 702, § 1, eff. Aug. 29, 1977.]

[Sections 304.003 to 304.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 304.011. Hunting With Dogs

A person may use dogs to hunt game birds and game animals in San Jacinto County during the open season for the game bird or game animal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 304.012 to 304.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 304.021. Hunting Deer With Dogs

(a) No person may allow or permit a dog under his control to hunt wild deer in San Jacinto County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 304.022. Possession of Deer

(a) No person may possess the freshly killed carcass of a wild deer, or part of one, in San Jacinto County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 304.023. Squirrels

(a) No person may hunt squirrel in San Jacinto County except during the open season beginning on October 15 and extending through January 15.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50. Each squirrel hunted in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 304.024 to 304.030 reserved for expansion]

SUBCHAPTER D. BIRDS

§ 304.031. Turkey

(a) No person may hunt wild turkey in San Jacinto County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 304.032 to 304.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 304.041. Fox

(a) A person may hunt or trap wild fox at any time in San Jacinto County.

(b) The commissioners court in San Jacinto County may fix and pay, out of the general fund of the county, bounties on the destruction of wild fox in the county.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 305. SAN PATRICIO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
305.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

305.011. Regulatory Act: Quail Exempted.
305.012. Quail Season.

SUBCHAPTER C. FISH

305.021. Fish Sale: Lake Corpus Christi and Nueces River.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 305.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in San Patricio County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 305.002 to 305.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 305.011. Regulatory Act: Quail Exempted

In San Patricio County quail are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 305.012. Quail Season

The open season when it is lawful to hunt wild quail of all varieties in San Patricio County begins on December 1 of one year and extends through January 31 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER C. FISH

§ 305.021. Fish Sale: Lake Corpus Christi and Nueces River

(a) No person may take for sale any fish from Lake Corpus Christi in San Patricio County.

(b) No person may take for sale any fish from the portion of the Nueces River in San Patricio County west and north of the Calallen Dam or from a tributary of the Nueces River in San Patricio County the confluence of which with the Nueces River is west and north of the Calallen Dam.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

[Added by Acts 1977, 65th Leg., p. 1401, ch. 565, § 3, eff. Aug. 29, 1977.]

CHAPTER 306. SAN SABA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
306.001. Regulatory Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

306.011. Definitions.
306.012. Open Archery Season.
306.013. Prohibited Archery Equipment.
306.014. Deer Permits.
306.015. Limit and Possession of Deer.
306.016. Penalty.
306.017. Possession of Firearms.

SUBCHAPTER C. FISH

306.021. Fish Sale.
306.022. Leaving Fish to Die.
306.023, 306.024. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 306.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in San Saba County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 306.002 to 306.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 306.011. Definitions

In this subchapter:

(1) "Buck deer" means a deer that has a hardened antler protruding through the skin.

(2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 306.012. Open Archery Season

(a) The open archery season in San Saba County begins on October 1 and extends through October 31 each year.

(b) During the open archery season a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 306.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) in San Saba County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 306.014. Deer Permits

(a) At least 15 days prior to the opening of the archery season, a landowner or lessee in San Saba County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from the used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 306.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrows during the open archery season in San Saba County.

(b) No person may possess an antlerless deer in San Saba County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in San Saba County if it does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) No person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer in San Saba County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 306.016. Penalty

A person who violates Section 306.012 through Section 306.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 306.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp in San Saba County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 306.018 to 306.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 306.021. Fish Sale

(a) No person may buy, barter, or sell or offer to barter or sell any bass, crappie, perch, catfish, or any other fish, except bait fish, taken from the fresh water in San Saba County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 217, ch. 105, § 30, eff. Sept. 1, 1977.]

§ 306.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in San Saba County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§§ 306.023, 306.024. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed sections, relating to minnow sale and minnow transport, respectively, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.
Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 307. SCHLEICHER COUNTY

§ 307.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Schleicher County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 308. SCURRY COUNTY

§ 308.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Scurry County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 309. SHACKELFORD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
309.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

309.011. Fish Sale.
309.012. Hubbard Creek Lake: Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 309.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Shackelford County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 309.002 to 309.010 reserved for expansion]

SUBCHAPTER B. FISH.

§ 309.011. Fish Sale

(a) No person may take for commercial purposes any fish, except bait fish, from the public water of Shackelford County.

(b) This section does not apply to that portion of Hubbard Creek Lake located in Shackelford County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $250. Each day in which a person takes fish for commercial purposes from the public water of Shackelford County is a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 217, ch. 105, § 31, eff. Sept. 1, 1977.]

§ 309.012. Hubbard Creek Lake: Fish Sale

(a) Except as provided in Subsection (b) of this section, no person may catch for barter or sale, possess or transport for barter or sale, offer to barter or sell, or barter or sell any fish, except bait fish, taken from that part of Hubbard Creek Lake located in Shackelford County.

(b) A person may catch, possess, transport, barter, or sell fish from Hubbard Creek Lake under a contract with the department for removal of rough fish as provided in Section 66.113 of this code.

(c) Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(b), eff. Sept. 1, 1977.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each fish possessed or sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 217, ch. 105, §§ 32, 42(b), eff. Sept. 1, 1977.]

CHAPTER 310. SHELBY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
310.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

310.011. Deer.
310.012. Hunting Deer With Dogs.
310.013. Squirrel.

SUBCHAPTER C. BIRDS

310.021. Turkeys.
310.0211. Turkey.
310.022. Quail.

SUBCHAPTER D. FUR-BEARING ANIMALS

310.031. Methods of Taking Fur-Bearing Animals.
310.032. Fox.
310.033. Attracting Foxes With Calling Devices.

SUBCHAPTER E. FISH

310.041. Regulatory Act: Applicability.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 310.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Shelby County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 310.002 to 310.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 310.011. Deer

(a) Except as provided in Subsection (b) of this section, no person may take or kill any deer in Shelby County at any time.

(b) A person may take or kill buck deer in that portion of Shelby County lying east of U.S. Highway 96, leading from Carthage in Panola County, through Tenaha and Center in Shelby County, to San Augustine in San Augustine County, during the open seasons beginning on November 15 and extending through November 30, and beginning on December 26 and extending through December 31.

(c) For the purpose of this section, a "buck deer" is a deer with a hardened antler protruding through the skin.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $500, or by confinement in the county jail for not less than 10 days nor more than six months, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 310.012. Hunting Deer With Dogs

(a) No person may use a dog to hunt any deer in that portion of Shelby County south and west of U.S. Highways 59 and 96, leading from Carthage in Panola County, through Tenaha and Center in Shelby County, to San Augustine in San Augustine County.

(b) A person owning or controlling a dog who permits the dog to run, trail, or pursue a deer is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 310.013. Squirrel

(a) No person may hunt squirrel in Shelby County except during the open season beginning on October 1 and extending through December 31.

(b) During the open season in Shelby County no person may take in one day or have in his possession at one time more than 10 squirrels.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50. Each squirrel taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 310.014 to 310.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 310.021. Turkeys

(a) No person may hunt wild turkey in Shelby County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

Suspended

This section is suspended until September 1, 1982, under the provisions of § 310.0211(a) as added by Acts 1977, 65th Leg., p. 37, ch. 20, § 1.

§ 310.0211. Turkey

Text of section effective until September 1, 1982

(a) Section 310.021 of this code is suspended during the effective period of this section.

(b) No person may hunt turkey in Shelby County at any time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

(d) This section expires on September 1, 1982.
[Added by Acts 1977, 65th Leg., p. 37, ch. 20, § 1, eff. Aug. 29, 1977.]

§ 310.022. Quail

(a) No person may take or kill quail in Shelby County except during the open season beginning on December 1 of one year and extending through January 31 of the next year.

(b) No person may kill more than 12 quail in one day, take more than 36 quail in one week, or possess more than 36 quail at one time during the open season in Shelby County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50. Each bird taken or possessed in violation of this section constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 310.023 to 310.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 310.031. Methods of Taking Fur-Bearing Animals

(a) No person may trap any fur-bearing animal, or set any trap or deadfall for any fur-bearing animal in Shelby County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 310.032. Fox

(a) Except as provided in Subsections (b) and (c) of this section, no person may hunt wild fox in Shelby County.

(b) A person may kill wild fox caught destroying domestic fowl or other domestic stock.

(c) When the state health officer finds and declares that the health of the people of Shelby County is menaced by rabies caused by rabid foxes, a person may kill or destroy wild foxes until the state health officer declares that the danger from rabid foxes has passed.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 310.033. Attracting Foxes With Calling Devices

(a) No person may use any horn, recording, or other device to call or attract a wild fox in Shelby County, except that a person may use the devices for scientific research or in making wildlife movies after obtaining a permit to use them from the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 310.034 to 310.040 reserved for expansion]

SUBCHAPTER E. FISH

§ 310.041. Regulatory Act: Applicability

The provisions of the Uniform Wildlife Regulatory Act (Chapter 61 of this code) apply to fish in all of the water area of Toledo Bend Reservoir located in Shelby County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 311. SHERMAN COUNTY

§ 311.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Sherman County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 312. SMITH COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
312.001. Regulatory Act: Applicability.
312.002. Regulatory Act: Aquatic Life.

SUBCHAPTER B. GAME ANIMALS

312.011. Regulatory Authority: Deer.
312.012. Prohibited Weapons.
312.013. Squirrel.

SUBCHAPTER C. BIRDS

312.021. Regulatory Authority: Quail.
312.022. Daily Hunting Permitted.
312.023. Turkey.
312.024. Pheasant.

SUBCHAPTER D. FISH

312.031. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 312.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.002. Regulatory Act: Aquatic Life

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to all aquatic life in Smith County.

[Added by Acts 1979, 66th Leg., p. 908, ch. 416, § 3, eff. Aug. 27, 1979.]

[Sections 312.003 to 312.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 312.011. Regulatory Authority: Deer

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to deer in Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.012. Prohibited Weapons

(a) In Smith County, no person may hunt using a shotgun shell containing larger than Number 4 shot, except during the open season for deer.

(b) In Smith County, no person may hunt with a high-powered rifle in an area where deer are known to roam, except during the open deer season.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each violation constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.013. Squirrel

(a) No person may hunt squirrel in Smith County except during the open season beginning on October 1 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each violation constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 312.014 to 312.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 312.021. Regulatory Authority: Quail

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to quail in Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.022. Daily Hunting Permitted

A person in Smith County may hunt game birds each day of the week during the open seasons. This section does not apply to quail.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.023. Turkey

(a) No person may hunt turkey in Smith County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.024. Pheasant

There is no closed season for the hunting of pheasant of all varieties in Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 312.025 to 312.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 312.031. Fish Sale

(a) Except as provided in Subsection (b) of this section, no person may sell, offer for sale, or possess

for the purpose of sale fish, except bait fish, caught from the public fresh water of Smith County.

(b) A person having a commercial fishing license may sell rough fish (drum, shad, carp, suckers, gar, and buffalo fish) caught from the Sabine River in Smith County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 217, ch. 105, § 33, eff. Sept. 1, 1977.]

CHAPTER 313. SOMERVELL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
313.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

313.011. Repealed.
313.012. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 313.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Somervell County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 313.002 to 313.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 313.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow sale, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 313.012. Fish Sale

(a) Except as authorized by the department, no person may sell, possess for sale, offer for sale, or expose for sale fish caught from the Brazos River or its tributaries or from Lake Whitney or its source streams in Somervell County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. Each fish possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 218, ch. 105, § 34, eff. Sept. 1, 1977.]

CHAPTER 314. STARR COUNTY

§ 314.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Starr County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 315. STEPHENS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
315.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

315.011. Repealed.
315.012. Fish Sale: Possum Kingdom Lake.
315.013. Fish Sale: Hubbard Creek Lake.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 315.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Stephens County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 315.002 to 315.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 315.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow sale, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 315.012. Fish Sale: Possum Kingdom Lake

(a) No person may barter, sell, or buy or offer to barter or sell fish, except bait fish, caught from Possum Kingdom Lake or its backwater located in Stephens County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 218, ch. 105, § 35, eff. Sept. 1, 1977.]

§ 315.013. Fish Sale: Hubbard Creek Lake

(a) No person may catch, possess, or transport for the purpose of sale or sell or barter or offer to sell or barter fish, except bait fish, from Hubbard Creek Lake in Stephens County.

(b) This section does not apply to a person operating under contract with the department authorized by Section 66.113 of this code.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each fish possessed or sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 218, ch. 105, § 36, eff. Sept. 1, 1977.]

CHAPTER 316. STERLING COUNTY

§ 316.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Sterling County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 317. STONEWALL COUNTY

§ 317.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Stonewall County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 318. SUTTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
318.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

318.011. Fish Sale.
318.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 318.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Sutton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 318.002 to 318.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 318.011. Fish Sale

(a) No person may catch or possess for the purpose of sale or offer for sale catfish, perch, crappie, bream, or bass in Sutton County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 318.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Sutton County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 319. SWISHER COUNTY

§ 319.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Swisher County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 320. TARRANT COUNTY

§ 320.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Tarrant County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 321. TAYLOR COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
321.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

321.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 321.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Taylor County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 321.002 to 321.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 321.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows caught from Fort Phantom Hill Lake, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 322. TERRELL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
322.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

322.011. Regulatory Act: Exception.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 322.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Terrell County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 322.002 to 322.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 322.011. Regulatory Act: Exception

In Terrell County fish are not "wildlife resources" as that term is used in the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 323. TERRY COUNTY

§ 323.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Terry County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 324. THROCKMORTON COUNTY

§ 324.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Throckmorton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 325. TITUS COUNTY

§ 325.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Titus County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 326. TOM GREEN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
326.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

326.011. Repealed.
326.012. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 326.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Tom Green County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 326.002 to 326.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 326.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 326.012. Fish Sale

(a) No person may purchase or sell or attempt to purchase or sell freshwater fish caught from the water of Tom Green County except bait fish, buffalo fish, carp, suckers, and garfish.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 218, ch. 105, § 37, eff. Sept. 1, 1977.]

CHAPTER 327. TRAVIS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
327.001. Wildlife Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

327.011. Definitions.
327.012. Open Archery Season.
327.013. Prohibited Archery Equipment.
327.014. Deer Permits.
327.015. Limit and Possession of Deer.
327.016. Penalty.
327.017. Possession of Firearms.

SUBCHAPTER C. BIRDS

327.021. Release of Pheasants.

SUBCHAPTER D. FISH

327.031. Repealed.
327.032. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 327.001. Wildlife Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Travis County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 327.002 to 327.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 327.011. Definitions

In this subchapter:

(1) "Buck deer" means a deer that has a hardened antler protruding through the skin.

(2) "Antlerless deer" means a deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 327.012. Open Archery Season

(a) The open archery season in Travis County begins on October 1 and extends through October 31 each year.

(b) During the open archery season, a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 327.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in Travis County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 327.014. Deer Permits

(a) At least 15 days before the opening date of the open archery season, a landowner or lessee in Travis County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate that taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs to the issuing officer not later than January 10 of the year following the date of issuance.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 327.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season.

(b) No person may possess an antlerless deer in Travis County unless he has in possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of a deer in Travis County that does not have attached to it a tag issued to the person on his valid hunting license unless the carcass has been finally processed.

(d) No person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 327.016. Penalty

A person who violates Section 327.012 through Section 327.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 327.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Travis County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 327.018 to 327.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 327.021. Release of Pheasants

(a) A person may purchase wild pheasants legally propagated by a person holding a license under Chapter 45 of this code and may release the pheasants in Travis County for hunting or shooting purposes.

(b) The holder of a license issued under Chapter 45 of this code may release pheasants for hunting or shooting purposes in Travis County.

(c) At least 30 percent of the birds released on any premises for shooting purposes shall be released within five days before the opening of the controlled season, and the remainder of the birds may be released at any time during the controlled season.

(d) Birds released under this section must be in good health, be full-winged, and in condition to go wild.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 327.022 to 327.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 327.031. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 327.032. Fish Sale

(a) Except as provided in Subsection (b) of this section, no person may catch or possess for the purpose of sale or offer for sale fish, except bait fish, from the water of Travis County.

(b) This section does not apply to rough fish, including shad, carp, suckers, gar, buffalo fish, mullet, and needlefish, from the water of Travis County, but not including the water of the Colorado River Lakes.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50. Each fish caught or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 218, ch. 105, § 38, eff. Sept. 1, 1977.]

CHAPTER 328. TRINITY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

328.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

328.011. Deer Season; Spike Deer.

SUBCHAPTER C. FISH

328.021. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 328.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Trinity County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 328.002 to 328.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 328.011. Deer Season; Spike Deer

(a) No person may hunt deer in Trinity County except during the open season beginning on November 16 and extending through December 31 of each

year and during an archery season provided for by the commission beginning on October 1 and extending through October 31 of each year.

(b) No person may take or kill a spike deer in Trinity County at any time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each animal taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 574, ch. 207, § 1, eff. Aug. 29, 1977.]

[Sections 328.012 to 328.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 328.021. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 329. TYLER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
329.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

329.011. Hunting With Dogs.

SUBCHAPTER C. FUR-BEARING ANIMALS

329.021. Regulatory Act: Fox Excluded.
329.022. Fox: Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 329.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Tyler County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 329.002 to 329.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 329.011. Hunting With Dogs

(a) In Tyler County a person may use dogs in hunting game birds and game animals only during the open season for the game bird or game animal.

(b) In Tyler County no person may knowingly allow a dog under his control to hunt a wild deer except during the open deer season.

(c) Except during the open deer season, no person in Tyler County may possess the carcass or a part of the carcass of a wild deer freshly killed.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 329.012 to 329.020 reserved for expansion]

SUBCHAPTER C. FUR-BEARING ANIMALS

§ 329.021. Regulatory Act: Fox Excluded

In Tyler County fox are not included as wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 329.022. Fox: Calling Devices

(a) No person may use a horn, recording, or other device to call or attract wild fox in Tyler County except that, with a permit obtained from the department a device may be used for scientific research or the making of wildlife movies.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 330. UPSHUR COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
330.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

330.011. Hunting Weapons.

SUBCHAPTER C. GAME ANIMALS

330.021. Deer.
330.022. Squirrels.

SUBCHAPTER D. BIRDS

330.031. Quail.
330.032. Turkey.

SUBCHAPTER E. FISH

Section
330.041. Suckerfish.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 330.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources of Upshur County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 330.002 to 330.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 330.011. Hunting Weapons

(a) No person may hunt with a rifle larger than .22 caliber or with a shotgun loaded with buckshot or a slug in an area of Upshur County where deer are known to range, except during the open deer season.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $20 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 330.012 to 330.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 330.021. Deer

(a) No person may hunt or possess deer in Upshur County except during a 30-day open season beginning on the Saturday nearest November 15.

(b) No person in Upshur County may hunt a deer other than a buck deer.

(c) No person may kill or take more than one buck deer during the open season in Upshur County.

(d) A "buck deer" means a deer having a hardened antler protruding through the skin.

(e) A person who violates a provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. Each deer taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1763, ch. 711, § 1, eff. Aug. 29, 1977.]

§ 330.022. Squirrels

(a) No person may hunt wild red or fox squirrel or wild gray squirrel in Upshur County except during the open season beginning on October 1 and extending through December 31.

(b) No person may take or kill more than 10 squirrels in a day or more than 20 squirrels during the open season.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1763, ch. 711, § 2, eff. Aug. 29, 1977.]

[Sections 330.023 to 330.030 reserved for expansion]

SUBCHAPTER D. BIRDS

§ 330.031. Quail

(a) No person may hunt wild quail in Upshur County except during the open season beginning on December 1 of one year and extending through January 15 of the following year.

(b) Persons may hunt wild quail on every day of the week.

(c) No person may kill more than 12 quail in one day or more than 36 quail during any period of seven days. No person may possess at one time more than 36 quail.

(d) No person may hunt quail on the land of another without the oral consent of the owner or other person in charge of the land given in the presence of two witnesses or the written consent of the owner or other person in charge of the land.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. Each quail killed or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1763, ch. 711, § 3, eff. Aug. 29, 1977.]

§ 330.032. Turkey

(a) No person may hunt wild turkey in Upshur County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $300.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 330.033 to 330.040 reserved for expansion]

SUBCHAPTER E. FISH

§ 330.041. Suckerfish

A person may catch suckerfish in Gin and Glade creeks during February, March, and April with any kind of trammel net.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 331. UPTON COUNTY

§ 331.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Upton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 332. UVALDE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
332.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

332.011. Repealed.
332.012. Fish Sale.
332.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 332.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Uvalde County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 332.002 to 332.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 332.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 332.012. Fish Sale

(a) No person may sell or offer for sale a bass, white perch, crappie, or catfish caught in the streams of Uvalde County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 332.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water in Uvalde County an edible fish and leave the fish to die without an intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 333. VAL VERDE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
333.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

333.011. Repealed.
333.012. Fish Sale.
333.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 333.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Val Verde County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 333.002 to 333.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 333.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 333.012. Fish Sale

(a) No person may sell or offer for sale a bass, white perch, crappie, or catfish caught in the streams of Val Verde County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 333.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water in Val Verde County an edible fish and leave the fish to die without an intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 334. VAN ZANDT COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

334.001. Regulatory Act: Applicability.
334.002. Regulatory Act: Lake Tawakoni.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

334.011. Trapping Without Permission of Landowner.

SUBCHAPTER C. BIRDS

334.021. Quail.
334.022. Turkey.
334.023. Turkey: Specific Tract.

SUBCHAPTER D. FISH

334.031. Fish Sale; Lake Tawakoni.

SUBCHAPTER E. ANIMALS

334.041. Sale of Certain Live Animals.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 334.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources of Van Zandt County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 334.002. Regulatory Act: Lake Tawakoni

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in all of the water area of Lake Tawakoni in Van Zandt County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 334.003 to 334.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 334.011. Trapping Without Permission of Landowner

(a) No person in Van Zandt County may set a trap, snare, deadfall, or other device for the taking of a bird or animal protected by this code on the land of another person without first having received from the landowner or his authorized agent written permission for the taking. The permit must specify the period of time during which the taking is authorized and the methods of taking authorized.

(b) The evidence that a person was setting a device for the taking of a bird or animal on land of another person and that the person did not have in his possession the permit required by this section is prima facie evidence of a violation of this section.

(c) No person may use a forged or otherwise fraudulent permit in taking or attempting to take a bird or animal by a trap, snare, deadfall, or other device on the land of another.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 334.012 to 334.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 334.021. Quail

(a) No person may hunt quail in Van Zandt County except during the open season beginning on December 1 of one year and extending through January 31 of the following year.

(b) No person may hunt quail on a Sunday in Van Zandt County.

(c) No person may hunt quail with a gun or a dog outside the county of his residence on the land of another person in Van Zandt County without first having received from the landowner or his agent in charge of the land written permission to hunt. The permission must give the time during which hunting is allowed. This subsection does not apply to a person hunting in the company of the landowner or agent.

(d) The evidence that a person was hunting quail with a gun or a dog on the private land of another outside the county of his residence without being in possession of the permit required by this section is prima facie evidence of a violation of this section.

(e) No person may use a forged or otherwise fraudulent permit to hunt quail with a gun or dog on the land of another in Van Zandt County.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 334.022. Turkey

(a) No person may hunt turkey in Van Zandt County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 334.023. Turkey: Specific Tract

Text of section effective until November 16, 1984

(a) No person may hunt turkey at any time in the following described tract in Van Zandt County:

BEGINNING at a point where the Sabine River crosses F.M. 17;

THENCE, southwest along F.M. 17 to the first county road on the right, a distance of 4.3 miles;

THENCE, north and northwest 2.1 miles along the county road to the paved Caney Creek road;

THENCE, northwest along Caney Creek road 2.6 miles to its intersection with the Clark's Ferry road;

THENCE, north along Clark's Ferry road 2.8 miles to the Sabine River and the county line separating Van Zandt County and Rains County;

THENCE, southeast along the Sabine River to the point of beginning.

(b) A person who violates this section is guilty of a misdemeanor and on conviction shall be punished by a fine of not less than $50 nor more than $200.

(c) This section expires on November 16, 1984. [Added by Acts 1979, 66th Leg., p. 250, ch. 129, § 1, eff. May 9, 1979.]

[Sections 334.024 to 334.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 334.031. Fish Sale; Lake Tawakoni

(a) No person may sell fish, except bait fish, caught from Lake Tawakoni in Van Zandt County except under a contract with the department for the taking of rough fish.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 nor more than $200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 218, ch. 105, § 39, eff. Sept. 1, 1977.]

SUBCHAPTER E. ANIMALS

§ 334.041. Sale of Certain Live Animals

(a) No person may sell or possess for the purpose of sale in Van Zandt County a living armadillo, squirrel, skunk, bobcat, porcupine, raccoon, wolf, coyote, bear, fox, or opossum.

(b) This section does not apply to:

(1) the sale of an animal by or to a zoo; or

(2) the sale of an animal to an educational institution or a medical or research center for scientific purposes as authorized by a permit issued under Subchapter C, Chapter 43, of this code.[1]

(c) In this section, "zoo" means a publicly or privately owned establishment that has a permanent place of business open to the public and that displays 15 or more different species of wildlife.

(d) A person who violates Subsection (a) of this section is guilty of a Class B misdemeanor.

(e) A peace officer who has probable cause to believe that an animal has been sold or held for sale in violation of Subsection (a) of this section may seize the animal and hold it for observation to determine if the animal has rabies or any other communicable disease harmful to man or other animals. If the animal is free from disease, the officer may release the animal or, if the animal is otherwise dangerous or harmful, may destroy it. If the animal is diseased, it shall be destroyed. An officer exercising the duties under this section is immune from liability.

(f) A person who violates Subsection (a) of this section, in addition to the penalties under Subsection (d) of this section, on conviction shall pay all costs and expenses incurred under Subsection (e) of this section.

[Added by Acts 1979, 66th Leg., p. 262, ch. 136, § 2, eff. Aug. 27, 1979.]

[1] Section 43.021 et seq.

CHAPTER 335. VICTORIA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
335.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

335.011. Quail.

SUBCHAPTER C. FISH

335.021. Regulatory Act: Marine Life Excluded.
335.022. Fishing Methods: Guadalupe River.
335.023. Seining Within One Mile of City.
335.024. Fishing Methods: Certain Water.
335.025. Commission May Close Certain Water.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 335.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Victoria County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 335.002 to 335.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 335.011. Quail

(a) In Victoria County, quail are not included as wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

(b) The open season when it is lawful to hunt wild quail of all varieties in Victoria County begins on November 15 of one year and extends through February 15 of the following year.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 335.012 to 335.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 335.021. Regulatory Act: Marine Life Excluded

In Victoria County saltwater species of marine life, except red drum, are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 725, ch. 270, § 14, eff. Oct. 1, 1978.]

§ 335.022. Fishing Methods: Guadalupe River

(a) No person may catch fish from the Guadalupe River in Victoria County except by:

(1) hook and line;

(2) trotline;

(3) flounder gig and light;

(4) cast net or minnow seine not exceeding 20 feet in length to be used for catching bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 335.023. Seining Within One Mile of City

(a) No person may catch fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in Victoria County within one mile of a city.

(b) "City" means a community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes, or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200. The identification of a boat operating in violation of this section is prima facie evidence of a violation by the owner, lessee, person in charge, or master of the boat.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 335.024. Fishing Methods: Certain Water

(a) No person may catch fish from the water of Lavaca Bay, Banal Lake, Mesquite Creek, Placedo Creek, Garcitas Creek, or Oyster Bayou in Victoria County except by:

(1) hook and line;

(2) rod and reel;

(3) trotline;

(4) flounder gig and light; or

(5) cast net or minnow seine not exceeding 20 feet in length and for catching bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 335.025. Commission May Close Certain Water

(a) The commission may close tidal water in Victoria County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent their destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

(1) the reason for the closing;

(2) a designation of the area to be closed;

(3) the effective date and duration of the closing;

(4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may

open the area to seining, netting, gigging, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 335.023 and 335.024 apply.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 336. WALKER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT.

Section
336.001. Regulatory Act: Applicability.

SUBCHAPTER B. FUR-BEARING ANIMALS
336.011. Fox Calling Devices.

SUBCHAPTER C. FISH
336.021. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 336.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Walker County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 336.002 to 336.010 reserved for expansion]

SUBCHAPTER B. FUR-BEARING ANIMALS

§ 336.011. Fox Calling Devices

(a) No person may use a horn, recording, or other device to call or attract fox in Walker County except that a person may use a calling device for scientific research or the making of wildlife movies if a permit is acquired from the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 336.012 to 336.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 336.021. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 337. WALLER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
337.001. Regulatory Act: Applicability.

SUBCHAPTER B. ANIMALS
337.011. Squirrel.

SUBCHAPTER C. FISH
337.021. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 337.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies only to the following wildlife resources in Waller County:

(1) deer;

(2) quail; and

(3) turkey.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 337.002 to 337.010 reserved for expansion]

SUBCHAPTER B. ANIMALS

§ 337.011. Squirrel

(a) No person may hunt squirrel in Waller County except during the open seasons beginning on May 1 and extending through July 31 and beginning on October 1 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 337.012 to 337.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 337.021. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 338. WARD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
338.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

338.011. Fish Sale.
338.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 338.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Ward County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 338.002 to 338.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 338.011. Fish Sale

(a) No person may sell or offer for sale a bass, white perch, crappie, or catfish caught in the streams of Ward County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 338.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water in Ward County an edible fish and leave the fish to die without an intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish left to die in violation of this section constitutes a separate offense.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 339. WASHINGTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
339.001. Regulatory Act: Applicability.
339.002. Repealed.

SUBCHAPTER B. ANIMALS

339.011, 339.012. Repealed.

SUBCHAPTER C. FISH

339.021. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 339.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Washington County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1761, ch. 709, § 1, eff. Aug. 29, 1977.]

§ 339.002. Repealed by Acts 1977, 65th Leg., p. 1761, ch. 709, § 2, eff. Aug. 29, 1977

The repealed section, relating to area of the Somerville Reservoir, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

[Sections 339.003 to 339.010 reserved for expansion]

SUBCHAPTER B. ANIMALS

§§ 339.011, 339.012. Repealed by Acts 1977, 65th Leg., p. 1761, ch. 709, § 3, eff. Aug. 29, 1977

The repealed sections, relating to deer and squirrel, respectively, were derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

[Sections 339.013 to 339.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 339.021. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.
Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 340. WEBB COUNTY

Section
340.001. Regulatory Act: Applicability.
340.002. Certain Methods of Taking Game Prohibited.

§ 340.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Webb County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 340.002. Certain Methods of Taking Game Prohibited

Sections 62.003, 62.005, and 66.004 of this code apply in Webb County and the provisions of those sections prevail over provisions of the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 341. WHARTON COUNTY

§ 341.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wharton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 342. WHEELER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
342.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

342.011. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 342.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wheeler County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 342.002 to 342.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 342.011. Quail

(a) No person may hunt quail in Wheeler County except during the open season beginning on December 1 and extending through January 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100. Each bird taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 343. WICHITA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
343.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

343.011. Repealed.
343.012. Fish Sale.
343.013. Leaving Fish to Die.
343.014. Injuring Fish.
343.015. Special Charge.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 343.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wichita County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 343.002 to 343.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 343.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 343.012. Fish Sale

(a) No person may barter, sell, offer for barter or sale, or buy a bass, perch, crappie, catfish, or any other fish, except minnows, taken from the water located in the valley of the Big Wichita River from where the lower or diversion dam on the Big Wichita River is located, above the dam, up the valley of the Big Wichita River to the storage dam in Baylor County, and up the river valley from the dam as far as the water is impounded by the dam, or in any water in Lake Wichita in Wichita County, or in any water impounded by the dam across Holliday Creek forming Lake Wichita, or in any of the irrigation canals connected with Lake Kemp or the diversion dam, or in any of the water in laterals leading from the canals in Wichita County, or in the lateral, canal, or drainage ditch leading from the South Side Canal from Diversion Lake from a point in the South Side Canal in Section 16, of Denton County school lands, League No. 4, Wichita County, Texas, to Holliday Creek and thence down Holliday Creek to Lake Wichita in Wichita County, or in any of the water of Buffalo Creek Reservoir, Lake Iowa Park, or Old City Lake, located in Wichita County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a

fine of not less than $5 nor more than $50. Each fish sold or purchased in violation of this section constitutes a separate offense.

(c) A person alleged to have violated this section may be prosecuted in the county where the fish were caught, where he is found in possession of them, or where the fish were bartered or sold, or offered for sale or barter, or purchased.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 343.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the water described in Section 343.012(a) of this code, a bass, crappie, white perch, sunfish, drum, catfish, or other edible fish and leave the fish to die without an intent to eat the fish or leave any minnows without an intent to use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $1 nor more than $25. Each fish allowed to die constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 343.014. Injuring Fish

(a) No person may injure or destroy fish by using dynamite, powder, or other explosive or poison in any of the water described in Section 343.012(a) of this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $1,000 and by confinement in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 343.015. Special Charge

District judges of the judicial districts of Wichita County shall give a special charge on Sections 343.012 through 343.014 of this code to the grand juries of Wichita County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 344. WILBARGER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
344.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

344.011. Repealed.
344.012. Fish Sale.
344.013. Leaving Fish to Die.
344.014. Injuring Fish.
344.015. Special Charge.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 344.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wilbarger County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 344.002 to 344.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 344.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 344.012. Fish Sale

(a) No person may barter, sell, offer for barter or sale, or buy a bass, perch, crappie, catfish, or any other fish, except minnows, taken from any water in laterals leading off from irrigation canals connected with Lake Kemp or Diversion Lake or from those irrigation canals in Wilbarger County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50. Each fish sold or purchased in violation of this section constitutes a separate offense.

(c) A person alleged to have violated this section may be prosecuted in a county where the fish were caught, where the person was in possession of them, or where the fish were sold, bartered, offered for sale or barter, or purchased.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 344.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the water described in Section 344.012(a) of this code, a bass, crappie, white perch, sunfish, drum, catfish, or other edible fish and leave the fish to die without an intent to eat the fish or leave any minnows without an intent to use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $1 nor more than $25. Each fish allowed to die constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 344.014. Injuring Fish

(a) No person may injure or destroy fish by using dynamite, powder, or other explosive or poison in any of the water described in Section 344.012(a) of this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $1,000 and by confinement in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 344.015. Special Charge

District judges of the judicial districts of Wilbarger County shall give a special charge on Sections 344.012 through 344.014 of this code to the grand juries of Wilbarger County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 345. WILLACY COUNTY

§ 345.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Willacy County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 346. WILLIAMSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
346.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

346.011. Repealed.
346.012. Fish Sale.
346.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 346.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Williamson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 346.002 to 346.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 346.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnow transport, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 346.012. Fish Sale

(a) No person may sell or offer to sell a bass, white perch, crappie, or catfish caught in the streams of Williamson County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 346.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, or lagoons, or tanks, in Williamson County a catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without an intent to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 347. WILSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
347.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

347.011. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 347.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wilson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 347.002 to 347.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 347.011. Fish Sale

(a) No person may sell or barter or offer for sale or barter a bass, perch, crappie, or catfish caught from the fresh water of Wilson County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 348. WINKLER COUNTY

§ 348.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources of Winkler County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 252, ch. 118, § 1, eff. May 4, 1977.]

CHAPTER 349. WISE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
349.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

349.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 349.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wise County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 349.002 to 349.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 349.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts, 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 350. WOOD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
350.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

350.011. Fish Sale.
350.012. Sale of White Perch and Crappie Outside County.

SUBCHAPTER C. ANIMALS

350.021. Sale of Certain Live Animals.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 350.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wood County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 350.002 to 350.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 350.011. Fish Sale

(a) No person may sell, offer for sale, or possess for sale fish, except bait fish, caught from the fresh water of Wood County.

(b) Licensed commercial fishermen may sell drum, shad, carp, suckers, gar, and buffalo fish caught from the Sabine River forming the boundary between Smith and Wood Counties.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 218, ch. 105, § 40, eff. Sept. 1, 1977.]

§ 350.012. Sale of White Perch and Crappie Outside County

(a) No operator or owner of a private fish hatchery in Wood County may sell white perch or crappie for the purpose of stocking water outside Wood County.

(b) The owner or operator of a fish hatchery in Wood County is not prohibited from selling fish for the purpose of stocking water in Wood County and the Commissioners Court of Wood County and any person may purchase white perch and crappie for that purpose from a private fish hatchery.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $25 nor more than $200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER C. ANIMALS

§ 350.021. Sale of Certain Live Animals

(a) No person may sell or possess for the purpose of sale in Wood County a living armadillo, squirrel, skunk, bobcat, porcupine, raccoon, wolf, coyote, bear, fox, or opossum.

(b) This section does not apply to:

(1) the sale of an animal by or to a zoo; or

(2) the sale of an animal to an educational institution or a medical or research center for scientific purposes as authorized by a permit issued under Subchapter C, Chapter 43, of this code.[1]

(c) In this section, "zoo" means a publicly or privately owned establishment that has a permanent place of business open to the public and that displays 15 or more different species of wildlife.

(d) A person who violates Subsection (a) of this section is guilty of a Class B misdemeanor.

(e) A peace officer who has probable cause to believe that an animal has been sold or held for sale in violation of Subsection (a) of this section may seize the animal and hold it for observation to determine if the animal has rabies or any other communicable disease harmful to man or other animals. If the animal is free from disease, the officer may release the animal or, if the animal is otherwise dangerous or harmful, may destroy it. If the animal is diseased, it shall be destroyed. An officer exercising the duties under this section is immune from liability.

(f) A person who violates Subsection (a) of this section, in addition to the penalties under Subsection (d) of this section, on conviction shall pay all costs and expenses incurred under Subsection (e) of this section.

[Added by Acts 1979, 66th Leg., p. 262, ch. 136, § 3, eff. Aug. 27, 1979.]

[1] Section 43.021 et seq.

CHAPTER 351. YOAKUM COUNTY

§ 351.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Yoakum County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 352. YOUNG COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
352.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

352.011. Repealed.
352.012. Fish Sale.
352.013. Fish Sale: Possum Kingdom Lake.
352.014. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 352.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Young County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 352.002 to 352.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 352.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 352.012. Fish Sale

(a) No person may sell, barter, offer for sale or barter, or buy a bass, crappie, perch, catfish, or any other fish, except minnows, caught in Young County.

(b) Subsection (a) of this section does not apply to Lake Possum Kingdom or its backwater in Young County or to the Clear Fork of the Brazos River in Young County.

(c) A person alleged to have violated this section may be prosecuted in Young County, where the person was found to be in possession of the fish, or where the fish were sold or bought.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50. Each fish sold or bought in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 352.013. Fish Sale: Possum Kingdom Lake

(a) No person may sell, barter, offer for sale or barter, or buy fish, except bait fish, caught from Lake Possum Kingdom or its backwater.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 218, ch. 105, § 41, eff. Sept. 1, 1977.]

§ 352.014. Leaving Fish to Die

(a) No person may knowingly throw, place, or deposit on the banks or grounds within 500 feet of any water to which Section 352.012 of this code applies a bass, crappie, white perch, bream, sunfish, drum, catfish, or other edible fish and leave it to die without an intent to eat the fish or to leave a minnow to die without an intent to use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $2 nor more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 353. ZAPATA COUNTY

§ 353.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Zapata County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 354. ZAVALA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

354.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

354.011. Repealed.
354.012. Fish Sale.
354.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 354.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Zavala County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 354.002 to 354.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 354.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

The repealed section, relating to minnows, was derived from Acts 1975, 64th Leg., p. 1405, ch. 545, § 1.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 354.012. Fish Sale

(a) No person may sell or offer to sell a bass, white perch, crappie, or catfish caught in the streams of Zavala County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $5 nor more than $50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 354.013. Leaving Fish to Die

(a) No person may throw, place, or deposit on the bank or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Zavala County a catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave it to die, without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

DISPOSITION TABLE

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TITLE 1. INTRODUCTORY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

§ 1.07. Definitions

(a) In this code:

[See Compact Edition, Volume 1 for text of (1)]

(2) "Suspect" means a person whose criminal responsibility is in issue in a criminal action. Whenever the term "actor" is used in this code, it means "suspect".

[See Compact Edition, Volume 1 for text of (3) to (9)]

(9.1) "Corporation" includes nonprofit corporations, professional associations created pursuant to statute, and joint stock companies.

[See Compact Edition, Volume 1 for text of (10) to (36)]

Text of subdivision as added by Acts 1979, 66th Leg., p. 1113, ch. 530, § 1

(37) "Electric generating plant" means a facility that generates electric energy for distribution to the public.

Text of subdivision as added by Acts 1979, 66th Leg., p. 1520, ch. 655, § 1

(37) "Participant in a court proceeding" means a judge, a prosecuting attorney or an assistant prosecuting attorney who represents the state, a grand juror, a party in a court proceeding, an attorney representing a party, a witness, or a juror.

(38) "Electric utility substation" means a facility used to switch or change voltage in connection with the transmission of electric energy for distribution to the public.

[See Compact Edition, Volume 1 for text of (b)]

[Amended by Acts 1975, 64th Leg., p. 912, ch. 342, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 2123, ch. 848, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1113, ch. 530, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1520, ch. 655, § 1, eff. Sept. 1, 1979.]

Saving provisions. Section 17 of the 1975 Act provided:

"(a) Except as provided in Subsections (b) and (c) of this section, this Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date.

"(b) Conduct constituting an offense under existing law that is repealed by this Act and that does not constitute an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense under the laws repealed by this Act and that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act for conduct constituting an offense under laws repealed by this Act is valid and unaffected by this Act. For purposes of this section, "conviction" means a finding of guilt in a court of competent jurisdiction, and it is of no consequence that the conviction is not final.

"(c) In a criminal action pending on or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins."

CHAPTER 2. BURDEN OF PROOF

§ 2.05. Presumption

When this code or another penal law establishes a presumption with respect to any fact, it has the following consequences:

(1) if there is sufficient evidence of the facts that give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly precludes a finding beyond a reasonable doubt of the presumed fact; and

(2) if the existence of the presumed fact is submitted to the jury, the court shall charge the jury, in terms of the presumption and the specific element to which it applies, as follows:

(A) that the facts giving rise to the presumption must be proven beyond a reasonable doubt;

(B) that if such facts are proven beyond a reasonable doubt the jury may find that the element of the offense sought to be presumed exists, but it is not bound to so find;

(C) that even though the jury may find the existence of such element, the state must prove beyond a reasonable doubt each of the other elements of the offense charged; and

(D) if the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the presumption fails and the jury shall not consider the presumption for any purpose.

[Amended by Acts 1975, 64th Leg., p. 912, ch. 342, § 2, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 2.06. Repealed by Acts 1975, 64th Leg., p. 918, ch. 342, § 16, eff. Sept. 1, 1975

For saving provisions see note set out under Section 1.07.

TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

CHAPTER 6. CULPABILITY GENERALLY

§ 6.01. Requirement of Voluntary Act or Omission

(a) A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 3, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

CHAPTER 7. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER

SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS

§ 7.22. Criminal Responsibility of Corporation or Association

[See Compact Edition, Volume 1 for text of (a)]

(b) A corporation or association is criminally responsible for a felony offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:

(1) a majority of the governing board acting in behalf of the corporation or association; or

(2) a high managerial agent acting in behalf of the corporation or association and within the scope of his office or employment.

[Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 4, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 7.24. Defense to Criminal Responsibility of Corporation or Association

It is an affirmative defense to prosecution of a corporation or association under Section 7.22(a)(1) or (a)(2) of this code that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

[Amended by Acts 1975, 64th Leg., p. 913, ch. 341, § 5, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

§ 8.07. Age Affecting Criminal Responsibility

(a) A person may not be prosecuted for or convicted of any offense that he committed when younger than 15 years of age except:

(1) perjury and aggravated perjury when it appears by proof that he had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended,[1] except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense); or

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state.

(b) Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age except:

(1) perjury and aggravated perjury when it appears by proof that he had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended, except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense); or

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state.

(c) Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person who has been alleged in a petition for an adjudication hearing to have engaged in delinquent conduct or conduct indicating a need for supervision may not be prosecuted for or convicted of any offense alleged in the juvenile court petition or any offense within the knowledge of the juvenile court judge as evidenced by anything in the record of the juvenile court proceedings.

(d) No person may, in any case, be punished by death for an offense committed while he was younger than 17 years.

[Amended by Acts 1975, 64th Leg., p. 2158, ch. 693, § 24, eff. Sept. 1, 1975.]

[1] Civil Statutes, art. 6701*l*-4.

Acts 1975, 64th Leg., p. 912, ch. 342, § 16 and Acts 1975, 64th Leg., p. 2159, ch. 693, § 26 repealed Penal Code (1925), art. 30, as amended by Acts 1973, 63rd Leg., p. 1484, ch. 544, § 2.

For saving provisions see note set out under Section 1.07.

CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

SUBCHAPTER D. PROTECTION OF PROPERTY

§ 9.44. Use of Device to Protect Property

The justification afforded by Sections 9.41 and 9.43 of this code applies to the use of a device to protect land or tangible, movable property if:

(1) the device is not designed to cause, or known by the actor to create a substantial risk of causing, death or serious bodily injury; and

(2) use of the device is reasonable under all the circumstances as the actor reasonably believes them to be when he installs the device.

[Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 6, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

TITLE 3. PUNISHMENTS

CHAPTER 12. PUNISHMENTS

SUBCHAPTER D. EXCEPTIONAL SENTENCES

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12.46. Use of Prior Convictions.

SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS

§ 12.32. First-Degree Felony Punishment

(a) An individual adjudged guilty of a felony of the first degree shall be punished by confinement in the Texas Department of Corrections for life or for any term of not more than 99 years or less than 5 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed $10,000.

[Amended by Acts 1979, 66th Leg., p. 1058, ch. 488, § 1, eff. Sept. 1, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before this Act's effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

SUBCHAPTER D. EXCEPTIONAL SENTENCES

§ 12.46. Use of Prior Convictions

The use of a conviction for enhancement purposes shall not preclude the subsequent use of such conviction for enhancement purposes.

[Added by Acts 1979, 66th Leg., p. 1027, ch. 459, § 1, eff. June 7, 1979.]

SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS

§ 12.51. Authorized Punishments for Corporations and Associations

[See Compact Edition, Volume 1 for text of (a)]

(b) If a corporation or association is adjudged guilty of an offense that provides a penalty including imprisonment, or that provides no specific penalty, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed:

(1) $20,000 if the offense is a felony of any category;

(2) $10,000 if the offense is a Class A or Class B misdemeanor; or

(3) $2,000 if the offense is a Class C misdemeanor.

(c) In lieu of the fines authorized by Subsections (a) and (b)(1) and (b)(2) of this section, if a court finds that the corporation or association gained money or property or caused personal injury, property damage, or other loss through the commission of a felony or Class A or Class B misdemeanor, the court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed double the amount gained or caused by the corporation to be lost, whichever is greater.

(d) In addition to any sentence that may be imposed by this section, a corporation that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction to any person the court deems appropriate.

[Amended by Acts 1977, 65th Leg., p. 1917, ch. 768, § 1, eff. June 16, 1977.]

TITLE 4. INCHOATE OFFENSES

CHAPTER 15. PREPARATORY OFFENSES

§ 15.01. Criminal Attempt

(a) A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

(b) If a person attempts an offense that may be aggravated, his conduct constitutes an attempt to commit the aggravated offense if an element that aggravates the offense accompanies the attempt.

(c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

(d) An offense under this section is one category lower than the offense attempted, and if the offense attempted is a felony of the third degree, the offense is a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 478, ch. 203, § 4, eff. Sept. 1, 1975.]

Subsection 7(a) of the 1975 amendatory act provided:

"Sections 1, 2, and 4 of this Act apply only to offenses committed on or after the effective date of this Act, and except as provided in Subsections (b), (c), and (d) of this section, a criminal action for an offense committed before the effective date of this Act is governed by the law existing before the effective date, which law is continued in effect for this purpose as though this law were not in force."

CHAPTER 16. CRIMINAL INSTRUMENTS

§ 16.01. Unlawful Use of Criminal Instrument

(a) A person commits an offense if:

(1) he possesses a criminal instrument with intent to use it in the commission of an offense; or

(2) with knowledge of its character and with intent to use or aid or permit another to use in the commission of an offense, he manufactures, adapts, sells, installs, or sets up a criminal instrument.

(b) For the purpose of this section, "criminal instrument" means anything, the possession, manufacture, or sale of which is not otherwise an offense, that is specially designed, made, or adapted for use in the commission of an offense.

(c) An offense under Subsection (a)(1) of this section is one category lower than the offense intended. An offense under Subsection (a)(2) of this section is a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 7, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

TITLE 5. OFFENSES AGAINST THE PERSON

CHAPTER 21. SEXUAL OFFENSES

Section

21.13. Evidence of Previous Sexual Conduct.

§ 21.01. Definitions

In this chapter:

[See Compact Edition, Volume 1 for text of (1)]

(2) "Sexual contact" means any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

[See Compact Edition, Volume 1 for text of (3)]

[Amended by Acts 1979, 66th Leg., p. 373, ch. 168, § 1, eff. Aug. 27, 1979.]

§ 21.02. Rape

[See Compact Edition, Volume 1 for text of (a)]

(b) The intercourse is without the female's consent under one or more of the following circumstances:

(1) he compels her to submit or participate by force that overcomes such earnest resistance as might reasonably be expected under the circumstances;

(2) he compels her to submit or participate by any threat, communicated by actions, words, or deeds, that would prevent resistance by a woman of ordinary resolution, under the same or similar circumstances, because of a reasonable fear of harm;

(3) she has not consented and he knows she is unconscious or physically unable to resist;

(4) he knows that as a result of mental disease or defect she is at the time of the intercourse incapable either of appraising the nature of the act or of resisting it;

(5) she has not consented and he knows that she is unaware that sexual intercourse is occurring;

(6) he knows that she submits or participates because she erroneously believes that he is her husband; or

(7) he has intentionally impaired her power to appraise or control her conduct by administering any substance without her knowledge.

[See Compact Edition, Volume 1 for text of (c)]

[Amended by Acts 1975, 64th Leg., p. 476, ch. 203, § 1, eff. Sept. 1, 1975.]

Subsection 7(a) of the 1975 amendatory act provided:

"Sections 1, 2, and 4 of this Act apply only to offenses committed on or after the effective date of this Act, and except as provided in Subsections (b), (c), and (d) of this section, a criminal action for an offense committed before the effective date of this Act is governed by the law existing before the effective date, which law is continued in effect for this purpose as though this law were not in force."

§ 21.04. Sexual Abuse

[See Compact Edition, Volume 1 for text of (a)]

(b) The intercourse is without the other person's consent under one or more of the following circumstances:

(1) the actor compels the other person to submit or participate by force that overcomes such earnest resistance as might be reasonably expected under the circumstances;

(2) the actor compels the other person to submit or participate by any threat, communicated by actions, words, or deeds, that would prevent resistance by a person of ordinary resolution, under the same or similar circumstances, because of a reasonable fear of harm;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the deviate sexual intercourse incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that deviate sexual intercourse is occurring;

(6) the actor knows that the other person submits or participates because of the erroneous belief that he is the other person's spouse; or

(7) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge.

[See Compact Edition, Volume 1 for text of (c)]

[Amended by Acts 1975, 64th Leg., p. 477, ch. 203, § 2, eff. Sept. 1, 1975.]

Subsection 7(a) of the 1975 amendatory act provided:

"Sections 1, 2, and 4 of this Act apply only to offenses committed on or after the effective date of this Act, and except as provided in Subsections (b), (c), and (d) of this section, a criminal action for an offense committed before the effective date of this Act is governed by the law existing before the effective date, which law is continued in effect for this purpose as though this law were not in force."

§ 21.09. Rape of a Child

(a) A person commits an offense if he has sexual intercourse with a female not his wife and she is younger than 17 years.

(b) It is a defense to prosecution under this section that the female was at the time of the alleged offense 14 years or older and had, prior to the time of the alleged offense, engaged promiscuously in sexual intercourse or deviate sexual intercourse.

(c) It is an affirmative defense to prosecution under this section that the actor was not more than two years older than the victim.

(d) An offense under this section is a felony of the second degree.

[Amended by Acts 1975, 64th Leg., p. 914, ch. 342, § 8, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 21.13. Evidence of Previous Sexual Conduct

(a) Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct may be admitted under Sections 21.02 through 21.05 of this code (rape, aggravated rape, sexual abuse, and aggravated sexual abuse) only if, and only to the extent that, the judge finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(b) If the defendant proposes to ask any question concerning specific instances, opinion evidence, or reputation evidence of the victim's sexual conduct, either by direct examination or cross-examination of any witness, the defendant must inform the court out of the hearing of the jury prior to asking any such question. After this notice, the court shall conduct an in camera hearing, recorded by the court reporter, to determine whether the proposed evidence is admissible under Subsection (a) of this section. The court shall determine what evidence is admissible and shall accordingly limit the questioning. The defendant shall not go outside these limits nor refer to any evidence ruled inadmissible in camera without prior approval of the court without the presence of the jury.

(c) The court shall seal the record of the in camera hearing required in Subsection (b) of this section for delivery to the appellate court in the event of an appeal.

(d) This section does not limit the right of the state or the accused to impeach credibility by showing prior felony convictions nor the right of the accused to produce evidence of promiscuous sexual conduct of a child 14 years old or older as a defense to rape of a child, sexual abuse of a child, or indecency with a child. If evidence of a previous felony conviction involving sexual conduct or evidence of promiscuous sexual conduct is admitted, the court shall instruct the jury as to the purpose of the evidence and as to its limited use.

[Added by Acts 1975, 64th Leg., p. 477, ch. 203, § 3, eff. Sept. 1, 1975.]

Subsection 7(b) of the 1975 amendatory act provided:

"Sections 3 and 6 of this Act apply to the prosecution of criminal offenses committed but not brought to trial before the effective date of this Act."

CHAPTER 22. ASSAULTIVE OFFENSES

§ 22.01. Assault

(a) A person commits an offense if he:

(1) intentionally, knowingly, or recklessly causes bodily injury to another, including his spouse; or

(2) intentionally or knowingly threatens another with imminent bodily injury, including his spouse; or

(3) intentionally or knowingly causes physical contact with another when he knows or should reasonably believe that the other will regard the contact as offensive or provocative.

(b) An offense under Subsection (a)(1) of this section is a Class A misdemeanor unless the offense is committed by the owner or an employee of an institution described in Subsection (a), Section 2, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes), or a person providing medical or psychiatric treatment at an institution described in that subsection, and the offense is committed by causing bodily injury to a patient or resident of an institution described in that subsection, in which event the offense is a felony of the third degree.

(c) An offense under Subsection (a)(2) of this section is a Class C misdemeanor unless:

(1) the offense is committed by the owner or an employee of an institution described in Subsection (a), Section 2, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes), or a person providing medical or psy-

chiatric treatment at an institution described in that subsection, and the offense is committed by threatening a patient or resident of an institution described in that subsection with bodily injury, in which event the offense is a Class B misdemeanor; or

(2) the offense is committed against a classroom teacher, counselor, principal, or other similar instructional or administrative employee of a primary or secondary school accredited by the Texas Education Agency while engaged in performing his educational duties, in which event the offense is a Class B misdemeanor.

(d) An offense under Subsection (a)(3) of this section is a Class C misdemeanor unless the offense is committed against a classroom teacher, counselor, principal, or other similar instructional or administrative employee of a primary or secondary school accredited by the Texas Education Agency while engaged in performing his educational duties, in which event the offense is a Class B misdemeanor.

[Amended by Acts 1977, 65th Leg., 1st C.S., p. 55, ch. 2, §§ 12, 13, eff. July 22, 1977; Acts 1979, 66th Leg., p. 260, ch. 135, §§ 1, 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 367, ch. 164, § 2, eff. Sept. 1, 1979.]

§ 22.02. Aggravated Assault

(a) A person commits an offense if he commits assault as defined in Section 22.01 of this code and he:

(1) causes serious bodily injury to another, including his spouse;

(2) causes bodily injury to a peace officer when he knows or has been informed the person assaulted is a peace officer:

(A) while the peace officer is lawfully discharging an official duty; or

(B) in retaliation for or on account of the peace officer's exercise of official power or performance of official duty as a peace officer; or

(3) causes bodily injury to a participant in a court proceeding when he knows or has been informed the person assaulted is a participant in a court proceeding:

(A) while the injured person is lawfully discharging an official duty; or

(B) in retaliation for or on account of the injured person's having exercised an official power or performed an official duty as a participant in a court proceeding; or

(4) uses a deadly weapon.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1979, 66th Leg., p. 367, ch. 164, § 3, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1520, ch. 655, § 2, eff. Sept. 1, 1979.]

§ 22.03. Deadly Assault on a Peace Officer or Court Participant

(a) A person commits an offense if, with a firearm or a prohibited weapon, he intentionally or knowingly causes serious bodily injury:

(1) to a peace officer where he knows or has been informed the person assaulted is a peace officer:

(A) while the peace officer is acting in the lawful discharge of an official duty; or

(B) in retaliation for or on account of the peace officer's exercise of official power or performance of official duty as a peace officer; or

(2) to a participant in a court proceeding when he knows or has been informed that the person assaulted is a participant in a court proceeding:

(A) while the injured person is in the lawful discharge of official duty; or

(B) in retaliation for or on account of the injured person's having exercised an official power or performed an official duty as a participant in a court proceeding.

(b) The actor is presumed to have known the person assaulted was a peace officer if he was wearing a distinctive uniform indicating his employment as a peace officer.

(c) An offense under this section is a felony of the first degree.

[Amended by Acts 1979, 66th Leg., p. 1520, ch. 655, § 3, eff. Sept. 1, 1979.]

§ 22.04. Injury to a Child

(a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that causes to a child who is 14 years of age or younger:

(1) serious bodily injury;

(2) serious physical or mental deficiency or impairment;

(3) disfigurement or deformity; or

(4) bodily injury.

(b) An offense under Subsection (a)(1), (2), or (3) of this section is a felony of the second degree unless the conduct is engaged in recklessly or negligently, in which event it shall be a felony of the third degree.

(c) An offense under Subsection (a)(4) of this section is a felony of the third degree unless the conduct is engaged in recklessly or negligently, in which event it shall be a Class A misdemeanor.

[Amended by Acts 1977, 65th Leg., p. 2067, ch. 819, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 365, ch. 162, § 1, eff. Aug. 27, 1979.]

§ 22.07. Terroristic Threat

(a) A person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to:

(1) cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;

(2) place any person in fear of imminent serious bodily injury; or

(3) prevent or interrupt the occupation or use of a building; room; place of assembly; place to which the public has access; place of employment or occupation; aircraft, automobile, or other form of conveyance; or other public place; or

(4) cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service.

(b) An offense under Subdivision (1) or (2) of Subsection (a) of this section is a Class B misdemeanor. An offense under Subdivision (3) of Subsection (a) of this section is a Class A misdemeanor. An offense under Subdivision (4) of Subsection (a) of this section is a felony of the third degree.

[Amended by Acts 1979, 66th Leg., p. 1114, ch. 530, § 2, eff. Aug. 27, 1979.]

TITLE 6. OFFENSES AGAINST THE FAMILY

CHAPTER 25. OFFENSES AGAINST THE FAMILY

Section
25.06. Sale or Purchase of Child.
25.06. Solicitation of a Child.
25.07. Harboring Runaway Child.

§ 25.03. Interference with Child Custody

(a) A person commits an offense if he takes or retains a child younger than 18 years out of this state when he:

(1) knows that his taking or retention violates the express terms of a judgment or order of a court disposing of the child's custody; or

(2) has not been awarded custody of the child by a court of competent jurisdiction and knows that a suit for divorce, or a civil suit or application for habeas corpus to dispose of the child's custody, has been filed.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1979, 66th Leg., p. 1111, ch. 527, § 1, eff. Aug. 27, 1979.]

§ 25.05. Criminal Nonsupport

Acts 1975, 64th Leg., p. 912, ch. 342, § 16, repealed Penal Code (1925), arts. 602 and 602–A, as amended by Acts 1973, 63rd Leg., p. 603, ch. 257, §§ 1, 2 and art. 602–B, as added by § 3 of the 1973 Act.

For saving provisions see note set out under Section 1.07.

§ 25.06. Sale or Purchase of Child

Text as added by Acts 1977, 65th Leg., p. 81, ch. 38, § 1

(a) A person commits an offense if he:

(1) possesses a child or has the custody, conservatorship, or guardianship of a child, whether or not he has actual possession of the child, and he offers to accept, agrees to accept, or accepts a thing of value for the delivery of the child to another or for the possession of the child by another for purposes of adoption; or

(2) offers to give, agrees to give, or gives a thing of value to another for acquiring or maintaining the possession of a child for the purpose of adoption.

(b) It is an exception to the application of this section that the thing of value is:

(1) a fee paid to a child-placing agency as authorized by law;

(2) a fee paid to an attorney or physician for services rendered in the usual course of legal or medical practice; or

(3) a reimbursement of legal or medical expenses incurred by a person for the benefit of the child.

(c) An offense under this section is a Class A misdemeanor unless the actor has been convicted previously under this section, in which event the offense is a felony of the third degree.

[Added by Acts 1977, 65th Leg., p. 81, ch. 38, § 1, eff. March 30, 1977.]

For text of section added by Acts 1977, 65th Leg., p. 1115, ch. 413, § 1, see § 25.06, post.

§ 25.06. Solicitation of a Child

Text as added by Acts 1977, 65th Leg., p. 1115, ch. 413, § 1

(a) A person commits an offense if he entices, persuades, or invites a child younger than 14 years to enter a vehicle, building, structure, or enclosed area with intent to engage in or propose engaging in sexual intercourse, deviate sexual intercourse, or sexual contact with the child or with intent to expose his anus or any part of his genitals to the child.

(b) The definitions of "sexual intercourse," "deviate sexual intercourse," and "sexual contact" in Chapter 21 of this code[1] apply to this section.

(c) An offense under this section is a Class A misdemeanor unless the actor takes the child out of the county of residence of the parent, guardian, or person standing in the stead of the parent or guardi-

an of the child, in which event the offense is a felony of the third degree.

[Added by Acts 1977, 65th Leg., p. 1115, ch. 413, § 1, eff. June 15, 1977.]

[1] See § 21.01.

For text of section added by Acts 1977, 65th Leg., p. 81, ch. 38, § 1, see § 25.06, ante.

§ 25.07. Harboring Runaway Child

(a) A person commits an offense if he knowingly harbors a child and he is criminally negligent about whether the child:

(1) is younger than 18 years; and

(2) has escaped from the custody of a peace officer, a probation officer, the Texas Youth Council, or a detention facility for children, or is voluntarily absent from the child's home without the consent of the child's parent or guardian for a substantial length of time or without the intent to return.

(b) It is a defense to prosecution under this section that the actor was related to the child within the second degree by consanguinity or affinity.

(c) It is a defense to prosecution under this section that the actor notified:

(1) the person or agency from which the child escaped or a law enforcement agency of the presence of the child within 24 hours after discovering that the child had escaped from custody; or

(2) a law enforcement agency or a person at the child's home of the presence of the child within 24 hours after discovering that the child was voluntarily absent from home without the consent of the child's parent or guardian.

(d) An offense under this section is a Class A misdemeanor.

[Added by Acts 1979, 66th Leg., p. 1155, ch. 558, § 1, eff. Sept. 1, 1979.]

TITLE 7. OFFENSES AGAINST PROPERTY

CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DAMAGE OR DESTRUCTION

§ 28.01. Definitions

In this chapter:

[See Compact Edition, Volume 1 for text of (1) to (3)]

(4) "Vehicle" includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation.

[Amended by Acts 1979, 66th Leg., p. 1216, ch. 588, § 1, eff. Sept. 1, 1979.]

§ 28.02. Arson

(a) A person commits an offense if he starts a fire or causes an explosion with intent to destroy or damage any building, habitation, or vehicle:

(1) knowing that it is within the limits of an incorporated city or town;

(2) knowing that it is insured against damage or destruction;

(3) knowing that it is subject to a mortgage or other security interest;

(4) knowing that it is located on property belonging to another;

(5) knowing that it has located within it property belonging to another; or

(6) when he is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another.

(b) It is a defense to prosecution under Subsection (a)(1) of this section that prior to starting the fire or causing the explosion, the actor obtained a permit or other written authorization granted in accordance with a city ordinance, if any, regulating fires and explosions.

(c) An offense under this section is a felony of the second degree, unless any bodily injury less than death is suffered by any person by reason of the commission of the offense, in which event it is a felony of the first degree.

[Amended by Acts 1979, 66th Leg., p. 1216, ch. 588, § 2, eff. Sept. 1, 1979.]

Section 3 of the 1979 amendatory act provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act takes effect is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

CHAPTER 30. BURGLARY AND CRIMINAL TRESPASS

§ 30.05. Criminal Trespass

(a) A person commits an offense if he enters or remains on property or in a building of another without effective consent and he:

(1) had notice that the entry was forbidden; or

(2) received notice to depart but failed to do so.

(b) For purposes of this section:

(1) "entry" means the intrusion of the entire body; and

(2) "notice" means:

(A) oral or written communication by the owner or someone with apparent authority to act for the owner;

(B) fencing or other enclosure obviously designed to exclude intruders; or

(C) signs posted to be reasonably likely to come to the attention of intruders.

(c) An offense under this section is a Class C misdemeanor unless it is committed in a habitation, in which event it is a Class A misdemeanor, or unless it is committed on the premises of an electric generating plant or an electric utility substation, in which event it is a Class B misdemeanor.

[Amended by Acts 1979, 66th Leg., p. 1114, ch. 530, § 3, eff. Aug. 27, 1979.]

CHAPTER 31. THEFT

Section
31.11. Tampering with Identification Numbers.

§ 31.01. Definitions

In this chapter:

[See Compact Edition, Volume 1 for text of (1) to (4)]

(5) "Appropriate" means:

(A) to bring about a transfer or purported transfer of title to or other nonpossessory interest in property, whether to the actor or another; or

(B) to acquire or otherwise exercise control over property other than real property.

[See Compact Edition, Volume 1 for text of (6) to (8)]

[Amended by Acts 1975, 64th Leg., p. 914, ch. 342, § 9, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 31.03. Theft

(a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.

(b) Appropriation of property is unlawful if:

(1) it is without the owner's effective consent; or

(2) the property is stolen and the actor appropriates the property knowing it was stolen by another;

(c) For purposes of Subsection (b)(2) of this section:

(1) evidence that the actor has previously participated in recent transactions other than, but similar to, that which the prosecution is based is admissible for the purpose of showing knowledge or intent and the issues of knowledge or intent are raised by the actor's plea of not guilty;

(2) the testimony of an accomplice shall be corroborated by proof that tends to connect the actor to the crime, but the actor's knowledge or intent may be established by the uncorroborated testimony of the accomplice.

(3) an actor engaged in the business of buying and selling used or secondhand personal property, or lending money on the security of personal property deposited with him, is presumed to know upon receipt by the actor of stolen property (other than a motor vehicle subject to Article 6687–1, Vernon's Texas Civil Statutes) that the property has been previously stolen from another if the actor pays for or loans against the property $25 or more (or consideration of equivalent value) and the actor knowingly or recklessly;

(i) fails to record the name, address, and physical description or identification number of the seller or pledgor;

(ii) fails to record a complete description of the property, including the serial number, if reasonably available, or other identifying characteristics; or

(iii) fails to obtain a signed warranty from the seller or pledgor that the seller or pledgor has the right to possess the property. It is the express intent of this provision that the presumption arises unless the actor complies with each of the numbered requirements.

(4) for the purposes of Subparagraph (i) above, "identification number" means driver's license number, military identification number, identification certificate, or other official number capable of identifying an individual.

(d) An offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than $5;

(2) a Class B misdemeanor if:

(A) the value of the property stolen is $5 or more but less than $20; or

(B) the value of the property stolen is less than $5 and the defendant has previously been convicted of any grade of theft;

(3) a Class A misdemeanor if the value of the property stolen is $20 or more but less than $200;

(4) a felony of the third degree if:

(A) the value of the property stolen is $200 or more but less than $10,000, or the property is one or more head of cattle, horses, sheep, swine, or goats or any part thereof under the value of $10,000;

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave; or

(C) the value of the property stolen is less than $200 and the defendant has been previously convicted two or more times of any grade of theft;

(5) a felony of the second degree if the value of the property stolen is $10,000 or more;

(6) a felony of the second degree regardless of the value, if the property was stolen by threat to commit, in the future, a felony offense against the person or property of the person threatened or another.

[Amended by Acts 1975, 64th Leg., p. 914, ch. 342, § 10, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 937, ch. 349, § 1, eff. Aug. 29, 1977.]

For saving provisions see note set out under Section 1.07.

Section 2 of the 1977 amendatory act provided:

"The provisions of Subsections (c)(3) and (4) shall not apply to the purchase or sale of property at a public sale commonly known as a neighborhood garage sale or community-wide flea market or First Monday Sale."

§ 31.04. Theft of Service

(a) A person commits theft of service if, with intent to avoid payment for service that he knows is provided only for compensation:

(1) he intentionally or knowingly secures performance of the service by deception, threat, or false token;

(2) having control over the disposition of services of another to which he is not entitled, he intentionally or knowingly diverts the other's services to his own benefit or to the benefit of another not entitled to them; or

(3) having control of personal property under a written rental agreement, he holds the property beyond the expiration of the rental period without the effective consent of the owner of the property, thereby depriving the owner of the property of its use in further rentals.

(b) For purposes of this section, intent to avoid payment is presumed if

(1) the actor absconded without paying for the service in circumstances where payment is ordinarily made immediately upon rendering of the service, as in hotels, restaurants, and comparable establishments; or

(2) the actor failed to return the property held under a rental agreement within 10 days after receiving notice demanding return.

(c) For purposes of Subsection (b)(2) of this section, notice shall be notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the actor at his address shown on the rental agreement.

(d) If written notice is given in accordance with Subsection (c) of this section, it is presumed that the notice was received no later than five days after it was sent.

(e) An offense under this section is:

(1) a Class C misdemeanor if the value of the service stolen is less than $5;

(2) a Class B misdemeanor if the value of the service stolen is $5 or more but less than $20;

(3) a Class A misdemeanor if the value of the service stolen is $20 or more but less than $200;

(4) a felony of the third degree if the value of the service stolen is $200 or more but less than $10,000;

(5) a felony of the second degree if the value of the service stolen is $10,000 or more.

[Amended by Acts 1977, 65th Leg., p. 1138, ch. 429, § 1, eff. Aug. 29, 1977.]

§ 31.11. Tampering with Identification Numbers

(a) A person commits an offense if, without the effective consent of the owner:

(1) he knowingly or intentionally removes, alters, or obliterates the serial number or other permanent identification marking on tangible personal property other than a motor vehicle; or

(2) he possesses tangible personal property other than a motor vehicle knowing that the serial number or other permanent identification marking has been removed, altered, or obliterated.

(b) Property involved in a violation of this section may be treated as stolen for purposes of custody and disposition of the property.

(c) An offense under this section is a Class A misdemeanor.

[Added by Acts 1979, 66th Leg., p. 417, ch. 191, § 1, eff. Sept. 1, 1979.]

Section 3 of the 1979 Act provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act takes effect is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

CHAPTER 32. FRAUD

SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

Section

32.49. Issuance of Checks Printed on Red Paper.

SUBCHAPTER C. CREDIT

§ 32.33. Hindering Secured Creditors

(a) For purposes of this section:

(1) "Remove" means transport, without the effective consent of the secured party, from the state in which the property was located when the security interest or lien attached.

(2) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.

(b) A person who has signed a security agreement creating a security interest in property or a mortgage or deed of trust creating a lien on property commits an offense if, with intent to hinder enforce-

ment of that interest or lien, he destroys, removes, conceals, encumbers, or otherwise harms or reduces the value of the property.

(c) For purposes of this section, a person is presumed to have intended to hinder enforcement of the security interest or lien if, when any part of the debt secured by the security interest or lien was due, he failed:

(1) to pay the part then due; and

(2) if the secured party had made demand, to deliver possession of the secured property to the secured party.

(d) Except as provided in Subsections (e) and (f) of this section, an offense under this section is a Class A misdemeanor.

(e) If the actor removes the property, the offense is a felony of the third degree.

(f) A person commits an offense if he transfers or otherwise disposes of secured property without the effective consent of the secured party and with intent to appropriate (as defined in Chapter 31 of this code) the interest of the secured party. An offense under this subsection is:

(1) a Class A misdemeanor if the unpaid balance remaining on the secured indebtedness is less than $10,000;

(2) a felony of the third degree if the unpaid balance remaining on the secured indebtedness is $10,000 or more.

[Amended by Acts 1979, 66th Leg., p. 501, ch. 232, § 1, eff. Sept. 1, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before this Act's effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

§ 32.42. Deceptive Business Practices

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) An offense under Subsections (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this section is:

(1) a Class C misdemeanor if the actor commits an offense with criminal negligence and if he has not previously been convicted of a deceptive business practice; or

(2) a Class A misdemeanor if the actor commits an offense intentionally, knowingly, recklessly or if he has been previously convicted of a Class B or C misdemeanor under this section.

(d) An offense under Subsections (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), and (b)(12) is a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 1350, ch. 508, §§ 1, 2, eff. Sept. 1, 1975.]

§ 32.49. Issuance of Checks Printed on Red Paper

(a) A person commits an offense if he issues a check or similar sight order for payment of money printed on dark red or other colored paper that prevents reproduction of an image of the order by microfilming or other similar reproduction equipment, knowing that the colored paper prevents reproduction.

(b) An offense under this section is a Class A misdemeanor.

[Added by Acts 1979, 66th Leg., p. 865, ch. 389, § 1, eff. Sept. 1, 1979.]

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION

CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

§ 36.01. Definitions

In this chapter:

(1) "Coercion" means a threat, however communicated:

(A) to commit any offense;

(B) to inflict bodily injury on the person threatened or another;

(C) to accuse any person of any offense;

(D) to expose any person to hatred, contempt, or ridicule;

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(2) "Custody" means:

(A) detained or under arrest by a peace officer; or

(B) under restraint by a public servant pursuant to an order of a court.

(3) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.

(4) "Party official" means a person who holds any position or office in a political party, whether by election, appointment, or employment.

(5) "Pecuniary benefit" means money, property, commercial interests, or other similar benefit the primary significance of which is economic gain; but does not include contributions made and reported in accordance with law.

(6) "Vote" means to cast a ballot in an election regulated by law.

[Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 36.02. Bribery

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

(1) any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.

(c) An offense under this section is a felony of the second degree.

[Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 36.07. Compensation for Past Official Behavior

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer any pecuniary benefit on a public servant for the public servant's having exercised his official powers or performed his official duties in favor of the actor or another.

(b) A public servant commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any pecuniary benefit for having exercised his official powers or performed his official duties in favor of another.

(c) An offense under this section is a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 36.08. Gift to Public Servant by Person Subject to His Jurisdiction

(a) A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency.

(b) A public servant in an agency having custody of prisoners commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from a person the public servant knows to be in his custody or the custody of his agency.

(c) A public servant in an agency carrying on civil or criminal litigation on behalf of government commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from a person against whom the public servant knows litigation is pending or contemplated by the public servant or his agency.

(d) A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

(f) A public servant who is a member of or employed by the legislature or by an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from any person.

(g) An offense under this section is a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 36.10. Non-Applicable

Sections 36.07 (Compensation for Past Official Behavior), 36.08 (Gift to Public Servant), and 36.09 (Offering Gift to Public Servant) of this code do not apply to:

(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

(3) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:

(A) not more than one honorarium is received from the same person in a calendar year; and

(B) not more than one honorarium is received for the same service; and

(C) the value of the honorarium does not exceed $250;

(D) the honorarium, regardless of amount, is reported in the financial statement filed under Chapter 421, Acts of the 63rd Legislature, 1973 (Article 6252–9b, Vernon's Texas Civil Statutes), if the recipient is required to file a financial statement under that Act; and

(E) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

(4) a benefit consisting of food, lodging, transportation, or entertainment accepted as a guest and reported as required by law; or

(5) a benefit to a public servant required to file a financial statement under Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252–9b, Vernon's Texas Civil Statutes), that is derived from a function in honor or appreciation of the recipient if:

(A) the benefit and the source of any benefit in excess of $20 is reported in the financial statement; and

(B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision.

(6) Subsection (5) of Section 36.10 of this Act does not apply to those public servants designated in Section 36.08(f) of this Act 30 days prior to or during a regular session of the Texas Legislature.

[Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

Section
38.14. Preventing Execution of Civil Process.

§ 38.14. Preventing Execution of Civil Process

(a) A person commits an offense if he intentionally or knowingly prevents the execution of any process in a civil cause.

(b) It is an exception to the application of this section that the actor evaded service of process by avoiding detection.

(c) An offense under this section is a Class C misdemeanor.

[Added by Acts 1977, 65th Leg., p. 1136, ch. 427, § 1, eff. Aug. 29, 1977.]

CHAPTER 39. ABUSE OF OFFICE

Section
39.021. Violations of the Civil Rights of a Prisoner.
39.04. Public Disclosure by Public Servant.

§ 39.021. Violations of the Civil Rights of a Prisoner

(a) A peace officer or a jailer or guard employed at a municipal or county jail or by the Texas Department of Corrections commits an offense if he:

(1) intentionally subjects a person in his custody to bodily injury knowing his conduct is unlawful;

(2) willfully denies or impedes a person in his custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful.

(b) An offense under this section is a felony of the third degree. An offense under this section is a felony of the second degree if serious bodily injury occurs or a felony of the first degree if death occurs.

(c) This section shall not preclude prosecution for any other offense set out in this code.

(d) The Attorney General of Texas shall have concurrent jurisdiction with law enforcement agencies to investigate violations of this statute involving serious bodily injury or death.

[Added by Acts 1979, 66th Leg., p. 1383, ch. 618, § 1, eff. Sept. 1, 1979.]

§ 39.04. Public Disclosure by Public Servant

(a) For purposes of this section:

(1) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer of government; or

(B) a candidate for nomination or election to public office.

(2) "Public disclosure" means the filing of an affidavit with the county clerks of the counties wherein the property to be acquired is located and wherein the public servant resides within 10 days prior to the acquisition, setting forth the following:

(A) name of the public servant;

(B) the public office, public title, or job designation with which the public servant is connected;

(C) a full and complete description of the property;

(D) a full description of the nature, type, and amount of interest in the property, including but not limited to the percent ownership interest in the property;

(E) the date the public servant acquired an interest in the property;

(F) a verification by the public servant, reading, "I do solemnly swear that the above and foregoing statement, filed herewith, is of my own personal knowledge in all things true and correct, and fully shows the information required to be reported by me pursuant to Section 39.04, Texas Penal Code"; and

(G) an acknowledgement of the same type as required for the recording of deeds in the deed records of the county clerk's office.

(3) "Property" means both real and personal.

(4) "Acquired" means by purchase or condemnation.

(5) "Public funds" mean any funds collected by or through any government.

(b) A public servant commits an offense if he fails to make public disclosure of any legal or equitable interest he may have in property which is acquired with public funds provided such public servant has actual notice of the acquisition or intended acquisition.

(c) If the public servant fails to file the affidavit provided for herein within the time period prescribed, his intent to commit the offense provided herein shall be presumed.

(d) An offense under this section is a Class A misdemeanor.

[Added by Acts 1975, 64th Leg., p. 1361, ch. 518, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided:

"If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of the Act are declared to be severable."

TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY

CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES

Section
42.12. Repealed.
42.13. Interference with Emergency Communication.

§ 42.01. Disorderly Conduct

(a) A person commits an offense if he intentionally or knowingly:

[See Compact Edition, Volume 1 for text of (a)(1) to (a)(7)]

(8) discharges a firearm in a public place other than a public road;

(9) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm;

(10) discharges a firearm on or across a public road; or

(11) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by his act.

[See Compact Edition, Volume 1 for text of (b) and (c)]

(d) An offense under this section is a Class C misdemeanor unless committed under Subsection (a)(8) or (a)(9) of this section, in which event it is a Class B misdemeanor; and further provide that a person who violates Subsection (a)(10) is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than $25 nor more than $200, on a second conviction is punishable by a fine of not less than $200 nor more than $500, and on a third or subsequent conviction is punishable by a fine of $500.

[Amended by Acts 1977, 65th Leg., p. 181, ch. 89, § 1, eff. Aug. 29, 1977.]

§ 42.06. False Alarm or Report

(a) A person commits an offense if he knowingly initiates, communicates or circulates a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false or baseless and that would ordinarily:

(1) cause action by an official or volunteer agency organized to deal with emergencies;

(2) place a person in fear of imminent serious bodily injury; or

(3) prevent or interrupt the occupation of a building, room, place of assembly, place to which the public has access, or aircraft, automobile, or other mode of conveyance.

(b) An offense under this section is a Class A misdemeanor unless the false report is of an emergency involving public communications, public transportation, public water, gas, or power supply or other public service, in which event the offense is a felony of the third degree.

[Amended by Acts 1979, 66th Leg., p. 1114, ch. 530, § 4, eff. Aug. 27, 1979.]

§ 42.11. Cruelty to Animals

(a) A person commits an offense if he intentionally or knowingly:

(1) tortures or seriously overworks an animal;

(2) fails unreasonably to provide necessary food, care, or shelter for an animal in his custody;

(3) abandons unreasonably an animal in his custody;

(4) transports or confines an animal in a cruel manner;

(5) kills, injures, or administers poison to an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent; or

(6) causes one animal to fight with another.

[See Compact Edition, Volume 1 for text of (b) to (d)]

[Amended by Acts 1975, 64th Leg., p. 917, ch. 342, § 12, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 42.12. Repealed by Acts 1975, 64th Leg., p. 918, ch. 342, § 16, eff. Sept. 1, 1975

For saving provisions see note set out under Section 1.07.

§ 42.13. Interference with Emergency Communication

(a) A person commits an offense if the person intentionally, knowingly, recklessly, or with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over a citizen's band radio channnel, the purpose of which communication is to inform or inquire about an emergency.

(b) In this section, "emergency" means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting the communication to be in imminent danger of serious bodily injury or in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of damage or destruction.

(c) An offense under this section is a Class B misdemeanor unless, as a result of the commission of the offense, serious bodily injury or property loss in excess of $1,000 occurs, in which event the offense is a felony of the third degree.

[Added by Acts 1979, 66th Leg., p. 806, ch. 365, § 1, eff. Aug. 27, 1979.]

CHAPTER 43. PUBLIC INDECENCY

SUBCHAPTER B. OBSCENITY

Section
43.25. Sexual Performance by a Child.

SUBCHAPTER A. PROSTITUTION

§ 43.01. Definitions

In this subchapter:

[See Compact Edition, Volume 1 for text of (1) and (2)]

(3) "Sexual contact" means any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

[See Compact Edition, Volume 1 for text of (4) and (5)]

[Amended by Acts 1979, 66th Leg., p. 373, ch. 168, § 2, eff. Aug. 27, 1979.]

§ 43.02. Prostitution

(a) A person commits an offense if he knowingly:

(1) offers to engage, agrees to engage, or engages in sexual conduct for a fee; or

[See Compact Edition, Volume 1 for text of (a)(2)]

(b) An offense is established under Subsection (a)(1) of this section whether the actor is to receive or pay a fee. An offense is established under Subsection (a)(2) of this section whether the actor solicits a person to hire him or offers to hire the person solicited.

(c) An offense under this section is a Class B misdemeanor, unless the actor has been convicted previously under this section, in which event it is a Class A misdemeanor.

[Amended by Acts 1977, 65th Leg., p. 757, ch. 286, § 1, eff. May 27, 1977.]

§ 43.03. Promotion of Prostitution

(a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly:

(1) receives money or other property pursuant to an agreement to participate in the proceeds of prostitution; or

(2) solicits another to engage in sexual conduct with another person for compensation.

[See Compact Edition, Volume 1 for text of (b)]

[Amended by Acts 1977, 65th Leg., p. 758, ch. 287, § 1, eff. May 27, 1977.]

SUBCHAPTER B. OBSCENITY

§ 43.21. Definitions

(a) In this subchapter:

(1) "Obscene" means material or a performance that:

(A) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(B) depicts or describes:

(i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

(ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a descernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

(C) taken as a whole, lacks serious literary, artistic, political, and scientific value.

(2) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three dimensional obscene device.

(3) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

(4) "Patently offensive" means so offensive on its face as to affront current community standards of decency.

(5) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

(6) "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

(7) "Obscene device" means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

(b) If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

[Amended by Acts 1975, 64th Leg., p. 372, ch. 163, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1974, ch. 778, § 1, eff. Sept. 1, 1979.]

Sections 3 and 4 of the 1979 amendatory act provided:

"Sec. 3. If any portion of this Act is declared unlawful by a court of competent jurisdiction, this declaration does not ivalidate any other portions of this Act.

"Sec. 4. This Act applies only to offenses committed on or after its effective date. A criminal action for an offense committed before this Act's effective date is governed by the law in existence before the effective date of this Act, and Sections 43.21 and 43.23, Penal Code, as in existence before the effective date of this Act, are continued in effect for this purpose as if this Act were not in effect. For the purpose of this section, an offense is committed before the effective date of this Act if any element of the offense is committed before the effective date."

§ 43.23. Obscenity

(a) A person commits an offense if, knowing its content and character, he wholesale promotes or possesses with intent to wholesale promote any obscene material or obscene device.

(b) An offense under Subsection (a) of this section is a felony of the third degree.

(c) A person commits an offense if, knowing its content and character, he:

(1) promotes or possesses with intent to promote any obscene material or obscene device; or

(2) produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.

(d) An offense under Subsection (c) of this section is a Class A misdemeanor.

(e) A person who promotes or wholesale promotes obscene material or an obsecene device or possesses the same with intent to promote or wholesale promote it in the course of his business is presumed to do so with knowledge of its content and character.

(f) A person who possesses six or more obscene devices or identical or similar obscene articles is presumed to possess them with intent to promote the same.

(g) This section does not apply to a person who possesses or distributes obscene material or obscene devices or participates in conduct otherwise prescribed [1] by this section when the possession, participation, or conduct occurs in the course of law enforcement activities.

[Amended by Acts 1979, 66th Leg., p. 1975, ch. 778, § 2, eff. Sept. 1, 1979.]

[1] So in enrolled bill; probably should read "proscribed".

For severability of 1979 amendatory act and application of act to offenses committed before its effective date, see note under § 43.21.

§ 43.25. Sexual Performance by a Child

(a) In this section:

(1) "Sexual performance" means any performance or part thereof that includes sexual conduct by a child younger than 17 years of age.

(2) "Obscene sexual performance" means any performance that includes sexual conduct by a child younger than 17 years of age of any material that is obscene, as that term is defined by Section 43.21 of this code.

(3) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals.

(4) "Performance" means any play, motion picture, photograph, dance, or other visual representation that is exhibited before an audience.

(5) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.

(6) "Simulated" means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which the persons engaging in the conduct exhibit any uncovered portion of the breasts, genitals, or buttocks.

(7) "Deviate sexual intercourse" has the meaning defined by Section 43.01 of this code.

(8) "Sado-masochistic abuse" has the meaning defined by Section 43.24 of this code.

(b) A person commits an offense if, knowing the character and content thereof, he employs, authorizes, or induces a child younger than 17 years of age to engage in a sexual performance. A parent or legal guardian or custodian of a child younger than 17 years of age commits an offense if he consents to the participation by the child in a sexual performance.

(c) An offense under Subsection (b) of this section is a felony of the second degree.

(d) A person commits an offense if, knowing the character and content of the material, he produces, directs, or promotes an obscene performance that includes sexual conduct by a child younger than 17 years of age.

(e) A person commits an offense if, knowing the character and content of the material, he produces, directs, or promotes a performance that includes sexual conduct by a child younger than 17 years of age.

(f) An offense under Subsection (d) or (e) of this section is a felony of the third degree.

(g) It is an affirmative defense to a prosecution under this section that the defendant, in good faith, reasonably believed that the person who engaged in the sexual conduct was 17 years of age or older.

(h) When it becomes necessary for the purposes of this section to determine whether a child who participated in sexual conduct was younger than 17 years of age, the court or jury may make this determination by any of the following methods:

(1) personal inspection of the child;

(2) inspection of the photograph or motion picture that shows the child engaging in the sexual performance;

(3) oral testimony by a witness to the sexual performance as to the age of the child based on the child's appearance at the time;

(4) expert medical testimony based on the appearance of the child engaging in the sexual performance; or

(5) any other method authorized by law or by the rules of evidence at common law.

[Added by Acts 1977, 65th Leg., p. 1035, ch. 381, § 1, eff. June 10, 1977. Amended by Acts 1979, 66th Leg., p. 1976, ch. 779, § 1, eff. Sept. 1, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act applies only to offenses committed on or after its effective date. A criminal action for an offense committed before this Act's effective date is governed by the law in existence when the offense was committed, and Section 43.25, Penal Code, as in existence before the effective date of this Act, is continued in effect for this purpose as if this Act were not in effect. For the purpose of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

CHAPTER 46. WEAPONS

§ 46.01. Chapter Definitions

In this chapter:

[See Compact Edition, Volume 1 for text of (1) to (5)]

(6) "Illegal knife" means a:

(A) knife with a blade over five and one-half inches;

(B) a hand instrument designed to cut or stab another by being thrown;

(C) dagger, including but not limited to a dirk, stiletto, and poniard;

(D) bowie knife;

(E) sword; or

(F) spear.

[See Compact Edition, Volume 1 for text of (7) to (11)]

[Amended by Acts 1975, 64th Leg., p. 917, ch. 342, § 13, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 46.03. Non-Applicable

The provisions of Section 46.02 of this code do not apply to a person:

(1) in the actual discharge of his official duties as a peace officer, a member of the armed forces or national guard, or a guard employed by a penal institution;

(2) on his own premises or premises under his control unless he is an employee or agent of the owner of the premises and his primary responsibility is to act in the capacity of a private security guard to protect persons or property, in which event he must comply with Subdivision (5) of this section;

(3) traveling;

(4) engaging in lawful hunting, fishing, or other sporting activity if the weapon is a type commonly used in the activity; or

(5) who holds a security officer commission issued by the Texas Board of Private Investigators and Private Security Agencies, if:

(A) he is engaged in the performance of his duties as a security officer or traveling to and from his place of assignment;

(B) he is wearing a distinctive uniform; and

(C) the weapon is in plain view.

[Amended by Acts 1975, 64th Leg., p. 109, ch. 49, § 1, eff. April 15, 1975; Acts 1975, 64th Leg., p. 918, ch. 342, § 14, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1330, ch. 494, § 2; Acts 1977, 65th Leg., p. 1879, ch. 746, § 26, eff. Aug. 29, 1977.]

For saving provisions of Acts 1975, 64th Leg., ch. 342, see note set out under Section 1.07.

§ 46.06. Prohibited Weapons

(a) A person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) an explosive weapon;

(2) a machine gun;

(3) a short-barrel firearm;

(4) a firearm silencer;

(5) a switchblade knife; or

(6) knuckles.

(b) It is a defense to prosecution under this section that the actor's conduct was incidental to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a penal institution.

(c) It is a defense to prosecution under this section that the actor's possession was pursuant to registration pursuant to the National Firearms Act, as amended.[1]

(d) It is an affirmative defense to prosecution under this section that the actor's conduct was incidental to dealing with a switchblade knife, springblade knife, or short-barrel firearm solely as an antique or curio.

(e) An offense under this section is a felony of the second degree unless it is committed under Subsection (a)(5) or (a)(6) of this section, in which event, it is a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 918, ch. 342, § 15, eff. Sept. 1, 1975.]

[1] 26 U.S.C.A. § 5801 et seq.

For saving provisions see note set out under Section 1.07.

CHAPTER 47. GAMBLING

§ 47.04. Keeping a Gambling Place

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) It is an affirmative defense to prosecution under this section that the gambling place is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state in the course of a bona fide voyage to or from a foreign port if:

(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the gambling place on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;

(2) the portion of the vessel that is used as a gambling place is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;

(3) no person other than the master and crew of the vessel is permitted to enter or view the gambling place while the vessel is in the territorial waters of this state; and

(4) the gambling place is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.

(d) An offense under this section is a felony of the third degree.

[Amended by Acts 1977, 65th Leg., p. 667, ch. 251, § 1, eff. Aug. 29, 1977.]

§ 47.06. Possession of Gambling Device or Equipment.

[See Compact Edition, Volume 1 for text of (a) and (b)]

Text of subsec. (c) added by Acts 1977, 65th Leg., p. 668, ch. 251, § 2

(c) It is an affirmative defense to prosecution under this section that the device or equipment is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state in the course of a bona fide voyage to or from a foreign port if:

(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the device or equipment on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;

(2) the portion of the vessel in which the device or equipment is located is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;

(3) no person other than the master and crew of the vessel is permitted to enter or view the portion of the vessel in which the device or equipment is located while the vessel is in the territorial waters of this state; and

(4) the device or equipment is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.

Text of subsec. (c) added by Acts 1977, 65th Leg., p. 1865, ch. 741, § 1

(c) It is a defense to prosecution under this section that the gambling device was manufactured prior to 1940 and not used for gambling, gambling promotion, or keeping a gambling place under Sections 47.02, 47.03, and 47.04, respectively, of this code, and that the party possessing same:

(1) within 30 days after coming into possession of same or the effective date of this amendment, whichever last occurs, furnished the following information to the sheriff of the county wherein such device is to be maintained:

(A) the name and address of the party possessing same

(B) the name of the manufacturer, date of manufacture, and serial number of the device, if available, and

(2) within 30 days of the transfer of such device advises the sheriff of the county to whom the information provided for in item (1) above was furnished of the name and address of the transferee.

(d) An offense under this section is a felony of the third degree.

[Amended by Acts 1977, 65th Leg., p. 668, ch. 25, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1865, ch. 741, § 1, eff. Aug. 29, 1977.]

§ 47.07. Possession of Gambling Paraphernalia

[See Compact Edition, Volume 1 for text of (a)]

(b) It is an affirmative defense to prosecution under this section that the gambling paraphernalia is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state in the course of a bona fide voyage to or from a foreign port if:

(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the gambling paraphernalia on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;

(2) the portion of the vessel in which the gambling paraphernalia is located is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;

(3) no person other than the master and crew of the vessel is permitted to enter or view the portion of the vessel in which the gambling paraphernalia is located while the vessel is in the territorial waters of this state; and

(4) the gambling paraphernalia is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.

(c) An offense under this section is a Class A misdemeanor.

(d) The district or county attorney shall not be required to have a search warrant or subpoena to enter the vessel to inspect the gambling paraphernalia.

[Amended by Acts 1977, 65th Leg., p. 668, ch. 251, § 3, eff. Aug. 29, 1977.]

CHAPTER 48. CONDUCT AFFECTING PUBLIC HEALTH

§ 48.01. Smoking Tobacco

(a) A person commits an offense if he is in possession of a burning tobacco product or smokes tobacco in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, or intrastate bus, as defined by Section 4(b) of the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), plane, or train which is a public place.

(b) It is a defense to prosecution under this section that the conveyance or public place in which the offense takes place does not have prominently displayed a reasonably sized notice that smoking is prohibited by state law in such conveyance and/or public place and that an offense is punishable by a fine not to exceed $200.

(c) All conveyances and public places set out in Subsection (a) of Section 48.01 shall be equipped with facilities for extinguishment of smoking materials and it shall be a defense to prosecution under this section if the conveyance or public place within which the offense takes place is not so equipped.

(d) It is an exception to the application of Subsection (a) if the person is in possession of the burning tobacco product or smokes tobacco exclusively within an area designated for smoking tobacco or as a participant in an authorized theatrical performance.

(e) An area designated for smoking tobacco on a transit system bus or intrastate plane or train must also include the area occupied by the operator of the transit system bus, plane, or train.

(f) An offense under this section is punishable as a Class C misdemeanor.

[Acts 1975, 64th Leg., p. 744, ch. 290, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided:

"The provisions of this Act shall not preempt any ordinance adopted by a government entity now or in the future which prohibits the possession of lighted tobacco products or prohibits the smoking of tobacco within the jurisdiction of said governmental entity."

TITLE 11. ORGANIZED CRIME

CHAPTER 71. ORGANIZED CRIME

Section

71.01. Definitions.
71.02. Engaging in Organized Criminal Activity.
71.03. Defenses Excluded.
71.04. Testimonial Immunity.
71.05. Renunciation Defense.

§ 71.01. Definitions

In this chapter,

(a) "combination" means five or more persons who collaborate in carrying on criminal activities, although:

(1) participants may not know each other's identity;

(2) membership in the combination may change from time to time; and

(3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.

(b) "Conspires to commit" means that a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and that person and one or more of them perform an overt act in pursuance of the agreement. An agreement constituting conspiring to commit may be inferred from the acts of the parties.

[Added by Acts 1977, 65th Leg., p. 922, ch. 346, § 1, eff. June 10, 1977.]

§ 71.02. Engaging in Organized Criminal Activity

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, or forgery;

(2) any felony gambling offense;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons; or

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception.

(b) Except as provided in Subsection (c) of this section, an offense under this section is one category higher than the most serious offense listed in Subdivisions (1) through (5) of Subsection (a) of this section that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a felony of the third degree, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subdivisions (1) through (5) of Subsection (a) of this section that the person conspired to commit.

[Added by Acts 1977, 65th Leg., p. 922, ch. 346, § 1, eff. June 10, 1977.]

§ 71.03. Defenses Excluded

It is no defense to prosecution under Section 71.02 of this code that:

(1) one or more members of the combination are not criminally responsible for the object offense;

(2) one or more members of the combination have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are immune from prosecution;

(3) a person has been charged with, acquitted, or convicted of any offense listed in Subsection (a) of Section 71.02 of this code; or

(4) once the initial combination of five or more persons is formed there is a change in the number or identity of persons in the combination as long as two or more persons remain in the combination and are involved in a continuing course of conduct constituting an offense under this chapter.

[Added by Acts 1977, 65th Leg., p. 922, ch. 346, § 1, eff. June 10, 1977.]

§ 71.04. Testimonial Immunity

(a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) No evidence or testimony required to be furnished under the provisions of this section nor any information directly or indirectly derived from such evidence or testimony may be used against the witness in any criminal case, except a prosecution for aggravated perjury or contempt.

[Added by Acts 1977, 65th Leg., p. 922, ch. 346, § 1, eff. June 10, 1977.]

§ 71.05. Renunciation Defense

(a) It is an affirmative defense to prosecution under Section 71.02 of this code that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor withdrew from the combination before commission of an offense listed in Subdivisions (1) through (5) of Subsection (a) of Section 71.02 of this code and took further affirmative action that prevented the commission of the offense.

(b) Renunciation is not voluntary if it is motivated in whole or in part:

(1) by circumstances not present or apparent at the inception of the actor's course of conduct that increase the probability of detection or apprehension or that make more difficult the accomplishment of the objective; or

(2) by a decision to postpone the criminal conduct until another time or to transfer the criminal act to another but similar objective or victim.

(c) Evidence that the defendant withdrew from the combination before commission of an offense listed in Subdivisions (1) through (5) of Subsection (a) of Section 71.02 of this code and made substantial effort to prevent the commission of an offense listed in Subdivisions (1) through (5) of Subsection (a) of Section 71.02 of this code shall be admissible as mitigation at the hearing on punishment if he has been found guilty under Section 71.02 of this code, and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided under Section 71.02 of this code.

[Added by Acts 1977, 65th Leg., p. 922, ch. 346, § 1, eff. June 10, 1977.]

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CODE OF CRIMINAL PROCEDURE

PART I. CODE OF CRIMINAL PROCEDURE OF 1965

Chapter — Section

32A. Speedy Trial ---------- 32A.01

CHAPTER TWO. GENERAL DUTIES OF OFFICERS

Art. 2.12. Who are Peace Officers

The following are peace officers:

(1) sheriffs and their deputies;

(2) constables and deputy constables;

(3) marshals or police officers of an incorporated city, town, or village;

(4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

(5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;

(6) law enforcement agents of the Alcoholic Beverage Commission;

(7) each member of an arson investigating unit of a city, county or the state;

(8) any private person specially appointed to execute criminal process;

(9) officers commissioned by the governing board of any state institution of higher education, public junior college or the Texas State Technical Institute;

(10) officers commissioned by the Board of Control;

(11) law enforcement officers commissioned by the Parks and Wildlife Commission;

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state that operates an airport served by a Civil Aeronautics Board certificated air carrier;

(13) municipal park and recreational patrolmen and security officers; and

(14) security officers commissioned as peace officers by the State Treasurer.

[Amended by Acts 1975, 64th Leg., p. 480, ch. 204, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 618, ch. 227, § 2, eff. May 24, 1977; Acts 1977, 65th Leg., p. 1082, ch. 396, § 1, eff. Aug. 29, 1977.]

Section 2 of Acts 1977, 65th Leg., p. 1082, ch. 396, provided:

"The following named criminal investigators of the United States shall not be deemed peace officers, but shall have the powers of arrest, search and seizure as to felony offenses only under the laws of the State of Texas:

"Special Agents of the Federal Bureau of Investigation,

"Special Agents of the Secret Service,

"Special Agents of United States Customs, excluding border patrolmen and custom inspectors,

"Special Agents of Alcohol, Tobacco and Firearms, and

"Special Agents of Federal Drug Enforcement Agency."

Art. 2.21. Duty of Clerks

(a) Each clerk of the district or county court shall receive and file all papers and exhibits in respect to criminal proceedings, issue all process in such cases, and perform all other duties imposed upon them by law.

(b) Any firearm or contraband received by a clerk as an exhibit in any criminal proceeding may be placed by the clerk in the hands of the sheriff for safekeeping at any time during the pendency of such proceeding or thereafter.

(c) The sheriff shall receive and hold such exhibits and release them only to the person or persons authorized by the court in which such exhibits have been received.

[Amended by Acts 1979, 66th Leg., p. 212, ch. 119, § 1, eff. Aug. 27, 1979.]

CHAPTER THREE. DEFINITIONS

Art. 3.01. Words and Phrases

All words, phrases and terms used in this Code are to be taken and understood in their usual acceptation in common language, except where specially defined.

[Amended by Acts 1975, 64th Leg., p. 909, ch. 341, § 1, eff. June 19, 1975.]

Saving provisions. Section 7 of the 1975 Act provided:

"Sec. 7. (a) Except as provided in Subsections (b) and (c) of this section, this Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date.

"(b) Conduct constituting an offense under existing law that is repealed by this Act and that does not constitute an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense under the laws repealed by this Act and that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act for conduct constituting an offense under laws repealed by this Act is valid and unaffected by this Act. For purposes of this section, "conviction" means a finding of guilt in a court of competent jurisdiction, and it is of no consequence that the conviction is not final."

"(c) In a criminal action pending on or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins."

CHAPTER SIX. PREVENTING OFFENSES BY THE ACT OF MAGISTRATES AND OTHER OFFICERS

Art. 6.01. When Magistrate Hears Threat

It is the duty of every magistrate, when he may have heard, in any manner, that a threat has been

made by one person to do some injury to himself or the person or property of another, including the person or property of his spouse, immediately to give notice to some peace officer, in order that such peace officer may use lawful means to prevent the injury.
[Amended by Acts 1979, 66th Leg., p. 366, ch. 164, § 1, eff. Sept. 1, 1979.]

Art. 6.02. Threat to Take Life

If, within the hearing of a magistrate, one person shall threaten to take the life of another, including that of his spouse, or himself, the magistrate shall issue a warrant for the arrest of the person making the threat, or in case of emergency, he may himself immediately arrest such person.
[Amended by Acts 1979, 66th Leg., p. 366, ch. 164, § 1, eff. Sept. 1, 1979.]

Art. 6.03. On Attempt to Injure

Whenever, in the presence or within the observation of a magistrate, an attempt is made by one person to inflict an injury upon himself or to the person or property of another, including the person or property of his spouse, it is his duty to use all lawful means to prevent the injury. This may be done, either by verbal order to a peace officer to interfere and prevent the injury, or by the issuance of an order of arrest against the offender, or by arresting the offender; for which purpose he may call upon all persons present to assist in making the arrest.
[Amended by Acts 1979, 66th Leg., p. 366, ch. 164, § 1, eff. Sept. 1, 1979.]

Art. 6.05. Duty of Peace Officer as to Threats

It is the duty of every peace officer, when he may have been informed in any manner that a threat has been made by one person to do some injury to himself or to the person or property of another, including the person or property of his spouse, to prevent the threatened injury, if within his power; and, in order to do this, he may call in aid any number of citizens in his county. He may take such measures as the person about to be injured might for the prevention of the offense.
[Amended by Acts 1979, 66th Leg., p. 366, ch. 164, § 1, eff. Sept. 1, 1979.]

Art. 6.06. Peace Officer to Prevent Injury

Whenever, in the presence of a peace officer, or within his view, one person is about to commit an offense against the person or property of another, including the person or property of his spouse, or injure himself, it is his duty to prevent it; and, for this purpose the peace officer may summon any number of the citizens of his county to his aid. The peace officer must use the amount of force necessary to prevent the commission of the offense, and no greater.
[Amended by Acts 1979, 66th Leg., p. 366, ch. 164, § 1, eff. Sept. 1, 1979.]

HABEAS CORPUS

CHAPTER ELEVEN. HABEAS CORPUS

Art. 11.07. Return to Certain County; Procedure After Conviction

[See Compact Edition, Volume 1 for text of 1]

Sec. 2. (a) After final conviction in any felony case, the writ must be made returnable to the Court of Criminal Appeals of Texas at Austin, Texas.

(b) Whenever a petition for writ of habeas corpus is filed after final conviction in a felony case, the clerk shall transfer or assign it to the court in which the conviction being challenged was obtained. When the petition is received by that court, a writ of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law. The clerk of that court shall make appropriate notation thereof, assign to the case a file number (ancillary to that of the conviction being challenged), and send a copy of the petition by certified mail, return receipt requested, to the attorney representing the state in that court, who shall have 15 days in which it may answer the petition. Matters alleged in the petition not admitted by the state are deemed denied.

(c) Within 20 days of the expiration of the time in which the state is allowed to answer, it shall be the duty of the convicting court to decide whether there are controverted, previously unresolved facts material to the legality of the applicant's confinement. If the convicting court decides that there are no such issues, the clerk shall immediately transmit to the Court of Criminal Appeals a copy of the petition, any answers filed, and a certificate reciting the date upon which that finding was made. Failure of the court to act within the allowed 20 days shall constitute such a finding.

(d) If the convicting court decides that there are controverted, previously unresolved facts which are material to the legality of the applicant's confinement, it shall enter an order within 20 days of the expiration of the time allowed for the state to reply, designating the issues of fact to be resolved. To resolve those issues the court may order affidavits, depositions, interrogatories, and hearings, as well as using personal recollection. Also, the convicting court may appoint an attorney or a magistrate to hold a hearing and make findings of fact. An attorney so appointed shall be compensated as provided in Article 26.05 of this code. It shall be the duty of the reporter who is designated to transcribe a hearing held pursuant to this article to prepare a transcript within 15 days of its conclusion. After the convicting court makes findings of fact or approves the findings of the person designated to make them, the clerk of the convicting court shall immediately transmit to the Court of Criminal Appeals, under one cover, the petition, any answers filed, any

motions filed, transcripts of all depositions and hearings, any affidavits, and any other matters such as official records used by the court in resolving issues of fact.

[See Compact Edition, Volume 1 for text of 3 to 4]

Sec. 5. When the attorney for the state files an answer, motion, or other pleading relating to a petition for a writ of habeas corpus or the court issues an order relating to a petition for a writ of habeas corpus, the clerk of the court shall mail or deliver to the petitioner a copy of the answer, motion, pleading, or order.

[Amended by Acts 1977, 65th Leg., p. 1974, ch. 789, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1017, ch. 451, § 1, eff. Sept. 1, 1979.]

LIMITATION AND VENUE

CHAPTER TWELVE. LIMITATION

Art. 12.01. Felonies

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1) no limitation: murder and manslaughter;

(2) ten years from the date of the commission of the offense:

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B) theft by a public servant of government property over which he exercises control in his official capacity;

(C) forgery or the uttering, using or passing of forged instruments;

(3) five years from the date of the commission of the offense:

(A) theft, burglary, robbery;

(B) arson;

(4) three years from the date of the commission of the offense: all other felonies.

[Amended by Acts 1975, 64th Leg., p. 478, ch. 203, § 5, eff. Sept. 1, 1975.]

Subsection 7(c) of the 1975 amendatory act provided:

(c) Section 5 of this Act applies to the prosecution of criminal offenses committed not more than one year before the effective date of this Act.

CHAPTER THIRTEEN. VENUE

Article

13.20. Venue by Consent.
13.21. Organized Criminal Activity.
13.22. Possession and Delivery of Marihuana.

Art. 13.15. Rape

Rape may be prosecuted in the county in which it is committed, in the county in which the victim is abducted, or in any county through or into which the victim is transported in the course of the abduction and rape. When it shall come to the knowledge of any district judge whose court has jurisdiction under this Article that rape has probably been committed, he shall immediately, if his court be in session, and if not in session, then, at the first term thereafter in any county of the district, call the attention of the grand jury thereto; and if the court be in session, but the grand jury has been discharged, he shall immediately recall the grand jury to investigate the accusation. Prosecution for rape shall take precedence in all cases in courts; and the district courts are authorized and directed to change the venue in such cases whenever it shall be necessary to secure a speedy trial.

[Amended by Acts 1977, 65th Leg., p. 692, ch. 262, § 1, eff. May 25, 1977.]

Art. 13.20. Venue by Consent

The trial of all felony cases, without a jury, may, with the consent of the defendant in writing, his attorney, and the attorney for the state, be held in any county within the judicial district or districts for the county where venue is otherwise authorized by law.

[Added by Acts 1975, 64th Leg., p. 242, ch. 91, § 1, eff. Sept. 1, 1975.]

Art. 13.21. Organized Criminal Activity

The offense of engaging in organized criminal activity may be prosecuted in any county in which any act is committed to effect an objective of the combination.

[Added by Acts 1977, 65th Leg., p. 924, ch. 346, § 2, eff. June 10, 1977.]

Art. 13.22. Possession and Delivery of Marihuana

An offense of possession or delivery of marihuana may be prosecuted in the county where the offense was committed or with the consent of the defendant in a county that is adjacent to and in the same judicial district as the county where the offense was committed.

[Added by Acts 1979, 66th Leg., p. 18, ch. 10, § 1, eff. March 7, 1979.]

Section 2 of the 1979 Act provided:

"This Act applies to a prosecution commenced by the filing of an indictment or information on or after the effective date of this Act."

ARREST, COMMITMENT AND BAIL

CHAPTER FIFTEEN. ARREST UNDER WARRANT

Art. 15.17. Duties of Arresting Officer and Magistrate

(a) In each case enumerated in this Code, the person making the arrest shall without unnecessary

delay take the person arrested or have him taken before some magistrate of the county where the accused was arrested. The magistrate shall inform in clear language the person arrested of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, of his right to request the appointment of counsel if he is indigent and cannot afford counsel, and of his right to have an examining trial. He shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall admit the person arrested to bail if allowed by law.

(b) When a deaf accused is taken before a magistrate under Article 14.06 or 15.17 of this Code, an interpreter appointed by the magistrate qualified and sworn as provided in Article 38.31 of this Code shall interpret the warning required by those articles in a language that the accused can understand, including but not limited to sign language.

[Amended by Acts 1979, 66th Leg., p. 398, ch. 186, § 3, eff. May 15, 1979.]

CHAPTER SEVENTEEN. BAIL

Article
17.151. Release Because of Delay.
17.39. Records of Bail.

Art. 17.151. Release Because of Delay

Sec. 1. A defendant who is detained in jail pending trial of an accusation against him must be released either on personal bond or by reducing the amount of bail required, if the state is not ready for trial of the criminal action for which he is being detained within:

(1) 90 days from the commencement of his detention if he is accused of a felony;

(2) 30 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment in jail for more than 180 days;

(3) 15 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less; or

(4) five days from the commencement of his detention if he is accused of a misdemeanor punishable by a fine only.

Sec. 2. The provisions of this article do not apply to a defendant who is:

(1) serving a sentence of imprisonment for another offense while he is serving that sentence;

(2) being detained pending trial of another accusation against him as to which the applicable period has not yet elapsed; or

(3) incompetent to stand trial, during the period of his incompetence.

Sec. 3. If a person released under this article is arrested and detained for a violation of the conditions of his release, the time for release under Section 1 of this article begins to run on the date of the arrest for violation of conditions of the release.

[Added by Acts 1977, 65th Leg., p. 1972, ch. 787, § 2, eff. July 1, 1978.]

Art. 17.39. Records of Bail

A magistrate or other officer who sets the amount of bail or who takes bail shall record in a well-bound book the name of the person whose appearance the bail secures, the amount of bail, the date bail is set, the magistrate or officer who sets bail, the offense or other cause for which the appearance is secured, the magistrate or other officer who takes bail, the date the person is released, and the name of the bondsman, if any.

[Added by Acts 1977, 65th Leg., p. 1525, ch. 618, § 1, eff. Aug. 29, 1977.]

SEARCH WARRANTS

CHAPTER EIGHTEEN. SEARCH WARRANTS

Art. 18.01. Search Warrant

[See Compact Edition, Volume 1 for text of (a) and (b)]

(c) A search warrant may not be issued pursuant to Subdivision (10) of Article 18.02 of this code unless the sworn affidavit required by Subsection (b) of this article sets forth sufficient facts to establish probable cause: (1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched. Only a judge of a statutory county court, district court, the Court of Criminal Appeals, or the Supreme Court may issue warrants pursuant to Subdivision (10), Article 18.02 of this code.

(d) Only the specifically described property or items set forth in a search warrant issued under Subdivision (10) of Article 18.02 of this code or property or items enumerated in Subdivisions (1) through (9) of Article 18.02 of this code may be seized. Subsequent search warrants may not be

issued pursuant to Subdivision (10) of Article 18.02 of this code to search the same person, place, or thing subjected to a prior search under Subdivision (10) of Article 18.02 of this code.

(e) A search warrant may not be issued under Subdivision (10) of Article 18.02 of this code to search for and seize property or items that are not described in Subdivisions (1) through (9) of that article and that are located in an office of a newspaper, news magazine, television station, or radio station, and in no event may property or items not described in Subdivisions (1) through (9) of that article be legally seized in any search pursuant to a search warrant of an office of a newspaper, news magazine, television station, or radio station.

[Amended by Acts 1977, 65th Leg., p. 640, ch. 237, § 1, eff. May 25, 1977; Acts 1979, 66th Leg., p. 1076, ch. 505, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1124, ch. 536, § 1, eff. June 11, 1979.]

Art. 18.02. Grounds for Issuance

A search warrant may be issued to search for and seize:

[See Compact Edition, Volume 1 for text of (1) to (8)]

(9) implements or instruments used in the commission of a crime; or

(10) property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense.

[Amended by Acts 1977, 65th Leg., p. 640, ch. 237, § 2, eff. May 25, 1977.]

AFTER COMMITMENT OR BAIL AND BEFORE THE TRIAL

CHAPTER NINETEEN. ORGANIZATION OF THE GRAND JURY

Art. 19.01. Appointment of Jury Commissioners; Selection Without Jury Commission

(a) The district judge, at or during any term of court, shall appoint not less than three, nor more than five persons to perform the duties of jury commissioners, and shall cause the sheriff to notify them of their appointment, and when and where they are to appear. The district judge shall, in the order appointing such commissioners, designate whether such commissioners shall serve during the term at which selected or for the next succeeding term. Such commissioners shall receive as compensation for each day or part thereof they may serve the sum of Ten Dollars, and they shall possess the following qualifications:

1. Be intelligent citizens of the county and able to read and write the English language;

2. Be qualified jurors in the county;

3. Have no suit in said court which requires intervention of a jury;

4. Be residents of different portions of the county; and

5. The same person shall not act as jury commissioner more than once in the same year.

(b) In lieu of the selection of prospective jurors by means of a jury commission, the district judge may direct that 20 to 50 prospective grand jurors be selected and summoned, with return on summons, in the same manner as for the selection and summons of panels for the trial of civil cases in the district courts. The judge shall try the qualifications for and excuses from service as a grand juror and impanel the completed grand jury in the same manner as provided for grand jurors selected by a jury commission.

[Amended by Acts 1979, 66th Leg., p. 393, ch. 184, § 1, eff. Sept. 1, 1979.]

Art. 19.06. Shall Select Grand Jurors

The jury commissioners shall select not less than 15 nor more than 20 persons from the citizens of the county to be summoned as grand jurors for the next term of court, or the term of court for which said commissioners were selected to serve, as directed in the order of the court selecting the commissioners. The commissioners shall, to the extent possible, select grand jurors who the commissioners determine represent a broad cross-section of the population of the county, considering the factors of race, sex, and age.

[Amended by Acts 1979, 66th Leg., p. 394, ch. 184, § 4, eff. Sept. 1, 1979.]

Art. 19.25. Excuses from Service

Any person summoned who does not possess the requisite qualifications shall be excused by the court from serving. The following qualified persons may be excused from grand jury service:

(1) a person older than 65 years;

(2) a person responsible for the care of a child younger than 18 years;

(3) a student of a public or private secondary school;

(4) a person enrolled and in actual attendance at an institution of higher education; and

(5) any other person that the court determines has a reasonable excuse from service.

[Amended by Acts 1979, 66th Leg., p. 393, ch. 184, § 2, eff. Sept. 1, 1979.]

Art. 19.30. Challenge to "Array"

A challenge to the "array" shall be made in writing for these causes only:

1. That those summoned as grand jurors are not in fact those selected by the method provided by Article 19.01(b) of this chapter or by the jury commissioners; and

2. In case of grand jurors summoned by order of the court, that the officer who summoned them had acted corruptly in summoning any one or more of them.

[Amended by Acts 1979, 66th Leg., p. 394, ch. 184, § 3, eff. Sept. 1, 1979.]

CHAPTER TWENTY. DUTIES AND POWERS OF THE GRAND JURY

Art. 20.21. Indictment Presented

When the indictment is ready to be presented, the grand jury shall through their foreman, deliver the indictment to the judge or clerk of the court. At least nine members of the grand jury must be present on such occasion.

[Amended by Acts 1979, 66th Leg., p. 1033, ch. 463, § 1, eff. June 7, 1979.]

Art. 20.22. Presentment Entered of Record

The fact of a presentment of indictment by a grand jury shall be entered upon the minutes of the court, noting briefly the style of the criminal action and the file number of the indictment, but omitting the name of the defendant, unless he is in custody or under bond.

[Amended by Acts 1979, 66th Leg., p. 1033, ch. 463, § 2, eff. June 7, 1979.]

CHAPTER TWENTY-ONE. INDICTMENT AND INFORMATION

Art. 21.09. Description of Property

If known, personal property alleged in an indictment shall be identified by name, kind, number, and ownership. When such is unknown, that fact shall be stated, and a general classification, describing and identifying the property as near as may be, shall suffice. If the property be real estate, its general locality in the county, and the name of the owner, occupant or claimant thereof, shall be a sufficient description of the same.

[Amended by Acts 1975, 64th Leg., p. 909, ch. 341, § 2, eff. June 19, 1975.]

For saving provisions of 1975 amendatory act, see note set out under art. 3.01.

CHAPTER TWENTY-THREE. THE CAPIAS

Art. 23.03. Capias or Summons in Felony

(a) A capias shall be issued by the district clerk upon each indictment for felony presented, after bail has been set or denied by the judge of the court. Upon the request of the attorney representing the State, a summons shall be issued by the district clerk. The capias or summons shall be delivered by the clerk or mailed to the sheriff of the county where the defendant resides or is to be found. A capias or summons need not issue for a defendant in custody or under bond.

[See Compact Edition, Volume 2 for text of (b) and (c)]

[Amended by Acts 1979, 66th Leg., p. 1034, ch. 463, § 3, eff. June 7, 1979.]

CHAPTER TWENTY-FOUR. SUBPOENA AND ATTACHMENT

Art. 24.04. Service and Return of Subpoena

A subpoena is served by reading the same in the hearing of the witness or by delivering a copy of the subpoena to the witness. The officer having the subpoena shall make due return thereof, showing the time and manner of service, if served, and if not served, he shall show in his return the cause of his failure to serve it; and if the witness could not be found, he shall state the diligence he has used to find him, and what information he has as to the whereabouts of the witness.

[Amended by Acts 1979, 66th Leg., p. 770, ch. 336, § 1, eff. Aug. 27, 1979.]

CHAPTER TWENTY-SIX. ARRAIGNMENT

Article
26.055. Contribution from State for Defense of Certain Prisoners.

Art. 26.055. Contribution from State for Defense of Certain Prisoners

Sec. 1. A county in which a facility of the Texas Department of Corrections is located shall pay from its general fund only the first $250 of the aggregate sum allowed and awarded by the court for attorneys' fees, investigation, and expert testimony under Article 26.05 toward defending a prisoner committed to that facility who is being prosecuted for an offense committed in that county while in the custody of the department if the prisoner was originally committed for an offense committed in another county.

Sec. 2. If the fees awarded for court-appointed counsel in a case covered by Section 1 of this article exceed $250, the court shall certify the amount in

excess of $250 to the Comptroller of Public Accounts of the State of Texas. The comptroller shall issue a warrant to the court-appointed counsel in the amount certified to the comptroller by the court.
[Added by Acts 1975, 64th Leg., p. 168, ch. 72, § 1, eff. Sept. 1, 1975.]

Art. 26.13. Plea of Guilty

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(1) the range of the punishment attached to the offense;

(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of any plea bargaining agreements between the state and the defendant and, in the event that such an agreement exists, the court shall inform the defendant whether it will follow or reject such agreement in open court and before any finding on the plea. Should the court reject any such agreement, the defendant shall be permitted to withdraw his plea of guilty or nolo contendere, and neither the fact that the defendant had entered a plea of guilty or nolo contendere nor any statements made by him at the hearing on the plea of guilty or nolo contendere may be used against the defendant on the issue of guilt or punishment in any subsequent criminal proceeding; and

(3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney, the trial court must give its permission to the defendant before he may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial.

(b) No plea of guilty or plea of nolo contendere shall be accepted by the court unless it appears that the defendant is mentally competent and the plea is free and voluntary.

(c) In admonishing the defendant as herein provided, substantial compliance by the court is sufficient, unless the defendant affirmatively shows that he was not aware of the consequences of his plea and that he was misled or harmed by the admonishment of the court.

[Amended by Acts 1975, 64th Leg., p. 909, ch. 341, § 3, eff. June 19, 1975; Acts 1977, 65th Leg., p. 748, ch. 280, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1108, ch. 524, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1160, ch. 561, § 1, eff. Sept. 1, 1979.]

For saving provisions of 1975 amendatory act, see note set out under art. 3.01.

CHAPTER TWENTY-SEVEN. THE PLEADING IN CRIMINAL ACTIONS

Art. 27.14. Plea of Guilty or Nolo Contendere in Misdemeanor

(a) A plea of "guilty" or a plea of "nolo contendere" in a misdemeanor case may be made either by the defendant or his counsel in open court; in such case, the defendant or his counsel may waive a jury, and the punishment may be assessed by the court either upon or without evidence, at the discretion of the court.

(b) A defendant charged with a misdemeanor for which the maximum possible punishment is by fine only may, in lieu of the method provided in Subsection (a) of this article, mail to the court a plea of "guilty" or a plea of "nolo contendere" and a waiver of jury trial. The defendant may also request in writing that the court notify the defendant, at the address stated in the request, of the amount of an appeal bond that the court will approve. If the court receives a plea and waiver before the time the defendant is scheduled to appear in court, the court shall dispose of the case without requiring a court appearance by the defendant. The court shall notify the defendant by certified mail, return receipt requested, of the amount of any fine assessed in the case and, if requested by the defendant, the amount of an appeal bond that the court will approve. The defendant shall pay any fine assessed or give an appeal bond in the amount stated in the notice before the 31st day after receiving the notice.

(c) In a misdemeanor case arising out of a moving traffic violation for which the maximum possible punishment is by fine only, payment of a fine, or an amount accepted by the court constitutes a finding of guilty in open court, as though a plea of nolo contendere had been entered by the defendant.
[Amended by Acts 1977, 65th Leg., p. 2143, ch. 858, § 1, eff. June 16, 1977; Acts 1979, 66th Leg., p. 450, ch. 207, § 1, eff. Sept. 1, 1979.]

Section 4 of the 1979 amendatory act provided:

"This Act applies only to appeal bonds given for an appeal from a sentence of a justice or municipal court rendered on or after the effective date of this Act. The sufficiency of an appeal bond for an appeal from a sentence of a justice or municipal court rendered before the effective date of this Act is governed by the law amended by this Act as it existed at the time the sentence was rendered, and that law is continued in effect for this purpose as if this Act were not in force."

Art. 27.16. Plea of Not Guilty, How Made

(a) The plea of not guilty may be made orally by the defendant or by his counsel in open court. If the defendant refuses to plead, the plea of not guilty shall be entered for him by the court.

(b) A defendant charged with a misdemeanor for which the maximum possible punishment is by fine only may, in lieu of the method provided in Subsection (a) of this article, mail to the court a plea of not guilty.

[Amended by Acts 1977, 65th Leg., p. 2143, ch. 858, § 2, eff. June 16, 1977.]

CHAPTER TWENTY-EIGHT. MOTIONS, PLEADINGS AND EXCEPTIONS

Article
28.061. Discharge for Delay.

Art. 28.01. Pre-Trial

Sec. 1. The court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and his attorney, if any of record, and the State's attorney, to appear before the court at the time and place stated in the court's order for a conference and hearing. The defendant must be present at the arraignment, and his presence is required during any pre-trial proceeding. The pre-trial hearing shall be to determine any of the following matters:

(1) Arraignment of the defendant, if such be necessary; and appointment of counsel to represent the defendant, if such be necessary;

(2) Pleadings of the defendant;

(3) Special pleas, if any;

(4) Exceptions to the form or substance of the indictment or information;

(5) Motions for continuance either by the State or defendant; provided that grounds for continuance not existing or not known at the time may be presented and considered at any time before the defendant announces ready for trial;

(6) Motions to suppress evidence—When a hearing on the motion to suppress evidence is granted, the court may determine the merits of said motion on the motions themselves, or upon opposing affidavits, or upon oral testimony, subject to the discretion of the court;

(7) Motions for change of venue by the State or the defendant; provided, however, that such motions for change of venue, if overruled at the pre-trial hearing, may be renewed by the State or the defendant during the voir dire examination of the jury;

(8) Discovery;

(9) Entrapment; and

(10) Motion for appointment of interpreter.

Sec. 2. When a criminal case is set for such pre-trial hearing, any such preliminary matters not raised or filed seven days before the hearing will not thereafter be allowed to be raised or filed, except by permission of the court for good cause shown; provided that the defendant shall have sufficient notice of such hearing to allow him not less than 10 days in which to raise or file such preliminary matters. The record made at such pre-trial hearing, the rulings of the court and the exceptions and objections thereto shall become a part of the trial record of the case upon its merits.

[See Compact Edition, Volume 1 for text of 3]

[Amended by Acts 1979, 66th Leg., p. 204, ch. 113, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 453, ch. 209, § 2, eff. Aug. 27, 1979.]

Art. 28.061. Discharge for Delay

If a motion to set aside an indictment, information, or complaint for failure to provide a speedy trial as required by Article 32A.02 is sustained, the court shall discharge the defendant. A discharge under this article is a bar to any further prosecution for the offense discharged or for any other offense arising out of the same transaction.

[Added by Acts 1977, 65th Leg., p. 1972, ch. 787, § 4, eff. July 1, 1978.]

CHAPTER TWENTY-NINE. CONTINUANCE

Art. 29.02. By Agreement

A criminal action may be continued by consent of the parties thereto, in open court, at any time on a showing of good cause, but a continuance may be only for as long as is necessary.

[Amended by Acts 1977, 65th Leg., p. 1972, ch. 787, § 3, eff. July 1, 1978.]

Art. 29.03. For Sufficient Cause Shown

A criminal action may be continued on the written motion of the State or of the defendant, upon sufficient cause shown; which cause shall be fully set forth in the motion. A continuance may be only for as long as is necessary.

[Amended by Acts 1977, 65th Leg., p. 1972, ch. 787, § 3, eff. July 1, 1978.]

CHAPTER THIRTY. DISQUALIFICATION OF THE JUDGE

Art. 30.03. County Judge Disqualified, Absent or Disabled

Sec. 1. When the judge of the county court or county court at law, or of any county criminal court, is disqualified in any criminal case pending in the court of which he is judge, the parties may by consent agree upon a special judge to try such case. If they fail to agree upon a special judge to try such case, on or before the third day of the term at which such case may be called for trial, the practicing attorneys of the court present may elect from among their number a special judge who shall try the case. The election of the special judge shall be conducted in accordance with the provisions of Article 1887, et seq., V.A.C.S.

Sec. 2. In the event a county judge or the regular judge of a county court at law created in a county is absent, or is for any cause disabled from presiding, a special judge, who is an attorney, may be appointed by the commissioners court of the county.

Sec. 3. The special judge so appointed must possess those qualifications required of the regular judge of the court and, when appointed shall serve for the period of time designated by the order of appointment but in no event beyond that period of time the regular judge is absent or disabled.
[Amended by Acts 1975, 64th Leg., p. 1191, ch. 448, § 1, eff. June 19, 1975.]

Art. 30.04. Special Judge to Take Oath

The attorney agreed upon, elected, or appointed shall, before he enters upon his duties as special judge, take the oath of office required by the Constitution.
[Amended by Acts 1975, 64th Leg., p. 1191, ch. 448, § 2, eff. June 19, 1975.]

Art. 30.05. Record Made by Clerk

When a special judge is agreed upon by the parties, elected, or appointed as herein provided, the clerk shall enter in the minutes as a part of the proceedings in such cause a record showing:

1. That the judge of the court was disqualified, absent, or disabled to try the cause;

2. That such special judge (naming him) was by consent of the parties agreed upon, or elected or appointed;

3. That the oath of office prescribed by law was duly administered to such special judge.

[Amended by Acts 1975, 64th Leg., p. 1191, ch. 448, § 3, eff. June 19, 1975.]

CHAPTER THIRTY-ONE. CHANGE OF VENUE

Art. 31.03. Granted on Motion of Defendant

(a) A change of venue may be granted in any felony or misdemeanor case punishable by confinement on the written motion of the defendant, supported by his own affidavit and the affidavit of at least two credible persons, residents of the county where the prosecution is instituted, for either of the following causes, the truth and sufficiency of which the court shall determine:

1. That there exists in the county where the prosecution is commenced so great a prejudice against him that he cannot obtain a fair and impartial trial; and

2. That there is a dangerous combination against him instigated by influential persons, by reason of which he cannot expect a fair trial.

An order changing venue to a county beyond an adjoining district shall be grounds for reversal, if upon timely contest by defendant, the record of the contest affirmatively shows that any county in his own and the adjoining district is not subject to the same conditions which required the transfer.

(b) For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant and with the consent of the attorney for the state may transfer the proceeding as to him to another district.

(c) The court upon motion of the defendant and with the consent of the attorney for the state may transfer the proceedings to another district in those cases wherein the defendant stipulates that a plea of guilty will be entered.
[Amended by Acts 1979, 66th Leg., p. 266, ch. 140, § 1, eff. Aug. 27, 1979.]

TRIAL AND ITS INCIDENTS

CHAPTER THIRTY-TWO A. SPEEDY TRIAL

Article
32A.01. Trial Priorities.
32A.02. Time Limitations.

Art. 32A.01. Trial Priorities

Insofar as is practicable, the trial of a criminal action shall be given preference over trials of civil cases, and the trial of a criminal action against a defendant who is detained in jail pending trial of the action shall be given preference over trials of other criminal actions.
[Added by Acts 1977, 65th Leg., p. 1970, ch. 787, § 1, eff. July 1, 1978.]
Section 5 of the 1977 Act provided: "The effective date of this Act shall be July 1, 1978."

Art. 32A.02. Time Limitations

Sec. 1. A court shall grant a motion to set aside an indictment, information, or complaint if the state is not ready for trial within:

(1) 120 days of the commencement of a criminal action if the defendant is accused of a felony;

(2) 90 days of the commencement of a criminal action if the defendant is accused of a misdemeanor punishable by a sentence of imprisonment for more than 180 days; or

(3) 60 days of the commencement of a criminal action if the defendant is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less or punishable by a fine only.

Sec. 2. (a) Except as provided in subsections (b) and (c) of this section, a criminal action commences for purposes of this article when an indictment, information, or complaint against the defendant is filed in court, unless prior to the filing the defendant is either detained in custody or released on bail or personal bond to answer for the same offense or any other offense arising out of the same transaction, in which event the criminal action commences when he is arrested.

(b) If a defendant is to be retried following a mistrial, an order granting a new trial, or an appeal or collateral attack, a criminal action commences for purposes of this article on the date of the mistrial, the order granting a new trial, or the remand.

(c) If an indictment, information, or complaint is dismissed on motion of the defendant, a criminal action commences for the purposes of the article when a new indictment, information, or complaint against the defendant is filed in court, unless the defendant is either detained in custody or released on bail or personal bond to answer for the same offense or any other offense arising out of the same transaction, in which event the criminal action commences when he is detained or released.

Sec. 3. The failure of a defendant to move for discharge under the provisions of this article prior to trial or entry of a plea of guilty constitutes a waiver of the rights accorded by this article.

Sec. 4. In computing the time by which the state must be ready for trial, the following periods shall be excluded:

(1) a reasonable period of delay resulting from other proceedings involving the defendant, including but not limited to proceedings for the determination of competence to stand trial, hearing on pretrial motions, appeals, and trials of other charges;

(2) any period during which the defendant is incompetent to stand trial;

(3) a period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel, except that a defendant without counsel is deemed not to have consented to a continuance unless the court advised him of his right to a speedy trial and of the effect of his consent;

(4) a period of delay resulting from the absence of the defendant because his location is unknown and:

(A) he is attempting to avoid apprehension or prosecution; or

(B) the state has been unable to determine his location by due diligence;

(5) a period of delay resulting from the unavailability of the defendant whose location is known to the state but whose presence cannot be obtained by due diligence or because he resists being returned to the state for trial;

(6) a reasonable period of delay resulting from a continuance granted at the request of the state if the continuance is granted:

(A) because of the unavailability of evidence that is material to the state's case, if the state has exercised due diligence to obtain the evidence and there are reasonable grounds to believe the evidence will be available within a reasonable time; or

(B) to allow the state additional time to prepare its case and the additional time is justified because of the exceptional circumstances of the case;

(7) if the charge is dismissed upon motion of the state or the charge is disposed of by a final judgment and the defendant is later charged with the same offense or another offense arising out of the same transaction, the period of delay from the date of dismissal or the date of the final judgment to the date the time limitation would commence running on the subsequent charge had there been no previous charge;

(8) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run, if there is good cause for not granting a severance;

(9) a period of delay resulting from detention of the defendant in another jurisdiction, if the state is aware of the detention and exercises due diligence to obtain his presence for trial; and

(10) any other reasonable period of delay that is justified by exceptional circumstances.

[Added by Acts 1977, 65th Leg., p. 1970, ch. 787, eff. July 1, 1978. Amended by Acts 1979, 66th Leg., p. 4, ch. 3, § 1, eff. Sept. 1, 1979.]

Sections 2 and 3 of the 1979 amendatory act provided:

"Sec. 2. This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date.

"Sec. 3. This Act takes effect on September 1, 1979."

TRIAL AND ITS INCIDENTS

CHAPTER THIRTY-THREE. THE MODE OF TRIAL

Art. 33.03. Presence of Defendant

In all prosecutions for felonies, the defendant must be personally present at the trial, and he must likewise be present in all cases of misdemeanor when the punishment or any part thereof is imprisonment in jail; provided, however, that in all cases, when the defendant voluntarily absents himself after pleading to the indictment or information, or after the jury has been selected when trial is before a jury, the trial may proceed to its conclusion. When the record in the appellate court shows that the defendant was present at the commencement, or any portion of the trial, it shall be presumed in the absence of all evidence in the record to the contrary that he was present during the whole trial. Provided, however, that the presence of the defendant shall not be required at the hearing on the motion for new trial in any misdemeanor case.

[Amended by Acts 1979, 66th Leg., p. 1832, ch. 745, § 1, eff. Aug. 27, 1979.]

CHAPTER THIRTY-FIVE. FORMATION OF THE JURY

Art. 35.16. Reasons for Challenge for Cause

(a) A challenge for cause is an objection made to a particular juror, alleging some fact which renders him incapable or unfit to serve on the jury. A challenge for cause may be made by either the state or the defense for any one of the following reasons:

1. That he is not a qualified voter in the state and county under the Constitution and laws of the state; provided, however, the failure to pay a poll tax or register to vote shall not be a disqualification;

2. That he has been convicted of theft or any felony;

3. That he is under indictment or other legal accusation for theft or any felony;

4. That he is insane or has such defect in the organs of feeling or hearing, or such bodily or mental defect or disease as to render him unfit for jury service, or that he is legally blind and either the court or the state in its discretion or the defendant or the prospective juror in his discretion is not satisfied that he is fit for jury service in that particular case;

5. That he is a witness in the case;

6. That he served on the grand jury which found the indictment;

7. That he served on a petit jury in a former trial of the same case;

8. That he has a bias or prejudice in favor of or against the defendant;

9. That from hearsay, or otherwise, there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as would influence him in his action in finding a verdict. To ascertain whether this cause of challenge exists, the juror shall first be asked whether, in his opinion, the conclusion so established will influence his verdict. If he answers in the affirmative, he shall be discharged without further interrogation by either party or the court. If he answers in the negative, he shall be further examined as to how his conclusion was formed, and the extent to which it will affect his action; and, if it appears to have been formed from reading newspaper accounts, communications, statements or reports or mere rumor or hearsay, and if the juror states that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that he is impartial and will render such verdict, may, in its discretion, admit him as competent to serve in such case. If the court, in its discretion, is not satisfied that he is impartial, the juror shall be discharged;

10. That he cannot read or write.

No juror shall be impaneled when it appears that he is subject to the second, third or fourth grounds of challenge for cause set forth above, although both parties may consent. All other grounds for challenge may be waived by the party or parties in whose favor such grounds of challenge exist.

In this subsection, "legally blind" shall mean having not more than 20/200 of visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1975, 64th Leg., p. 475, ch. 202, § 2, eff. Sept. 1, 1975.]

Art. 35.24. Repealed by Acts 1975, 64th Leg., p. 1353, ch. 510, § 2, eff. Sept. 1, 1975

See, now, Civil Statutes, art. 2122.

Art. 35.27. Compensation of Nonresident Witnesses

[See Compact Edition, Volume 2 for text of 1]

Amount of Compensation for Expenses

Sec. 2. Any person seeking compensation as a witness shall make an affidavit setting out the travel and daily living expenses necessitated by his travel to and from and attendance at the place he appeared to give testimony, together with the number of days that such travel and attendance made him absent from his place of residence. Compensation paid by the State to the witness for such expenses shall not exceed $50 per day for daily living expenses and 16 cents per mile for travel by personal automobile.

[See Compact Edition, Volume 2 for text of 3 to 9]

[Amended by Acts 1979, 66th Leg., p. 1039, ch. 469, § 1, eff. Sept. 1, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act applies to reimbursement of a nonresident witness for travel expenses and daily living expenses incurred on or after the effective date of this Act. The reimbursement for travel expenses and daily living expenses incurred before the effective date of this Act are governed by the law amended by this Act as it existed before the effective date of this Act, and that law is continued in force for this purpose as if this Act were not in effect."

CHAPTER THIRTY-SIX. THE TRIAL BEFORE THE JURY

Art. 36.14. Charge of Court

Subject to the provisions of Article 36.07 in each felony case and in each misdemeanor case tried in a court of record, the judge shall, before the argument begins, deliver to the jury, except in pleas of guilty, where a jury has been waived, a written charge distinctly setting forth the law applicable to the

case; not expressing any opinion as to the weight of the evidence, not summing up the testimony, discussing the facts or using any argument in his charge calculated to arouse the sympathy or excite the passions of the jury. Before said charge is read to the jury, the defendant or his counsel shall have a reasonable time to examine the same and he shall present his objections thereto in writing, distinctly specifying each ground of objection. Said objections may embody errors claimed to have been committed in the charge, as well as errors claimed to have been committed by omissions therefrom or in failing to charge upon issues arising from the facts, and in no event shall it be necessary for the defendant or his counsel to present special requested charges to preserve or maintain any error assigned to the charge, as herein provided. The requirement that the objections to the court's charge be in writing will be complied with if the objections are dictated to the court reporter in the presence of and with the consent of the court, before the reading of the court's charge to the jury, and are subsequently transcribed, endorsed with the court's ruling and official signature, and filed with the clerk in time to be included in the transcript. Compliance with the provisions of this Article is all that is necessary to preserve, for review, the exceptions and objections presented to the charge and any amendment or modification thereof. In no event shall it be necessary for the defendant to except to the action of the court in over-ruling defendant's exceptions or objections to the charge.

[Amended by Acts 1975, 64th Leg., p. 617, ch. 253, § 1, eff. Sept. 1, 1975.]

Art. 36.15. Requested Special Charges

Before the court reads his charge to the jury, counsel on both sides shall have a reasonable time to present written instructions and ask that they be given to the jury. The requirement that the instructions be in writing is complied with if the instructions are dictated to the court reporter in the presence of and with the consent of the court before the reading of the court's charge to the jury and are subsequently transcribed, endorsed with the court's ruling and official signature, and filed with the clerk in time to be included in the transcript. The court shall give or refuse these charges. The defendant may, by a special requested instruction, call the trial court's attention to error in the charge, as well as omissions therefrom, and no other exception or objection to the court's charge shall be necessary to preserve any error reflected by any special requested instruction which the trial court refuses.

Any special requested charge which is granted shall be incorporated in the main charge and shall be treated as a part thereof, and the jury shall not be advised that it is a special requested charge of either party. The judge shall read to the jury only such special charges as he gives.

When the defendant has leveled objections to the charge or has requested instructions or both, and the court thereafter modifies his charge and rewrites the same and in so doing does not respond to objections or requested charges, or any of them, then the objections or requested charges shall not be deemed to have been waived by the party making or requesting the same, but shall be deemed to continue to have been urged by the party making or requesting the same unless the contrary is shown by the record; no exception by the defendant to the action of the court shall be necessary or required in order to preserve for review the error claimed in the charge.

[Amended by Acts 1979, 66th Leg., p. 1109, ch. 525, § 1, eff. Sept. 1, 1979.]

CHAPTER THIRTY-EIGHT. EVIDENCE IN CRIMINAL ACTIONS

Article

38.07. Testimony in Corroboration of Victim of Sexual Offense.
38.33. Preservation and Use of Evidence of Drunk or Drugged Driving Convictions.

Art. 38.07. Testimony in Corroboration of Victim of Sexual Offense

A conviction under Chapter 21, Penal Code,[1] is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within six months after the date on which the offense is alleged to have occurred. The court shall instruct the jury that the time which lapsed between the alleged offense and the time it was reported shall be considered by the jury only for the purpose of assessing the weight to be given to the testimony of the victim.

[Added by Acts 1975, 64th Leg., p. 479, ch. 203, § 6, eff. Sept. 1, 1975.]

[1] Penal Code, § 21.01 et seq.

Subsection 7(b) of the 1975 amendatory act provided:

"Sections 3 and 6 of this Act apply to the prosecution of criminal offenses committed but not brought to trial before the effective date of this Act."

Art. 38.21. Statement

A statement of an accused may be used in evidence against him if it appears that the same was freely and voluntarily made without compulsion or persuasion, under the rules hereafter prescribed.

[Amended by Acts 1977, 65th Leg., p. 935, ch. 348, § 1, eff. Aug. 29, 1977.]

Art. 38.22. When Statements May be Used

Sec. 1. In this article, a written statement of an accused means a statement signed by the accused or a statement made by the accused in his own handwriting or, if the accused is unable to write, a statement bearing his mark, when the mark has been witnessed by a person other than a peace officer.

Sec. 2. No written statement made by an accused as a result of custodial interrogation is admissible as evidence against him in any criminal proceeding unless it is shown on the face of the statement that:

(a) the accused, prior to making the statement, either received from a magistrate the warning provided in Article 15.17 of this code or received from the person to whom the statement is made a warning that:

(1) he has the right to remain silent and not make any statement at all and that any statement he makes may be used against him at his trial;

(2) any statement he makes may be used as evidence against him in court;

(3) he has the right to have a lawyer present to advise him prior to and during any questioning;

(4) if he is unable to employ a lawyer, he has the right to have a lawyer appointed to advise him prior to and during any questioning; and

(5) he has the right to terminate the interview at any time; and

(b) the accused, prior to and during the making of the statement, knowingly, intelligently, and voluntarily waived the rights set out in the warning prescribed by Subsection (a) of this section.

Sec. 3. (a) An oral or sign language statement of an accused made as a result of custodial interrogation is admissible against the accused in a criminal proceeding for the purpose of impeachment only and when:

(1) an electronic recording, which may include motion picture, video tape, or other visual recording, is made of the statement;

(2) prior to the statement but during the recording the accused is told that a recording is being made;

(3) prior to the statement but during the recording the accused is given the warning in Subsection (a) of Section 2 above and the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

(4) the recording device was capable of making an accurate recording, that the operator was competent, and that the recording is accurate and has not been altered;

(5) the statement is witnessed by at least two persons; and

(6) all voices on the recording are identified.

(b) Every electronic recording of any statement made by an accused during custodial interrogation must be preserved until its destruction is permitted by order of a district court of this state.

(c) Subsection (a) of this section shall not apply to any statement which contains assertions of facts or circumstances that are found to be true and which conduce to establish the guilt of the accused, such as the finding of secreted or stolen property or the instrument with which he states the offense was committed.

(d) If the accused is a deaf person, the accused's statement under Section 2 or Section 3(a) of this article is not admissible against the accused unless the warning in Section 2 of this article is interpreted to the deaf person by an interpreter who is qualified and sworn as provided in Article 38.31 of this code.

Sec. 4. When any statement, the admissibility of which is covered by this article, is sought to be used in connection with an official proceeding, any person who swears falsely to facts and circumstances which, if true, would render the statement admissible under this article is presumed to have acted with intent to deceive and with knowledge of the statement's meaning for the purpose of prosecution for aggravated perjury under Section 37.03 of the Penal Code. No person prosecuted under this subsection shall be eligible for probation.

Sec. 5. Nothing in this article precludes the admission of a statement made by the accused in open court at his trial, before a grand jury, or at an examining trial in compliance with Articles 16.03 and 16.04 of this code, or of a statement that is the res gestae of the arrest or of the offense, or of a statement that does not stem from custodial interrogation, or of a voluntary statement, whether or not the result of custodial interrogation, that has a bearing upon the credibility of the accused as a witness, or of any other statement that may be admissible under law.

Sec. 6. In all cases where a question is raised as to the voluntariness of a statement of an accused, the court must make an independent finding in the absence of the jury as to whether the statement was made under voluntary conditions. If the statement has been found to have been voluntarily made and held admissible as a matter of law and fact by the court in a hearing in the absence of the jury, the court must enter an order stating its conclusion as to whether or not the statement was voluntarily made, along with the specific finding of facts upon which the conclusion was based, which order shall be filed among the papers of the cause. Such order shall not be exhibited to the jury nor the finding thereof made known to the jury in any manner. Upon the finding by the judge as a matter of law and fact that the statement was voluntarily made, evidence pertaining to such matter may be submitted to the jury and it shall be instructed that unless the jury believes beyond a reasonable doubt that the statement was voluntarily made, the jury shall not con-

sider such statement for any purpose nor any evidence obtained as a result thereof. In any case where a motion to suppress the statement has been filed and evidence has been submitted to the court on this issue, the court within its discretion may reconsider such evidence in his finding that the statement was voluntarily made and the same evidence submitted to the court at the hearing on the motion to suppress shall be made a part of the record the same as if it were being presented at the time of trial. However, the state or the defendant shall be entitled to present any new evidence on the issue of the voluntariness of the statement prior to the court's final ruling and order stating its findings.

Sec. 7. When the issue is raised by the evidence, the trial judge shall appropriately instruct the jury, generally, on the law pertaining to such statement. [Amended by Acts 1977, 65th Leg., p. 935, ch. 348, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 398, ch. 186, §§ 4, 5, eff. May 15, 1979.]

Section 3 of the 1977 amendatory act provided: "This Act applies only to statements made on or after its effective date."

Art. 38.30. Interpreter

When a motion for appointment of an interpreter is filed by any party or on motion of the court, in any criminal proceeding, it is determined that a person charged or a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him. Any person may be subpoenaed, attached or recognized in any criminal action or proceeding, to appear before the proper judge or court to act as interpreter therein, under the same rules and penalties as are provided for witnesses. In the event that the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or the interpreter is not familiar with use of slang, the person charged or witness may be permitted by the court to nominate another person to act as intermediary between himself and the appointed interpreter during the proceedings. Interpreters appointed under the terms of this article will receive from the general fund of the county for their services a sum not to exceed $100 a day as follows: interpreters shall be paid not less than $15 nor more than $100 a day at the discretion of the judge presiding, and when travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case he is appointed to serve shall be paid at the same rate applicable to state employees.

[Amended by Acts 1979, 66th Leg., p. 453, ch. 209, § 1, eff. Aug. 27, 1979.]

Sections 3 and 4 of the 1979 amendatory act provided:

"Sec. 3. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 4. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 38.31. Interpreters for Deaf Persons

(a) If the court is notified by a party that the defendant is deaf and will be present at an arraignment, hearing, examining trial, or trial, or that a witness is deaf and will be called at a hearing, examining trial, or trial, the court shall appoint a qualified interpreter to interpret the proceedings in any language that the deaf person can understand, including but not limited to sign language. On the court's motion or the motion of a party, the court may order testimony of a deaf witness and the interpretation of that testimony by the interpreter visually, electronically recorded for use in verification of the transcription of the reporter's notes. The clerk of the court shall include that recording in the appellate record if requested by a party under Article 40.09 of this Code.

(b) Following the filing of an indictment, information, or complaint against a deaf defendant, the court on the motion of the defendant shall appoint a qualified interpreter to interpret in a language that the defendant can understand, including but not limited to sign language, communications concerning the case between the defendant and defense counsel. The interpreter may not disclose a communication between the defendant and defense counsel or a fact that came to the attention of the interpreter while interpreting those communications if defense counsel may not disclose that communication or fact.

(c) In all cases where the mental condition of a person is being considered and where such person may be committed to a mental institution, and where such person is deaf, all of the court proceedings pertaining to him shall be interpreted by a qualified interpreter appointed by the court.

(d) A proceeding for which an interpreter is required to be appointed under this Article may not commence until the appointed interpreter is in a position not exceeding ten feet from and in full view of the deaf person.

(e) The interpreter appointed under the terms of this Article shall be required to take an oath that he will make a true interpretation to the person accused or being examined, which person is deaf, of all the proceedings of his case in a language that he understands; and that he will repeat said deaf person's answer to questions to counsel, court, or jury, in the English language, in his best skill and judgment.

(f) Interpreters appointed under this Article are entitled to a reasonable fee determined by the court after considering the recommendations of the State Commission for the Deaf. When travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case he is appointed to serve shall be paid at the same rate applicable to state employees.

(g) In this Code:

(1) "Deaf person" means a person who has a hearing impairment, regardless of whether the

person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

(2) "Qualified interpreter" means an interpreter for the deaf whose qualifications have been approved by the State Commission for the Deaf. [Amended by Acts 1979, 66th Leg., p. 396, ch. 186, § 1, eff. May 15, 1979.]

Art. 38.33. Preservation and Use of Evidence of Drunk or Drugged Driving Convictions

Documents Filed

Sec. 1. When a person is finally convicted of an offense of driving while intoxicated or driving while under the influence of drugs, the clerk of the court shall mail a notice of the conviction to the sheriff of the county in which the offense occurred. The sheriff shall compile and send to the clerk copies of any photograph, picture, description, fingerprint, or measurement of the defendant made by a law enforcement agency in connection with that offense. The clerk shall forward to the department of public safety those documents and any complaint, information, indictment, judgment, sentence, mandate, or written waiver or motion in possession of the clerk pertaining to the conviction and the name of the attorney of record in that case.

Use as Evidence

Sec. 2. A certified copy of a document of the department of public safety forwarded to the department pursuant to Section 1 of this article is admissible as evidence in a criminal proceeding to prove that a particular person was convicted of the offense to which the document pertains if the court finds that 15 days before trial, the party against whom the evidence is offered was provided a copy of the document offered as evidence.

Dissemination of Documents

Sec. 3. (a) On written request of a prosecuting attorney for any documents of the department of public safety forwarded to the department pursuant to Section 1 of this article pertaining to a particular person, the department shall furnish the prosecuting attorney at no cost to the prosecuting attorney certified copies of those documents.

(b) The court in which a criminal case is pending may request the department to mail to the defendant or the defendant's attorney copies of documents filed in the name of the defendant under Section 1 of this article. The department shall furnish the copies to the defendant or the defendant's attorney without cost to the defendant or the attorney. [Added by Acts 1979, 66th Leg., p. 1851, ch. 751, § 1, eff. Sept. 1, 1979.]

PROCEEDINGS AFTER VERDICT

CHAPTER FORTY. NEW TRIALS

Art. 40.09. The Record on Appeal

[See Compact Edition, Volume 1 for text of 1 and 2]

3. Statement of Facts and Other Proceedings

The record may include a transcription of all or any part of the proceedings shown by notes of the reporter to have occurred before, during or after the trial and the same will constitute the statement of facts for the appeal. A transcription applicable to any proceeding occurring before or within a period of ninety days after notice of appeal shall be filed with the clerk for inclusion in the record not later than the end of such period. A transcription of notes applicable to any proceeding occurring after the end of such period shall be filed with the clerk for inclusion in the record not later than thirty days after the end of such proceeding.

[See Compact Edition, Volume 1 for text of 4 and 5]

6. Bills of Exception

(a) A party desiring to have the record disclose some action, testimony, evidence, proceeding, objection, exception or other event or occurrence not otherwise shown by the record may utilize a bill of exception for this purpose. Bills of exception must be filed with the clerk and presented to the trial judge within ninety days after notice of appeal is given. The clerk shall notify the court of each bill immediately upon its being filed. The court shall either approve the bill without qualification or shall approve it subject to qualification or refuse it, setting forth in the qualification or refusal any reasons that may seem proper to the judge. Notice of the court's action in qualifying or refusing a bill shall be immediately given by the clerk to the party filing the bill or to his counsel, and such party, if unwilling to accept the court's qualification or refusal may not later than fifteen days after receipt of such notice, file a bystander's bill of exception, and the clerk shall include same in the record. A bill of exception will be deemed approved without qualification if it be not acted upon by the trial judge within a period of 100 days after notice of appeal is given and no extension of time for filing has been granted; provided, however, if an extension of time for filing has been granted, a bill of exception will be deemed approved without qualification if it be not acted upon by the trial judge within a period of 10 days after the actual filing of the bill.

[See Compact Edition, Volume 1 for text of 6(b) to 6(d)]

7. Approval of the Record

Notice of completion of the record shall be made by the clerk by certified mail to the parties or their respective counsel. If neither files and presents to the court in writing any objection to the record, within fifteen days after the mailing of such notice and if the court has no objection to the record, he shall approve the same. If the trial court deems that a supplemental record or any other modification of the record be necessary to make the record speak the truth, for any reason, with or without objections from the state or the defendant, and whether on the court's own motion or the motion of either party or by order of the Court of Criminal Appeals, the defendant and the state shall be notified by certified mail of same and be given five days from receipt of notice for objections to such modification or supplementation. If objection be made, or if the court fails to approve the record within five days after the expiration of such fifteen-day period, the court shall set the matter down for hearing, and, after hearing, shall enter such orders as may be appropriate to cause the record to speak the truth and the findings and adjudications in such orders, if supported by evidence, shall be final. In its discretion, the court may require the attendance of the defendant at such hearing. Such proceeding shall be included in the record, and the entire record approved by the court.

8. Filing Approved Record with Clerk

The record, on approval by the court, shall be filed with the clerk of the trial court. Notice of the approval of the record by the court shall be made by the clerk by certified mail to the parties or their respective counsel. The 30-day time limit provided in Section 9 of this article shall commence when the notice is mailed.

9. Defendant's Brief

Within thirty days after approval of the record by the court, the defendant shall file with the clerk of the trial court the original and one copy of his appellate brief, or the number of copies required by the rules of the court of criminal appeals. The rules may not require him to file more than 10 copies. This brief shall set forth separately each ground of error of which the defendant desires to complain on appeal and may set forth such arguments as he deems appropriate. Each ground of error shall briefly refer to that part of the ruling of the trial court, charge given to the jury, or charge refused, admission or rejection of evidence, or other proceedings which are designated to be complained of in such way so that the point of objection can be clearly identified and understood by the court. If the defendant includes in his brief arguments supporting a particular ground of error, they shall be construed with it in determining what point of objection is sought to be presented by such ground of error; and if the court, upon consideration of such ground of error in the light of arguments made in support thereof in the brief, can identify and understand such point of objection, the same shall be reviewed notwithstanding any generality, vagueness, or any other technical defect that may exist in the language employed to set forth such ground of error.

10. The State's Brief

Within thirty days after defendant files his brief with the clerk of the trial court, the State shall file with the clerk of the trial court the original and one copy of its brief, or the number of copies required by the rules of the court of criminal appeals. The rules may not require the State to file more than 10 copies. Each party, upon filing his brief with the clerk of the trial court, shall cause a true copy thereof to be delivered to the opposing party or to the latter's counsel.

[See Compact Edition, Volume 1 for text of 11 to 15]

16. Extensions of Time

Extensions of time for meeting the limits prescribed in Sections 3, 6, 9, and 10 of this Article for either the appellant or the State may be granted by the Court of Criminal Appeals or a judge of the Court for good cause shown on timely application to the Court of Criminal Appeals.

[Amended by Acts 1977, 65th Leg., p. 638, ch. 236, §§ 1 to 3, eff. May 25, 1977; Acts 1979, 66th Leg., p. 447, ch. 204, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 731, ch. 324, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 865, ch. 390, § 1, eff. Sept. 1, 1979.]

Acts 1979, 66th Leg., p. 866, ch. 390, amending §§ 9 and 10 of this article, provided in § 2:

"This Act applies to an appellate brief only if that brief is filed with the clerk of the trial court on or after the effective date of this Act."

CHAPTER FORTY-TWO. JUDGMENT AND SENTENCE

Article

42.121. Texas Adult Probation Commission.
42.17. Transfer Under Treaty.

Art. 42.01. Judgment

Sec. 1. A "judgment" is the declaration of the court entered of record, showing:

1. The title and number of the case;
2. That the case was called for trial and that the parties appeared;
3. The plea of the defendant;
4. The selection, impaneling and swearing of the jury;

5. The submission of the evidence;
6. That the jury was charged by the court;
7. The return of the verdict;
8. The verdict;
9. In the case of a conviction, that it is considered by the court that the defendant is adjudged to be guilty of the offense as found by the jury; or in case of acquittal, that the defendant be discharged;
10. That the defendant be punished as has been determined.

Sec. 2. The judge may order the clerk of the court, the prosecuting attorney, or the attorney or attorneys representing any defendant to prepare the judgment, or the court may prepare the same.

Sec. 3. The provisions of this Article shall apply to both felony and misdemeanor cases.

[Amended by Acts 1975, 64th Leg., p. 245, ch. 95, § 1, eff. Sept. 1, 1975.]

Art. 42.03. Pronouncing Sentence; Time; Credit for Time Spent in Jail Between Arrest and Sentence or Pending Appeal

[See Compact Edition, Volume 1 for text of 1 to 4]

Sec. 5. (a) Where jail time has been awarded, the trial judge may, when in his or her discretion the ends of justice would best be served and upon written motion of the defendant, sentence the defendant to serve his or her sentence during his or her off-work hours, or on weekends. When such a sentence is permitted by the trial judge it must be served on consecutive days or consecutive weekends. The trial judge may require bail of the defendant to insure the faithful performance of the sentence. The trial judge may attach conditions regarding the employment, travel, and other conduct of the defendant during the performance of such a sentence.

(b) The court may impose as a condition to permitting a defendant to serve the jail time assessed during off-work hours or on weekends a requirement that the defendant execute a letter and direct it to his or her employer directing the employer to deduct from the defendant's salary an amount directed by the court, which is to be sent by the employer to the clerk of the court. The money directed by the court under this section may be used to pay the following expenses as directed by the court:

(1) the support of the prisoner's dependents, if necessary;

(2) the prisoner's personal, business, and travel expenses;

(3) reimbursement of the general fund of the county for the maintenance of the prisoner in jail; and

(4) installment payments on restitution, fines, and court costs ordered by the court.

The condition shall not be binding on the employer and his or her compliance shall be on a voluntary basis.

(c) The court may sentence the defendant to serve his or her sentence during his or her off-work hours or on weekends in order for the defendant to continue his or her employment if the court imposes confinement as punishment for criminal nonsupport under Section 25.05, Penal Code, or contempt of a court order for periodic payments for the support of a child.

(d) The court may impose as a condition to permitting a defendant to serve the jail time assessed during off-work hours or on weekends a requirement that the defendant execute a letter and direct it to his or her employer directing the employer to deduct from the defendant's salary an amount directed by the court, which is to be sent by the employer to the clerk of the court and credited against any arrears of child support payments. The condition shall not be binding on the employer and his or her compliance shall be on a voluntary basis.

[Amended by Acts 1977, 65th Leg., p. 1036, ch. 382, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2076, ch. 827, § 1, eff. Aug. 29, 1977.]

Art. 42.07. Reasons to Prevent Sentence

Before pronouncing sentence, the defendant shall be asked whether he has anything to say why the sentence should not be pronounced against him. The only reasons which can be shown, on account of which sentence cannot be pronounced, are:

1. That the defendant has received a pardon from the proper authority, on the presentation of which, legally authenticated, he shall be discharged.

2. That the defendant is incompetent to stand trial; and if evidence be shown to support a finding of incompetency to stand trial, no sentence shall be pronounced, and the court shall proceed under Article 46.02 of this code;

3. Where there has not been a motion for a new trial or a motion in arrest of judgment made, the defendant may answer that he has good grounds for either or both of these motions and either or both motions may be immediately entered and disposed of, although more than ten days may have elapsed since the rendition of the verdict; and

4. When a person who has been convicted escapes after conviction and before sentence and an individual supposed to be the same has been arrested he may before sentence is pronounced, deny that he is the person convicted, and an issue be accordingly tried before a jury as to his identity.

[Amended by Acts 1975, 64th Leg., p. 1102, ch. 415, § 3, eff. June 19, 1975.]

Art. 42.09. Indeterminate Sentence; Commencement of Sentence and Delivery to Place of Confinement

[See Compact Edition, Volume 1 for text of 1 to 3]

Sec. 4. If a defendant is convicted of a felony and sentenced to death, life, or a term of more than ten years in the Department of Corrections and he gives notice of appeal, he shall be transferred to the Department of Corrections on a commitment pending a mandate from the Court of Criminal Appeals.

Sec. 5. If a defendant is convicted of a felony and his sentence is a term of ten years or less and he gives notice of appeal, he shall be transferred to the Department of Corrections on a commitment pending a mandate from the Court of Criminal Appeals upon request in open court or upon written request to the sentencing court. Upon a valid transfer to the Department of Corrections under this section, the defendant may not thereafter be released on bail pending his appeal.

[See Compact Edition, Volume 1 for text of 6 and 7]

[Amended by Acts 1977, 65th Leg., p. 2018, ch. 806, § 1, eff. Aug. 29, 1977.]

Art. 42.11. Uniform Act for Out-of-State Parolee Supervision

[See Compact Edition, Volume 1 for text of 1 to 3]

Sec. 3a. The office of Interstate Parole Compact Administrator for Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this Article expires effective September 1, 1987.

[1] Civil Statutes, art. 5429k.

[Amended by Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.134, eff. Aug. 29, 1977.]

Art. 42.12. Adult Probation, Parole, and Mandatory Supervision Law

A. Purpose of Article and Definitions

Sec. 1. It is the purpose of this Article to place wholly within the State courts of appropriate jurisdiction the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of probation, and the supervision of probationers, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. It is also the intent of this Article to provide for the release of persons on parole and for the method thereof, to designate the Board of Pardons and Paroles as the responsible agency of State government to recommend determination of paroles and to further designate the Board of Pardons and Paroles as responsible for the investigation and supervision of persons released on parole. It is the intent of this Article to aid all prisoners to readjust to society upon completion of their period of incarceration by providing a program of mandatory supervision for those prisoners not released on parole or through executive clemency and to designate the Board of Pardons and Paroles as the agency of government responsible for the program. It is the final purpose of this Article to remove from existing statutes the limitations, other than questions of constitutionality, that have acted as barriers to effective systems of probations and paroles in the public interest.

Sec. 2. This Article may be cited as the "Adult Probation, Parole, and Mandatory Supervision Law".

Unless the context otherwise requires, the following definitions shall apply to the specified words and phrases as used in this Article:

[See Compact Edition, Volume 1 for text of 2(a) to 2(c)]

d. "Mandatory supervision" shall mean the release of a prisoner from imprisonment but not on parole and not from the legal custody of the State, for rehabilitation outside of prison walls under such conditions and provisions for disciplinary supervision as the Board of Pardons and Paroles may determine. Mandatory supervision may not be construed as a commutation of sentence or any other form of executive clemency;

e. "Probation officer" shall mean either a person duly appointed by one or more courts of record having original criminal jurisdiction, to supervise defendants placed on probation; or a person designated by such courts for such duties on a part-time basis;

f. "Parole officer" shall mean a person duly appointed by the Director of the Division of Parole Supervision and assigned the duties of investigating and supervising paroled prisoners and prisoners released to mandatory supervision to see that the conditions of parole or mandatory supervision are complied with;

g. "Board" shall mean the Board of Pardons and Paroles;

h. "Division" shall mean the Division of Parole Supervision of the Board of Pardons and Paroles; and

i. "Director" shall mean the Director of the Division of Parole Supervision.

B. Probations

Sec. 3. The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be sub-

served thereby, shall have the power, after conviction or a plea of guilty for any crime or offense, where the maximum punishment assessed against the defendant does not exceed ten years imprisonment, to suspend the imposition of the sentence and may place the defendant on probation or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. In all cases where the punishment is assessed by the Court it may fix the period of probation without regard to the term of punishment assessed, but in no event may the period of probation be greater than 10 years or less than the minimum prescribed for the offense for which the defendant was convicted. Any such person placed on probation, whether in a trial by jury or before the court, shall be under the supervision of such court.

Sec. 3a. Where there is a conviction in any court of this State and the punishment assessed by the jury shall not exceed ten years, the jury may recommend probation for a period of any term of years authorized for the offense for which the defendant was convicted, but in no event for more than ten years, upon written sworn motion made therefor by the defendant, filed before the trial begins. When the jury recommends probation, it may also assess a fine applicable to the offense for which the defendant was convicted. When the trial is to a jury, and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the sworn motion and proof shall show, and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other State. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but he may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict, for the period recommended by the jury.

If probation is granted by the jury the court may impose only those conditions which are set forth in Section 6 hereof.

[See Compact Edition, Volume 1 for text of 3b and 3c]

Sec. 3d. (a) When in its opinion the best interest of society and the defendant will be served, the court may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on probation on reasonable terms and conditions as the court may require and for a period as the court may prescribe not to exceed 10 years. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the court shall proceed to final adjudication as in all other cases.

(b) On violation of a condition of probation imposed under Subsection (a) of this section, the defendant may be arrested and detained as provided in Section 8 of this Article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of probation, and defendant's appeal continue as if the adjudication of guilt had not been deferred.

(c) On expiration of a probationary period imposed under Subsection (a) of this section, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and discharge him. The court may dismiss the proceedings and discharge the defendant prior to the expiration of the term of probation if in its opinion the best interest of society and the defendant will be served. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that upon conviction of a subsequent offense, the fact that the defendant had previously received probation shall be admissible before the court or jury to be considered on the issue of penalty.

Sec. 3e. (a) For the purposes of this section, the jurisdiction of the courts in this state in which a sentence requiring confinement in the Texas Department of Corrections is imposed for conviction of a felony shall continue for 120 days from the date the execution of the sentence actually begins. After the expiration of 60 days but prior to the expiration of 120 days from the date the execution of the sentence actually begins, the judge of the court that imposed such sentence may, on his own motion or on written motion of the defendant, suspend further execution of the sentence imposed and place the defendant on probation under the terms and conditions of this article, if such sentence is otherwise eligible for probation under this article and prior to the execution of such sentence, the defendant had never been incarcerated in a penitentiary serving a sentence for a felony and in the opinion of the judge the defendant would not benefit from further incarceration in a penitentiary. Probation may be granted under this section only if the offense for which the defendant was sentenced was an offense other than criminal homicide, rape, or robbery.

(b) When the defendant files a written motion requesting suspension by the court of further execution of the sentence and placement on probation, or when requested to do so by the judge, the clerk of the court shall request a copy of the defendant's record while incarcerated from the Texas Department of Corrections. Upon receipt of such request, the Texas Department of Corrections shall forward to the court, as soon as possible, a full and complete copy of the defendant's record while incarcerated.

Sec. 3f. (a) The provisions of Sections 3 and 3c of this Article do not apply:

(1) to a defendant adjudged guilty of an offense defined by the following sections of the Penal Code:

(A) Section 19.03 (Capital murder);

(B) Section 20.04 (Aggravated kidnapping);

(C) Section 21.03 (Aggravated rape);

(D) Section 21.05 (Aggravated sexual abuse);

(E) Section 29.03 (Aggravated robbery); or

(2) to a defendant when it is shown that the defendant used or exhibited a deadly weapon as defined in Section 1.07(a)(11), Penal Code, during the commission of a felony offense or during immediate flight therefrom. Upon affirmative finding that the defendant used or exhibited a deadly weapon during the commission of an offense or during immediate flight therefrom, the trial court shall enter the finding in the judgment of the court. Upon an affirmative finding that the deadly weapon the defendant used or exhibited was a firearm, the court shall enter that finding in its judgment.

(b) If there is an affirmative finding that the defendant convicted of a felony of the second degree or higher used or exhibited a firearm during the commission or flight from commission of the offense and the defendant is granted probation, the court may order the defendant confined in the Texas Department of Corrections for not less than 60 and not more than 120 days. At any time after the defendant has served 60 days in the custody of the Department of Corrections, the sentencing judge, on his own motion or on motion of the defendant, may order the defendant released to probation. The Department of Corrections shall release the defendant to probation after he has served 120 days.

Sec. 4. When directed by the court, a probation officer shall fully investigate and report to the court in writing the circumstances of the offense, criminal record, social history and present condition of the defendant. Whenever practicable, such investigation shall include a physical and mental examination of defendant. Defendant, if not represented by counsel, counsel for defendant and counsel for the state shall be afforded an opportunity to see a copy of the report upon request. If a defendant is committed to any institution the probation officer shall send a report of such investigation to the institution at the time of commitment.

[See Compact Edition, Volume 1 for text of 5]

Sec. 6. The court having jurisdiction of the case shall determine the terms and conditions of probation and may, at any time, during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer, and shall note the date of delivery of such copy on the docket. Terms and conditions of probation may include, but shall not be limited to, the conditions that the probationer shall:

a. Commit no offense against the laws of this State or of any other State or of the United States;

b. Avoid injurious or vicious habits;

c. Avoid persons or places of disreputable or harmful character;

d. Report to the probation officer as directed by the judge or probation officer and obey all rules and regulations of the probation department;

e. Permit the probation officer to visit him at his home or elsewhere;

f. Work faithfully at suitable employment as far as possible;

g. Remain within a specified place;

h. Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, and make restitution or reparation in any sum that the court shall determine;

i. Support his dependents;

j. Participate in any community-based program;

k. Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed, or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;

l. Remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;

m. Pay a percentage of his income to his dependents for their support while under custodial suspension in a community-based facility; and

n. Pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense.

Sec. 6a. (a) A court granting probation may fix a fee not exceeding $15 per month to be paid to the court by the probationer during the probationary period. The court may make payment of the fee a condition of granting or continuing the probation.

(b) The court shall deposit the fees received under Subsection (a) of this section in the special fund of the county treasury provided by Section 4.05(b), Article 42.121 of this Code, to be used for the same purposes for which state-aid may be used under that section.

Sec. 6b. (a) When the court having jurisdiction of the case grants probation to the defendant, in addition to the conditions imposed under Section 6 of this article, the court may require as a condition of probation that the defendant submit to a period of detention in a penal institution to serve a term of imprisonment not to exceed 30 days or one-third of the sentence, whichever is lesser.

(b) The imprisonment imposed shall be treated as a condition of probation, and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall be credited toward service of such subsequent imprisonment.

[See Compact Edition, Volume 1 for text of 7]

Sec. 8. (a) At any time during the period of probation the court may issue a warrant for violation of any of the conditions of the probation and cause the defendant to be arrested. Any probation officer, police officer or other officer with power of arrest may arrest such defendant without a warrant upon the order of the judge of such court to be noted on the docket of the court. A probationer so arrested may be detained in the county jail or other appropriate place of detention until he can be taken before the court. Such officer shall forthwith report such arrest and detention to such court. If the defendant has not been released on bail, on motion by the defendant the court shall cause the defendant to be brought before it for a hearing within 20 days of filing of said motion, and after a hearing without a jury, may either continue, modify, or revoke the probation. The state may amend the motion to revoke probation any time up to seven days before the date of the revocation hearing, after which time the motion may not be amended except for good cause shown, and in no event may the state amend the motion after the commencement of taking evidence at the hearing. The court may continue the hearing for good cause shown by either the defendant or the state. If probation is revoked, the court may proceed to dispose of the case as if there had been no probation, or if it determines that the best interests of society and the probationer would be served by a shorter term of imprisonment, reduce the term of imprisonment originally assessed to any term of imprisonment not less than the minimum prescribed for the offense of which the probationer was convicted.

[See Compact Edition, Volume 1 for text of 8(b)]

Text of subsec. (c) added by Acts 1977, 65th Leg., p. 909, ch. 342, § 2

(c) In a probation revocation hearing at which it is alleged only that the probationer violated the conditions of probation by failing to pay probation fees, court costs, restitution, or reparations, the inability of the probationer to pay as ordered by the court is an affirmative defense to revocation, which the probationer must prove by a preponderance of evidence.

Text of subsec. (c) added by Acts 1977, 65th Leg., p. 1058, ch. 388, § 2

(c) In a probation revocation hearing at which it is alleged that the probationer violated the conditions of probation by failing to pay compensation paid to appointed counsel, probation fees, court costs, restitution, or reparations, the inability of the probationer to pay as ordered by the court is an affirmative defense to revocation, which the probationer must prove by a preponderance of evidence.

[See Compact Edition, Volume 1 for text of 9]

Sec. 10. (a) For the purpose of providing adequate probation services, the district judge or district judges trying criminal cases in each judicial district in this state shall establish a probation office and employ, in accordance with standards set by the commission, district personnel as may be necessary to conduct presentence investigation, supervise and rehabilitate probationers, and enforce the terms and conditions of misdemeanor and felony probation. If two or more judicial districts serve a county, or a district has more than one county, one district probation department shall serve all courts and counties in the districts. However, the adult probation commission may adopt rules to allow more than one probation department in a judicial district with more than one county if providing more than one probation department will promote administrative convenience or economy or improve probation services.

(b) Where more than one probation officer is required, the judge or judges shall appoint a chief adult probation officer or director, who, with their approval, shall appoint a sufficient number of assistants and other employees to carry on the professional, clerical, and other work of the court.

(c) To be eligible for appointment as an adult probation officer, a person who is not an adult probation officer on the effective date of this Act:

(1) must have acquired a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Coordi-

nating Board, Texas College and University System; and

(A) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology, or a related field that has been approved by the Texas Adult Probation Commission; [1] or

(B) one year of experience in full-time case work, counseling, or community or group work in a social, community, corrections, or juvenile agency that deals with offenders or disadvantaged persons that has been approved by the Texas Adult Probation Commission; and

(2) must not be otherwise disqualified by Section 31 of this article.

(d) The adult probation commission may adopt rules under which a judicial district may employ an adult probation officer who is not qualified under Subdivision (B), Subsection (c) of this section if the district judge, district judges, chief adult probation officer, or director tried but failed to employ a probation officer qualified under Subsection (c) of this section.

(e) The same person serving as a probation officer for juveniles may not be required to serve as a probation officer for adults and vice versa.

(f) Probation officers shall be furnished transportation or, alternatively, shall be entitled to an automobile allowance for use of personal automobile on official business.

(g) Personnel of the respective district probation departments shall not be deemed state employees and the responsible judge or judges of a district probation department shall negotiate a contract with the most populous county within the judicial district for all district probation department staff to participate in that county's group insurance programs, liability insurance, or self-insurance for acts done in the course and scope of their employment as probation department staff, retirement plan, including the district and county retirement system if the county participates in that system for any county employees, and personnel policies with regard to vacation credit, sick leave credit, holiday schedule, credit union, jury leave, military leave, etc. It shall be the responsibility of the county or counties comprising the judicial district or geographical area served by such district probation department to provide physical facilities, equipment, and utilities for an effective and professional adult probation and adult community-based correctional service.

(h) Where a judicial district has criminal jurisdiction in two or more counties, those counties may enter into agreement that the total expenses of such facilities, equipment, and utilities be distributed approximately in the same proportion as the population in each county bears to the total population of all those counties, according to the last preceding or any future federal census.

(i) The salaries of personnel, and other expenses essential to the adequate supervision of probationers, shall be paid from the funds of the judicial district. In all the instances of employment of probation officers, the responsible judges are authorized to accept state-aid, grants or gifts from other political subdivisions of the state or associations and foundations, for the sole purpose of financing adequate and effective probationary programs and community-based correctional facilities other than jails or prisons in the various parts of the district. For the purposes of this Act, the municipalities of this state are specifically authorized to grant and allocate such sums of money as their respective governing bodies may approve to their appropriate county governments for the support and maintenance of effective programs. All grants, gifts, and allocations of the character and purpose described in this section shall be handled and accounted for separately from other public funds of the county.

[1] See Art. 42.121.

[See Compact Edition, Volume 1 for text of 11]

Sec. 11a. The provisions of Sections 6a, 10, and 11 of this Article also apply to Article 42.13.

C. Paroles

Sec. 12. The Board of Pardons and Paroles created by Article 4, Section 11 of the Constitution of this State, shall administer the provisions of this Act respecting determinations of which prisoners shall be paroled from an institution operated by the Department of Corrections, the conditions of parole and mandatory supervision, and may recommend the revocation of releases to mandatory supervision, paroles, and conditional pardons by the Governor. Keeping the goals of this Act in mind, the Board shall have the authority to determine the degree and intensity of supervision a prisoner released on parole or released to mandatory supervision should receive.

Sec. 12a. The Board of Pardons and Paroles is subject to the Texas Sunset Act,[1] but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1987 and of every 12th year after 1987 are reviewed.

[1] Civil Statutes, art. 5429k.

Sec. 13. The members of the Board shall give full time to the duties of their office and shall be paid such salaries as the Legislature may determine in Appropriation Acts. The members of the Board shall elect one of their number as chairman, who shall serve for a period of two years and until his successor is elected and qualified.

The Board shall meet at the call of the chairman and from time to time as may otherwise be determined by majority vote of the Board. A majority of the Board shall constitute a quorum for the transaction of all business.

The Board shall adopt an official seal of which the courts shall take judicial notice. Decisions of the Board shall be by majority vote.

The Board shall keep a record of its acts and shall notify each institution of its decision relating to the persons who are confined therein. At the close of each fiscal year the Board shall submit to the Governor and to the Legislature a report with statistical and other data of its work.

All minutes of the Board and decisions relating to mandatory supervision, parole, pardon, and clemency shall be matters of public record and subject to public inspection at all reasonable times.

[See Compact Edition, Volume 1 for text of 14]

Sec. 14A. (a) To aid and assist the Board of Pardons and Paroles in parole and mandatory supervision decisions, provision is hereby made for the appointment of parole commissioners.

(b) There shall be appointed no less than six commissioners.

(c) One-third of the commissioners shall be appointed by the governor; one-third of the commissioners by the Chief Justice of the Supreme Court of Texas; and one-third of the commissioners by the Presiding Judge of the Texas Court of Criminal Appeals. One of the commissioners appointed by each of the appointing authorities shall reside in Walker County.

(d) Each commissioner shall hold office for a term of six years; provided that of the commissioners first appointed, the commissioners appointed by one of the appointing authorities shall serve for two years; the commissioners appointed by one of the appointing authorities shall serve for four years; and the other one-third of the commissioners shall serve for six years. Prior to appointment, the appointing authority shall draw lots for the length of the first term for his respective appointees. All terms shall begin on September 1, 1975.

(e) In matters of parole and mandatory supervision revocation decisions, the commissioners shall have the same duties and authority as the board members. A parole panel, as hereinafter provided, may recommend the granting, denying, or revocation of parole, the revocation of mandatory supervision status, and may conduct parole revocation hearings and mandatory supervision revocation hearings. The commissioners may interview inmates for parole consideration, and they shall perform their duties as directed by the board in its rules and regulations affecting these commissioners.

(f) The board may provide and promulgate a written plan for the administrative review of actions taken by a parole panel.

(g) The commissioners shall be compensated while holding office at a salary to be set by the legislature. They shall be reimbursed for their expenses in the same manner and in the same amount as are board members.

(h) The board members shall continue to exercise their responsibility for the administrative operation of the board of pardons and paroles.

(i) In matters of parole and release to mandatory supervision, the board members and commissioners may act in panels comprised of three persons in each panel. The composition of the respective panels shall be designated by the board. A majority of each panel shall constitute a quorum for the transaction of its business, and its decisions shall be by a majority vote. The functions given to the board throughout Article 42.12, Code of Criminal Procedure, 1965, as amended, may be enlarged and extend to the parole panels, as provided by board rules. The powers of the board and the board members can be delegated by the board to the parole panels and to the commissioners as needed for the convenience of and assistance to the board.

(j) In case of a vacancy among the parole commissioners, the appointing authority who appointed the commissioner now absent shall fill the vacancy with another appointment, and the person so appointed shall continue in office for the unexpired portion of the term for which the commissioner so vacating his office has been appointed.

Sec. 15. (a) The Board is authorized to release on parole, with the approval of the Governor, any person confined in any penal or correctional institution of this State who is eligible for parole under Subsection (b) of this Section. The period of parole shall be equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. All paroles shall issue upon order of the Board, duly adopted and approved by the Governor.

(b) A prisoner under sentence of death is not eligible for parole. If a prisoner is serving a sentence for the offenses listed in Section 3f(a)(1) of this Article or if the judgment contains an affirmative finding under Section 3f(a)(2) of this Article, he is not eligible for release on parole until his actual calendar time served, without consideration of good conduct time, equals one-third of the maximum sentence or 20 calendar years, whichever is less, but in no event shall he be eligible for release on parole in less than two calendar years. All other prisoners shall be eligible for release on parole when their calendar time served plus good conduct time equals

one-third of the maximum sentence imposed or 20 years, whichever is less.

(c) A prisoner who is not on parole, except a person under sentence of death, shall be released to mandatory supervision by order of the Board when the calendar time he has served plus any accrued good conduct time equal the maximum term to which he was sentenced. A prisoner released to mandatory supervision shall, upon release, be deemed as if released on parole. To the extent practicable, arrangements for the prisoner's proper employment, maintenance, and care shall be made prior to his release to mandatory supervision. The period of mandatory supervision shall be for a period equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. The time served on mandatory supervision is calculated as calendar time. Every prisoner while on mandatory supervision shall remain in the legal custody of the institution from which he was released but shall be amenable to the orders of the Board.

(d) A prisoner who has not been released to mandatory supervision and has 180 calendar days or less remaining on his sentence may be released by order of the Board to mandatory supervision.

(e) Within one year after a prisoner's admittance to the penal or correctional institution and at such intervals thereafter, as it may determine, the Board shall secure and consider all pertinent information regarding each prisoner, except any under sentence of death, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and attitude in prison, and his physical and mental health.

(f) Before ordering the parole of any prisoner, the Board may have the prisoner appear before it and interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his proper employment or for his maintenance and care, and, as may be, in part, evidenced by the prisoner's having made, in whole or in part, restitution or reparation to the victim of his crime, the total amount of such restitution or reparation as may be established by the court and entered in the judgment of the court which sentenced the prisoner to his term of imprisonment, and when the Board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be amenable to the orders of the Board.

(g) The Board may adopt such other reasonable rules not inconsistent with law as it may deem proper or necessary with respect to the eligibility of prisoners for parole and mandatory supervision, the conduct of parole and mandatory supervision hearings, or conditions to be imposed upon parolees and persons released to mandatory supervision. Each person to be released on parole shall be furnished a written statement and contract setting forth in clear and intelligible language the conditions and rules of parole. The conditions may include the making of restitution or reparation to the victim of the prisoner's crime, the total amount of such restitution or reparation as may be established by the court and entered in the judgment of the court which sentenced the prisoner to his term of imprisonment. Acceptance, signing, and execution of the contract by the inmate to be paroled shall be a precondition to release on parole. Persons to be released on mandatory supervision shall be furnished a written statement setting forth in clear and intelligible language the conditions and rules of mandatory supervision.

(h) It shall be the duty of the Board at least ten days before ordering the parole of any prisoner or upon the granting of executive clemency by the Governor to notify the sheriff, the district attorney and the district judge in the county where such person was convicted that such parole or clemency is being considered by the Board or by the Governor.

(i) If no parole officer has been assigned to the locality where a person is to be released on parole, mandatory supervision, or executive clemency the Board shall notify the chairman of the Voluntary Parole Board of such county prior to the release of such person. The Board shall request such Voluntary Parole Board, in the absence of a parole officer, for information which would herein be required of such duly appointed parole officer. This shall not, however, preclude the Board from requesting information from any public agency in such locality.

[See Compact Edition, Volume 1 for text of 16 to 19]

Sec. 20. The Board shall have the power and duty to make rules for the conduct of persons placed on parole and of persons released to mandatory supervision.

Sec. 21. (a) A warrant for the return of a paroled prisoner, a prisoner released to mandatory supervision, a prisoner released on emergency reprieve or on furlough, or a person released on a conditional pardon to the institution from which he was paroled, released, or pardoned may be issued by the Board on order by the Governor when there is reason to believe that he has committed an offense against the laws of this State or of the United States, violated a condition of his parole, mandatory supervision, or conditional pardon, or when the circumstances indicate that he poses a danger to society that warrants his immediate return to incarceration. Such warrant shall authorize all officers named therein to take actual custody of the prisoner and return him to the institution from which he was

released. Pending hearing, as hereinafter provided, upon any charge of parole violation or violation of the conditions of mandatory supervision, the prisoner shall remain incarcerated.

(b) A prisoner for whose return a warrant has been issued by the Board shall, after the issuance of such warrant, be deemed a fugitive from justice and if it shall appear that he has violated the conditions or provisions of his mandatory supervision or parole, then the time from the issuing of such warrant to the date of his arrest shall not be counted as any part of the time to be served under his sentence. The law now in effect concerning the right of the State of Texas to extradite persons and return fugitives from justice, and Article 42.11 of this Code concerning the waiver of all legal requirements to obtain extradition of fugitives from justice, from other states to this State, shall not be impaired by this Act and shall remain in full force and effect.

Sec. 22. Whenever a prisoner or a person granted a conditional pardon is accused of a violation of his parole, mandatory supervision, or conditional pardon on information and complaint by a law enforcement officer or parole officer, he shall be entitled to be heard on such charges before the Board or its designee under such rules and regulations as the Board may adopt; providing, however, said hearing shall be a public hearing and shall be held within ninety days of the date of arrest under a warrant issued by the Board of Pardons and Paroles or the Governor and at a time and place set by the Board. When the Board has heard the facts, it may recommend to the Governor that the parole, mandatory supervision, or conditional pardon be continued, or revoked, or modified in any manner the evidence may warrant. When the Governor revokes a person's parole, mandatory supervision, or conditional pardon, that person may be required to serve the portion remaining of the sentence on which he was released, such portion remaining to be calculated without credit for the time from the date of his release to the date of revocation. When a warrant is issued by the Board of Pardons and Paroles or the Governor charging a violation of release conditions, the sentence time credit shall be suspended until a determination is made by the Board of Pardons and Paroles or the Governor in such case and such suspended time credit may be re-instated by the Board of Pardons and Paroles should such parole, mandatory supervision, or conditional pardon be continued.

[See Compact Edition, Volume 1 for text of 23]

Sec. 24. When any prisoner who has been paroled or released to mandatory supervision has complied with the rules and conditions governing his release until the end of the term to which he was sentenced, and without a revocation of his parole or mandatory supervision, the Board shall make a final order of discharge and issue the prisoner a certificate of discharge.

[See Compact Edition, Volume 1 for text of 25]

Sec. 26. The Board of Pardons and Paroles shall have general responsibility for the investigation and supervision of all prisoners released on parole and to mandatory supervision. For the discharge of this responsibility, there is hereby created with the Board of Pardons and Paroles, a Division of Parole Supervision. Subject to the general direction of the Board of Pardons and Paroles, the Division of Parole Supervision, including its field staff shall be responsible for obtaining and assembling any facts the Board of Pardons and Paroles may desire in considering parole eligibility, in establishing a mandatory supervision plan, and for investigating and supervising paroled prisoners and prisoners released to mandatory supervision to see that the conditions of parole and mandatory supervision are complied with, and for making such periodic reports on the progress of parolees and prisoners released to mandatory supervision as the Board may desire.

Sec. 27. All information obtained in connection with inmates of the Texas Department of Corrections subject to parole, release to mandatory supervision, or executive clemency or individuals who may be on mandatory supervision or parole and under the supervision of the division, or persons directly identified in any proposed plan of release for a prisoner, shall be confidential and privileged information and shall not be subject to public inspection; provided, however, that all such information shall be available to the Governor and the Board of Pardons and Paroles upon request. It is further provided, that statistical and general information respecting the parole and mandatory supervision program and system, including the names of paroled prisoners, prisoners released to mandatory supervision, and data recorded in connection with parole and mandatory supervision services, shall be subject to public inspection at any reasonable time.

Sec. 28. Salaries of all employees of the Division of Parole Supervision shall be governed by Appropriation Acts of the Legislature. The Board of Pardons and Paroles shall appoint a Director of the division, and all other employees shall be selected by the Director, subject to such general policies and regulations as the Board may approve.

It is expressly provided, however, that no person may be employed as a parole officer or supervisor, or be responsible for the investigations or supervision of persons on parole or mandatory supervision, unless he meets the following qualifications together with any other qualifications that may be specified by the Director of the Division, with the approval of the Board of Pardons and Paroles; four years of successfully completed education in an accredited college or university, and two years of full time paid employment in responsible correctional work with adults or juveniles, social welfare work, teaching, or

personnel work. Additional experience in the above categories may be substituted year for year for the required college education, with a maximum substitution for two years.

[See Compact Edition, Volume 1 for text of 29]

Sec. 30. In order to provide supervision of parolees, persons released to mandatory supervision, and persons granted executive clemency who reside in sparsely settled areas of the State and in localities not served by regularly employed parole officers, the Governor of this State is authorized to appoint chairmen of Voluntary Parole Boards for such areas or localities. The appointed chairman may, with the advice and approval of the Director of the Division of Parole Supervision, appoint additional members of such Voluntary Parole Boards. The term of service by such appointed chairmen of Voluntary Parole Boards shall not exceed the term of office of the appointing Governor; and the terms of service of locally appointed additional members of such Voluntary Parole Boards shall not exceed the terms of office of the director. However, it is expressly provided that the terms of service by such chairmen and additional members of Voluntary Parole Boards may be continued by appropriate reappointments. The chairman of the Voluntary Parole Board shall be responsible for assigning supervision of parolees and of persons released to mandatory supervision to the members of such board.

Sec. 31. No person who is serving as a sheriff, deputy sheriff, constable, deputy constable, city policeman, Texas Ranger, state highway patrolman, or similar law enforcement officer, or as a prosecuting attorney, shall act as a parole officer or be responsible for the supervision of persons on parole or released to mandatory supervision.

[See Compact Edition, Volume 1 for text of 32]

E. General Provisions

[See Compact Edition, Volume 1 for text of 33 to 35]

Sec. 36. The provisions of this article do not apply to temporary furloughs granted to an inmate by the Texas Department of Corrections under Article 6184n, Revised Civil Statutes of Texas, 1925.

[Amended by Acts 1975, 64th Leg., p. 263, ch. 110, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 572, ch. 231, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 909, ch. 341, § 4, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1243, ch. 467, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1244, ch. 468, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2150, ch. 692, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 38, ch. 22, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 102, ch. 47, § 1, eff. April 5, 1977; Acts 1977, 65th Leg., p. 821, ch. 306, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 909, ch. 342, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 914, ch. 343, § 2, eff. Sept. 1, 1978; Acts 1977, 65th Leg., p. 925, ch. 347, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1058, ch. 388, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.133, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 265, ch. 139, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1336, ch. 605, §§ 1, 2, 4, eff. Aug. 27, 1979.]

For saving provisions of Acts 1975, 64th Leg., p. 909, ch. 341, see note set out under art. 3.01.

Section 7 of Acts 1977, 65th Leg., p. 934, ch. 347, provided:

"This Act applies only to inmates sentenced to the Texas Department of Corrections for an offense committed on or after the effective date of this Act. Inmates sentenced for an offense committed prior to the effective date of this Act are governed by the law existing before the effective date, which is continued in effect for this purpose. For the purpose of this Act, an offense is committed on or after the effective date if any element of the offense occurs on or after the effective date."

Art. 42.121. Texas Adult Probation Commission

Text of article added effective until September 1, 1987

SUBCHAPTER A. GENERAL PROVISION

Purposes

Sec. 1.01. The purposes of this article are to make probation services available throughout the state, to improve the effectiveness of probation services, to provide alternatives to incarceration by providing financial aid to judicial districts for the establishment and improvement of probation services and community-based correctional programs and facilities other than jails or prisons, and to establish uniform probation administration standards.

Definitions

Sec. 1.02. In this article:

(1) "Director" means the executive director of the Texas Adult Probation Commission.

(2) "Commission" means the Texas Adult Probation Commission.

(3) "Probation office" means the office established under Section 10(a), Article 42.12, Code of Criminal Procedure, 1965, as amended, to provide probation services in each judicial district.

(4) "Employee in the criminal justice system" means a person employed as a peace officer, county attorney, district attorney, probation officer, parole officer, corrections officer, or any person employed by a court.

SUBCHAPTER B. TEXAS ADULT PROBATION COMMISSION

Creation

Sec. 2.01. The Texas Adult Probation Commission is hereby created.

Membership

Sec. 2.02. The commission shall consist of three judges of the district courts of Texas and two citizens of Texas who are not employed in the criminal justice system to be appointed by the Chief Justice of the Supreme Court of Texas and three judges of the district courts of Texas and one citizen of Texas not employed in the criminal justice system to be appointed by the presiding judge of the Texas Court of Criminal Appeals.

Terms of Office

Sec. 2.03. (a) The first members appointed to the Board shall serve terms of two, four, and six years respectively, and until their successors are appointed. Thereafter each member shall serve for six years.

(b) The appointing authority shall draw lots to determine which members serve two, four, and six-year terms.

(c) If any member of the commission resigns or expires, the appointing authority for his respective commission position shall appoint another member to serve the remainder of the unexpired term.

Chairman

Sec. 2.04. (a) The members of the commission shall elect a chairman from among its members.

(b) The chairman of the commission shall serve for a term of two years.

Expenses

Sec. 2.05. Members of the commission are not entitled to compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing their official duties as commission members.

Meetings

Sec. 2.06. (a) The Chief Justice of the Supreme Court of Texas shall call the first meeting of the commission in September, 1977.

(b) The commission shall hold regular quarterly meetings each year on dates fixed by the commission and such special meetings as the commission determines necessary. The commission shall make rules providing for the regulation of its proceedings and for the holding of special meetings.

(c) A majority of the commission shall constitute a quorum.

(d) The commission shall keep a public record of its decisions at its general office.

Executive Director, Employees

Sec. 2.07. (a) The commission shall employ an executive director, whose qualifications shall comply with the standards required for a probation officer and who has a minimum of two years experience in the administration and supervision of adult probation services, and as many other employees as it needs to administer this article.

(b) The commission may delegate authority to the executive director to select employees of the commission.

Expiration

Sec. 2.08. Unless continued by law, the commission is abolished and this article expires effective September 1, 1987.

SUBCHAPTER C. POWERS AND DUTIES OF COMMISSION

Standards for Probation Offices, Probation Officers, and Community-based Correctional Programs and Facilities

Sec. 3.01. The commission shall promulgate reasonable rules:

(1) establishing minimum standards for case loads, programs, facilities, and equipment, and other aspects of the operation of a probation office necessary for the provision of adequate and effective probation services;

(2) establishing a code of ethics for probation officers and providing for the enforcement thereof.

Records and Reports

Sec. 3.02. The commission shall require each probation office in Texas to:

(1) keep such financial and statistical records as the commission deems necessary;

(2) submit periodic financial and statistical reports to the commission.

Gifts and Grants

Sec. 3.03. The commission may apply for and accept gifts or grants from any public or private source for use in maintaining and improving probation services in Texas.

Intergovernmental Cooperation

Sec. 3.04. The commission may cooperate and contract with the federal government, with governmental agencies of Texas and other states, and with political subdivisions of Texas to improve probation services.

Inspections, Audits

Sec. 3.05. The commission may inspect and evaluate any probation office and conduct audits of financial records at any reasonable time to determine compliance with the commission's rules, regulations, or standards.

Studies

Sec. 3.06. The commission may conduct or participate in studies of corrections methods and systems.

Annual Report

Sec. 3.07. The commission shall make a report to the governor and to the legislature each year covering its operations and the condition of probation services in Texas during the previous year and making whatever recommendations it considers desirable.

Delegation of Authority

Sec. 3.08. The commission may delegate to the director or to any other employee any authority given it by this article except the authority to make rules.

Deposit of Money

Sec. 3.09. All money received by the commission under Section 3.03 of this article shall be deposited to the credit of special funds, which shall be appropriated, from the General Revenue Fund, for the payment of state aid by this article and for the administration of this article.

SUBCHAPTER D. STATE-AID TO PROBATION OFFICES

State-Aid Defined

Sec. 4.01. "State-aid" means funds appropriated by the state legislature to be used by the commission for financial assistance to judicial districts to achieve the purposes of this Act as stated previously in Section 1.01 of this Act and to conform to the standards and policies promulgated by the commission.

Determination of Amount

Sec. 4.02. The legislature shall determine and appropriate the amount of state-aid necessary to maintain and improve statewide probation services commensurate with the purposes as stated in Section 1.01 of this Act.

Data for State-Aid

Sec. 4.03. The district judge or judges in each judicial district shall present data to the commission, determined by the commission, which is necessary to determine the amount of state financial aid needed for use in maintaining and improving probation services and community-based correctional programs and facilities other than jails or prisons in the district.

Reports

Sec. 4.04. A judicial district receiving state-aid shall submit reports as required by the commission.

Payment of State-Aid

Sec. 4.05. (a) When the commission determines that a judicial district complies with its standards, the commission shall prepare and submit to the comptroller of public accounts a voucher for payment to the district the amount of state-aid to which it is entitled.

(b) The fiscal officer designated for the district shall deposit all state-aid received under this article in a special fund of the county treasury, to be used solely for the provision of adult probation services and community-based correctional programs and facilities other than jails or prisons.

Refusal or Suspension of State-Aid

Sec. 4.06. The commission shall refuse or suspend payment of state-aid to any district that fails to comply with the commission standards. The commission shall provide for notice and a hearing in cases in which it refuses or suspends state-aid. [Added by Acts 1977, 65th Leg., p. 910, ch. 343, § 1, eff. June 10, 1977. Amended by Acts 1979, 66th Leg., p. 1644, ch. 687, § 1, eff. Aug. 27, 1979.]

Section 3 of the 1977 Act provided:

"Section 4.05 of Article 42.121, Code of Criminal Procedure, 1965, as amended, and Section 2 of this Act take effect on September 1, 1978."

Art. 42.13. Misdemeanor Adult Probation and Supervision Law

Sec. 1. It is the purpose of this article to place wholly within the state courts of appropriate jurisdiction the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of probation, and the supervision of probationers in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. It is the further purpose of this article to remove from existing statutes the limitations other than questions of constitutionality that have acted as barriers to an effective system of probation in the public interest.

Sec. 2. This article may be cited as the "Misdemeanor Adult Probation and Supervision Law."

Unless the context otherwise requires, the following definitions shall apply to the specified words and phrases as used in this article:

(1) "Courts" shall mean the courts of record having original criminal jurisdiction.

(2) "Probation" shall mean the release of a convicted defendant by a court under conditions imposed by the court for a specified period during which the imposition of sentence is suspended.

(3) "Probationer" means a defendant who is on probation.

(4) "Probation officer" shall mean either a person duly appointed by one or more courts of record having original criminal jurisdiction to supervise defendants placed on probation or a person designated by such courts for such duties on a part-time basis.

Sec. 3. The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, after conviction or a plea of guilty or nolo contendere for any crime or offense, where the punishment assessed against the defendant is by confinement in jail or by fine or by both such fine and imprisonment, to suspend the imposition of the sentence and may place the defendant on probation or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. When imprisonment is assessed, the period of probation shall be for the maximum imprisonment applicable to such offense. Any such person placed on probation, whether in a trial by jury or before the court, shall be under the supervision of such court.

Sec. 3a. Where there is a conviction in any court of this state and the punishment assessed by the jury shall be by imprisonment in jail or by a fine or by both such fine and imprisonment, the jury may recommend probation for a period of the maximum imprisonment applicable to such offense of which the defendant is convicted, upon sworn motion made therefor by the defendant, filed before the penalty stage of the trial begins. When the jury recommends probation, it may recommend that the imprisonment or fine or both such fine and imprisonment found in its verdict may be probated. When the trial is to a jury and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the defendant, before the trial began, had filed a sworn statement that the defendant has never before been convicted of a felony, and after conviction and before the penalty stage of the trial began, the defendant shall have filed a sworn motion for probation and the proof shall show and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other state. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but the defendant may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict.

If probation is granted by the jury, the court may impose only those conditions which are set out in Section 6 hereof.

Sec. 3b. Where probation is recommended by the verdict of a jury as provided for in Section 3a above, a defendant's probation shall not be revoked during his good behavior, so long as the defendant is within the jurisdiction of the court and his residence is known, except in accordance with the provisions of Section 8 of this article. If such defendant has no counsel, it shall be the duty of the court to inform the defendant of his right to show cause why the defendant's probation should not be revoked; and if the defendant requests such right, the court shall appoint counsel in accordance with Articles 26.04 and 26.05 of this code to prepare and present the same; and in all other respects the procedure set forth in Section 8 of this article shall be followed.

Sec. 3c. Nothing herein shall limit the power of the court to grant a probation of sentence regardless of the recommendation of the jury or prior conviction of the defendant.

Sec. 3d. (a) When in its opinion the best interest of society and the defendant will be served, the court may, after receiving a plea of guilty or a plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt and place the defendant on probation on reasonable terms and conditions as the court may require and for a period as the court may subscribe not to exceed the maximum period of imprisonment prescribed for the offense for which defendant is charged. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the court shall proceed to final adjudication as in all other cases.

(b) On violation of a condition of probation imposed under Subsection (a) of this section, the defendant may be arrested and detained as provided in Section 8 of this article. The defendant is entitled to a hearing limited to a determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of probation, and defendant's appeal continue as if the adjudication of guilt had not been deferred.

(c) On expiration of a probationary period imposed under Subsection (a) of this section, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and discharge the defendant. The court may dismiss the proceedings and discharge the defendant prior to the expiration of the term of probation if in its opinion the best interest of society and the defendant will be served. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that upon conviction of a subsequent offense, the fact that the defendant had previously received probation shall be admissible before the court or jury to be considered on the issue of penalty.

Sec. 3e. (a) For the purposes of this section, the jurisdiction of the courts in this state in which a sentence requiring confinement in a jail is imposed for conviction of a misdemeanor shall continue for a period of 90 days from the date the execution of the sentence actually begins. After the expiration of 10 days but prior to 90 days from the date the execution of the sentence actually begins, the judge of the court that imposed such sentence may on his own motion or on the motion of the defendant suspend further execution of the sentence imposed and place the defendant on probation under the terms and conditions of this article, if prior to the execution of that sentence the defendant had never been incarcerated in a penitentiary or jail serving a sentence

for a felony or misdemeanor and in the opinion of the judge the defendant would not benefit from further incarceration in a jail.

(b) When the defendant files a written motion with the court requesting suspension of further execution of the sentence and placement on probation or when requested to do so by the judge, the clerk of the court shall request a copy of the defendant's record while incarcerated from the agency operating the jail where the defendant is incarcerated. Upon receipt of such request, the agency operating the jail where the defendant is incarcerated shall forward to the court as soon as possible a full and complete copy of the defendant's record while incarcerated.

Sec. 4. When directed by the court, a probation officer shall fully investigate and report to the court in writing the circumstances of the offense, criminal record, social history and present condition of the defendant. Whenever practicable, such investigation shall include a physical and mental examination of the defendant. Defendant, if not represented by counsel, counsel for defendant, and counsel for the state shall be afforded an opportunity to see a copy of the report upon request. If a defendant is committed to any institution, the probation officer shall send a report of such investigation to the institution at the time of commitment.

Sec. 5. Only the court in which the defendant was tried may grant probation, fix or alter conditions, revoke the probation, or discharge the defendant, unless the court has transferred jurisdiction of the case to another court with the latter's consent. After a defendant has been placed on probation, jurisdiction of the case may be transferred to a court of the same rank in this state having geographical jurisdiction where the defendant is residing or where a violation of the conditions of probation occurs. Upon transfer, the clerk of the court of original jurisdiction shall forward a transcript of such portions of the record as the transferring judge shall direct to the court accepting jurisdiction, which latter court shall thereafter proceed as if the trial and conviction had occurred in that court. Any court having geographical jurisdiction where the defendant is residing or where a violation of the conditions of probation occurs may issue a warrant for his arrest, but the determination of action to be taken after arrest shall be only by the court having jurisdiction of the case at the time the action is taken.

Sec. 6. The court having jurisdiction of the case shall determine the terms and conditions of probation and may at any time during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer and shall note the date of delivery of such delivery on the docket. Terms and conditions of probation may include but shall not be limited to the conditions that the probationer shall:

(1) commit no offense against the laws of this state or of any other state or of the United States;

(2) avoid injurious or vicious habits;

(3) avoid persons or places of disreputable or harmful character;

(4) report to the probation officer as directed by the court or probation officer and obey all rules and regulations of the probation department;

(5) permit the probation officer to visit him at his home or elsewhere;

(6) work faithfully at suitable employment as far as possible;

(7) remain within a specified place;

(8) pay his fine, if one be assessed, and all court costs, whether a fine be assessed or not, in one or several sums and make restitution or reparation in any sum that the court shall determine;

(9) support his dependents;

(10) participate in any community-based program or participate in an alcohol or drug abuse treatment or education program and abstain from the use of alcoholic beverages or specified drugs at all times or under certain circumstances;

(11) reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;

(12) remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;

(13) pay a percentage of his income to his dependents for their support while under custodial supervision in the community-based facility; and

(14) pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense.

Sec. 6a. (a) A court granting probation may fix a fee not exceeding $15 per month to be paid to the court by the probationer during the probationary period. The court may make payment of the fee a condition of granting or continuing the probation.

(b) The court shall deposit the fees received under Subsection (a) of this section in the special fund of the county treasury provided by Section 4.05(b), Article 42.121 of this code, as added, to be used for

the same purposes for which state aid may be used under that section.

Sec. 6b. (a) When the court having jurisdiction of the case grants probation to the defendant, in addition to the conditions imposed under Section 6 of this article, the court may require as a condition of probation that the defendant submit to a period of detention in jail to serve a term of imprisonment not to exceed 30 days or one-third of the sentence, whichever is lesser.

(b) The imprisonment imposed shall be treated as a condition of probation, and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall be credited toward service of such subsequent imprisonment.

Sec. 6c. If a person convicted of an offense under Article 6701*l*–1, Revised Civil Statutes of Texas, 1925, as amended, is placed on probation, the court may require, as a condition of the probation, that the defendant attend an educational program approved by the Texas Commission on Alcoholism, the Texas Department of Public Safety, or the Office of Traffic Safety designed to rehabilitate persons who have driven while intoxicated. The judge shall waive this requirement, however, if no program is operated within 60 miles of the defendant's residence.

Sec. 7. At any time after the defendant has satisfactorily completed one-third of the original probationary period, the period of probation may be reduced or terminated by the court. Upon the satisfactory fulfillment of the conditions of probation and the expiration of the period of probation, the court by order duly entered shall amend or modify the original sentence imposed, if necessary, to conform to the probation period and shall discharge the defendant. In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere and the court has discharged the defendant hereunder, such court shall set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information, or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which defendant has been convicted or to which defendant has pleaded guilty or pleaded nolo contendere, except that proof of defendant's conviction or plea of guilty or nolo contendere shall be made known to the court should the defendant again be convicted of any criminal offense.

Sec. 8. (a) At any time during the period of probation the court may issue a warrant for violation of any of the conditions of the probation and cause the defendant to be arrested. Any probation officer, police officer or other officer with power of arrest may arrest such defendant without a warrant upon the order of the judge of such court to be noted on the docket of the court. A probationer so arrested may be detained in the county jail or other appropriate place of detention until he can be taken before the court. Such officer shall forthwith report such arrest and detention to such court. If the defendant has not been released on bail, on motion by the defendant the court shall cause the defendant to be brought before it for a hearing within 20 days of filing of said motion, and after a hearing without a jury, may either continue, modify, or revoke the probation. The court may continue the hearing for good cause shown by either the defendant or the state. If probation is revoked, the court may proceed to dispose of the case as if there had been no probation or if it determines that the best interests of society and the probationer would be served by a shorter term of imprisonment, reduce the term of imprisonment not less than the minimum prescribed for the offense of which the probationer was convicted.

(b) Any probationer who removes himself from the State of Texas without permission of the court having jurisdiction of the case shall be deemed and considered a fugitive from justice and shall be subject to extradition as now provided by law. No part of the time that the defendant is on probation shall be considered as any part of the time that defendant shall be sentenced to serve. The right of the probationer to appeal to the Court of Criminal Appeals for a review of the trial and conviction as provided by law shall be accorded the probationer at the time the defendant is placed on probation. When the probationer is notified that his probation is revoked for violation of the conditions of probation and he is called on to serve a sentence in jail or in an institution operated by the Texas Department of Corrections, he may appeal the revocation.

(c) In a probation revocation hearing at which it is alleged only that the probationer violated the conditions of probation by failing to pay probation fees, court costs, restitution, or reparations or compensation paid to appointed counsel, the inability of the probationer to pay as ordered by the court is an affirmative defense to revocation, which the probationer must prove by a preponderance of evidence.

Sec. 9. If for good and sufficient reasons probationers desire to change their residence within the state, such transfer may be effected by application to their supervising probation officer, which transfer shall be subject to the court's consent and subject to such regulations as the court may require in the absence of a probation officer in the locality to which the probationer is transferred.

Sec. 10. For the purpose of providing adequate probation services under this article, all of the provisions of Section 10 of Article 42.12 of the Code of Criminal Procedure, 1965, as amended, apply hereto.

Sec. 11. For the purpose of determining when fees are to be paid to any officer or officers, the placing of the defendant on probation shall be considered a final disposition of the case, without the necessity of waiting for the termination of the period of probation or suspension of sentence.

[Acts 1979, 66th Leg., p. 1514, ch. 654, § 1, eff. Aug. 27, 1979.]

Acts 1979, 66th Leg., p. 2062, ch. 807, § 1, without reference to the repeal and reenactment of this article by Acts 1979, 66th Leg., p. 1514, ch. 654, § 1, added a § 3B to read as follows:

Suspension of Sentence and Performance of Community Service

Sec. 3B. (a) A defendant who pleads guilty or nolo contendere to a first offense misdemeanor that does not involve bodily injury or the threat of bodily injury to any person and for which the maximum permissible punishment is by confinement in jail or by a fine in excess of $200 or by both a fine and confinement is eligible for community-service probation.

(b) If an eligible defendant applies for community-service probation and the court finds that it will be in the best interests of society and the defendant, the court, after receiving the defendant's plea, hearing the evidence, and finding that it substantiates the defendant's guilt, may defer further proceedings without entering an adjudication of guilt and place the defendant on community-service probation.

(c) If the court places a defendant on community-service probation, the court shall require, as a condition of the probation, that the defendant work a specified number of hours at a specified community-service project for an organization named in the court's order.

(d) The amount of community-service work ordered by the court:

(1) may not exceed 100 hours and may not be less than 24 hours for an offense classified as a Class B misdemeanor or for any other misdemeanor for which the maximum permissible imprisonment, if any, does not exceed six months and the maximum permissible fine, if any, does not exceed $1,000; and

(2) may not exceed 200 hours and may not be less than 80 hours for an offense classified as a Class A misdemeanor or for any other misdemeanor for which the maximum permissible imprisonment, if any, exceeds six months or the maximum permissible fine, if any, exceeds $1,000.

(e) The terms of community-service probation must include, but are not limited to, requirements that the probationer:

(1) commit no offense against the laws of this or any other state or the United States;

(2) avoid injurious or vicious habits;

(3) avoid persons or places of disreputable or harmful character;

(4) work faithfully at suitable employment as far as possible;

(5) work faithfully at the community-service task assigned by the court;

(6) remain within a specified place; and

(7) support his dependents.

(f) The clerk of a court granting community-service probation shall promptly furnish the probationer with a written statement of the period and terms of the probation.

(g) Community-service work authorized pursuant to this section must be for any nonprofit organization that has agreed to accept community-service probationers and supervise and report on their work and whose services are provided to the general public and are designed to enhance the social welfare, physical or mental stability, environmental quality, or general well-being of the community.

(h) The court shall select community-service tasks that may be performed during hours the probationer is not working or attending school and that are within the probationer's capabilities. A probationer may not receive compensation for community-service work.

(i) On violation of a condition of community-service probation, the defendant may be arrested and detained as provided in Section 6 of this article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of probation, and defendant's appeal continue as if the adjudication of guilt had not been deferred.

(j) On satisfactory completion by a probationer of the required amount of community-service work, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and discharge him. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that on conviction of a subsequent offense the fact that the defendant previously received community-service probation is admissible on the issue of penalty.

[Added by Acts 1979, 66th Leg., p. 2062, ch. 807, § 1, eff. Sept. 1, 1979.]

Acts 1979, 66th Leg., p. 1514, ch. 654, § 1, repealed former art. 42.13, as amended, and enacted a new art. 42.13 in lieu thereof. Section 2 of ch. 654 repealed Acts 1965, 59th Leg., ch. 164 and Acts 1979, 66th Leg., H.B. 588 (ch. 26). Section 3 of ch. 654 provided:

"If any provision, section, or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision, section, or clause, and to this end the provisions of this Act are declared to be severable."

Prior to repeal and reenactment of this article by Acts 1979, 66th Leg., p. 1514, ch. 654, § 1, this article was amended by:

Acts 1975, 64th Leg., p. 910, ch. 341, § 5.
Acts 1977, 65th Leg., p. 822, ch. 306, § 3.
Acts 1977, 65th Leg., p. 1059, ch. 388, §§ 3, 4.
Acts 1979, 66th Leg., p. 952, ch. 428, § 31.
Acts 1979, 66th Leg., p. 1339, ch. 605, § 5.

Art. 42.17. Transfer Under Treaty

When a treaty is in effect between the United States and a foreign country providing for the transfer of convicted offenders who are citizens or nationals of foreign countries to the foreign countries of which they are citizens or nationals, the governor is authorized, subject to the terms of such treaty, to act on behalf of the State of Texas and to consent to the transfer of such convicted offenders under the provisions of Article IV, Section 11 of the Constitution of the State of Texas.

[Added by Acts 1977, 65th Leg., p. 1266, ch. 489, § 1, eff. June 15, 1977.]

CHAPTER FORTY-THREE. EXECUTION OF JUDGMENT

Art. 43.14. Execution of Convict

Whenever the sentence of death is pronounced against a convict, the sentence shall be executed at any time before the hour of sunrise on the day set for the execution not less than thirty days from the day of sentence, as the court may adjudge, by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until such convict is dead, such execution procedure to be determined and supervised by the Director of the Department of Corrections.

[Amended by Acts 1977, 65th Leg., p. 287, ch. 138, § 1, eff. Aug. 29, 1977.]

Art. 43.17. Visitors

Upon the receipt of such condemned person by the Director of the Department of Corrections, the condemned person shall be confined therein until the time for his or her execution arrives, and while so confined, all persons outside of said prison shall be denied access to him or her, except his or her physician, lawyer, and clergyperson, who shall be admitted to see him or her when necessary for his or her health or for the transaction of business, and the relatives and friends of the condemned person, who shall be admitted to see and converse with him or her at all proper times, under such reasonable rules and regulations as may be made by the Board of Directors of the Department of Corrections.

[Amended by Acts 1979, 66th Leg., p. 1181, ch. 572, § 1, eff. Aug. 27, 1979.]

Art. 43.18. Executioner

The Director of the Texas Department of Corrections shall designate an executioner to carry out the death penalty provided by law.

[Amended by Acts 1975, 64th Leg., p. 911, ch. 341, § 6, eff. June 19, 1975; Acts 1977, 65th Leg., p. 288, ch. 138, § 2, eff. Aug. 29, 1977.]

For saving provisions of 1975 amendatory act, see note set out under art. 3.01.

APPEAL AND WRIT OF ERROR

CHAPTER FORTY-FOUR. APPEAL AND WRIT OF ERROR

Art. 44.02. Defendant May Appeal

A defendant in any criminal action has the right of appeal under the rules hereinafter prescribed, provided, however, before the defendant who has been convicted upon either his plea of guilty or plea of nolo contendere before the court and the court, upon the election of the defendant, assesses punishment and the punishment does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney may prosecute his appeal, he must have permission of the trial court, except on those matters which have been raised by written motion filed prior to trial. This article in no way affects appeals pursuant to Article 44.17 of this chapter.

[Amended by Acts 1977, 65th Leg., p. 940, ch. 351, § 1, eff. Aug. 29, 1977.]

Art. 44.04. Bond Pending Appeal

(a) Pending the appeal from any misdemeanor conviction, the defendant is entitled to be released on reasonable bail, and if a defendant charged with a misdemeanor is on bail, is convicted, and appeals that conviction, his bond is not discharged until his conviction is final or in the case of an appeal to a court where a trial de novo is held, he files an appeal bond as required by this code for appeal from the conviction.

(b) The defendant may not be released on bail pending the appeal from any felony conviction where the punishment exceeds 15 years confinement but shall immediately be placed in custody and the bail discharged.

(c) Pending the appeal from any felony conviction where the punishment does not exceed 15 years confinement, the trial court may deny bail and commit the defendant to custody if there then exists good cause to believe that the defendant would not appear when his conviction became final or is likely to commit another offense while on bail, permit the defendant to remain at large on the existing bail, or, if not then on bail, admit him to reasonable bail until his conviction becomes final. The court may impose reasonable conditions on bail pending the finality of

his conviction. On a finding by the court on a preponderance of the evidence of a violation of a condition, the court may revoke the bail.

(d) After conviction, either pending determination of any motion for new trial or pending final determination of the appeal, the court in which trial was had may increase or decrease the amount of bail, as it deems proper, either upon its own motion or the motion of the State or of the defendant.

(e) Any bail entered into after conviction and the sureties on the bail must be approved by the court where trial was had. Bail is sufficient if it substantially meets the requirements of this code and may be entered into and given at any term of court.

(f) In no event shall the defendant and the sureties on his bond be released from their liability on such bond or bonds until the defendant is placed in the custody of the sheriff.

(g) The right of appeal to the Court of Criminal Appeals of this state is expressly accorded the defendant for a review of any judgment or order made hereunder, and said appeal shall be given preference by the Court of Criminal Appeals.

[Amended by Acts 1977, 65th Leg., p. 636, ch. 234, § 1, eff. Aug. 29, 1977.]

Art. 44.05. Receipt of Mandate

When the clerk of any court from whose judgment an appeal has been taken in cases wherein bail has been allowed shall receive the mandate of the Court of Criminal Appeals affirming such judgment, he shall send an acknowledgment to the Court of Criminal Appeals of the receipt of the mandate and immediately file the same and forthwith issue a capias for the arrest of the defendant for the execution of the sentence of the court, which shall recite the fact of conviction, setting forth the offense and the judgment and sentence of the court, the appeal from and affirmance of such judgment and the filing of such mandate, and shall command the sheriff to arrest and take into his custody the defendant and place him in jail and therein keep him until delivered to the proper authorities, as directed by said sentence. The sheriff shall forthwith execute such capias as directed. The sheriff shall notify the clerk of the trial court and the Court of Criminal Appeals when the mandate has been carried out and executed.

[Amended by Acts 1979, 66th Leg., p. 1900, ch. 769, § 1, eff. Sept. 1, 1979.]

Art. 44.13. Appeals from Justice and Corporation Courts

In appeals from the judgments and sentence of justice or corporation courts, the defendant shall, if he be in custody, be committed to jail unless he gives bail, to be approved by the court from whose judgment and sentence the appeal is taken, in an amount not less than double the amount of fine and costs adjudged against him, payable to the State of Texas; provided the bail shall not in any case be for a less sum than fifty dollars. Without requiring a court appearance by the defendant, the court shall approve an appeal bond in an amount that the court under Article 27.14(b) of this code notified the defendant would be approved if the appeal bond otherwise meets the requirements of this code. An appeal bond shall recite that in the cause the defendant was convicted and has appealed, and be conditioned that the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if said court be then in session; and if said court be not in session, then at its next regular term, stating the time and place of holding the same, and there remain from day to day and term to term, and answer in said cause in said court.

[Amended by Acts 1979, 66th Leg., p. 451, ch. 207, § 2, eff. Sept. 1, 1979.]

Art. 44.16. Appeal Bond Given Within What Time

If the defendant is not in custody, a notice of appeal as provided in Article 44.13 shall have no effect whatever until the required appeal bond has been given and approved. The appeal bond shall be given within ten days after the sentence of the court has been rendered, except as provided in Article 27.14 of this code.

[Amended by Acts 1979, 66th Leg., p. 450, ch. 207, § 3, eff. Sept. 1, 1979.]

MISCELLANEOUS PROCEEDINGS

CHAPTER FORTY-SIX. INSANITY AS DEFENSE

Article
46.03. Insanity Defense.

Art. 46.02. Incompetency to Stand Trial

Incompetency to Stand Trial

Sec. 1. (a) A person is incompetent to stand trial if he does not have:

(1) sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding; or

(2) a rational as well as factual understanding of the proceedings against him.

(b) A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence.

Raising the Issue of Incompetency to Stand Trial

Sec. 2. (a) The issue of the defendant's incompetency to stand trial shall be determined in advance of the trial on the merits if the court determines there is evidence to support a finding of incompeten-

cy to stand trial on its own motion or on written motion by the defendant or his counsel filed prior to the date set for trial on the merits asserting that the defendant is incompetent to stand trial.

(b) If during the trial evidence of the defendant's incompetency is brought to the attention of the court from any source, the court must conduct a hearing out of the presence of the jury to determine whether or not there is evidence to support a finding of incompetency to stand trial.

Examination of the Defendant

Sec. 3. (a) At any time the issue of the defendant's incompetency to stand trial is raised, the court may, on its own motion or motion by the defendant, his counsel, or the prosecuting attorney, appoint disinterested experts experienced and qualified in mental health or mental retardation to examine the defendant with regard to his competency to stand trial and to testify at any trial or hearing on this issue.

(b) The court may order any defendant to submit to examination for the purposes described in this article. If the defendant is free on bail, the court in its discretion may order him to submit to examination. If the defendant fails or refuses to submit to examination, the court may order him to custody for examination for a reasonable period not to exceed 21 days. The court may not order a defendant to a facility operated by the Texas Department of Mental Health and Mental Retardation for examination without the consent of the head of that facility or for a period exceeding 21 days. If a defendant who has been ordered to a facility operated by Texas Department of Mental Health and Mental Retardation for examination remains in such facility for a period of time exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the Texas Department of Mental Health and Mental Retardation facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(c) The court shall advise any expert appointed pursuant to this section of the nature of the offense with which the defendant is charged and the meaning of incompetency to stand trial.

(d) A written report of the examination shall be submitted to the court within 30 days of the order of examination, and the court shall furnish copies of the report to the defense counsel and the prosecuting attorney. The report shall include a description of the procedures used in the examination, the examiner's observations and findings pertaining to the defendant's competency to stand trial, and recommended treatment. If the examiner concludes that the defendant is incompetent to stand trial, the report shall include the examiner's observations and findings about whether there is a substantial probability that the defendant will attain the competence to stand trial in the foreseeable future. The examiner shall also submit a separate report setting forth his observations and findings concerning:

(1) whether the defendant is mentally ill and requires observation and/or treatment or hospitalization in a mental hospital for his own welfare and protection or the protection of others; or

(2) whether the defendant is a mentally retarded person as defined in The Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes) [1] and requires commitment to a mental retardation facility.

(e) If the examiner is a physician and concludes that the defendant is mentally ill, he shall complete and submit to the court a Certificate of Medical Examination for Mental Illness. If the examiner concludes that the defendant is a mentally retarded person and the examination has been conducted at a facility of the Texas Department of Mental Health and Mental Retardation or at a diagnostic center approved by the Texas Department of Mental Health and Mental Retardation, the examiner shall submit to the court an affidavit setting forth the conclusions reached as a result of the diagnostic examination.

(f) The appointed experts shall be paid by the county in which the indictment was returned or information was filed. A facility operated by the Texas Department of Mental Health and Mental Retardation which accepts a defendant for examination under Subsection (a) of this section shall be reimbursed by the county in which the indictment was returned or information was filed for such expenses incurred as are determined by the department to be reasonably necessary and incidental to the proper examination of the defendant.

(g) No statement made by the defendant during the examination or hearing on his competency to stand trial may be admitted in evidence against the defendant on the issue of guilt in any criminal proceeding.

(h) When a defendant wishes to be examined by a psychiatrist or other expert of his own choice, the court on timely request shall provide the examiner with reasonable opportunity to examine the defendant.

(i) The experts appointed under this section to examine the defendant with regard to his competency to stand trial also may be appointed by the court to examine the defendant with regard to the insanity defense pursuant to Section 3 of Article 46.03 of

this code, but separate written reports concerning the defendant's competency to stand trial and the insanity defense shall be filed with the court.

[1] Repealed; see, now, the Mentally Retarded Persons Act of 1977, classified as Civil Statutes, art. 5547–300.

Incompetency Hearing

Sec. 4. (a) If the court determines that there is evidence to support a finding of incompetency to stand trial, a jury shall be impaneled to determine the defendant's competency to stand trial. This determination shall be made by a jury that has not been selected to determine the guilt or innocence of the defendant. If the defendant is found incompetent to stand trial, a further hearing may be held to determine whether or not the defendant is mentally ill and requires observation and/or treatment or hospitalization in a mental hospital for his own welfare and protection or the protection of others or whether he is a mentally retarded person as defined in The Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes), and requires commitment to a mental retardation facility.

(b) The defendant is entitled to counsel at the competency hearing. If the defendant is indigent and the court has not yet appointed counsel to represent the defendant, the court shall appoint counsel prior to the competency hearing.

(c) If the issue of incompetency to stand trial is raised other than by written motion in advance of trial pursuant to Subsection (a) of Section 2 of this article and the court determines that there is evidence to support a finding of incompetency to stand trial, the court shall set the issue for determination immediately or at any time prior to the sentencing of the defendant. If the competency hearing is delayed until after a verdict on the guilt or innocence of the defendant is returned, the competency hearing shall be held as soon thereafter as reasonably possible, but a competency hearing may be held only if the verdict in the trial on the merits is "guilty." If the defendant is found incompetent to stand trial after the beginning of the trial on the merits, the court shall declare a mistrial in the trial on the merits. A subsequent trial and conviction of the defendant for the same offense is not barred and jeopardy does not attach by reason of a mistrial under this section.

(d) Instructions submitting the issue of incompetency to stand trial shall be framed to require the jury to state in its verdict:

(1) whether the defendant is incompetent to stand trial; and

(2) if found incompetent to stand trial, whether there is no substantial probability that the defendant will attain the competency to stand trial within the foreseeable future.

(e) If the jury is unable to agree on a unanimous verdict after a reasonable opportunity to deliberate, the court shall declare a mistrial of the incompetency hearing, discharge the jury, and impanel another jury to determine the incompetency of the defendant to stand trial.

(f) If the defendant is found competent to stand trial, the court shall dismiss the jury that decided the issue and may continue the trial on the merits before the court or with the jury selected for that purpose.

(g) If the defendant is found incompetent to stand trial and it is determined that there is a substantial probability that he will attain the competency to stand trial within the foreseeable future, the court shall proceed under Section 5 of this article.

(h) If the defendant is found incompetent to stand trial and there is found no substantial probability that he will become competent within the foreseeable future, and the court determines there is evidence that the defendant is mentally ill or is a mentally retarded person, and all charges pending against the defendant are not then dismissed, the court shall proceed under Section 6 of this article or shall release the defendant.

(i) If the defendant is found incompetent to stand trial and there is found no substantial probability that he will become competent within the foreseeable future, and the court determines there is evidence that the defendant is mentally ill or is a mentally retarded person, and all charges pending against the defendant are then dismissed, the court shall proceed under Section 7 of this article or shall release the defendant.

Criminal Commitment

Sec. 5. (a) When a defendant has been determined incompetent to stand trial, and absent a determination that there is no substantial probability that the defendant will attain competency to stand trial in the foreseeable future, the court shall enter an order committing the defendant to the maximum security unit of Rusk State Hospital, to the maximum security unit of any other facility designated by the Texas Department of Mental Health and Mental Retardation, to an agency of the United States operating a mental hospital, or to a Veterans Administration hospital for a period of at least 60 days, but not to exceed 18 months, and placing him in the custody of the sheriff for transportation to the facility to be confined therein for further examination and treatment toward the specific objective of attaining competency to stand trial. The court shall order that a transcript of all medical testimony received by the jury be forthwith prepared by the court reporter and that such transcript, together with a statement of the facts and circumstances surrounding the alleged offense, shall accompany the patient to the facility.

(b) No person shall be committed to a mental health or mental retardation facility under this section except on competent medical or psychiatric testimony.

(c) The facility to which the defendant is committed shall develop an individual program of treatment and shall report on the defendant's progress towards achieving competency to the court at least every 90 days.

(d) Nothing in this section precludes the court from allowing the defendant to be released on bail if the court determines that the defendant can be adequately treated on an outpatient basis for the purpose of attaining competency to stand trial.

(e) If the charges pending against a defendant are dismissed, the committing court shall send a copy of the order of dismissal to the head of the facility in which the defendant is held and the defendant shall then be discharged.

(f) The head of a facility to which a person has been committed pursuant to Subsection (a) of this section shall promptly notify the committing court:

(1) when he is of the opinion that the defendant has attained competency to stand trial; or

(2) when he is of the opinion that there is no substantial probability that the defendant will attain the competency to stand trial in the foreseeable future; or

(3) when an 18-month commitment is due to expire, such notice to be given 14 days prior to such expiration.

(g) On notification to the committing court under Subsection (f) of this section, the sheriff of the county in which the committing court is located shall forthwith transport the defendant to the committing court; provided, however, that if the defendant remains in the maximum security unit of a facility of the Texas Department of Mental Health and Mental Retardation 14 days following receipt by the committing court of such notification, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the Texas Department of Mental Health and Mental Retardation facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(h) Upon the defendant's return to court, if he has no counsel and the court determines that the defendant is indigent, the court shall appoint counsel to represent him.

(i) When the head of a facility to which the defendant is committed discharges the defendant and the defendant is returned to court, a final report shall be filed with the court documenting the applicable reason therefor under Subsection (f) of this section, and the court shall furnish copies to the defense counsel and the prosecuting attorney. If the head of such facility is of the opinion that the defendant is mentally ill and requires observation and/or treatment or hospitalization in a mental hospital for his own welfare and protection or the protection of others, he shall complete and submit to the court a Certificate of Medical Examination for Mental Illness. If the head of such facility is of the opinion that the defendant is mentally retarded, he shall submit to the court an affidavit setting forth the conclusions reached as a result of the diagnostic examination. When the report is filed with the court, the court is authorized to make a determination based solely on the report with regard to the defendant's competency to stand trial, unless the prosecuting attorney or the defense counsel objects in writing or in open court to the findings of the report within 15 days from the time the report is served on the parties. In the event of objection, the issue shall be set for a hearing before the court or, on motion by the defendant, his counsel, the prosecuting attorney, or the court, the hearing shall be held before a jury. The hearing shall be held within 30 days following the date of objection unless continued for good cause.

(j) No defendant who has been committed to a facility under Subsection (a) of this section may be recommitted to a facility under that subsection in connection with the same offense.

(k) If the defendant is found competent to stand trial, criminal proceedings against him may be resumed.

(*l*) If the defendant is found incompetent to stand trial, and all charges pending against the defendant are not then dismissed, the court shall proceed under Section 6 of this article or shall release the defendant.

(m) If the defendant is found incompetent to stand trial, and all charges pending against the defendant are then dismissed, the court shall proceed under Section 7 of this article or shall release the defendant.

Civil Commitment—Charges Pending

Sec. 6. (a) If a defendant is found incompetent to stand trial and there is found no substantial probability that he will become competent in the foreseeable future, or if the defendant is found incompetent to stand trial and he has been previously committed to a facility under Subsection (a) of Section 5 of this article in connection with the same offense, and, in either event, all charges pending against the defendant are not then dismissed, the court shall determine whether there is evidence to support findings that the defendant is mentally ill or is mentally retarded and requires commitment to a mental health or mental retardation facility.

(b) If it appears to the court that the defendant may be mentally ill and there is on file with the court Certificates of Medical Examination for Mental Illness by two physicians, at least one of whom must not be employed by the Texas Department of Mental Health and Mental Retardation, who have examined the defendant within 45 days of the date of the commitment hearing, each stating that the defendant is mentally ill and requires observation and/or treatment or hospitalization in a mental hospital, the court shall impanel a jury to determine whether the defendant shall be committed to a mental health facility or such hearing may be held before the jury impaneled to determine the defendant's competency to stand trial.

(1) If there has not been filed with the court two such Certificates of Medical Examination for Mental Illness, the judge shall appoint the necessary physicians, at least one of whom shall be a psychiatrist if one is available in the county, to examine the defendant and file certificates with the court. The judge may order the defendant to submit to the examination.

(2) The Texas Mental Health Code (Article 5547–1 et seq., Vernon's Texas Civil Statutes) shall govern proceedings for commitment of the defendant to a mental health facility insofar as the provisions of that code are applicable and not in conflict herewith, except that the criminal court shall conduct the proceedings whether or not the criminal court is also the county court.

(3) If the defendant has not been under observation and/or treatment in a mental hospital for at least 60 days under the provisions of Section 5(a) above or under an Order of Temporary Commitment pursuant to the provisions of the Texas Mental Health Code (Article 5547–1 et seq., Vernon's Texas Civil Statutes) within the 12 months immediately preceding the date of the hearing, the instructions submitting the issue shall be framed to require the jury to state in its verdict:

(i) whether the defendant is mentally ill, and if so

(ii) whether he requires observation and/or treatment in a mental hospital for his own welfare and protection or the protection of others.

(4) If the jury finds that the defendant is not mentally ill or does not require observation and/or treatment in a mental hospital, the court shall order the immediate release of the defendant.

If the jury finds that the defendant is mentally ill and requires observation and/or treatment in a mental hospital for his own welfare and protection or the protection of others, the court shall order that the defendant be committed as a patient for observation and/or treatment in a state mental hospital for a period not exceeding 90 days.

(5) If the defendant has been under observation and/or treatment in a mental hospital for at least 60 days under the provisions of Section 5(a) above or under an Order of Temporary Commitment pursuant to the provisions of the Texas Mental Health Code (Article 5547–1 et seq., Vernon's Texas Civil Statutes) within the 12 months immediately preceding the date of the hearing, the instructions submitting the issue shall be framed to require the jury to state in its verdict:

(i) whether the defendant is mentally ill, and if so

(ii) whether he requires hospitalization in a mental hospital for his own welfare and protection or the protection of others, and if so

(iii) whether he is mentally incompetent.

(6) If the jury finds that the defendant is not mentally ill or that he does not require hospitalization in a mental hospital for his own welfare and protection or the protection of others, the court shall enter an order discharging the defendant.

If the jury finds that the defendant is mentally ill and requires hospitalization in a mental hospital for his own welfare and protection or the protection of others, the court shall order that the defendant be committed as a patient to a state mental hospital for an indefinite period.

(7) If the court enters an order committing the defendant to a state mental hospital, the defendant shall be treated and released in conformity to the Texas Mental Health Code except as may be provided in this article.

(c) If it appears to the court that the defendant may be mentally retarded and there is on file with the court an Affidavit of Examination of Alleged Mentally Retarded Person based upon an examination conducted at a facility of the Texas Department of Mental Health and Mental Retardation or at a diagnostic center approved by that department, the court shall impanel a jury to determine whether the defendant is a mentally retarded person or such hearing may be held before the jury impaneled to determine the defendant's competency to stand trial.

(1) If such affidavit is not on file with the court, the judge shall arrange for such diagnostic examination of the defendant by a facility of the Texas Department of Mental Health and Mental Retardation or by a diagnostic center approved by that department. The judge may order the defendant to submit to the examination. The county shall reimburse the facility or center which conducts the examination for the reasonable and necessary expenses incurred in conducting such examination.

(2) The Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes) shall govern proceedings for commitment of the defendant to a

mental retardation facility insofar as the provisions of that Act are applicable and not in conflict herewith, except that the criminal court shall conduct the proceedings whether or not the criminal court is also a county court.

(3) The instructions submitting the issue of mental retardation to the jury shall be framed to require the jury to state in its verdict whether the defendant is a mentally retarded person as defined in the Mentally Retarded Persons Act, and if so, whether he requires commitment to a mental retardation facility.

(4) If the jury finds that the defendant is not a mentally retarded person as defined in the Mentally Retarded Persons Act, or that he does not require commitment to a mental retardation facility, the court shall enter an order discharging the defendant.

(5) If the jury finds that the defendant is a mentally retarded person as defined in the Mentally Retarded Persons Act, and requires commitment to a mental retardation facility, the court shall enter an order declaring that fact and that the person is committed to a mental retardation facility of the Texas Department of Mental Health and Mental Retardation.

(d) In the proceedings conducted under this section:

(1) no Application for Temporary Hospitalization, Petition for Indefinite Commitment or Application to have the defendant declared a mentally retarded person shall be required;

(2) the provisions of the Texas Mental Health Code and the Mentally Retarded Persons Act relating to notice of hearing shall not be applicable;

(3) appeals from the criminal court proceedings under this section shall be to the court of civil appeals as in the proceedings for temporary hospitalization or for indefinite commitment under the Texas Mental Health Code.

Civil Commitment—Charges Dismissed

Sec. 7. If a defendant is found incompetent to stand trial and there is found no substantial probability that he will become competent in the foreseeable future, or if the defendant is found incompetent to stand trial and he has been previously committed to a facility under Section 5 of this article and all charges pending against the defendant are then dismissed, the court shall determine whether there is evidence to support findings that the defendant is either mentally ill or is a mentally retarded person. If it appears to the court that there is evidence to support either of such findings, the court shall enter an order transferring the defendant to the appropriate court for civil commitment proceedings, stating that all charges pending against the defendant in that court have been dismissed, and may order the defendant detained in jail or other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether the defendant will be committed to a mental health or mental retardation facility; provided, however, that a patient placed in a facility of the Texas Department of Mental Health and Mental Retardation pending civil hearing under this section may be detained in such facility only pursuant to an Order of Protective Custody issued pursuant to the provisions of the Texas Mental Health Code and with the consent of the head of the facility, or the court may give the defendant into the care of a responsible person on satisfactory security being given for his proper care and protection; otherwise, the defendant shall be discharged.

General

Sec. 8. (a) A person committed to a mental health or mental retardation facility as a result of the proceedings initiated pursuant to Section 6 or Section 7 of this article shall be committed to the maximum security unit of Rusk State Hospital or to the maximum security unit of any other facility designated by the Texas Department of Mental Health and Mental Retardation. Within 60 days following arrival at the maximum security unit, the person shall be transferred to a nonsecurity unit of a mental health or mental retardation facility designated by the Texas Department of Mental Health and Mental Retardation unless the person is determined to be manifestly dangerous by a review board with the Texas Department of Mental Health and Mental Retardation. The Commissioner of the Texas Department of Mental Health and Mental Retardation shall appoint three psychiatrists who are licensed to practice medicine in the State of Texas to determine whether the person is manifestly dangerous. If the superintendent of the facility at which the maximum security unit is located disagrees with the determination, then the matter will be referred to the Commissioner of the Texas Department of Mental Health and Mental Retardation who will resolve the disagreement by deciding whether the person is manifestly dangerous.

(b) The court shall order that a transcript of all medical testimony received in both the criminal proceedings and the civil commitment proceedings be prepared forthwith by the court reporters and that such transcripts, together with a statement of the facts and circumstances surrounding the alleged offense, shall accompany the patient to the mental health or mental retardation facility.

(c) If the head of a mental health facility determines that a patient committed to a state mental hospital for a period not exceeding 90 days as a result of proceedings initiated pursuant to Section 6

or Section 7 of this article requires indefinite commitment to a mental hospital for his own welfare and protection or the protection of others, he shall notify the court from which the patient was committed in writing at least 30 days prior to the expiration of the temporary commitment. The court from which the patient was committed shall order the sheriff of the county in which the court is located to return the patient for a Hearing for Indefinite Commitment or shall make arrangements for the hearing to be held in an appropriate court of the county in which the patient is hospitalized. Provided, however, that if the patient has not received a Hearing for Indefinite Commitment by the date on which the temporary commitment expires, the head of the facility in which the patient is hospitalized shall cause the patient to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the court is located. That county shall reimburse the facility of the Texas Department of Mental Health and Mental Retardation for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(d) The head of a mental health or mental retardation facility to which a person has been committed or transferred as a result of the proceedings initiated pursuant to Section 6 of this article and who has received written notice from a court or prosecuting attorney that criminal charges are pending against the person shall notify the court in writing at least 14 days prior to the discharge of the person unless the notice provided for in (c) above has been given. A written report as to the competency of the person to stand trial shall accompany the notice of discharge.

(e) On written notice by the head of a mental health or mental retardation facility that in his opinion a person who has been civilly committed to that facility and against whom criminal charges are pending is competent to stand trial, or on good cause shown by the defendant, his counsel, or the prosecuting attorney, the court in which the criminal charges are pending may hold a hearing to determine the competency of the defendant to stand trial. The hearing shall be before a jury unless waived by agreement of the parties. The order setting the hearing shall order the defendant placed in the custody of the sheriff for transportation to the court. The court may appoint disinterested experts to examine the defendant in accordance with the provisions of Section 3 of this article. If the defendant is found to be competent to stand trial, the proceedings on the criminal charges may be continued. If the defendant is found incompetent to stand trial and is under an order of commitment to a mental health or mental retardation facility, the court shall order him placed in the custody of the sheriff for transportation to that facility.

Time Credited

Sec. 9. The time a person charged with a criminal offense is confined in a mental health or mental retardation facility pending trial shall be credited to the term of his sentence on subsequent sentencing or resentencing.

[Amended by Acts 1975, 64th Leg., p. 1095, ch. 415, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1458, ch. 596, § 1, Sept. 1, 1977.]

Section 10 of the 1977 amendatory act provided:

"If any portion of this Act is declared invalid or unconstitutional, it is the intention of the legislature that the other portions shall remain in full force and effect, and to this end the provisions of this Act are declared to be severable."

Art. 46.03. Insanity Defense

The Insanity Defense

Sec. 1. (a) The insanity defense provided in Section 8.01 of the Penal Code shall be submitted to the jury only if supported by competent evidence.

(b) When the insanity defense is submitted, the trier of facts shall determine and include in the verdict or judgment or both whether the defendant is guilty, not guilty, or not guilty by reason of insanity.

(c) A defendant who has been found not guilty by reason of insanity shall stand acquitted of the offense charged and may not be considered a person charged with a criminal offense.

Raising the Insanity Defense

Sec. 2. (a) A defendant planning to offer evidence of the insanity defense shall file a notice of his intention to offer such evidence with the court and the prosecuting attorney:

(1) at least 10 days prior to the date the case is set for trial; or

(2) if the court sets a pretrial hearing before the 10-day period, the defendant shall give notice at the hearing; or

(3) if the defendant raises the issue of his incompetency to stand trial before the 10-day period, he shall at the same time file notice of his intention to offer evidence of the insanity defense.

(b) Unless notice is timely filed pursuant to Subsection (a) of this section, evidence on the insanity defense is not admissible unless the court finds that good cause exists for failure to give notice.

Examination of the Defendant

Sec. 3. (a) If notice of intention to raise the insanity defense is filed under Section 2 of this article, the court may, on its own motion or motion by the defendant, his counsel, or the prosecuting attorney, appoint disinterested experts experienced and qualified in mental health and mental retardation to examine the defendant with regard to the insanity defense and to testify thereto at any trial or hearing on this issue.

(b) The court may order any defendant to submit to examination for the purposes described in this article. If the defendant is free on bail, the court in its discretion may order him to submit to examination. If the defendant fails or refuses to submit to examination, the court may order him to custody for examination for a reasonable period not to exceed 21 days. The court may not order a defendant to a facility operated by the Texas Department of Mental Health and Mental Retardation for examination without the consent of the head of that facility or for a period exceeding 21 days. If a defendant who has been ordered to a facility operated by the Texas Department of Mental Health and Mental Retardation for examination remains in such facility for a period of time exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the Texas Department of Mental Health and Mental Retardation facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at that time.

(c) The court shall advise any expert appointed pursuant to this section of the facts and circumstances of the offense with which the defendant is charged and the elements of the insanity defense.

(d) A written report of the examination shall be submitted to the court within 30 days of the order of examination, and the court shall furnish copies of the report to the defense counsel and the prosecuting attorney. The report shall include a description of the procedures used in the examination and the examiner's observations and findings pertaining to the insanity defense. The examiner shall also submit a separate report setting forth his observations and findings concerning:

(1) whether the defendant is presently mentally ill and requires observation and/or treatment or hospitalization in a mental hospital for his own welfare and protection or the protection of others; or

(2) whether the defendant is a mentally retarded person as defined in the Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes).[1]

(e) The appointed experts shall be paid by the county in which the indictment was returned or information was filed. A facility operated by the Texas Department of Mental Health and Mental Retardation which accepts a defendant for examination under Subsection (a) of this section shall be reimbursed by the county in which the indictment was returned or information was filed for such expenses incurred as are determined by the department to be reasonably necessary and incidental to the proper examination of the defendant.

(f) When a defendant wishes to be examined by a psychiatrist or other expert of his own choice, the court on timely request shall provide the examiner with reasonable opportunity to examine the defendant.

(g) The experts appointed under this section to examine the defendant with regard to the insanity defense also may be appointed by the court to examine the defendant with regard to his competency to stand trial pursuant to Section 3 of Article 46.02 of this code, provided that separate written reports concerning the defendant's competency to stand trial and the insanity defense shall be filed with the court.

[1] Repealed; see, now, the Mentally Retarded Persons Act of 1977, classified as Civil Statutes, art. 5547–300.

Civil Commitment

Sec. 4. (a) If a defendant is found not guilty by reason of insanity in the trial of a criminal offense, the court shall determine whether there is evidence to support findings that the defendant is either mentally ill or is a mentally retarded person. If the court determines that there is evidence to support either of such findings, the court shall transfer the defendant to the appropriate court for civil commitment proceedings and may order the defendant detained in jail or other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether the defendant shall be committed to a mental health or mental retardation facility; provided, however, that a patient placed in a facility of the Texas Department of Mental Health and Mental Retardation pending civil hearing under this section shall only be detained pursuant to the provisions for an Order of Protective Custody as set out in the Texas Mental Health Code and with the consent of the head of the facility, or the court may give the defendant into the care of a responsible person on satisfactory security being given for his proper care and protection; otherwise, the defendant shall be discharged.

(b) A person committed to a mental health or mental retardation facility as a result of the proceedings initiated pursuant to Subsection (a) of this section shall be committed to the maximum security unit of Rusk State Hospital or the maximum security unit of any other facility designated by the Texas Department of Mental Health and Mental Retardation. Within 60 days following arrival at the maximum security unit, the person shall be transferred to a nonsecurity unit of a mental health or mental retardation facility designated by the Texas Department of Mental Health and Mental Retardation unless the person is determined to be manifestly dan-

gerous by a review board within the Texas Department of Mental Health and Mental Retardation. The Commissioner of the Texas Department of Mental Health and Mental Retardation shall appoint three psychiatrists who are licensed to practice medicine in the State of Texas to determine whether the person is manifestly dangerous. If the superintendent of the facility at which the maximum security unit is located disagrees with the determination, then the matter will be referred to the Commissioner of the Texas Department of Mental Health and Mental Retardation who will resolve the disagreement by deciding whether the person is manifestly dangerous.

(c) The court shall order a transcript of all medical testimony received in both the criminal proceedings and the civil commitment proceedings shall be prepared forthwith by the court reporters and that such transcripts, together with a statement of the facts and circumstances surrounding the alleged offense, shall accompany the patient to the mental health or mental retardation facility.

[Added by Acts 1975, 64th Leg., p. 1100, ch. 415, § 2, eff. June 19, 1975. Amended by Acts 1977, 65th Leg., p. 1467, ch. 596, § 2, eff. Sept. 1, 1977.]

CHAPTER FORTY-SEVEN. DISPOSITION OF STOLEN PROPERTY

Article

47.01a. Restoration When No Trial is Pending.

Art. 47.01a. Restoration When No Trial is Pending

If no criminal action is pending, a magistrate of the county or city in which the property is being held may hold a hearing to determine the right to possession of the property, upon the petition of any interested person. The magistrate shall order the property delivered to whoever has the superior right to possession, subject to the condition that the property be made available to the prosecuting authority should it be needed in the future, or the magistrate may remand the property to the custody of the peace officer.

[Added by Acts 1977, 65th Leg., p. 2034, ch. 813, § 1, eff. Aug. 29, 1977.]

CHAPTER FORTY-EIGHT. PARDON AND PAROLE

Art. 48.05. Repealed by Acts 1977, 65th Leg., p. 933, ch. 347, § 6, eff. Aug. 29, 1977

CHAPTER FORTY-NINE. INQUESTS UPON DEAD BODIES

Art. 49.03. Autopsies and Tests

The justice of the peace may in all cases call in the County Health Officer, or if there be none or if his services are not then obtainable, then a duly licensed and practicing physician, and shall procure their opinions and their advice on whether or not to order an autopsy to determine the cause of death. If upon his own determination he deems an autopsy necessary, the justice of the peace shall, by proper order, request the County Health Officer, or if there be none or if it be impracticable to secure his service, then some duly licensed and practicing physician who is trained in pathology to make an autopsy in order to determine the cause of death, and whether death was from natural causes or resulting from violence, and the nature and character of either of them. The county in which such autopsy is ordered shall pay the physician making such autopsy a reasonable fee. The Commissioners Court may authorize payment for transportation of the body within this state for the performance of an autopsy ordered by a justice of the peace. In those cases where a complete autopsy is deemed unnecessary by the justice of the peace to ascertain the cause of death, he may by proper order, order the taking of blood samples or any other samples of fluids, body tissues or organs in order to ascertain the cause of death or whether any crime has been committed. In the case of a body of a human being whose identity is unknown, the justice of the peace may, by proper order, authorize such investigative and laboratory tests and processes as are required to determine the identity as well as the cause of death.

In those cases where a complete autopsy is deemed unnecessary by the justice of the peace to ascertain the cause of death, he may by proper order, order the taking of blood samples or any other samples of fluids, body tissues or organs in order to ascertain the cause of death or whether any crime has been committed. In the case of a body of a human being whose identity is unknown, the justice of the peace may, by proper order, authorize such investigative and laboratory tests and processes as are required to determine the identity as well as the cause of death.

[Amended by Acts 1977, 65th Leg., p. 691, ch. 261, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 601, ch. 277, § 1, eff. May 24, 1979.]

Art. 49.05. Consent to Autopsy

Sec. 1. Consent for a licensed physician to conduct an autopsy of the body of a deceased person shall be deemed sufficient when given by the following: In the case of a married person, the surviving spouse, or if no spouse survive him, by any child of such marriage, or in the event of a minor child of such marriage, the guardian of such child if any

there be, or in the absence of such guardian, the court having jurisdiction of the person of such minor; in the event that neither spouse nor child survives such deceased, then permission for an autopsy shall be valid when given by a person who would be allowed to give such permission in the case of an unmarried deceased.

If the deceased be unmarried, then permission shall be given by the following for such autopsy, in the order stated: parent, guardian, or next of kin, and in the absence of any of the foregoing, by any natural person assuming custody of and responsibility for burial of the body of such deceased. If two or more of the above-named persons assume custody of the body, consent of one of them shall be deemed sufficient.

[See Compact Edition, Volume 1 for text of 2]

[Amended by Acts 1977, 65th Leg., p. 1106, ch. 407, § 1, eff. Aug. 29, 1977.]

Art. 49.25. Medical Examiners

[See Compact Edition, Volume 1 for text of 1 to 10]

Waiting Period Between Death and Cremation

Sec. 10a. The body of a deceased person shall not be cremated within forty-eight hours after the time of death as indicated on the regular death certificate, unless the death certificate indicates death was caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, or unless the time requirement is waived in writing by the county medical examiner or, in counties not having a county medical examiner, a justice of the peace.

[See Compact Edition, Volume 1 for text of 11 to 13]

[Amended by Acts 1975, 64th Leg., p. 1826, ch. 562, § 1, eff. Sept. 1, 1975.]

CHAPTER FIFTY-ONE. FUGITIVES FROM JUSTICE

Article
51.14. Interstate Agreement on Detainers.

Art. 51.14. Interstate Agreement on Detainers

This article may be cited as the "Interstate Agreement on Detainers Act." This agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joined therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I.

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II.

As used in this agreement: (a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

ARTICLE III.

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in Paragraph (a) hereof shall be

given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to Paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to Paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of Paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in Paragraph (a) hereof shall void the request.

ARTICLE IV.

(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Paragraph (a) of Article V hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in Paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in Paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executing authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Paragraph (e) of Article V hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V.

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) proper identification and evidence of his authority to act for the state into whose temporary custody this prisoner is to be given;

(2) a duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI.

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII.

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII.

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the with-

drawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX.

(a) This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(b) As used in this article, "appropriate court" means a court of record with criminal jurisdiction.

(c) All courts, departments, agencies, officers, and employees of this state and its political subdivisions are hereby directed to enforce this article and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

(d) Any prisoner escapes from lawful custody while in another state as a result of the application of this article shall be punished as though such escape had occurred within this state.

(e) The governor is empowered to designate the officer who will serve as central administrator of and information agent for the agreement on detainers pursuant to the provisions of Article VII hereof.

(f) Copies of this article, upon its enactment, shall be transmitted to the governor of each state, the Attorney General and the Secretary of State of the United States, and the council of state governments.
[Added by Acts 1975, 64th Leg., p. 920, ch. 343, § 1, eff. June 19, 1975.]

CHAPTER FIFTY-THREE. COSTS AND FEES

Article
53.08. Fees in Proceedings for Expunction of Criminal Records.
53.08. Fee for Collecting and Processing Sight Order.

Art. 53.08. Fees in Proceedings for Expunction of Criminal Records

Text as added by Acts 1979, 66th Leg., p. 1335, ch. 604, § 2

The following fees shall be taxed against the petitioner seeking expunction of a criminal record:

(1) the fee charged for filing ex parte petitions in other civil actions in district court;

(2) $1.00 plus postage for each certified mailing of notice of the hearing date;

(3) $2.00 plus postage for each certified mailing of certified copies of the order of expunction.
[Added by Acts 1979, 66th Leg., p. 1335, ch. 604, § 2, eff. Aug. 27, 1979.]

For text as added by Acts 1979, 66th Leg., p. 1802, ch. 734, § 1, see art. 53.08, post

Art. 53.08. Fee for Collecting and Processing Sight Order

Text as added by Acts 1979, 66th Leg., p. 1802, ch. 734, § 1

(a) A county attorney, district attorney, or criminal district attorney may collect a fee if his office collects and processes a check or similar sight order if the check or similar sight order:

(1) has been issued or passed in a manner which makes the issuance or passing an offense under:

(A) Section 32.41, Penal Code;

(B) Section 31.03, Penal Code; or

(C) Section 31.04, Penal Code; or

(2) has been forged under Section 32.21, Penal Code.

(b) The county attorney, district attorney, or criminal district attorney may collect the fee from any person who is a party to the offense described in Subsection (a) of this article.

(c) The amount of the fee shall not exceed:

(1) $5 if the face amount of the check or sight order does not exceed $10;

(2) $10 if the face amount of the check or sight order is greater than $10 but does not exceed $100;

(3) $30 if the face amount of the check or sight order is greater than $100 but does not exceed $300;

(4) $50 if the face amount of the check or sight order is greater than $300 but does not exceed $500; and

(5) $75 if the face amount of the check or sight order is greater than $500.

(d) If the person from whom the fee is collected was a party to the offense of forgery under Section 32.21, Penal Code, committed by altering the face amount of the check or sight order, the face amount as altered governs for the purpose of determining the amount of the fee.

(e) Fees collected under this article shall be deposited in the county treasury in a special fund to be administered by the county attorney, district attorney, or criminal district attorney. Expenditures

from this fund shall be at the sole discretion of the attorney, and may be used only to defray the salaries and expenses of the prosecutor's office, but in no event may the county attorney, district attorney, or criminal district attorney supplement his or her own salary from this fund. Nothing in this Act shall be construed to decrease the total salaries, expenses, and allowances which a prosecuting attorney's office is receiving at the time this Act takes effect. [Added by Acts 1979, 66th Leg., p. 1802, ch. 734, § 1, eff. Aug. 27, 1979.]

For text as added by Acts 1979, 66th Leg., p. 1335, ch. 604, § 2, see art. 53.08, ante

CHAPTER FIFTY-FIVE. EXPUNCTION OF CRIMINAL RECORDS

Article
55.01. Right to Expunction.
55.02. Procedure for Expunction.
55.03. Effect of Expunction.
55.04. Violation of Expunction Order.
55.05. Notice of Right to Expunction.

Acts 1979, 66th Leg., p. 1333, ch. 604, which by § 1 amended this Chapter 55, provided in § 3:

"Any law or portion of a law that conflicts with Chapter 55, Code of Criminal Procedure, 1965, as amended, is repealed to the extent of the conflict."

Art. 55.01. Right to Expunction

A person who has been arrested for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if each of the following conditions exist:

(1) an indictment or information charging him with commission of a felony has not been presented against him for an offense arising out of the transaction for which he was arrested or, if an indictment or information charging him with commission of a felony was presented, it has been dismissed and the court finds that it was dismissed because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense or because it was void;

(2) he has been released and the charge, if any, has not resulted in a final conviction and, is no longer pending and there was no court ordered supervision under Article 42.13, Code of Criminal Procedure, 1965, as amended, nor a conditional discharge under Section 4.12 of the Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes); and

(3) he has not been convicted of a felony in the five years preceding the date of the arrest.

[Added by Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977. Amended Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.]

Art. 55.02. Procedure for Expunction

Sec. 1. (a) A person who is entitled to expunction of records and files under this chapter may file an ex parte petition for expunction in a district court for the county in which he was arrested.

(b) The petitioner shall include in the petition a list of all law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state and of all central federal depositories of criminal records that the petitioner has reason to believe have records or files that are subject to expunction.

Sec. 2. The court shall set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give reasonable notice of the hearing to each official or agency or other entity named in the petition by certified mail, return receipt requested, and such entity may be represented by the attorney responsible for providing such agency with legal representation in other matters.

Sec. 3. (a) If the court finds that the petitioner is entitled to expunction of any records and files that are the subject of the petition, it shall enter an order directing expunction and directing any state agency that sent information concerning the arrest to a central federal depository to request such depository to return all records and files subject to the order of expunction. Any petitioner or agency protesting the expunction may appeal the court's decision in the same manner as in other civil cases. When the order of expunction is final, the clerk of the court shall send a certified copy of the order by certified mail, return receipt requested, to each official or agency or other entity of this state or of any political subdivision of this state named in the petition that there is reason to believe has any records or files that are subject to the order. The clerk shall also send a certified copy by certified mail, return receipt requested, of the order to any central federal depository of criminal records that there is reason to believe has any of the records, together with an explanation of the effect of the order and a request that the records in possession of the depository, including any information with respect to the proceeding under this article, be destroyed or returned to the court.

(b) All returned receipts received by the clerk from notices of the hearing and copies of the order shall be maintained in the file on the proceedings under this chapter.

Sec. 4. (a) If the state establishes that the petitioner is still subject to conviction for an offense

arising out of the transaction for which he was arrested because the statute of limitations has not run and there is reasonable cause to believe that the state may proceed against him for the offense, the court may provide in its order that the law enforcement agency and the prosecuting attorney responsible for investigating the offense may retain any records and files that are necessary to the investigation.

(b) Unless the petitioner is again arrested for or charged with an offense arising out of the transaction for which he was arrested, the provisions of Articles 55.03 and 55.04 of this code apply to files and records retained under this section.

Sec. 5. (a) On receipt of the order, each official or agency or other entity named in the order shall:

(1) return all records and files that are subject to the expunction order to the court or, if removal is impracticable, obliterate all portions of the record or file that identify the petitioner and notify the court of its action; and

(2) delete from its public records all index references to the records and files that are subject to the expunction order.

(b) The court may give the petitioner all records and files returned to it pursuant to its order.

(c) If an order of expunction is issued under this article, the court records concerning expunction proceedings are not open for inspection by anyone except the petitioner unless the order permits retention of a record under Section 4 of this article and the petitioner is again arrested for or charged with an offense arising out of the transaction for which he was arrested. The clerk of the court issuing the order shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection.

[Added by Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.]

Art. 55.03. Effect of Expunction

After entry of an expunction order:

(1) the release, dissemination, or use of the expunged records and files for any purpose is prohibited;

(2) except as provided in Subdivision 3 of this article, the petitioner may deny the occurrence of the arrest and the existence of the expunction order; and

(3) the petitioner or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

[Added by Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.]

Art. 55.04. Violation of Expunction Order

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Sec. 2. A person who knowingly fails to return or to obliterate identifying portions of a record or file ordered expunged under this chapter commits an offense.

Sec. 3. An offense under this article is a Class B misdemeanor.

[Added by Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.]

Art. 55.05. Notice of Right to Expunction

On release or discharge of an arrested person, the person responsible for the release or discharge shall give him a written explanation of his rights under this chapter and a copy of the provisions of this chapter.

[Added by Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.]

PART II. MISCELLANEOUS PROVISIONS

Chapter		Article
101.	Collection of Money	1001
102.	Taxation of Costs	1009
103.	Costs Paid by the State	1018
104.	Costs Paid by Counties	1037
105.	Costs to be Paid by Defendant	1061

The Texas Code of Criminal Procedure enacted in 1965, expressly saved from repeal certain enumerated articles which had theretofore appeared in the Code of Criminal Procedure of 1925, as amended and supplemented. See Article 54.02 of the 1965 Code.

Included in the articles saved from repeal were articles 944 through 951, 1009 through 1035, 1037 through 1056, 1058 through 1064, and 1075 through 1082. These articles are incorporated herein as Part II. Articles 944 through 951 have been renumbered as 1001 through 1008. The remainder appear under the same numbers assigned to them in the 1925 Code.

CHAPTER ONE HUNDRED ONE. COLLECTION OF MONEY

Article
1001. Reports of Money Collected.
1002. Contents of Report.
1003. Report of Collections for County.
1004. What Officers to Report.
1005. Report to Embrace All Moneys.
1006. Money Collected Paid to Treasurer.
1007. Commissions on Collections.
1008. Commissions to Other Officers.

Art. 1001. Reports of Money Collected

All officers charged by law with collecting money in the name or for the use of the State shall report in writing under oath to the respective district courts of their several counties, on the first day of each term, the amounts of money that have come to their hands since the last term of their respective courts aforesaid.
[1925 C.C.P.]

Art. 1002. Contents of Report

Such report shall state:

1. The amount collected.
2. When and from whom collected.
3. By virtue of what process collected.
4. The disposition that has been made of the money.
5. If no money has been collected, the report shall so state.

[1925 C.C.P.]

Art. 1003. Report of Collections for County

A report, such as is required by the two preceding articles, shall also be made of all moneys collected for the county, which report shall be made to each regular term of the commissioners court for each county.
[1925 C.C.P.]

Art. 1004. What Officers to Report

The officers charged by law with the collection of money, within the meaning of the three preceding articles, and who are required to make the reports therein mentioned, are: District and county attorneys, clerks of the district and county courts, sheriffs, constables, and justices of the peace.
[1925 C.C.P.]

Art. 1005. Report to Embrace All Moneys

The moneys required to be reported embrace all moneys collected for the State or county other than taxes.
[1925 C.C.P.]

Art. 1006. Money Collected Paid to Treasurer

Money collected by an officer upon recognizances, bail bonds and other obligations recovered upon in the name of the State under any provision of this Code, and all fines, forfeitures, judgments and jury fees, collected under any provision of this Code, shall forthwith be paid over by the officers collecting the same to the county treasurer of the proper county, after first deducting therefrom the legal fees and commissions for collecting the same.
[1925 C.C.P.]

Art. 1007. Commissions on Collections

The district or county attorney shall be entitled to ten per cent of all fines, forfeitures or moneys collected for the State or county, upon judgments recovered by him; and the clerk of the court in which said judgments are rendered shall be entitled to five per cent of the amount of said judgments, to be paid out of the amount when collected.
[1925 C.C.P.]

Art. 1008. Commissions to Other Officers

The sheriff or other officer, except a justice of the peace or his clerk, who collects money for the State or county, except jury fees, under any provision of this Code, shall be entitled to retain five per cent thereof when collected.
[1925 C.C.P.; Acts 1929, 41st Leg., p. 240, ch. 105, § 1.]

CHAPTER ONE HUNDRED TWO. TAXATION OF COSTS

Article
1009. Fee Books.
1010. Fee Book Shall Show What.
1010a. Receipt Books; Delivery Monthly to County Auditor; Penalty.
1011. Extortion.
1012. Costs Payable in Money.
1013. When Costs Payable.
1014. Bill of Costs to Accompany Appeal.
1015. Taxing After Payment.
1016. Costs Retaxed.
1017. Fee Book Evidence.

Art. 1009. Fee Books

Each clerk of a court, county judge, justice of the peace, sheriff, constable and marshal, shall keep a fee book and enter therein all fees charged for service rendered in any criminal action or proceeding; which book may be inspected by any person interested in such costs.
[1925 C.C.P.]

Art. 1010. Fee Book Shall Show What

The fee book shall show the number and style of the action or proceeding in which the costs are charged, and shall name the officer or person to whom such costs are due, and state each item of costs separately.
[1925 C.C.P.; Acts 1935, 44th Leg., p. 470, ch. 188.]

Art. 1010a. Receipt Books; Delivery Monthly to County Auditor; Penalty

Sec. 1. Each fee officer within this State collecting fines and fees in criminal cases shall be furnished, by the county, in addition to the fee books now provided by law, duplicate official receipts in book form, each of which receipts shall bear a distinct number, and a facsimile of the official seal of the county. Whenever any money is received by any such officer in his official capacity, to be applied on the payment of any fine or costs in any case, the person paying said money shall be given a receipt showing the amount, date, style of case, number of case and purpose for which paid, which receipt shall show the name of the person paying and the official signature of the receiving officer.

Sec. 2. At the close of each month's business the receipt book shall be delivered to the County Auditor and the County Auditor shall thoroughly check said receipt book to see that proper disposition has been made of the money collected, and after such audit, the receipt books shall be returned to the officer, if any portion of the book is unused, but if all the book is used it shall be retained by the County Auditor. Such books shall be open to public inspection.

Sec. 3. Any officer who shall fail or refuse to comply with any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction therefor, may be fined not to exceed Two Hundred Dollars ($200.00), and may be removed from office upon petition of the County or District Attorney; and the principal of any office shall be responsible for the failure of his Deputies to comply herewith, insofar as the remedy of removal from office shall apply; but the Deputy so failing or refusing to comply herewith shall be liable for the fine herein provided.

[Acts 1935, 44th Leg., p. 470, ch. 188.]

Art. 1011. Extortion

No item of costs shall be taxed for a purported service which was not performed, or for a service for which no fee is expressly provided by law.

[1925 C.C.P.]

Art. 1012. Costs Payable in Money

All costs in criminal actions or proceedings are due and payable in money.

[1925 C.C.P.]

Art. 1013. When Costs Payable

No costs shall be payable by any person until there be produced, or ready to be produced, unto the person chargeable with the same, a written bill containing the items of such costs, signed by the officer to whom such costs are due or by whom the same are charged.

[1925 C.C.P.]

Art. 1014. Bill of Costs to Accompany Appeal

When a criminal action or proceeding is taken by appeal from one court to another, or whenever the same is in any other way transferred from one court to another, it shall be accompanied by a complete bill of all costs that have accrued therein, certified to and signed by the proper officer of the court from which the same is forwarded.

[1925 C.C.P.]

Art. 1015. Taxing After Payment

No further costs shall be taxed against or collected from a defendant after he has paid the costs taxed against him at the time of such payment, unless otherwise adjudged by the court upon a proper motion filed for that purpose.

[1925 C.C.P.]

Art. 1016. Costs Retaxed

Whenever costs have been erroneously taxed against a defendant, he may have the error corrected, and the costs properly taxed, upon filing a written motion for that purpose in the court in which the case is then or was last pending. Such motion may be made at any time within one year after the final disposition of the case in which the costs were taxed, and not afterward. Notice of such motion shall be given to each party to be affected thereby, as in the case of a similar motion in a civil action.

[1925 C.C.P.]

Art. 1017. Fee Book Evidence

The items of costs taxed in an officer's fee book shall be prima facie evidence of the correctness of such items.

[1925 C.C.P.]

CHAPTER ONE HUNDRED THREE. COSTS PAID BY THE STATE

Article

1018. Defendant Liable for Costs.
1019. Conviction for Misdemeanor.
1019a. Fees in Felony Cases Against Same Defendant.
1020. Fees in Examining Court.
1021. District Attorneys of Two or More Counties.
1022. If there are Several Defendants.
1023. Fees in Trust Cases.
1024. Attorney for Dallas and Harris Counties.
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1026. Fees of District Clerk.
1027. Officers Not to be Paid Fees until Case Finally Disposed Of.
1028. Sheriff Due Fees after Approval.
1029. Fees to Sheriff or Constable.
1030. Fees to Sheriff or Constable.
1030a. Fugitives from Justice; Allowance to Sheriffs and Deputies for Expenses.
1031. Services by Officer Other Than Sheriff.
1032. Sheriff Shall Not Charge Fees, When.
1033. Officer Shall Make Out Cost Bill.
1034. Judge to Examine Bill, Etc.
1035. Duty of Comptroller.

Art. 1018. Defendant Liable for Costs

When the defendant is convicted, the costs and fees paid by the State under this title shall be a charge against him, except when sentenced to death or to imprisonment for life, and when collected shall be paid into the State Treasury.
[1925 C.C.P.]

Art. 1019. Conviction for Misdemeanor

If the defendant is indicted for a felony and upon conviction his punishment is by fine or confinement in the county jail, or by both such fine and confinement in the county jail or convicted of a misdemeanor, no costs shall be paid by the State to any officer. All costs in such cases shall be taxed, assessed and collected as in misdemeanor cases.
[1925 C.C.P.; Acts 1931, 42nd Leg., p. 338, ch. 205, § 1.]

Art. 1019a. Fees in Felony Cases Against Same Defendant

In all felony cases where any officer is allowed fees payable by the State for services performed either before or after indictment, including examining trials before magistrates and habeas corpus proceedings, no officer shall be entitled to fees in more than five cases against the same defendant; provided, however, that where defendants are indicted and tried separately after severance of their cases, said officers shall be entitled to fees in five cases against each of said defendants, the same as if indicted and tried separately for separate offenses; provided further, that cases in which the same defendant has previously been indicted, tried, and convicted prior to the date of any act or acts for which said defendant is again apprehended, indicted, and/or tried shall not be computed in determining the number of cases against such defendant in which such officers are entitled to collect fees.
[Acts 1931, 42nd Leg., p. 334, ch. 200, § 1. Amended by Acts 1935, 44th Leg., p. 697, ch. 297, § 1.]

Art. 1020. Fees in Examining Court

In each case where a County Judge or a Justice of the Peace shall sit as an examining court in a felony case, they shall be entitled to the same fees allowed by law for similar services in misdemeanor cases to Justices of the Peace, and ten cents for each one hundred words for writing down the testimony, to be paid by the State, not to exceed Three and No/100 ($3.00) Dollars, for all his services in any one case.

Sheriffs and Constables serving process and attending any examining court in the examination of any felony case, shall be entitled to such fees as are fixed by law for similar services in misdemeanor cases in County Court to be paid by the State, not to exceed Four and No/100 ($4.00) Dollars in any one case, and mileage actually and necessarily traveled in going to the place of arrest, and for conveying the prisoner or prisoners to jail as provided in Articles 1029 and 1030, Code of Criminal Procedure, as the facts may be, but no mileage whatever shall be paid for summoning or attaching witnesses in the county where case is pending. Provided no sheriff or constable shall receive from the State any additional mileage for any subsequent arrest of a defendant in the same case, or in any other case in an examining court or in any district court based upon the same charge or upon the same criminal act, or growing out of the same criminal transaction, whether the arrest is made with or without a warrant, or before or after indictment, and in no event shall he be allowed to duplicate his fees for mileage for making arrests, with or without warrant, or when two or more warrants of arrest or capiases are served or could have been served on the same defendant on any one day.

District and County Attorneys, for attending and prosecuting any felony case before an examining court, shall be entitled to a fee of Five and no/100 ($5.00) Dollars, to be paid by the State for each case prosecuted by him before such court. Such fee shall not be paid except in cases where the testimony of the material witnesses to the transaction shall be reduced to writing, subscribed and sworn to by said witnesses; and provided further that such written testimony of all material witnesses to the transaction shall be delivered to the District Clerk under seal, who shall deliver the same to the foreman of the grand jury and take his receipt therefor. Such foreman shall, on or before the adjournment of the grand jury, return the same to the clerk who shall receipt him and shall keep said testimony in the files of his office for a period of five years.

The fees mentioned in this Article shall become due and payable only after the indictment of the defendant for an offense based upon or growing out of the charge filed in the examining court and upon an itemized account, sworn to by the officers claiming such fees, approved by the Judge of the District Court, and said County or District Attorney shall present to the District Judge the testimony transcribed in the examining trial, who shall examine the same and certify that he has done so and that he finds the testimony of one or more witnesses to be material; and provided further that a certificate from the District Clerk, showing that the written testimony of the material witnesses has been filed with said District Clerk, in accordance with the preceding paragraph, shall be attached to said account before such District or County Attorney shall be entitled to a fee in any felony case for services performed before an examining court.

Only one fee shall be allowed to any officer mentioned herein for services rendered in an examining trial, though more than one defendant is joined in

the complaint, or a severance is had. When defendants are proceeded against separately, who could have been proceeded against jointly, but one fee shall be allowed in all cases that could have been so joined. No more than one fee shall be allowed to any officer where more than one case is filed against the same defendant for offenses growing out of the same criminal act or transaction. The account of the officer and the approval of the District Judge must affirmatively show that the provisions of this Article have been complied with.
[1925 C.C.P.; Acts 1933, 43rd Leg., p. 219, ch. 99.]

Art. 1021. District Attorneys of Two or More Counties

District Attorneys in all judicial districts composed of two counties or more, shall receive from the State as pay for their services the sum of $500.00 per annum, and in addition thereto, shall receive from the State as pay for their services, the sum of $20.00 for each day they attend the Session of the District Court in their respective districts in the necessary discharge of their official duties, and $20.00 for each day used in necessarily going to and coming from the District Court in one county to the District Court in another county in their respective districts in the necessary discharge of their official duties, and in attending any Session of said Court; and $20.00 per day for each day they represent the State at examining trials, inquest proceedings and habeas corpus proceedings in vacation; said $20.00 per day to be paid upon the sworn account of the District Attorney, approved by the District Judge, who shall certify that the attendance of said District Court for the number of days mentioned in his account was necessary, after which said account shall be recorded in the Minutes of the District Court; provided that the maximum number of days for which compensation is allowed shall not exceed one hundred and seventy-five days in any one year. All commissions and fees allowed District Attorneys under the provisions hereof, in the districts composed of two or more counties, shall, when collected, be paid to the District Clerk of the County of his residence, who shall pay the same over to the State Treasurer.
[1925 C.C.P.; Acts 1927, 40th Leg., p. 350, ch. 236, § 1.]

Art. 1022. If there are Several Defendants

If there be more than one defendant in a case, and they are tried jointly, but one fee shall be allowed the district or county attorney. If the defendants sever, and are tried separately, a fee shall be allowed for each final conviction, except in habeas corpus cases, in which cases only one fee shall be allowed, without regard to the number of defendants or whether they are tried jointly or separately.
[1925 C.C.P.]

Art. 1023. Fees in Trust Cases

For every conviction obtained under the provisions of the anti-trust laws, the State shall pay to the county or district attorney in such prosecution the sum of two hundred and fifty dollars. If both the county and district attorney shall serve together in such prosecution, such fee shall be divided between them as follows: One hundred dollars to the county attorney, and one hundred and fifty dollars to the district attorney.
[1925 C.C.P.]

Art. 1024. Attorney for Dallas and Harris Counties

In addition to the fees allowed by law to other district attorneys for other services, the Criminal District Attorney of Dallas county and the Criminal District Attorney of Harris county shall each receive the following fees:

For all convictions of felony when the defendant does not appeal or dies or escapes after appeal and before final judgment of the appellate court, or when the judgment is affirmed on appeal, thirty dollars for each felony other than felonious homicide, and forty dollars for each such homicide.

For representing the State in each case of habeas corpus where the applicant is charged with felony, twenty dollars.
[1925 C.C.P.]

Art. 1025. Fees to District and County Attorneys

In each county where there have been cast at the preceding presidential election 3000 votes or over, the district or county attorney shall receive the following fees:

For all convictions of felony when the defendant does not appeal, or dies or escapes after appeal and before final judgment of the appellate court, or when the judgment is affirmed on appeal, twenty-four dollars for each felony other than felonious homicide, and forty dollars for each such homicide.

For representing the State in each case of habeas corpus where the applicant is charged with felony, sixteen dollars.

In each county where less than 3000 such votes have been so cast, such attorney shall receive thirty dollars for each such conviction of felony other than homicide, and fifty dollars for each such conviction of felonious homicide, and twenty dollars for each such habeas corpus case.
[1925 C.C.P.]

Art. 1026. Fees of District Clerk

In each county where there have been cast at the preceding presidential election 3000 votes or over, the district clerk or criminal district clerk shall re-

ceive the following fees: Eight dollars for each felony case finally disposed of without trial or dismissed, or tried by jury whether the defendant be acquitted or convicted; eight cents for each one hundred words in each transcript on appeal or change of venue; eighty cents for entering judgment in habeas corpus cases, and eight cents for each one hundred words for preparing transcript in habeas corpus cases. In no event shall the fees in habeas corpus cases exceed eight dollars in any one case. In each county where less than 3000 such votes have been so cast, such clerk shall receive ten dollars for each felony case so disposed of, and ten cents for each one hundred words in such transcripts, and one dollar for entering judgment in each habeas corpus. The district clerk of any county shall receive fifty cents for recording each account of the sheriff.
[1925 C.C.P.]

Art. 1027. Officers Not to be Paid Fees until Case Finally Disposed Of

In all cases where a defendant is indicted for a felony but under the indictment he may be convicted of a misdemeanor or a felony, and the punishment which may be assessed is a fine, jail sentence or both such fine and imprisonment in jail, the State shall pay no fees to any officer, except where the defendant is indicted for the offense of murder, until the case has been finally disposed of in the trial court. Provided the provisions of this Article shall not be construed as affecting in any way the provisions of Article 1019, Code of Criminal Procedure, as amended by Chapter 205, General Laws, Regular Session, Forty-second Legislature; Provided this shall not apply to examining trial fees to County Attorneys and/or Criminal District Attorneys.
[1925 C.C.P.; Acts 1931, 42nd Leg., p. 338, ch. 205. Acts 1933, 43rd Leg., p. 308, ch. 119.]

Art. 1028. Sheriff Due Fees after Approval

All fees accruing under the two succeeding articles shall be due and payable at the close of each term of the district court, after being duly approved, except as provided for in subdivisions 7 and 8 of said articles, which shall be paid when approved by the judge under whose order the writ was issued.
[1925 C.C.P.]

Art. 1029. Fees to Sheriff or Constable

In each county where there have been cast at the preceding presidential election 3000 votes or more, the sheriff and constable shall receive the following fees:

1. For executing each warrant of arrest or capias, for making arrest without warrant when so authorized by law, the sum of one dollar, and in all cases five cents per mile for each mile actually and necessarily traveled in going to the place of arrest; and for conveying each prisoner to jail, he shall receive the mileage provided in subdivision 4.

2. For summoning or attaching each witness, fifty cents.

3. For summoning a jury in each case where a jury is actually sworn in, two dollars.

4. For removing or conveying prisoners, for each mile going and coming, including guards and all other necessary expenses, when traveling by railroad, ten cents. When traveling otherwise than by railroad, fourteen cents; provided that where more than one prisoner is so conveyed or removed at the same time, in addition to the foregoing, he shall be allowed eight cents per mile for each additional prisoner.

5. For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, five cents; provided that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case or series of cases against the same defendant, or in companion cases, or otherwise; when it is possible to serve process on them in the same neighborhood or vicinity during the same trip, he shall not charge mileage for serving such witnesses to or from the County seat, but shall charge only one mileage and for such additional miles only as are actually and necessarily travelled in summoning each additional witness.

6. For service of criminal process, not otherwise provided for, the sum of five cents a mile going and returning shall be allowed. If two or more persons are mentioned in the same or different writs, the rule prescribed in subdivision 5 shall apply.

7. For conveying witnesses attached by him to any court, or in habeas corpus proceedings out of his county, or when directed by the judge from any other county to the court where the case is pending, one dollar and fifty cents per day for each day actually and necessarily consumed in going to and returning from such courts, and his actual and necessary expenses by the nearest practical route, or nearest practical public conveyance, the amount to be stated by him in an account which shall show the place where the witnesses were attached, the distance to the nearest railroad station, and miles actually traveled to each court; if horses or vehicles are used, from whom hired and price paid and length of time consumed and paid out for feeding horses, and to whom; if meals and lodgings are provided from whom and when, and price paid; provided that officers shall not be entitled to receive exceeding fifty cents per meal, and thirty-five cents per night for lodging for any witness. No item for expenses shall be allowed, unless the officer present with his

account to the officer whose duty it is to approve the same, a written receipt for each item of account, except as to such items as are furnished by the officer himself. When meals and lodgings are furnished by the officer in person, conveying the witness, he shall be allowed to receive not exceeding twenty-five cents per meal, and twenty-five cents per night for lodging. Each said receipt shall be filed with the clerk of the court approving such accounts. Said accounts shall also show, before said officer shall be entitled to compensation for expenses of attached witnesses, that, before starting with said witnesses to the foreign court, he carried each of them before the magistrate nearest place of serving the attachment, giving his name and residence, and that said witness made oath in writing before said magistrate, certified copies of which shall be attached to the account, that they were unable to give bond for their appearance at court, or refused to give bond after having been advised by said officer of their right to do so. The officer shall also present to the court the affidavit of the witness to the same effect, or shall show that the witness refused to make the affidavit; and should it appear to the court that the witness is willing and able to give bond, the sheriff shall not be entitled to any compensation for conveying such witness. All accounts for fees in criminal cases, by sheriffs, shall be sworn to by the said officer, and shall state that said account is true, just and correct in every particular, and be presented to the judge, who shall during such term of court, carefully examine such account and, if found to be correct, in whole or in part, shall so certify and allow the same for such amount as he may find to be correct. If allowed by him in whole or in part, he shall so certify; and such account, with the affidavit of the sheriff, and certificate of the judge, shall be recorded by the district clerk in a book kept by him for that purpose, which shall constitute a part of the proceedings or minutes of the court. The clerk shall certify to the original account, and shall show that the same has been recorded, and said account shall then become due, and the same shall constitute a voucher on which the Comptroller is authorized to issue a warrant, if such account, when presented to the Comptroller, shall be accompanied by a certified copy under the hand and seal of the district clerk, of the returns made on the process for which such officer is claiming fees, corresponding to the amount so claimed in his account. The minutes of the court above provided for, or a certified copy thereof, may be used in evidence against the officer making the affidavit, for perjury, in case said affidavit shall be wilfully false. When the officer receiving the writ for the attachment of such a witness shall take bond for the appearance of such witness, he shall be entitled to receive from the State one dollar for each bond so taken; but he shall be responsible to the court issuing said writ, that the said bond is in proper form, and has been executed by the witness with one or more good and solvent sureties; and said bond shall in no case be less than one hundred dollars. The Comptroller may require from such officer a certified copy of all such process before auditing any account. When no inquest or examining trial has been held at which sufficient evidence is taken upon which to find an indictment, which fact shall be certified by the grand jury, or when the grand jury shall state to the district judge that an indictment cannot be procured except upon testimony of nonresident witnesses, the district judge may have attachments issued to other counties for witnesses not to exceed the number for which the sheriff may receive pay as provided for by law, to testify before grand juries; provided, that the judge shall not approve the accounts of any sheriff for more than one witness to any one fact, nor more than three witnesses to any one case pending before the grand jury, in which case the sheriff shall receive the same compensation as he does for conveying attached witnesses before the court. Subdivision 7 of this article shall apply to the officers affected thereby in all counties in Texas.

8. For attending a prisoner on habeas corpus, for each day, four dollars, together with mileage as provided in subdivision 4 when removing such prisoner out of the county, under an order issued by a district or appellate judge.

[1925 C.C.P.; Acts 1933, 43rd Leg., p. 144, ch. 69.]

Art. 1030. Fees to Sheriff or Constable

In each county where there have been cast at the preceding presidential election less than 3000 votes, the sheriff or constable shall receive the following fees when the charge is a felony:

1. For executing each warrant of arrest or capias, or for making arrest without warrant, when authorized by law, the sum of one dollar; and five cents for each mile actually and necessarily traveled in going to place of arrest, and for conveying the prisoner or prisoners to jail, mileage, as provided for in subdivision 4 shall be allowed; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For executing each warrant of arrest or capias, or for making arrest without warrant, when authorized by law, three dollars and fifteen cents for each mile actually and necessarily traveled in going to place of arrest, and for conveying prisoners to jail, mileage as provided for in subdivision 4 shall be allowed; and one dollar shall be allowed for the approval of a bond.

2. For summoning or attaching each witness, fifty cents; provided that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For summoning or attaching each witness, fifty cents, and where a bond is required of said witness, for the approval of said bond, one dollar.

3. For summoning jury in each case, where jury is actually sworn in, two dollars.

4. For removing a prisoner, for each mile going and coming, including guards and all other expenses, when traveling by railroad, ten cents; when traveling otherwise than by railroad, fifteen cents; provided, that when more than one prisoner is removed at the same time, in addition to the foregoing, he shall only be allowed ten cents a mile for each additional prisoner.

5. For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, five cents; provided that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case, and he shall serve process on them in the same vicinity or neighborhood, during the same trip; he shall not charge mileage for serving such witness to and from the county seat, but shall only charge one mileage and for such additional miles only as are actually and necessarily traveled in summoning or attaching each additional witness. When process is sent by mail to any officer away from the county seat or returned by mail by such officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process, and the return of the officer shall show the character of the service and miles actually traveled in accordance with this subdivision; and his accounts shall show the facts; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, ten cents; provided, that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case and he shall serve process on them in the same vicinity or neighborhood, during the same trip, he shall not charge mileage for serving such witness to and from the county seat, but shall only charge one mileage, and for such additional miles only as are actually and necessarily traveled in summoning or attaching each additional witness. When process is sent by mail to any officer away from the county seat or returned by mail by such officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process, and the return of the officer shall show the character of the service and the miles actually traveled in accordance with this subdivision; and his accounts shall show the facts.

6. To officers for service of criminal process not otherwise provided for, the sum of five cents a mile going and returning, shall be allowed; provided, if two or more persons are mentioned in the same or different writs, the rules prescribed in subdivision 5 shall apply; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: To officers for service of criminal process not otherwise provided for, the sum of ten cents a mile going and returning shall be allowed; provided, if two or more persons are mentioned in the same or different writs, the rule prescribed in subdivision 5 shall apply.

7. For conveying a witness attached by him to any court, or grand jury, or in habeas corpus proceeding out of his county, or when directed by the judge from any other county, to the court where the case is pending, one dollar per day for each day actually and necessarily consumed in going and returning from such court, and his actual necessary expenses, by the nearest practicable route or nearest practicable public conveyance, the amount to be stated by him in an account, which shall show the place at which the witness was attached, the distance to the nearest railroad station, and miles actually traveled to reach the court; if horses or vehicles are used, from whom hired, and price paid, and length of time consumed, and the amount paid out for feeding horses, and to whom; if meals and lodging were provided, from whom and when and price paid; provided, that officers shall not be entitled to receive exceeding fifty cents per meal, and thirty-five cents per night for lodging for any witness. Said account shall also show, before said officer shall be entitled to compensation for expenses of attached witnesses, that, before starting with said witnesses to the foreign court, he carried each of them before the magistrate nearest the place of serving the attachment, giving his name and residence, and that said witness made oath in writing before such magistrate, certified copies of which shall be attached to the account, that they were unable to give bond for their appearance at court, or refused to give bond after having been advised by said officer of their right to do so. The officer shall also present to the court the affidavit of the witness to the same effect or shall show that the witness refused to make the affidavit and, should it appear to the court that the witness was able and willing to give bond the sheriff shall not be entitled to any compensation for conveying such

witness; and said account shall be sworn to by the officer, and shall state that said account is true, just and correct in every particular, and present same to the judge, who shall, during such term of court, carefully examine such account, and, if found to be correct, in whole or in part, shall so certify, and allow the same for such an amount as he may find to be correct; and, if by him allowed, in whole or in part, he shall so certify; and such account with the affidavit of the sheriff, and certificate of the judge, shall be recorded by the district clerk in a book to be kept by him for that purpose, which shall constitute a part of the proceedings or minutes of the court; and the clerk shall certify to the original account and shall show that the same has been so recorded; and said account shall then become due, and the same shall constitute a voucher, on which the Comptroller is authorized to issue a warrant; and such minutes of the court, or a certified copy thereof, may be used in evidence against the officer making the affidavit, for perjury, in case said affidavit shall be wilfully false. When the officer receiving a writ for the attachment of such witness shall take a bond for the appearance of any such witness he shall be entitled to receive from the State, one dollar for each bond so taken; but he shall be responsible to the court issuing said writ, that said bond is in proper form, and has been executed by the witness with one or more good or solvent securities; and said bond shall, in no case, be less than one hundred dollars. The Comptroller may require from such officer a certified copy of all such process before auditing any such account.

8. For attending a prisoner on habeas corpus, for each day, four dollars, together with mileage as provided in subdivision 5, when removing such prisoner out of the county under an order issued by a district or appellate judge.

[1925 C.C.P.]

Art. 1030a. Fugitives from Justice; Allowance to Sheriffs and Deputies for Expenses

Sec. 1. Every sheriff, or deputy sheriff, in any county of this State, who shall hereafter arrest, or cause to be arrested, any person, or persons indicted for a criminal offense of the grade of a felony, in the county where such officer is the duly acting sheriff, or deputy sheriff, shall be paid the sum of five cents (5¢) per mile from the state line and return thereto, along the nearest practicable route, to the point where such person or persons has been, or will be, placed under arrest, and in addition thereto, such officer, or officers, shall be paid, not to exceed Five Dollars ($5) per day, per person, for hotel bills, meals and other expenses necessarily contracted in the performance of such official duty.

Sec. 2. The Comptroller of Public Accounts of the State of Texas is authorized and directed to pay, out of any fund or funds, provided for such purpose, upon the presentment of a duly itemized and verified mileage, per diem and expense account of any such officer, approved by the District Judge of the District where such official duty was performed as provided in the preceding Section, all of such account due, provided that only one (1) claim for mileage shall be paid for any such trip, and further providing that not more than two (2) such officers shall draw per diem and expense accounts for one (1) of such trips.

Sec. 3. In the event the Comptroller of Public Accounts of the State of Texas certifies that no funds are available for the payment of such per diem mileage and expense account, as specified in the preceding Section, then upon presentment of such itemized account duly verified by such officer and approved by the District Judge of the Judicial District in which such county is located, the Commissioners Court is authorized, within its discretion, to pay out of any fund or funds not otherwise pledged, such mileage per diem and expense accounts.

Sec. 4. It is further specifically provided that if the county of the sheriff or deputy sheriff making said trip is operating on a fee basis and no State funds are available, then and in that event, the Commissioners Court is authorized, within its discretion, to pay out of any available funds the mileage and per diem not in excess of the amounts stated in Section 1 of this Act, to said sheriff or deputy sheriff from the county seat to the state line and return.

Sec. 5. The compensation herein provided for the sheriff or any deputy sheriff of the county shall be allowable to such officer as expenses of office, and shall not be included in his compensation, and/or salary paid him, as now authorized by law.

Sec. 6. The provisions of this Act shall be severable, and if any section, subsection, sentence, clause or word of the same shall be held unconstitutional, or invalid for any reason, the same shall not be construed to affect the validity of any of the remaining provisions of this Act. It is hereby declared as the legislative intent that this Act would have been adopted, had such invalid provision not been included therein.

Sec. 7. It is not the intention of the Legislature by the passage of this Act to repeal any existing law providing for the reimbursement of traveling expenses and this Act is cumulative of all other statutes on this subject.

[1925 C.C.P.]

Art. 1031. Services by Officer Other Than Sheriff

When services have been rendered by any peace officer other than a sheriff, such as are enumerated in the two preceding articles, such officer shall receive the same fees therefor as are allowed the sheriff. The same shall be taxed in the sheriff's bill of costs, and noted therein as costs due such peace officer; and when received by such sheriff, he shall pay the same to such peace officer.
[Acts 1941, 47th Leg., p. 669, ch. 412.]

Art. 1032. Sheriff Shall Not Charge Fees, When

A sheriff shall not charge fees for arrests made by rangers, or mileage for prisoners transported by rangers, or mileage or other fees for transporting a witness under attachment issued from another county, unless such witness refuses to give bail for his appearance, or files an affidavit with such sheriff of his inability to give bail.
[1925 C.C.P.]

Art. 1033. Officer Shall Make Out Cost Bill

Before the close of each term of the district court, the district or county attorney, sheriff and clerk of said court shall each make out a bill of the costs claimed to be due them by the State, respectively, in the felony cases tried at that term; the bill shall show:

1. The style and number of each case.
2. The offense charged against the defendant.
3. The term of the court at which the case was disposed of.
4. The disposition of the case, and that the case was finally disposed of, and no appeal taken.
5. The name and number of defendants; and, if more than one, whether they were tried jointly or separately.
6. Where each defendant was arrested, or witness served, stating the county in which the service was made, giving distance and direction from county seat of county in which the process is served.
7. The court shall inquire whether there have been several prosecutions for a transaction that is but one offense in law. If there is more than one prosecution for the same transaction, or a portion thereof, that could have been combined in one indictment against the same defendant, the judge shall allow fees to sheriffs, clerks and district and county attorneys in but one prosecution.
8. Where the defendants in a case have severed on the trial, the judge shall not allow the charges for service of process and mileage to be duplicated in each case as tried; but only such additional fees shall be allowed as are caused by the severance.

[1925 C.C.P.]

Art. 1034. Judge to Examine Bill, Etc.

The District Judge, when any such bill is presented to him, shall examine the same carefully, and inquire into the correctness thereof, and approve the same, in whole or in part, or disapprove the entire bill, as the facts and law may require; and such approval shall be conditioned only upon, and subject to the approval of the State Comptroller as provided for in Article 1035 of this Code, and the Judge's approval shall so state therein; and such bill, with the action of the Judge thereon, shall be entered on the minutes of said Court; and immediately on the rising of said Court, the Clerk thereof shall make a certified copy from the minutes of said Court of said bill, and the action of the Judge thereon, and send same by registered letter to the Comptroller. Provided the bill herein referred to shall before being presented to such District Judge, be first presented to the County Auditor, if such there be, who shall carefully examine and check the same, and shall make whatever recommendations he shall think proper to be made to such District Judge relating to any item or the whole bill.

Fees due District Clerks for recording sheriff's accounts shall be paid at the end of said term; and all fees due District Clerks for making transcripts on change of venue and on appeal shall be paid as soon as the service is performed; and the Clerk's bill for such fees shall not be required to show that the case has been finally disposed of. Bills for fees for such transcripts shall be approved by the District Judge as above provided, and with the same conditions, and when approved shall be recorded as part of the minutes of the last preceding term of the Court.
[1925 C.C.P.; Acts 1931, 42nd Leg., p. 239, ch. 143, § 1.]

Art. 1035. Duty of Comptroller

The Comptroller upon the receipt of such claim, and said certified copy of the minutes of said Court, shall closely and carefully examine the same, and, if he deems the same to be correct, he shall draw his warrant on the State Treasurer for the amount found by him to be due, and in favor of the officer entitled to the same. If the appropriation for paying such accounts is exhausted, the Comptroller shall file the same away, if found to be correct, and issue a certificate in the name of the officer entitled to the same, stating herein the amount of the claim and the character of the services performed. All such claims or accounts not sent to or placed on file in the office of the Comptroller within twelve (12) months from the date the same becomes due and payable shall be forever barred.
[1925 C.C.P.; Acts 1931, 42nd Leg., p. 239, ch. 143, § 2.]

CHAPTER ONE HUNDRED FOUR. COSTS PAID BY COUNTIES

Article
1037. County Liable for Costs.
1038. Food and Lodging of Jurors.

Article
1039. Juror May Pay His Own Expenses.
1040. Allowance to Sheriff for Prisoners.
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1055. Half Costs Paid Officers.
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1057. Repealed.
1058. Pay of Bailiffs.
1058a. Bailiffs of Court of Civil Appeals.
1059. Certificates for Pay.
1060. Receivable for Taxes.

Art. 1037. County Liable for Costs

Each county shall be liable for all expense incurred on account of the safe keeping of prisoners confined in jail or kept under guard, except prisoners brought from another county for safe keeping, or on habeas corpus or change of venue; in which cases, the county from which the prisoner is brought shall be liable for the expense of his safe keeping.
[1925 C.C.P.]

Art. 1038. Food and Lodging of Jurors

The Sheriff of each County shall, with the approval of the Commissioners Court, provide food and lodging for jurors empaneled in a felony case and jurors so empaneled shall be paid as other jurors are paid, in addition to such food and lodging.
[1925 C.C.P.; Acts 1953, 53rd Leg., p. 918, ch. 380, § 1.]

Art. 1039. Juror May Pay His Own Expenses

A juror may pay his own expenses and draw his script; but the county is responsible in the first place for all expense incurred by the sheriff in providing suitable food and lodging for the jury, not to exceed two dollars a day.
[1925 C.C.P.]

Art. 1040. Allowance to Sheriff for Prisoners

For the safe keeping, support and maintenance of prisoners confined in jail or under guard, the sheriff shall be allowed the following charges:

1. For the safe keeping of each prisoner for each day the sum of fifteen cents, not to exceed the sum of two hundred dollars per month.

2. For support and maintenance, for each prisoner for each day such an amount as may be fixed by the commissioners court, provided the same shall be reasonably sufficient for such purpose, and in no event shall it be less than forty cents per day nor more than seventy-five cents per day for each prisoner. The net profits shall constitute fees of office and shall be accounted for by the sheriff in his annual report as other fees now provided by law. The sheriff shall in such report furnish an itemized verified account of all expenditures made by him for feeding and maintenance of prisoners, accompanying such report with receipts and vouchers in support of such items of expenditure, and the difference between such expenditures and the amount allowed by the commissioners court shall be deemed to constitute the net profits for which said officer shall account as fees of office.

3. For necessary medical bill and reasonable extra compensation for attention to a prisoner during sickness, such an amount as the commissioners court of the county where the prisoner is confined may determine to be just and proper.

4. For reasonable funeral expenses in case of death.
[1925 C.C.P.]

Art. 1041. Guards and Matrons

The sheriff shall be allowed for each guard or matron necessarily employed in the safekeeping of prisoners Two Dollars and Fifty Cents ($2.50) for each day. No allowance shall be made for the board of such guard or matron, nor shall any allowance be made for jailer or turnkey, except in counties having a population in excess of forty thousand (40,000) inhabitants according to the last preceding Federal Census. In such counties of forty thousand (40,000) or more inhabitants, the Commissioners Court may allow each jail guard, matron, jailer and turnkey Four Dollars and Fifty Cents ($4.50) per day; provided that in counties having a population in excess of seventy thousand (70,000) inhabitants and less than two hundred and twenty thousand (220,000) inhabitants, according to the last preceding Federal Census, the Commissioners Court of such counties may allow each jail guard, jailer, matron and turnkey a salary of not to exceed One Hundred and Eighty-seven Dollars and Fifty Cents ($187.50) per month; provided further that, in counties having a population in excess of two hundred and twenty thousand (220,000) inhabitants, according to the last preceding Federal Census, each jail guard, matron, jailer, jail bookkeeper and turnkey shall be paid not less than One Hundred and Seventy-five Dollars ($175) per month.
[1925 C.C.P.; Acts 1937, 45th Leg., p. 7, ch. 7, § 1; Acts 1941, 47th Leg., p. 843, ch. 518, § 1; Acts 1945, 49th Leg., p. 205, ch. 158, § 1; Acts 1947, 50th Leg., p. 166, ch. 104, § 1.]

Art. 1041a. Chief Jailer or Turnkey

In all counties in this State having a population of one hundred and forty-five thousand (145,000) inhabitants and not more than three hundred thousand (300,000) inhabitants according to the last or any future Federal Census, the Commissioners Court shall allow the chief jailer and/or turnkey who has the care and custody of persons in the County Jail, not to exceed Eight Dollars ($8) per day, and shall allow each assistant jailer and/or turnkey who has the care and custody of prisoners in the County Jail, not to exceed Six Dollars and Fifty Cents ($6.50) per day, and not to exceed four (4) assistant jailers and/or turnkeys and a matron for each jail.
[Acts 1933, 43rd Leg., 1st C.S., p. 151, ch. 51, § 1. Amended by Acts 1947, 50th Leg., p. 1011, ch. 429, § 1.]

Art. 1041b. Vacations for Jailers, Jail Guards and Matrons

Every member of the sheriff's department assigned to duty as jailer, jail guard, or jail matron at any county jail in any city of more than twenty-five thousand (25,000) inhabitants shall be allowed fifteen (15) days vacation in each year with pay, not more than two (2) members to be on vacation at the same time; provided that the provisions of this Section of this Act shall not be applied to any such jailer, jail guard, or jail matron in any city of more than twenty-five thousand (25,000) inhabitants, unless such member shall have been regularly employed as such jailer, jail guard, or jail matron for a period of at least one year.

Each preceding Federal Census shall determine the population.

The sheriff having supervision of the county jail shall designate the days upon which each jailer, jail guard, or jail matron shall be allowed to be on vacation.

The sheriff having supervision of the county jail in any such city who violates any provision of this Article shall be fined not less than Ten Dollars ($10) nor more than One Hundred Dollars ($100).
[Acts 1937, 45th Leg., p. 247, ch. 129, § 1.]

Art. 1042. Sheriff Reimbursed

The sheriff shall pay the expenses of jurors impaneled in cases of felony (except when they are paid by the juror himself), the expenses of employing and maintaining a guard, and to support and take care of all prisoners, for all of which, he shall be reimbursed by the proper county according to the rates fixed in the two preceding articles.
[1925 C.C.P.]

Art. 1043. Sheriff Shall Present Account

At each term of the district court of his county, the sheriff may present to the district judge presiding his accounts for all expenses incurred by him for food and lodging of jurors in case of trials for felony during the term at which his account is presented. Such account shall state the number and style of the cases in which the jurors were impaneled, and specify by name each juror's expenses paid by such sheriff, and the number of days the same were paid, and shall be verified by the affidavit of such sheriff.
[1925 C.C.P.]

Art. 1044. Judge Shall Examine Account

Such account shall be carefully examined by the district judge; and he shall approve it, or so much thereof as he finds correct. He shall write his approval of said account, specifying the amount for which it is approved, date and sign the same officially, and shall cause the same to be filed in the office of the district clerk of the county liable therefor.
[1925 C.C.P.]

Art. 1045. Judge Shall Give Sheriff Draft

The district judge shall give the sheriff a draft upon the county treasurer of the proper county for the amount of each account allowed by him; and the same, when presented to such treasurer, shall be paid in like manner as jury certificates are paid.
[1925 C.C.P.]

Art. 1046. Account for Keeping Prisoners

At each regular term of the commissioners court, the sheriff shall present to such court his account verified by his affidavit for the expense incurred by him since the last account presented for the safe-keeping and maintenance of prisoners, including guards employed, if any. Such account shall state the name of each prisoner, each item of expense incurred on account of such prisoner, the date of each item, the name of each guard employed, the length of time employed and the purpose of such employment.
[1925 C.C.P.]

Art. 1047. Court to Examine Account

The commissioners court shall examine such account and allow the same, or so much thereof as is reasonable and in accordance with law, and shall order a draft issued to the sheriff upon the county treasurer for the amount so allowed. Such account shall be filed and kept in the office of such court.
[1925 C.C.P.]

Art. 1048. Expenses of Prisoner from Another County

If the expenses incurred are for the safe-keeping and maintenance of a prisoner from another county, the sheriff shall make out a separate account therefor, and submit the same to the county judge of his county, who shall carefully examine the same, write thereon his approval for such amount as he finds correct and sign and date such approval officially.
[1925 C.C.P.]

Art. 1049. Draft to Sheriff

The account mentioned in the preceding article shall then be presented to the commissioners court of the county liable for the same, at a regular term of such court; and such court shall, if the charges therein be in accordance with law, order a draft issued to the sheriff upon the county treasurer for the amount allowed.
[1925 C.C.P.]

Art. 1050. In Case of Change of Venue

In all causes where indictments have been presented against persons in one county and such causes have been removed by change of venue to another county, and tried therein, the county from which such cause is removed shall be liable for all expenses incurred for pay for jurors in trying such causes.
[1925 C.C.P.]

Art. 1051. Account in Change of Venue

The county commissioners of each county at each regular meeting shall ascertain whether, since the last regular meeting, any person has been tried for crime upon a change of venue from any other county. If they find such to be the case they shall make out an account against such county from which such cause was removed showing the number of days the jury in such case was employed therein, and setting forth the amount paid for such jury service; such account shall then be certified to as correct by the county judge of such county, under his hand and seal, and be, by him, forwarded to the county judge of the county from which the said cause was removed; which account shall be paid in the same manner as accounts for the safe keeping of prisoners.
[1925 C.C.P.]

Art. 1052. Fees of Judge and Justice of the Peace

Five Dollars ($5) shall be paid to the County Judge or Judge of the Court at Law and Four Dollars ($4) shall be paid to the Justice of the Peace for each criminal action tried and finally disposed of before him. Such Judge or Justices shall present to the Commissioners Court of his county at a regular term thereof a written account specifying each criminal action in which he claims such fee certified by such Judge or Justice to be correct and filed with the County Clerk. The Commissioners Court shall approve such account for such amounts as they find to be correct and order a draft to be issued on the County Treasurer in favor of such Judge or Justice for the amount due said Judge or Justice from the county. The Commissioners Court shall not however pay any account or trial fees in any case tried and in which an acquittal is had unless the State of Texas was represented in the trial of said cause by the County Attorney or his assistant, Criminal District Attorney or his assistant and the certificate of said Attorney is attached to said account certifying to the fact that said cause was tried, and the State of Texas was represented, and that in their judgment there was sufficient evidence in said cause to demand a trial of the same. All fees provided herein which are paid to officers who are compensated on a salary basis shall be paid into the Officers Salary Fund.
[1925 C.C.P.; Acts 1929, 41st Leg., 1st C.S., p. 155, ch. 55, § 1. Acts 1949, 51st Leg., p. 917, ch. 496, § 1; Acts 1953, 53rd Leg., p. 852, ch. 344, § 1.]

Art. 1053. Inquest Fee

A Justice of the Peace shall be entitled, for an inquest on a dead body, including certifying and returning the proceeding to the proper court, the sum of Ten Dollars ($10), to be paid by the county. When an inquest is held over the dead body of a State penitentiary convict, the State shall pay the inquest fees allowed by law of all officers, upon the approval of the account therefor by the Commissioners Court of the county in which the inquest may be held and by the General Manager of the Texas Prison System.
[1925 C.C.P.; Acts 1947, 50th Leg., p. 745, ch. 369, § 5.]

Art. 1054. Pay for Inquest

Any officer claiming pay for services mentioned in the preceding article shall present to the commissioners court of the county, at a regular term of such court, an account therefor, verified by the affidavit of such claimant. If such account be found correct the court shall order a draft to issue upon the county treasurer in favor of such claimant for the amount due him. Such account shall be filed and kept in the office of the county clerk.
[1925 C.C.P.]

Art. 1055. Half Costs Paid Officers

The county shall not be liable to the officer and witness having costs in a misdemeanor case where defendant pays his fine and costs. The county shall be liable for one-half of the fees of the officers of the Court, when the defendant fails to pay his fine and lays his fine out in the county jail or discharges the same by means of working such fine out on the county roads or on any county project. And to pay such half of costs, the County Clerk shall issue his warrant on the County Treasurer in favor of such officer to be paid out of the Road and Bridge Fund or other funds not otherwise appropriated.
[1925 C.C.P.; Acts 1937, 45th Leg., p. 1323, ch. 488, § 1. Acts 1939, 46th Leg., p. 143, § 1.]

Art. 1056. Repealed by Acts 1975, 64th Leg., p. 1353, ch. 510, § 2, eff. Sept. 1, 1975

See, now, Civil Statutes, Art. 2122.

Art. 1057. Repealed by Acts 1945, 49th Leg., p. 371, ch. 239, § 4

Art. 1058. Pay of Bailiffs

Each grand jury bailiff appointed as such bailiff shall receive as compensation for his services the sum of Five ($5.00) Dollars for each day he may serve, and each riding grand jury bailiff appointed in counties of a population of one hundred fifty thousand (150,000) or more, according to the last Federal Census, shall receive as compensation for his services the sum of Six ($6.00) Dollars for each day he may serve, and shall further receive One ($1.00) Dollar per day for automobile expense and upkeep; provided, however, that not more than ten (10) such bailiffs shall be employed at any one time; and providing further, that the sheriff or deputy sheriff attending any County or District Court in counties of over three hundred fifty thousand (350,000), according to the last preceding Federal Census shall be paid the sum of Six ($6.00) Dollars for each day the sheriff or deputy sheriff shall serve in any of such said courts as bailiffs, and One ($1.00) Dollar per day as automobile expense and upkeep for each day he may use said automobile.

The compensation herein provided for shall be paid from the General or Jury Fund of the county affected, as may be determined by the Commissioners Court thereof, upon sworn accounts showing the Court in which or the Grand Jury for which, said Bailiff, Sheriff, or Deputy Sheriff serves, with a statement showing the dates on which the service was performed and the amounts due. No such claim shall be paid until approved by the foreman of the Grand Jury or the Judge of the Court for which the service was performed, and said claim shall be presented to the Commissioners Court or to the County Auditor in counties having a County Auditor, and shall be allowed in the manner provided by law for so much thereof as may be found due, and no warrant in payment of the amount due shall be paid unless countersigned by the County Auditor, if any.

[1925 C.C.P.; Acts 1927, 40th Leg., p. 320, ch. 217, § 1. Acts 1927, 40th Leg., 1st C.S., p. 154, ch. 54, § 1; Acts 1931, 42nd Leg., p. 222, ch. 130, § 1; Acts 1935, 44th Leg., p. 476, ch. 192, § 1; Acts 1947, 50th Leg., p. 781, ch. 388, § 1.]

Art. 1058a. Bailiffs of Court of Civil Appeals

That the Commissioners court of any county, having a population of 210,000 or more, in which is located a Court of Civil Appeals having its quarters in the County Court House, is authorized to pay out of its General Fund, not exceeding fifty dollars per month, to the Bailiff of such Court of Civil Appeals, or other employee of said Court designated by it, as additional compensation for his services as Custodian of the Court Room, Judges Chambers and Library of such Court of Civil Appeals.

[Acts 1927, 40th Leg., 1st C.S., p. 154, ch. 54, § 1.]

Art. 1059. Certificates for Pay

The amount due jurors and bailiffs shall be paid by the county treasurer, upon the certificate of the proper clerk or the justice of the peace, stating the service, when and by whom rendered, and the amount due therefor.

[1925 C.C.P.]

Art. 1060. Receivable for Taxes

Drafts drawn and certificates issued under the provisions of this chapter may be transferred by delivery, and shall without further action or acceptance by any authority, except registration by the county treasurer, be receivable from the holder thereof at par for all county taxes.

[1925 C.C.P.]

CHAPTER ONE HUNDRED FIVE. COSTS TO BE PAID BY DEFENDANT

1. IN DISTRICT AND COUNTY COURTS

Article
1061. District and County Attorneys.
1062. Joint Defendants.
1063. Attorney Appointed.
1064. Fees of District and County Clerks.
1065. County Clerks in Counties of 53,500 to 53,800; Temporary Support Orders; Fee.

2. JURY AND TRIAL FEES

1075. Jury Fee in Justice Court.
1076. Several Defendants.
1077. Jury Fee Collected.

3. WITNESS FEES

1078. Fees of Witnesses.
1079. Taxed Against Defendant.
1080. No Fees Allowed.
1081. Witness Record.
1082. Witness Liable for Costs.

4. CRIMINAL JUSTICE PLANNING FUND

1083. Criminal Justice Planning Fund.

1. IN DISTRICT AND COUNTY COURTS

Art. 1061. District and County Attorneys

District and county attorneys shall be allowed the following fees in cases tried in the district or county courts, or a county court at law, to be taxed against the defendant:

For every conviction under the laws against gaming when no appeal is taken, or when, on appeal, the judgment is affirmed, Fifteen Dollars ($15.00);

For every other conviction in cases of misdemeanor, where no appeal is taken, or when, on appeal the judgment is affirmed, Fifteen Dollars ($15.00).

[1925 C.C.P.; Acts 1955, 54th Leg., p. 1112, ch. 410, § 1.]

Art. 1062. Joint Defendants

Where several defendants are tried together, but one fee shall be allowed and taxed in the case for the district or county attorney. Where the defendants sever and are tried separately, a fee shall be allowed and taxed for each trial.
[1925 C.C.P.]

Art. 1063. Attorney Appointed

An attorney appointed by the court to represent the State in the absence of the district or county attorney shall be entitled to the fee allowed by law to the district or county attorney.
[1925 C.C.P.]

Art. 1064. Fees of District and County Clerks

(1) The clerks of the county courts, county courts at law and district courts shall be allowed the following fees:

(a) A fee of Fifteen Dollars ($15.00) in each cause filed in said courts: for filing complaints, information, for docketing and taxing costs for each defendant, for issuing original writs, issuing subpoenas, for swearing and impaneling a jury, receiving and recording verdict, for filing each paper entered in this cause, for swearing witnesses and for all other clerical duties in connection with such cause in county and district courts.

(b) A fee of One Dollar ($1.00) per page or part of a page, to be paid at the time each order is placed, for issuing each certified copy, transcript or any other paper authorized, permitted, or required, to be issued by said county clerk or clerk of county courts or clerk of district courts.

[1925 C.C.P.; Acts 1967, 60th Leg., p. 2010, ch. 743, § 1, eff. Aug. 28, 1967.]

Art. 1065. County Clerks in Counties of 53,500 to 53,800; Temporary Support Orders; Fee

In any county having a population of not less than 53,500, nor more than 53,800, according to the last preceding federal census, the clerk of the county court is entitled to a fee of $5 for the administrative costs of handling temporary support orders issued pursuant to Article 604, Penal Code of Texas, 1925, as amended. The fee shall be taxed against the defendant at the time the order is entered against him.
[Acts 1971, 62nd Leg., p. 2371, ch. 732, § 1, eff. June 8, 1971.]

2. JURY AND TRIAL FEES

Art. 1075. Jury Fee in Justice Court

If the defendant is convicted in a criminal action tried by a jury in a justice court, a jury fee of three dollars shall be taxed against him.
[1925 C.C.P.]

Art. 1076. Several Defendants

Only one jury fee shall be taxed against several defendants tried jointly. A jury fee shall be taxed in each trial if they sever and are tried separately.
[1925 C.C.P.]

Art. 1077. Jury Fee Collected

A jury fee shall be collected as other costs in a case, and the officer collecting it shall forthwith pay it to the county treasurer of the county where the conviction was had.
[1925 C.C.P.]

3. WITNESS FEES

Art. 1078. Fees of Witnesses

Witnesses in criminal cases shall be allowed one dollar and fifty cents a day for each day they are in attendance upon the court, and six cents for each mile they may travel in going to or returning from the place of trial.
[1925 C.C.P.]

Art. 1079. Taxed Against Defendant

Upon conviction, the costs accruing from the attendance of witnesses shall be taxed against the defendant, upon the affidavit of such witness, or of some credible person, stating the number of days that such witness has attended upon the court in the case, and the number of miles he has traveled in going to and returning from the place of trial. The affidavit shall be filed with the papers in the case.
[1925 C.C.P.]

Art. 1080. No Fees Allowed

No fees shall be allowed to a person as witness fees unless such person has been subpoenaed, attached or recognized as a witness in the case.
[1925 C.C.P.]

Art. 1081. Witness Record

Each clerk of the district and county court or county court at law, and each justice of the peace, shall keep a book, in which shall be entered the number and style of each criminal action in their respective courts, and the name of each witness subpoenaed, attached or recognized to testify therein, showing whether on the part of the State or the defendant.
[1925 C.C.P.]

Art. 1082. Witness Liable for Costs

In any criminal case where a witness has been subpoenaed and fails to attend, he shall be liable for the costs of an attachment, unless good cause be shown to the court why he failed to obey the subpoena.
[1925 C.C.P.]

4. CRIMINAL JUSTICE PLANNING FUND

Art. 1083. Criminal Justice Planning Fund

Purpose

Sec. 1. The purpose of this Act is to create and establish a special fund to be known as the Criminal Justice Planning Fund to provide the State and local funds required by Public Law 90–351, Title I, Omnibus Crime Control and Safe Streets Act of 1968, as amended,[1] to provide for costs of court as the source of these funds, and to provide that the costs to be borne in part by those who necessitate the establishment and maintenance of the criminal justice system.

[1] 42 U.S.C.A. § 3701 et seq.

Creation

Sec. 2. There is hereby created and established a special fund to be known as the Criminal Justice Planning Fund.

Costs Upon Conviction in Certain Misdemeanor Cases; Traffic Violations

Sec. 3. (a) The sum of $2.50 shall be taxed as costs of court, in addition to other taxable court costs, upon conviction in each misdemeanor case in which original jurisdiction lies in courts whose jurisdiction is limited to a maximum fine of $200.00 only.

(b) Convictions arising under the traffic laws of this State are specifically included and are those defined in:

(1) Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), known as the "Driver's License Law"; and

(2) Chapter 421, Acts of the 50th Legislature, 1947, as amended (Article 6701d, Vernon's Texas Civil Statutes) known as the "Uniform Act Regulating Traffic on Highways," except laws regulating pedestrians and the parking of motor vehicles.

Costs Upon Conviction in Misdemeanor and Felony Cases

Sec. 4. The sum of $5.00 shall be taxed as costs of court in addition to other taxable court costs, upon conviction in each misdemeanor case and the sum of $10.00 shall be taxed as costs of court, in addition to other taxable court costs, upon conviction in each felony case in all cases in which original jurisdiction lies in courts whose jurisdiction is limited to fines and/or confinement in a jail or the department of corrections.

Collection of Costs

Sec. 5. The costs due the State under this Act shall be collected along with and in the same manner as other fines or costs are collected in the case.

Officers Collecting Costs; Separate Records; Deposits

Sec. 6. (a) The officer collecting the costs due under this Act in cases in municipal court shall keep separate records of the funds collected as costs under this Act, and shall deposit the funds in the municipal treasury.

(b) The officer collecting the costs due under this Act in justice, county and district courts shall keep separate records of the funds collected as costs under this Act, and shall deposit the funds in the county treasury.

(c) The officer collecting the costs due under this Act in county courts on appeal from justice or municipal courts shall keep separate records of the funds collected under this Act, and shall deposit the funds in the county treasury.

Custodians of Funds; Quarterly Remittance; Service Fee

Sec. 7. The custodians of the municipal and county treasuries with whom funds collected under this Act are deposited shall keep records of the amount of funds collected under this Act which are on deposit with them, and shall on the first day of January, April, July and October of each year remit to the Comptroller of Public Account funds collected under this Act during the preceding quarter. The municipal and county treasuries are hereby authorized to retain five percent (5%) of funds collected under this Act as a service fee for said collection.

Special Fund Deposits

Sec. 8. The Comptroller of Public Accounts shall deposit the funds received by him in a Special Fund to be known as the Criminal Justice Planning Fund.

Appropriation of Funds; Simultaneous Expenditure with Federal Funds

Sec. 9. The funds so deposited in the Criminal Justice Planning Fund are hereby appropriated to the expenditure of State and local matching funds required by Public Law 90–351, Title I, Omnibus Crime Control and Safe Streets Act of 1968 as amended by the Omnibus Crime Control Act of 1970 and determined by the appropriations of Congress to carry out the provisions of said Act. The expenditure of Criminal Justice Planning Funds shall be simultaneous with the expenditure of federal funds.

Appropriation of Unexpended Balance of Funds Authorized

Sec. 10. The Legislature may appropriate the unexpended balance of the Criminal Justice Planning Funds for the preceding biennium for the im-

provement and upgrading of the criminal justice system as defined in the aforementioned federal Act.

Officers Collecting Funds; Reports

Sec. 11. All officers collecting funds due as costs under this Act shall file the reports required under Articles 1001 and 1002, Code of Criminal Procedure, 1965.

[Acts 1971, 62nd Leg., p. 2855, ch. 935, §§ 1 to 11, eff. Aug. 30, 1971.]

This article was not enacted as part of the Code of Criminal Procedure of 1965

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PROPERTY TAX CODE

TITLE 1. PROPERTY TAX CODE

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TITLE 1. PROPERTY TAX CODE

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Section

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The Property Tax Code, constituting Title 1 of the Tax Code, as enacted by Acts 1979, 66th Leg., p. 2217, ch. 841, is generally effective January 1, 1982.

Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted this Title. Section 6(b) of said Act provided:

"(b) All other general, local and special laws in conflict with this Act are repealed to the extent of the conflict, and the failure expressly to repeal or amend any law in conflict with this Act is not evidence of a legislative intent that the law not be repealed."

Section 3 of the 1979 Act was the effective date provision. Subsection (h) thereof provided:

"(h) To the extent necessary to apply provisions of the Property Tax Code that take effect before January 1, 1982, Chapter 1 takes effect on January 1, 1980."

§ 1.01. Short Title

This title may be cited as the Property Tax Code.
[Acts 1979, 66th Leg., p. 2218, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 1.02. Applicability of Title

This title applies to a taxing unit that is created by or pursuant to any general, special, or local law enacted before or after the enactment of this title unless a law enacted after enactment of this title by or pursuant to which the taxing unit is created expressly provides that this title does not apply.
[Acts 1979, 66th Leg., p. 2218, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 1.03. Construction of Title

The Code Construction Act [1] applies to the construction of each provision of this title except as otherwise expressly provided by this title.
[Acts 1979, 66th Leg., p. 2218, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Civil Statutes, art. 5429b-2.

§ 1.04. Definitions

In this title:

(1) "Property" means any matter or thing capable of private ownership.

(2) "Real property" means:

(A) land;

(B) an improvement;

(C) a mine or quarry;

(D) a mineral in place;

(E) standing timber; or

(F) an estate or interest, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation, in a property enumerated in Paragraphs (A) through (E) of this subdivision.

(3) "Improvement" means:

(A) a building, structure, fixture, or fence erected on or affixed to land; or

(B) a transportable structure that is designed to be occupied for residential or business purposes, whether or not it is affixed to land, if the owner of the structure owns the land on which it is located, unless the structure is unoccupied and held for sale or normally is located at a particular place only temporarily.

(4) "Personal property" means property that is not real property.

(5) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or otherwise perceived by the senses, but does not include a document or other perceptible object that constitutes evidence of a valuable interest, claim, or right and has negligible or no intrinsic value.

(6) "Intangible personal property" means a claim, interest (other than an interest in tangible property), right, or other thing that has value but cannot be seen, felt, weighed, measured, or otherwise perceived by the senses, although its existence may be evidenced by a document. It includes a stock, bond, note or account receivable, franchise, license or permit, demand or time deposit, certificate of deposit, share account, share certificate account, share deposit account, insurance policy, annuity, pension, cause of action, contract, and goodwill.

(7) "Market value" means the price at which a property would transfer for cash or its equivalent under prevailing market conditions if:

(A) exposed for sale in the open market with a reasonable time for the seller to find a purchaser;

(B) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and

(C) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.

(8) "Appraised value" means the value determined as provided by Chapter 23 of this code.

(9) "Assessed value" means the amount determined by multiplying the appraised value by the applicable assessment ratio.

(10) "Taxable value" means the amount determined by deducting from assessed value the amount of any applicable partial exemption.

(11) "Partial exemption" means an exemption of part of the value of taxable property.

(12) "Taxing unit" means a county, an incorporated city or town (including a home-rule city), a school district, a special district or authority, or any other political unit of this state, whether created by or pursuant to the constitution or a local, special, or general law, that is authorized to impose and is imposing ad valorem taxes on property.

(13) "Tax year" means the calendar year.

(14) "Assessor" means the officer or employee responsible for assessing property taxes as provided by Chapter 26 of this code for a taxing unit by whatever title he is designated.

(15) "Collector" means the officer or employee responsible for collecting property taxes for a taxing unit by whatever title he is designated.

(16) "Possessory interest" means an interest that exists as a result of possession or exclusive use or a right to possession or exclusive use of a property and that is unaccompanied by ownership of a fee simple or life estate in the property. However, "possessory interest" does not include an interest, whether of limited or indeterminate duration, that involves a right to exhaust a portion of a real property.

[Acts 1979, 66th Leg., p. 2218, ch. 841, § 1, eff. Jan. 1, 1982.]

Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted Title 1 of the Tax Code, the Property Tax Code. Section 3 of said Act was the effective date provision. Subsection (k) thereof provided:

"(k) For purposes of applying the parts of the Property Tax Code that take effect before January 1, 1982, 'appraisal office,' 'appraisal district,' and 'chief appraiser' means the office or officer, as applicable, that appraises property for the tax purposes of a taxing unit."

§ 1.05. City Fiscal Year

The governing body of a home-rule city may establish by ordinance a fiscal year different from that fixed in its charter if a different fiscal year is desirable to adapt budgeting and other fiscal activities to the tax cycle required by this title.

[Acts 1979, 66th Leg., p. 2218, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 1.06. Effect of Weekend or Holiday

If the last day for the performance of an act is a Saturday, Sunday, or legal state or national holiday, the act is timely if performed on the next regular business day.

[Acts 1979, 66th Leg., p. 2218, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 1.07. Delivery of Notice

(a) An official or agency required by this title to deliver a notice to a property owner may deliver the notice by regular first-class mail, with postage prepaid, unless this title requires a different method of delivery.

(b) The official or agency shall address the notice to the property owner or, if appropriate, his agent at his address according to the most recent record in the possession of the official or agency. However, if a property owner files a written request that notices be sent to a particular address, the official or agency shall send the notice to the address stated in the request.

(c) A notice permitted to be delivered by first-class mail by this section is delivered when it is deposited in the mail.

[Acts 1979, 66th Leg., p. 2218, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 1.08. Timeliness of Action by Mail

When a property owner is required by this title to make a payment or to file or deliver a report, application, statement, or other document or paper before a specified date, his action is timely if:

(1) it is sent by regular first-class mail, properly addressed with postage prepaid; and

(2) it bears a post office cancellation mark of a date earlier than the specified date and within the specified period or the property owner furnishes satisfactory proof that it was deposited in the mail before the specified date and within the specified period.

[Acts 1979, 66th Leg., p. 2218, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 1.09. Availability of Forms

When a property owner is required by this title to use a form, the office or agency with which the form is filed shall make printed forms readily and timely available and shall furnish a property owner a form without charge.

[Acts 1979, 66th Leg., p. 2218, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 1.10. Rolls in Electronic Data-Processing Records

(a) With the consent of the assessor for a taxing unit and of the governing body of the unit, the appraisal roll or the tax roll for the unit may be retained in electronic data-processing equipment and a physical document need not be prepared.

(b) If the appraisal roll or the tax roll for the unit is not reduced to a physical document, an entry required to be made on a roll shall be entered in the electronic data-processing records in which the roll is retained.

(c) A roll retained in electronic data-processing records shall be so stored that the information in the roll can be made readily available to the public in an understandable form.

[Acts 1979, 66th Leg., p. 2218, ch. 841, § 1, eff. Jan. 1, 1982.]

SUBTITLE B. PROPERTY TAX ADMINISTRATION

CHAPTER 5. STATE ADMINISTRATION

Section

5.01. State Property Tax Board.
5.02. Board Personnel.
5.03. Powers and Duties Generally.
5.04. Training and Education of Appraisers.
5.05. Appraisal Manuals and Other Materials.
5.06. Explanation of Taxpayer Remedies.
5.07. Property Tax Forms and Records Systems.
5.08. Professional and Technical Assistance.
5.09. Annual Report.

This Chapter is effective January 1, 1980, under the provisions of § 3(b) of Acts 1979, 66th Leg., p. 2314, ch. 841.

§ 5.01. State Property Tax Board

(a) The State Property Tax Board is established. The board consists of six members appointed by the governor with the advice and consent of the senate. In making the appointments, the governor, to the extent practicable, shall select persons so that each geographical area of the state is represented. A vacancy on the board is filled in the same manner for the unexpired portion of the term.

(b) Members of the board hold office for terms of six years, with the terms of two members expiring on March 1 of each odd-numbered year.

(c) To be eligible to serve on the board, a person must have been a resident of this state for at least 10 years.

(d) After March 1, 1983, at least two members must be certified by the Board of Tax Assessor Examiners.

(e) A majority of the board constitutes a quorum.

(f) The governor shall designate one of the members of the board to serve as chairman for a term, in that capacity, of two years expiring on March 1 of each odd-numbered year.

(g) The board shall maintain a principal office in Austin.

(h) The board shall meet at least once in each calendar quarter and may meet at other times at the call of the chairman or as provided by the rules of the board.

(i) A member of the board may not receive compensation for his service on the board but is entitled to reimbursement for actual and necessary expenses, as provided by legislative appropriation, incurred while on travel status in the performance of official duties.

[Acts 1979, 66th Leg., p. 2221, ch. 841, § 1, eff. Jan. 1, 1980.]

Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted Title 1 of the Tax Code, the Property Tax Code. Section 8(a) of said Act provided: "(a) The name of the School Tax Assessment Practices Board is changed to the State Property Tax Board, and its members serve as members of the State Property Tax Board for the terms to which each was appointed to serve on the

School Tax Assessment Practices Board. A reference to the School Tax Assessment Practices Board by a statute means the State Property Tax Board. All books, records, property, and personnel of the School Tax Assessment Practices Board are transferred to the State Property Tax Board."

§ 5.02. Board Personnel

(a) The board shall employ an executive director who shall administer board operations as directed by the board.

(b) The director may employ professional, clerical, and other personnel to assist him in the performance of his duties.

[Acts 1979, 66th Leg., p. 2221, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 5.03. Powers and Duties Generally

(a) The board shall adopt rules establishing minimum standards for the administration and operation of an appraisal district and a county assessor-collector's office. The minimum standards may vary according to the number of parcels and the kinds of property the district or office is responsible for appraising.

(b) The board may require from each district or office engaged in appraising property for taxation an annual report on a form prescribed by the board on the administration and operation of the office.

(c) The board may contract with consultants to assist in performance of the duties imposed by this chapter.

[Acts 1979, 66th Leg., p. 2221, ch. 841, § 1, eff. Jan. 1, 1980.]

Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted Title 1 of the Tax Code. Section 2 of said Act provided:

"(a) Each year the State Property Tax Board shall distribute money from funds appropriated by law to each appraisal district to assist the districts in preparing to implement the Property Tax Code. The board shall allocate the total amount appropriated as provided by this section.

"(b) Each appraisal district is entitled to an equal portion of one-fourth of the total amount appropriated for each year, except that the total amount distributed to a district under this subsection may not exceed $25 for each parcel of taxable real property in the district.

"(c) After the total of the allocations as provided by Subsection (b) of this section is determined and subtracted from the total appropriation for the year, each district is entitled to a portion of the balance of the annual appropriation according to the ratio the number of parcels of taxable real property in the district bears to the number of parcels of taxable real property in all appraisal districts.

"(d) The State Property Tax Board shall promulgate rules prescribing the procedures for distributing the funds and for determining the number of parcels of taxable real property in the state and in each appraisal district.

"(e) This section expires on December 31, 1981."

Section 7(a) and (b) of said Act provided:

"(a) Every power or duty relating to the administration of ad valorem taxation that is conferred on the comptroller of public accounts by a law that is repealed by this Act is transferred to the State Property Tax Board. The powers and duties relating to administration of ad valorem taxation that are conferred on the comptroller of public accounts by Article 7260, Revised Civil Statutes of Texas, 1925, as amended, are transferred to the State Property Tax Board.

"(b) On January 1, 1980, all books and records, property, and personnel in the office of the comptroller of public accounts that are involved or used in administration of ad valorem taxation are transferred to the State Property Tax Board. The state auditor shall resolve any dispute over what property, books, or records are subject to this section, and the auditor's decision is final."

§ 5.04. Training and Education of Appraisers

(a) The board shall conduct, sponsor, or approve courses of instruction and inservice and intern training programs on the technical, legal, and administrative aspects of property taxation.

(b) The board shall cooperate in developing curricula with other public agencies, with educational institutions, and with private organizations interested in training and educating appraisers, and the board may cooperate with them in conducting or sponsoring courses of instruction and training programs.

(c) An appraisal district or county shall reimburse an employee of the appraisal office or the county assessor-collector's office, as applicable, for all actual and necessary expenses, tuition and other fees, and costs of materials incurred in attending, with approval of the chief appraiser or county assessor-collector, as applicable, a course or training program conducted, sponsored, or approved by the board.

[Acts 1979, 66th Leg., p. 2221, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 5.05. Appraisal Manuals and Other Materials

(a) The board shall prepare and issue:

(1) a general appraisal manual;

(2) special appraisal manuals;

(3) cost, price, and depreciation schedules, with provision for inserting local market index factors and with a standard procedure for determining local market index factors;

(4) news and reference bulletins;

(5) annotated digests of all laws relating to property taxation; and

(6) a handbook of all rules promulgated by the board relating to the property tax and its administration.

(b) The board shall revise or supplement all materials periodically as necessary to keep them current.

(c) The board shall provide without charge all materials to officials of local government who are responsible for administering the property tax system. It shall make the materials available to members of the public but may charge a reasonable fee to offset the costs of printing and distributing the materials.

[Acts 1979, 66th Leg., p. 2221, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 5.06. Explanation of Taxpayer Remedies

The board shall prepare and publish a pamphlet explaining the remedies available to dissatisfied taxpayers and the procedures to be followed in seeking remedial action. It shall include in the pamphlet advice on preparing and presenting a protest.

[Acts 1979, 66th Leg., p. 2221, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 5.07. Property Tax Forms and Records Systems

(a) The board shall prescribe the contents of all forms necessary for the administration of the property tax system and on request shall furnish sufficient copies of model forms of each type to the appropriate local officials. The board may require reimbursement for the costs of printing and distributing the forms.

(b) The board shall make the contents of the forms uniform to the extent practicable but may prescribe or approve additional or substitute forms for special circumstances.

(c) The board shall also prescribe a uniform record system to be used by all offices appraising property for tax purposes.

[Acts 1979, 66th Leg., p. 2221, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 5.08. Professional and Technical Assistance

(a) The board may provide professional and technical assistance on request in appraising property, installing or updating tax maps, purchasing equipment, developing recordkeeping systems, or performing other appraisal activities. The board may also provide professional and technical assistance on request to a board of equalization or appraisal review board. The board shall require reimbursement for the costs of providing the assistance.

(b) The board may provide information to and consult with persons actively engaged in appraising property for tax purposes about any matter relating to property taxation without charge.

[Acts 1979, 66th Leg., p. 2221, ch. 841, § 1, eff. Jan. 1, 1980.]

Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted Title 1 of the Tax Code, the Property Tax Code. Section 3 of said Act was the effective date provision. Subsection (b) thereof provided:

"(b) Chapter 5 takes effect January 1, 1980. The board shall provide advice and assistance as provided by Section 5.08 to local officials on the implementation of the Property Tax Code."

§ 5.09. Annual Report

(a) The board shall publish an annual report of its operations under this code and of the operations of the appraisal districts and of the county assessors-collectors. The report shall include for each district, each county, and each school district and may include for other taxing units the total appraised values, assessed values, and taxable values of taxable property by class of property, the assessment ratio, and the tax rate.

(b) The board shall deliver a copy of each annual report to the governor, the lieutenant governor, and each member of the legislature.

[Acts 1979, 66th Leg., p. 2221, ch. 841, § 1, eff. Jan. 1, 1980.]

CHAPTER 6. LOCAL ADMINISTRATION

SUBCHAPTER A. APPRAISAL DISTRICTS

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6.02. District Boundaries.
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6.04. Organization, Meetings, and Compensation.
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SUBCHAPTER C. APPRAISAL REVIEW BOARD

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6.42. Organization, Meetings, and Compensation.
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SUBCHAPTER A. APPRAISAL DISTRICTS

Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted Title 1 of the Tax Code, the Property Tax Code. Section 3 of said Act was the effective date provision. Subsection (c) thereof provided:

"(c)(1) Except as otherwise provided by this subsection, Subchapter A of Chapter 6 takes effect January 1, 1980.

"(2) For the purpose of appointing the first members of the appraisal district board of directors, Section 6.03 takes effect September 1, 1979.

"(3) Section 6.06 takes effect January 1, 1981. However, for the purpose of preparing and adopting a budget for 1981, Subsections (a) through (c) of Section 6.06 take effect September 1, 1980. The board shall perform the chief appraiser's functions as provided by Section 6.06 before the district employs a chief appraiser.

"(4) Between January 1, 1980, and January 1, 1982, the appraisal district board of directors shall prepare for the district's operations pursuant to the Property Tax Code. The board of directors shall establish, equip, and staff the appraisal office before January 1, 1982. In 1980, the board of directors shall operate with funds distributed by the State Property Tax Board and in 1981 shall operate with the state funds and with the money paid to the district pursuant to Section 6.06, Property Tax Code.

"(5) Before January 1, 1982, the appraisal district may contract as provided by the Interlocal Cooperation Act [Civil Statutes, art. 4413(32c)] to perform appraisal services for any taxing unit within the district. A contract authorized by this subsection must provide that each contracting taxing unit pay the actual costs of the appraisal services performed for it and that a board of equalization appointed by the district's board of directors serve as board of equalization for the unit.

"(6) For the purposes of a contract authorized by this subsection, the appraisal district board of directors shall appoint three residents of the district to serve as a board of equalization each year the district appraises property pursuant to a contract authorized by this subsection. The board of directors shall designate one of its appointees to serve as chairman of the board of equalization. Members of the board of equalization are entitled to per diem set by the board of directors for each day the board meets. Before the board of equalization begins to perform its duties, each member shall take an oath in substantially the form required by Article 7215, Revised Civil Statutes of Texas, 1925. The appraisal district board of equalization has the powers and shall perform the duties of the county board of equalization as provided by Title 122, Revised Civil Statutes of Texas, 1925, as amended [Civil Statutes, art. 7041 et seq.]."

§ 6.01. Appraisal Districts Established

(a) An appraisal district is established in each county.

(b) The district is responsible for appraising property in the district for ad valorem tax purposes of the state and of each taxing unit other than the county that imposes ad valorem taxes on property in the district.

[Acts 1979, 66th Leg., p. 2224, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 6.02. District Boundaries

(a) Except as otherwise provided by this section, the appraisal district's boundaries are the same as the county's boundaries.

(b) A school district, an incorporated city or town, a water control and improvement district organized pursuant to Chapter 51, Water Code, irrigation districts organized under Chapter 58, Water Code, or a junior college district that has boundaries extending into two or more counties may choose to participate in only one of the appraisal districts. In that event, the boundaries of the district chosen extend outside the county to the extent of the unit's boundaries.

(c) A taxing unit that is eligible to choose to participate in only one appraisal district as provided by Subsection (b) of this section must make the choice by an official action of its governing body in the manner required by law for official action by the body adopted at least 90 days before the first day of the tax year in which appraisal districts first begin appraising property for ad valorem tax purposes. The choice made by a taxing unit is binding and may not be repealed or modified while the unit's boundaries extend into the county in which the appraisal district it joins is located. However, if the unit ceases to have territory in that county but still has territory in two or more counties, the unit may choose to participate in only one district in the manner prescribed by this subsection. The choice must be made at least 90 days before the first day of the next tax year.

(d) If, as a result of a taxing unit choosing to participate in only one appraisal district as authorized by Subsection (b) of this section, no taxing unit in a district imposes taxes on property in a portion of the district, the district is not required to appraise the property.

(e) All costs of operating an appraisal district in territory outside the county for which the appraisal district is established are allocated to the taxing unit that chooses to add that territory to the district. If two or more taxing units add the same territory to an appraisal district, costs of operating the district in that territory are allocated to the units in the proportion the total dollar amount of taxes each unit imposes in that territory bears to the total dollar amount of taxes all taxing units participating in the appraisal district impose in that territory.

[Acts 1979, 66th Leg., p. 2224, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 6.03. Board of Directors

(a) The appraisal district is governed by a board of five directors. To be eligible to serve on the board of directors, an individual must be a resident of the district and must have resided in the district for at least two years.

(b) Members of the board of directors serve two-year terms beginning on January 1 of even-numbered years.

(c) Members of the board of directors are appointed by vote of the governing bodies of the incorporated cities and towns and the school districts that participate in the district. A governing body may cumulate its votes by multiplying the number of votes to which it is entitled by this section by the number of directorships to be filled and by casting that total for one candidate or distributing it among candidates for any number of directorships.

(d) The voting entitlement of a taxing unit that is entitled to vote for directors is determined by dividing the total dollar amount of property taxes imposed in the district by the taxing unit for the preceding tax year by the sum of the total dollar amount of property taxes imposed in the district for that year by each taxing unit that is entitled to vote, by multiplying the quotient by 1,000, and by rounding the product to the nearest whole number. A taxing unit participating in two or more districts is entitled to vote in each district in which it participates, but only the taxes imposed in a district are used to calculate voting entitlement in that district.

(e) The county clerk shall calculate the number of votes to which each taxing unit is entitled and shall deliver written notice to the presiding officer of the governing body of each unit of its voting entitlement before October 1 of each odd-numbered year.

(f) Each taxing unit that is entitled to vote may nominate by resolution adopted by its governing body one candidate for each position to be filled on the board of directors. The presiding officer of the governing body of the unit shall submit the names of the unit's nominees to the county clerk before October 15. Before October 30, the county clerk shall prepare a ballot, listing the candidates alphabetically according to the first letter in each candidate's surname, and shall deliver a copy of the ballot to the presiding officer of the governing body of each taxing unit that is entitled to vote.

(g) The governing body of each taxing unit entitled to vote shall determine its vote by resolution and submit it to the county clerk before November 15. The county clerk shall count the votes, declare the five candidates who receive the largest cumulative vote totals elected, and submit the results before December 1 to the governing body of each taxing unit in the district and to the candidates.

(h) If a vacancy occurs on the board of directors, each taxing unit that is entitled to vote by this section may nominate by resolution adopted by its governing body a candidate to fill the vacancy. The unit shall submit the name of its nominee to the county clerk within 10 days after notification from the board of directors of the existence of the vacancy, and the county clerk shall prepare and deliver to the board of directors within the next five days a list of the nominees. The board of directors shall elect by majority vote of its members one of the nominees to fill the vacancy.

(i) The governing bodies of three-fourths of the taxing units that are entitled to vote on the appointment of members of a district's board of directors may change the number of members on the board of directors or may change the method of selecting members of the board of directors.

[Acts 1979, 66th Leg., p. 2224, ch. 841, § 1, eff. Jan. 1, 1980.]

For provisions as to the effective date of this section, see italicized note preceding § 6.01.

§ 6.04. Organization, Meetings, and Compensation

(a) A majority of the appraisal district board of directors constitutes a quorum. At its first meeting each calendar year, the board shall elect from its members a chairman and a secretary.

(b) The board may meet at any time at the call of the chairman or as provided by board rule. The board shall meet on October 1 of each year to receive the chief appraiser's proposed budget.

(c) Members of the board may not receive compensation for service on the board but are entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties as provided by the budget adopted by the board.

[Acts 1979, 66th Leg., p. 2224, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 6.05. Appraisal Office

(a) Except as authorized by Subsection (b) of this section, each appraisal district shall establish an appraisal office.

(b) The board of directors of an appraisal district may contract with an appraisal office in another district or with a taxing unit in the district to perform the duties of the appraisal office for the district.

(c) The chief appraiser is the chief administrator of the appraisal office. The chief appraiser is appointed by and serves at the pleasure of the appraisal district board of directors. If a taxing unit performs the duties of the appraisal office pursuant to a contract, the assessor for the unit is the chief appraiser.

(d) The chief appraiser is entitled to compensation as provided by the budget adopted by the board of directors. He may employ and compensate professional, clerical, and other personnel as provided by the budget.

(e) The chief appraiser may delegate authority to his employees.

[Acts 1979, 66th Leg., p. 2224, ch. 841, § 1, eff. Jan. 1, 1980.]

Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted Title 1 of the Tax Code, the Property Tax Code. Section 3 of said Act was the effective date provision. Subsection (k) thereof provided:

"(k) For purposes of applying the parts of the Property Tax Code that take effect before January 1, 1982, 'appraisal office,' 'appraisal district,' and 'chief appraiser' mean the office or officer, as applicable, that appraises property for the tax purposes of a taxing unit."

§ 6.06. Appraisal District Budget and Financing

(a) Each year the chief appraiser shall prepare a proposed budget for the operations of the district for the following tax year and shall submit copies to each taxing unit participating in the district and to the district board of directors before October 1. He shall include in the budget an estimate of the amount of the budget that will be allocated to each taxing unit.

(b) The board of directors shall meet to consider the budget. The secretary of the board shall deliver to the presiding officer of the governing body of each taxing unit participating in the district not later than the 10th day before the date of the hearing a written notice of the date, time, and place fixed for the hearing. The board shall complete its hearings, make any amendments to the proposed budget it desires, and finally approve a budget before December 1.

(c) The board may amend the approved budget at any time, but the secretary of the board must deliv-

er a written copy of a proposed amendment to the presiding officer of the governing body of each taxing unit participating in the district not later than the 30th day before the date the board acts on it.

(d) Unless the governing bodies of three-fourths of the taxing units entitled to vote on appointment of members of the district's board of directors agree to a different method of allocating the costs of operating the district, each taxing unit participating in the district is allocated a portion of the amount of the budget equal to the proportion that the total dollar amount of property taxes imposed in the district by the unit for the tax year in which the budget proposal is prepared bears to the sum of the total dollar amount of property taxes imposed in the district by each participating unit for that year. If a taxing unit participates in two or more districts, only the taxes imposed in a district are used to calculate the unit's cost allocations in that district.

(e) Unless the governing body of a unit and the chief appraiser agree to a different method of payment, each taxing unit shall pay its allocation in four equal payments to be made at the end of each calendar quarter, and the first payment shall be made before January 1 of the year in which the budget takes effect. If the budget is amended, any change in the amount of a unit's allocation is apportioned among the payments remaining.

(f) Payments shall be made to a depository designated by the district board of directors. The district's funds may be disbursed only by a written check, draft, or order signed by the chairman and secretary of the board or, if authorized by resolution of the board, by the chief appraiser.

[Acts 1979, 66th Leg., p. 2224, ch. 841, § 1, eff. Jan. 1, 1981.]

For provisions as to the effective date of this section, see Italicized note preceding § 6.01.

§ 6.07. Taxing Unit Boundaries

If a new taxing unit is formed or an existing taxing unit's boundaries are altered, the unit shall notify the appraisal office of the new boundaries within 30 days after the date the unit is formed or its boundaries are altered.

[Acts 1979, 66th Leg., p. 2224, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 6.08. Notice of Optional Exemptions

If a taxing unit adopts, amends, or repeals an exemption that the unit by law has the option to adopt or not, the taxing unit shall notify the appraisal office of its action and of the terms of the exemption within 30 days after the date of its action.

[Acts 1979, 66th Leg., p. 2224, ch. 841, § 1, eff. Jan. 1, 1980.]

[Sections 6.09 to 6.20 reserved for expansion]

SUBCHAPTER B. ASSESSORS AND COLLECTORS

§ 6.21. County Assessor-Collector

(a) The assessor-collector for a county is determined as provided by Article VIII, Sections 14, 16, and 16a, of the Texas Constitution.

(b) If a county with a population of less than 10,000 authorizes a separate county assessor-collector as provided by Article VIII, Section 16a, of the Texas Constitution, the commissioners court may appoint a county assessor-collector to serve until an assessor-collector is elected at the next general election and has qualified.

[Acts 1979, 66th Leg., p. 2227, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 6.22. Assessor and Collector for Other Taxing Units

(a) The assessor and collector for a taxing unit other than a county or a home-rule city are determined by the law creating or authorizing creation of the unit.

(b) The assessor and collector for a home-rule city are determined by the city's charter and ordinances.

(c) The governing body of a taxing unit authorized to have its own assessor and collector by official action in the manner required by law for official action by the body may require the county to assess and collect the taxes the unit imposes in the county in the manner in which the county assesses and collects its taxes. The governing body of the unit may revoke the requirement at any time by the same official action.

[Acts 1979, 66th Leg., p. 2227, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 6.23. Duties of Assessor and Collector

(a) The county assessor-collector shall appraise property for county tax purposes and shall assess and collect taxes on property in the county for the state and the county. He shall also assess and collect taxes on property for another taxing unit if:

(1) the law creating or authorizing creation of the unit requires it to use the county assessor-collector for the taxes the unit imposes in the county;

(2) the law creating or authorizing creation of the unit does not mention who assesses and collects its taxes and the unit imposes taxes in the county;

(3) the governing body of the unit requires the county to assess and collect its taxes as provided by Subsection (c) of Section 6.22 of this code; or

(4) required by an intergovernmental contract.

(b) The assessor and collector for a taxing unit other than a county shall assess, collect, or assess and collect taxes, as applicable, for the unit. He

shall also assess, collect, or assess and collect taxes, as applicable, for another unit if:

(1) required by or pursuant to the law creating or authorizing creation of the other unit; or

(2) required by an intergovernmental contract.

[Acts 1979, 66th Leg., p. 2227, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 6.24. Contracts for Assessment and Collection

(a) The governing body of a taxing unit other than a county may contract as provided by the Interlocal Cooperation Act [1] with the governing body of another unit or with the board of directors of an appraisal district for the other unit or the district to perform duties relating to the assessment or collection of taxes.

(b) The commissioners court with the approval of the county assessor-collector may contract as provided by the Interlocal Cooperation Act with the governing body of another taxing unit in the county or with the board of directors of the appraisal district for the other unit or the district to perform duties relating to the assessment or collection of taxes for the county. If a county contracts to have its taxes assessed and collected by another taxing unit, the contract shall require the other unit to assess and collect all taxes the county is required to assess and collect.

(c) To be effective, a contract between a county and another taxing unit or an appraisal district for the assessment and collection of state taxes must be approved by the State Property Tax Board.

[Acts 1979, 66th Leg., p. 2227, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Civil Statutes, art. 4413(32c).

§ 6.25. County Contract With Appraisal District

(a) The commissioners court with the approval of the county assessor-collector may contract with the appraisal district for the county to have the appraisal district appraise property and prepare the appraisal records for county tax purposes. A commissioners court may contract with the appraisal district to have the appraisal review board exercise the powers and duties of the commissioners court when sitting as a board of equalization.

(b) If a county contracts as provided by this section for the appraisal district to appraise property and prepare appraisal records for county tax purposes:

(1) the commissioners court is entitled to participate in the appointment of district directors in the same manner as an incorporated city or town or a school district;

(2) the county shall pay for the operations of the appraisal district according to the same terms and conditions as other taxing units in the district;

(3) the chief appraiser shall assume all the powers and duties of the county assessor-collector relating to appraisal of property and preparation of appraisal records for county tax purposes; and

(4) a property owner complies with the requirements of this title if he delivers to the chief appraiser any report, application, or other document that this title requires him to deliver to both the chief appraiser and the county assessor-collector.

[Acts 1979, 66th Leg., p. 2227, ch. 841, § 1, eff. Jan. 1, 1982.]

Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted Title 1 of the Tax Code, the Property Tax Code. Section 3 of said Act was the effective date provision. Subsection (d) thereof provided:

"If a county intends to contract with an appraisal district as authorized by Section 6.25, the commissioners court may participate in the appointment of the members of the district's board of directors before 1982 in the same manner as school districts and incorporated cities and towns if it adopts an order expressing that intent and delivers a certified copy of the order to the county clerk and the governing body of each taxing unit in the district before September 15 of any year in which nominations are made and appointments determined. If a county participates in the appointment of the district's board of directors as provided by this subsection, a portion of the district's budget is allocated to the county, in the same manner as other taxing units."

§ 6.26. Election to Consolidate Assessing and Collecting Functions

(a) The qualified voters residing in an appraisal district by petition may require than an election be held to determine whether or not to require the appraisal district, the county assessor-collector, or a specified taxing unit within the appraisal district to assess, collect, or assess and collect property taxes on property appraised by the district for all taxing units other than the county.

(b) The qualified voters of a taxing unit, other than the county, that assesses, collects, or assesses and collects its own property taxes by petition may require that an election be held to determine whether or not to require the appraisal district, the county assessor-collector, or another taxing unit that is assessing and collecting property taxes to assess, collect, or assess and collect the unit's property taxes.

(c) A petition is valid if:

(1) it states that it is intended to require an election in the appraisal district or taxing unit on the question of consolidation of assessing or collecting functions or both;

(2) it states the functions to be consolidated and identifies the entity or office that will be required to perform the functions; and

(3) it is signed by a number of qualified voters equal to at least 10 percent of the number of qualified voters, according to the most recent official list of qualified voters, residing in the appraisal district, if the petition is authorized by Subsection (a) of this section, or in the taxing unit, if the petition is authorized by Subsection (b) of this section, or by 10,000 qualified voters, whichever number is less.

(d) Not later than the 10th day after the day the petition is submitted, the board of directors of the appraisal district, if the petition is authorized by Subsection (a) of this section, or the governing body of the taxing unit, if the petition is authorized by Subsection (b) of this section, shall determine whether the petition is valid and pass a resolution stating its finding. If the governing body fails to act within the time allowed, the petition is treated as if it had been found valid.

(e) If the board of directors or the governing body finds that the petition is valid (or fails to act within the time allowed), it shall order that an election be held in the district or taxing unit on the next uniform election date prescribed by the Texas Election Code that is more than 60 days after the last day on which it could have acted to approve or disapprove the petition. At the election, the ballots shall be prepared to permit voting for or against the proposition: "Requiring the (name of entity or office) to (assess, collect, or assess and collect, as applicable) property taxes for (all taxing units in the appraisal district for _____ county or name of taxing unit or units, as applicable)."

(f) If a majority of the qualified voters voting on the question in the election favor the proposition, the entity or office named by the ballot shall perform the functions named by the ballot beginning with the next time property taxes are assessed or collected, as applicable, that is more than 90 days after the date of the election. If the governing bodies (and appraisal district board of directors when the district is involved) agree, a function may be consolidated when performance of the function begins in less than 90 days after the date of the election.

(g) A taxing unit shall pay the actual cost of performance of the functions to the office or entity that performs functions for it pursuant to an election as provided by this section.

(h) If a taxing unit is required by election pursuant to Subsection (b) of this section to assess, collect, or assess and collect property taxes for another taxing unit, it also shall perform the functions for all taxing units for which the other unit previously performed those functions pursuant to law or intergovernmental contract.

(i) If functions are consolidated by an election, a taxing unit may not terminate the consolidation within two years after the date of the consolidation.

(j) An appraisal district may not be required by an election to assess, collect, or assess and collect taxes on property outside the district's boundaries. A taxing unit may not be required by an election to assess, collect, or assess and collect taxes on property outside the boundaries of the appraisal district that appraises property for the unit.

[Acts 1979, 66th Leg., p. 2227, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 6.27. Fees of County Assessor-Collector

(a) For assessing and collecting state taxes, the county assessor-collector is entitled to a fee equal to two percent of the amount of state taxes collected in the county.

(b) The county assessor-collector is entitled to a reasonable fee, which may not exceed the actual costs incurred, for assessing and collecting taxes for a taxing unit pursuant to Subdivisions (1) through (3) of Subsection (a) of Section 6.23 of this code.

[Acts 1979, 66th Leg., p. 2227, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 6.28. Bonds for State and County Taxes

(a) To qualify for office, a person elected or appointed as county assessor-collector must, within 20 days after receiving notice of his election or appointment, give bonds to the state and to the county, conditioned on the faithful performance of his duties as assessor-collector.

(b) The bond for state taxes must be payable to the governor and his successors in office in an amount equal to five percent of the net state collections from motor vehicle sales and use taxes and motor vehicle registration fees in the county during the year ending August 31 preceding the date bond is given, except that the amount of bond may not be less than $2,500 or more than $100,000. To be effective, the bond must be approved by the commissioners court and the State Property Tax Board.

(c) The bond for county taxes must be payable to the commissioners court in an amount equal to 10 percent of the total amount of county taxes imposed in the preceding tax year, except that the amount of the bond may not be more than $100,000. To be effective, the bond must be approved by the commissioners court.

(d) The State Property Tax Board or the commissioners court may require a new bond for state taxes at any time. The commissioners court may require a new bond for county taxes at any time. However, the total amount of state bonds or county bonds required of an assessor-collector may not exceed $100,000 at one time. The commissioners court shall suspend the assessor-collector from office and begin removal proceedings if he fails to give new bond within a reasonable time after demand.

(e) The assessor-collector's official oath and bonds for state and county taxes shall be recorded in the office of the county clerk, and the county judge shall submit the bond for state taxes to the State Property Tax Board.

(f) A county shall pay a reasonable premium for the assessor-collector's bonds for state and county taxes out of the county general revenue fund on presentation to the commissioners court of a bill for the premium authenticated as required by law for other claims against the county. A court of compe-

tent jurisdiction may determine the reasonableness of any amount claimed as premium.
[Acts 1979, 66th Leg., p. 2227, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 6.29. Bonds for Other Taxes

(a) A taxing unit, other than a county, that has its own collector shall require him to give bond conditioned on the faithful performance of his duties. To be effective, the bond must be made payable to and must be approved by the governing body of the unit in an amount determined by the governing body. The governing body may require a new bond at any time, and failure to give new bond within a reasonable time after demand is a ground for removal from office. The governing body may prescribe additional requirements for the bond.

(b) A taxing unit whose taxes are collected by the collector for another taxing unit may require the collector to give bond conditioned on the faithful performance of his duties. To be effective, the bond must be made payable to and must be approved by the governing body of the unit requiring bond in an amount determined by the governing body. The governing body may prescribe additional requirements for the bond.

(c) A taxing unit shall pay the premium for a bond required pursuant to this section from its general fund or as provided by intergovernmental contract.
[Acts 1979, 66th Leg., p. 2227, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 6.30. Attorneys Representing Taxing Units

(a) In a suit to collect delinquent taxes, the county attorney or, if there is no county attorney, the district attorney shall represent the state and county. If a county collects taxes for another taxing unit, the county or district attorney may represent the unit in a suit to collect delinquent taxes if requested by the governing body of that unit.

(b) The governing body of a taxing unit other than a county may determine who represents the unit in a suit to collect delinquent taxes. If a taxing unit collects taxes for another taxing unit, the attorney representing the unit in a suit to collect delinquent taxes may represent the other unit with consent of its governing body.

(c) A taxing unit may contract with any competent attorney who is recommended by the collector for the unit to enforce the collection of delinquent taxes. The attorney's compensation is set in the contract, but the total amount of compensation provided may not exceed 20 percent of the amount of delinquent tax, penalty, and interest collected. However, the commissioners court may not contract with an attorney unless the county or district attorney fails or declines to file suit to collect taxes within 30 days after receiving written instructions from the commissioners court to do so.

(d) To be effective, a contract with an attorney for the collection of state and county taxes must be approved by the State Property Tax Board and the attorney general.

(e) A contract with an attorney that does not conform to the requirements of this section is void.
[Acts 1979, 66th Leg., p. 2227, ch. 841, § 1, eff. Jan. 1, 1982.]

[Sections 6.31 to 6.40 reserved for expansion]

SUBCHAPTER C. APPRAISAL REVIEW BOARD

§ 6.41. Appraisal Review Board

(a) The appraisal review board is established for each appraisal district.

(b) The board consists of three members. However, in a district with a population of at least 25,000, the district board of directors by resolution of a majority of its members may increase the size of the appraisal review board to not more than nine members.

(c) To be eligible to serve on the board, an individual must be a resident of the district and must have resided in the district for at least two years. A member of the appraisal district board of directors or an officer or employee of the State Property Tax Board, the appraisal office, or a taxing unit is ineligible to serve on the board.

(d) Members of the board are appointed by resolution of a majority of the appraisal district board of directors. A vacancy on the board is filled in the same manner for the unexpired portion of the term.

(e) Members of the board hold office for terms of two years beginning January 1. The appraisal district board of directors by resolution shall provide for staggered terms, so that the terms of as close to one-half of the members as possible expire each year. In making the initial appointments, the board of directors shall designate those members who serve terms of one year.
[Acts 1979, 66th Leg., p. 2231, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 6.42. Organization, Meetings, and Compensation

(a) A majority of the appraisal review board constitutes a quorum. The board shall elect a chairman and a secretary from its members.

(b) The board may meet at any time at the call of the chairman or as provided by rule of the board. The board shall meet to examine the appraisal records within 10 days after the date the chief appraiser submits the records to the board.

(c) Members of the board are entitled to per diem set by the appraisal district budget for each day the board meets and to reimbursement for actual and necessary expenses incurred in the performance of board functions as provided by the district budget.
[Acts 1979, 66th Leg., p. 2231, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 6.43. Personnel

The appraisal review board may employ legal counsel as provided by the district budget or use the services of the county attorney and may use the staff of the appraisal office for clerical assistance. [Acts 1979, 66th Leg., p. 2231, ch. 841, § 1, eff. Jan. 1, 1982.]

SUBTITLE C. TAXABLE PROPERTY AND EXEMPTIONS

CHAPTER 11. TAXABLE PROPERTY AND EXEMPTIONS

SUBCHAPTER A. TAXABLE PROPERTY

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SUBCHAPTER A. TAXABLE PROPERTY

This Subchapter is effective January 1, 1980, under the provisions of § 3(f) of Acts 1979, 66th Leg., p. 2315, ch. 841.

§ 11.01. Real and Tangible Personal Property

(a) All real and tangible personal property that this state has jurisdiction to tax is taxable unless exempt by law.

(b) This state has jurisdiction to tax real property if located in this state.

(c) This state has jurisdiction to tax tangible personal property if the property is:

(1) located in this state for longer than a temporary period;

(2) temporarily located outside this state and the owner resides in this state; or

(3) used continually, whether regularly or irregularly, in this state.

(d) Goods, wares, ores (other than oil, gas, and other petroleum products), and merchandise are presumed to be in interstate commerce and/or are not to be located in this state for longer than a temporary period if the property is:

(1) transported from outside this state into this state to be forwarded outside this state;

(2) detained in this state for assembling, storing, manufacturing, processing, or fabricating purposes; and

(3) not located in this state for longer than 175 days.

[Acts 1979, 66th Leg., p. 2233, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 11.02. Intangible Personal Property

(a) Except as provided by Subsection (b) of this section, intangible personal property is not taxable.

(b) Stock in a banking corporation, intangible property of an unincorporated bank, intangible property of a transportation business listed in Subchapter A, Chapter 24 of this code,[1] and intangible property governed by Article 4.01, Insurance Code, or by Section 11.09, Texas Savings and Loan Act,[2] are taxable as provided by law, unless exempt by law, if this state has jurisdiction to tax those intangibles.

(c) This state has jurisdiction to tax intangible personal property, other than stock in a banking corporation, if the property is:

(1) owned by a resident of this state; or

(2) located in this state for business purposes.

(d) This state has jurisdiction to tax stock in a banking corporation that is incorporated in this state or, if the bank is a national bank, is located in this state.

[Acts 1979, 66th Leg., p. 2223, ch. 841, § 1, eff. Jan. 1, 1980.]

[1] Section 24.01 et seq.
[2] Civil Statutes, art. 852a, § 11.09.

[Sections 11.03 to 11.10 reserved for expansion]

SUBCHAPTER B. EXEMPTIONS

This Subchapter is effective January 1, 1980, under the provisions of § 3(f) of Acts 1979, 66th Leg., p. 2315, ch. 841.

§ 11.11. Public Property

(a) Except as provided by Subsections (b) and (c) of this section, property owned by this state or a political subdivision of this state is exempt from taxation if the property is used for public purposes.

(b) Land owned by the Permanent University Fund is taxable for county purposes. Any notice required by Section 25.19 of this code shall be sent to the State Property Tax Board, and the board shall appear in behalf of the state in any protest or appeal

relating to taxation of Permanent University Fund land.

(c) Agricultural or grazing land owned by a county for the benefit of public schools under Article VII, Section 6, of the Texas Constitution is taxable for all but state purposes. The county shall pay the taxes on the land from the revenue derived from the land. If revenue from the land is insufficient to pay the taxes, the county shall pay the balance from the county general fund.

[Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 11.12. Federal Exemptions

Property exempt from ad valorem taxation by federal law is exempt from taxation.

[Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 11.13. Residence Homestead

(a) A family or single adult is entitled to an exemption from taxation for state purposes and for the county purposes authorized in Article VIII, Section 1–a, of the Texas Constitution of $3,000 of the assessed value of his residence homestead.

(b) An adult is entitled to exemption from taxation by a school district of $5,000 of the appraised value of his residence homestead.

(c) In addition to the exemption provided by Subsection (b) of this section, an adult who is disabled or is 65 or older is entitled to an exemption from taxation by a school district of $10,000 of the appraised value of his residence homestead.

(d) In addition to the exemptions provided by Subsections (b) and (c) of this section, an individual who is disabled or is 65 or older is entitled to an exemption from taxation by a taxing unit of a portion (the amount of which is fixed as provided by Subsection (e) of this section) of the appraised value of his residence homestead if the exemption is adopted either:

(1) by the governing body of the taxing unit; or

(2) by a favorable vote of a majority of the qualified voters of the taxing unit at an election called by the governing body of the taxing unit, and the governing body shall call the election on the petition of at least 20 percent of the number of qualified voters who voted in the preceding election of the taxing unit.

(e) The amount of an exemption adopted as provided by Subsection (d) of this section is $3,000 of the appraised value of the residence homestead unless a larger amount is specified by:

(1) the governing body authorizing the exemption if the exemption is authorized as provided by Subdivision (1) of Subsection (d) of this section; or

(2) the petition for the election if the exemption is authorized as provided by Subdivision (2) of Subsection (d) of this section.

(f) Once authorized, an exemption adopted as provided by Subsection (d) of this section may be repealed or decreased or increased in amount by the governing body of the taxing unit or by the procedure authorized by Subdivision (2) of Subsection (d) of this section. In the case of a decrease, the amount of the exemption may not be reduced to less than $3,000 of the market value.

(g) If the residence homestead exemption provided by Subsection (d) of this section is adopted by a county that levies a tax for the county purposes authorized by Article VIII, Section 1–a, of the Texas Constitution, the residence homestead exemptions provided by Subsections (a) and (d) of this section may not be aggregated for the county tax purposes. An individual who is eligible for both exemptions is entitled to take only the exemption authorized as provided by Subsection (d) of this section for purposes of that county tax.

(h) Joint or community owners may not each receive the same exemption provided by or pursuant to this section for the same residence homestead in the same year. An eligible disabled person who is 65 or older may not receive both a disabled and an elderly residence homestead exemption but may choose either.

(i) The assessor and collector for a taxing unit may disregard the exemptions authorized by Subsection (b), (c), or (d) of this section and assess and collect a tax pledged for payment of debt without deducting the amount of the exemption if:

(1) prior to adoption of the exemption, the unit pledged the taxes for the payment of a debt; and

(2) granting the exemption would impair the obligation of the contract creating the debt.

(j) For purposes of this section, "residence homestead" means a structure (including a mobile home) or a separately secured and occupied portion of a structure (together with the land and improvements used in the residential occupancy of the structure, if the structure and the land and improvements have identical ownership) that:

(1) is owned by one or more individuals;

(2) is designed or adapted for human residence;

(3) is used as a residence; and

(4) is occupied as his principal residence by an owner who qualifies for the exemption.

(k) A qualified residential structure does not lose its character as a residence homestead if a portion of the structure is rented to another or is used primarily for other purposes that are incompatible with the owner's residential use of the structure. However,

the amount of any residence homestead exemption does not apply to the value of that portion of the structure that is used primarily for purposes that are incompatible with the owner's residential use.

(*l*) A qualified residential structure does not lose its character as a residence homestead when the owner who qualifies for the exemption temporarily stops occupying it as a principal residence if that owner does not establish a different principal residence and intends to return and occupy the structure as his principal residence.

(m) In this section:

(1) "Disabled" means under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance.

(2) "School district" means a political subdivision organized to provide general elementary and secondary public education. "School district" does not include a junior college district or a political subdivision organized to provide special education services.

[Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 11.14. Household Goods and Personal Effects

(a) An individual is entitled to an exemption from taxation of his household goods and personal effects that are not held or used for production of income.

(b) In this section:

(1) "Household goods" means furnishings, appliances, utensils, and other tangible personal property used primarily in or around a residence by the residents and their guests.

(2) "Personal effects" means tangible personal property that normally is worn or carried by an individual or that is used by an individual in personal, recreational, or other activities that do not involve production of income. "Personal effects" does not include a motor vehicle, boat, or other means of transportation, a trailer that must be registered for operation on a highway, or a mobile home or similar vehicle designed for occupancy as a dwelling.

[Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 11.15. Family Supplies

A family is entitled to an exemption from taxation of its family supplies for home or farm use.

[Acts 1979, 66th Leg., p. 2236, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 11.16. Farm Products

A producer is entitled to an exemption from taxation of the farm products that he produces and owns.

[Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 11.17. Cemeteries

A person is entitled to an exemption from taxation of the property he owns and uses exclusively for human burial and does not hold for profit.

[Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 11.18. Charitable Organizations

(a) An organization that qualifies as a charitable organization as provided by Subsection (c) of this section is entitled to an exemption from taxation of the buildings and tangible personal property that:

(1) are owned by the charitable organization; and

(2) except as permitted by Subsection (b) of this section, are used exclusively by qualified charitable organizations.

(b) Use of exempt property by persons who are not charitable organizations qualified as provided by Subsection (c) of this section does not result in the loss of an exemption authorized by this section if the use is incidental to use by qualified charitable organizations and limited to activities that benefit the beneficiaries of the charitable organizations that own or use the property.

(c) To qualify as a charitable organization for the purposes of this section, an organization (whether operated by an individual, as a corporation, or as an association) must:

(1) be organized exclusively to perform and, except as permitted by Subsection (d) of this section, engage exclusively in performing one or more of the following charitable functions:

(A) providing medical care without regard to the beneficiaries' ability to pay;

(B) providing support or relief to orphans, the impoverished, or victims of natural disaster without regard to the beneficiaries' ability to pay;

(C) providing support to elderly persons or the handicapped without regard to the beneficiaries' ability to pay;

(D) preserving a historical landmark or site;

(E) promoting or operating a museum, zoo, library, theater of the dramatic arts, or symphony orchestra or choir;

(F) promoting or providing humane treatment of animals;

(G) acquiring, storing, transporting, selling, or distributing water for public use;

(H) answering fire alarms and extinguishing fires with no compensation or only nominal compensation to the members of the organization;

(I) promoting the athletic development of boys or girls under the age of 18 years; or

(J) preserving or conserving wildlife;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services ren-

dered, or realization of any other form of private gain and, if the organization performs one or more of the charitable functions specified by Paragraph (C), (D), (E), (F), (G), or (J) of Subdivision (1) of this subsection, be organized as a nonprofit corporation as defined by the Texas Non-Profit Corporation Act; [1] and

(3) by charter, bylaw, or other regulation adopted by the organization to govern its affairs:

(A) pledge its assets for use in performing the organization's charitable functions; and

(B) direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to an educational, religious, or charitable organization in this state that is qualified for an exemption authorized by this subchapter.

(d) Performance of noncharitable functions by a charitable organization that owns or uses exempt property does not result in loss of an exemption authorized by this section if those other functions are incidental to the organization's charitable functions.

(e) In this section, "building" includes the land that is reasonably necessary for use of, access to, and ornamentation of the building.

(f) An exemption authorized by Paragraph (J) of Subdivision (1) of Subsection (c) of this section is limited to land and improvements and may not exceed 1,000 acres in any one county.

[Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980.]

[1] Civil Statutes, art. 1396–1.01 et seq.

§ 11.19. Youth Spiritual, Mental, and Physical Development Associations

(a) An association that qualifies as a youth development association as provided by Subsection (d) of this section is entitled to an exemption from taxation of the tangible property that:

(1) is owned by the association;

(2) except as permitted by Subsection (b) of this section, is used exclusively by qualified youth development associations; and

(3) is reasonably necessary for the operation of the association.

(b) Use of exempt tangible property by persons who are not youth development associations qualified as provided by Subsection (d) of this section does not result in the loss of an exemption under this section if the use is incidental to use by qualified associations and benefits the individuals the associations serve.

(c) An association that qualifies as a youth development association as provided by Subsection (d) of this section is entitled to an exemption from taxation of those endowment funds the association owns that are used exclusively for the support of the association and are invested exclusively in bonds, mortgages, or property purchased at a foreclosure sale for the purpose of satisfying or protecting the bonds or mortgages. However, foreclosure-sale property that is held by an endowment fund for longer than the two-year period immediately following purchase at the foreclosure sale is not exempt from taxation.

(d) To qualify as a youth development association for the purposes of this section, an association must:

(1) engage primarily in promoting the threefold spiritual, mental, and physical development of boys, girls, young men, or young women;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain;

(3) operate in conjunction with a state or national organization that is organized and operated for the same purpose as the association; and

(4) by charter, bylaw, or other regulation adopted by the association to govern its affairs:

(A) pledge its assets for use in performing the association's youth development functions; and

(B) direct that on discontinuance of the association by dissolution or otherwise the assets are to be transferred to a charitable, educational, or religious organization or youth development association in this state that is qualified for an exemption authorized by this subchapter.

[Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 11.20. Religious Organizations

(a) An organization that qualifies as a religious organization as provided by Subsection (c) of this section is entitled to an exemption from taxation of:

(1) the real property that is owned by the religious organization, is used primarily as a place of regular religious worship, and is reasonably necessary for engaging in religious worship;

(2) the tangible personal property that is owned by the religious organization and is reasonably necessary for engaging in worship at the place of worship specified in Subdivision (1) of this subsection;

(3) the real property that is owned by the religious organization and is reasonably necessary for use as a residence (but not more than one acre of land for each residence) if the property:

(A) is used exclusively as a residence for those individuals whose principal occupation is

to serve in the clergy of the religious organization; and

(B) produces no revenue for the religious organization; and

(4) the tangible personal property that is owned by the religious organization and is reasonably necessary for use of the residence specified by Subdivision (3) of this subsection.

(b) An organization that qualifies as a religious organization as provided by Subsection (c) of this section is entitled to an exemption from taxation of those endowment funds the organization owns that are used exclusively for the support of the religious organization and are invested exclusively in bonds, mortgages, or property purchased at a foreclosure sale for the purpose of satisfying or protecting the bonds or mortgages. However, foreclosure-sale property that is held by an endowment fund for longer than the two-year period immediately following purchase at the foreclosure sale is not exempt from taxation.

(c) To qualify as a religious organization for the purposes of this section, an organization (whether operated by an individual, as a corporation, or as an association) must:

(1) be organized and operated primarily for the purpose of engaging in religious worship or promoting the spiritual development or well-being of individuals;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain; and

(3) by charter, bylaw, or other regulation adopted by the organization to govern its affairs:

(A) pledge its assets for use in performing the organization's religious functions; and

(B) direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to a charitable, educational, or religious organization in this state that is qualified for an exemption authorized by this subchapter.

(d) Use of property that qualifies for the exemption prescribed by Subdivision (1) or (2) of Subsection (a) of this section for occasional secular purposes other than religious worship does not result in loss of the exemption if the primary use of the property is for religious worship and all income from the other use is devoted exclusively to the maintenance and development of the property as a place of religious worship.

(e) For the purposes of this section, "religious worship" means individual or group ceremony or meditation, education, and fellowship, the purpose of which is to manifest or develop reverence, homage, and commitment in behalf of a religious faith. [Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 11.21. Schools

(a) A person is entitled to an exemption from taxation of the buildings and tangible personal property that he owns and that are used for a school that is qualified as provided by Subsection (d) of this section if:

(1) the school is operated exclusively by the person owning the property;

(2) except as permitted by Subsection (b) of this section, the buildings and tangible personal property are used exclusively for educational functions; and

(3) the buildings and tangible personal property are reasonably necessary for the operation of the school.

(b) Use of exempt tangible property for functions other than educational functions does not result in loss of an exemption authorized by this section if those other functions are incidental to use of the property for educational functions and benefit the students or faculty of the school.

(c) A person who operates a school that is qualified as provided by Subsection (d) of this section is entitled to an exemption from taxation of those endowment funds he owns that are used exclusively for the support of the school and are invested exclusively in bonds, mortgages, or property purchased at a foreclosure sale for the purpose of satisfying or protecting the bonds or mortgages. However, foreclosure-sale property that is held by an endowment fund for longer than the two-year period immediately following purchase at the foreclosure sale is not exempt from taxation.

(d) To qualify as a school for the purposes of this section, an organization (whether operated by an individual, as a corporation, or as an association) must:

(1) normally maintain a regular faculty and curriculum and normally have a regularly organized body of students in attendance at the place where its educational functions are carried on;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain and, if the organization is a corporation, be organized as a nonprofit corporation as

defined by the Texas Non-Profit Corporation Act; [1] and

(3) by charter, bylaw, or other regulation adopted by the organization to govern its affairs:

(A) pledge its assets for use in performing the organization's educational functions; and

(B) direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to a charitable or religious organization or school in this state that is qualified for an exemption authorized by this subchapter.

(e) In this section, "building" includes the land that is reasonably necessary for use of, access to, and ornamentation of the building.

[Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1. 1980.]

[1] Civil Statutes, art. 1396-1.01 et seq.

§ 11.22. Disabled Veterans

(a) A disabled veteran is entitled to an exemption from taxation of a portion of the assessed value of a property he owns and designates as provided by Subsection (f) of this section in accordance with the following schedule:

an exemption of up to:	for a disability rating of at least:	but not greater than:
$1,500 of the assessed value	10%	30%
2,000	31	50
2,500	51	70
3,000	71 and over	

(b) A disabled veteran is entitled to an exemption from taxation of $3,000 of the assessed value of a property he owns and designates as provided by Subsection (f) of this section if the veteran:

(1) is 65 years of age or older and has a disability rating of at least 10 percent;

(2) is totally blind in one or both eyes; or

(3) has lost the use of one or more limbs.

(c) If a disabled veteran who is entitled to an exemption by Subsection (a) or (b) of this section dies, the veteran's surviving spouse is entitled to an exemption from taxation of a portion of the assessed value of a property the spouse owns and designates as provided by Subsection (f) of this section. The amount of the exemption is the amount of the veteran's exemption at time of death. The spouse is entitled to an exemption by this subsection only for as long as the spouse remains unmarried. If the spouse does not survive the veteran, each of the veteran's surviving children who is younger than 18 years of age and unmarried is entitled to an exemption from taxation of a portion of the assessed value of a property the child owns and designates as provided by Subsection (f) of this section. The amount of exemption for each eligible child is computed by dividing the amount of the veteran's exemption at time of death by the number of eligible children.

(d) If an individual dies while on active duty as a member of the armed services of the United States:

(1) the individual's surviving spouse is entitled to an exemption from taxation of $2,500 of the assessed value of the property the spouse owns and designates as provided by Subsection (f) of this section; and

(2) each of the individual's surviving children who is younger than 18 years of age and unmarried is entitled to an exemption from taxation of a portion of the assessed value of a property the child owns and designates as provided by Subsection (f) of this section, the amount of exemption for each eligible child to be computed by dividing $2,500 by the number of eligible children.

(e) An individual who qualifies for more than one exemption authorized by this section is entitled to aggregate the amounts of the exemptions, except that:

(1) a disabled veteran who qualifies for more than one exemption authorized by Subsections (a) and (b) of this section is entitled to only one exemption but may choose the greatest exemption for which he qualifies; and

(2) an individual who receives an exemption as a surviving spouse of a disabled veteran as provided by Subsection (c) of this section may not receive an exemption as a surviving child as provided by Subsection (c) or (d) of this section.

(f) An individual may receive an exemption to which he is entitled by this section against only one property, which must be the same for every taxing unit in which the individual claims the exemption. If an individual is entitled by Subsection (e) of this section to aggregate the amounts of more than one exemption, he must take the entire aggregated amount against the same property. An individual must designate on his exemption application form the property against which he takes an exemption under this section.

(g) An individual is not entitled to an exemption by this section unless he is a resident of this state.

(h) In this section:

(1) "Child" includes an adopted child or a child born out of wedlock whose paternity has been admitted or has been established in a legal action.

(2) "Disability rating" means a veteran's percentage of disability as certified by the Veterans' Administration or its successor or the branch of the armed services in which the veteran served.

(3) "Disabled veteran" means a veteran of the armed services of the United States who is classified as disabled by the Veterans' Administration or its successor or the branch of the armed services in which the veteran served and whose disability is service-connected.

(4) "Surviving spouse" means the individual who was married to a disabled veteran or member of the armed services at the time of the veteran's or member's death.

[Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 11.23. Miscellaneous Exemptions

(a) Veterans' Organizations. The American Legion, American Veterans of World War II, Veterans of Foreign Wars of the United States, Disabled American Veterans, Jewish War Veterans, Catholic War Veterans, or the American G.I. Forum is entitled to an exemption from taxation of the buildings (including the land that is reasonably necessary for use of, access to, and ornamentation of the buildings) that are owned and primarily used by that organization if the property is not used to produce revenue or held for gain.

(b) Federation of Women's Clubs. The Texas Federation of Women's Clubs is entitled to an exemption from taxation of the tangible property it owns if the property is not held for gain.

(c) Nature Conservancy of Texas. The Nature Conservancy of Texas, Incorporated, is entitled to an exemption from taxation of the tangible property it owns if the property is not held for gain, as long as the organization is a nonprofit corporation as defined by the Texas Non-Profit Corporation Act.[1]

(d) Congress of Parents and Teachers. The Texas Congress of Parents and Teachers is entitled to an exemption from taxation for state and county purposes of the buildings (including the land that is reasonably necessary for use of, access to, and ornamentation of the buildings) it owns and uses as its state headquarters.

(e) Private Enterprise Demonstration Associations. An association that engages exclusively in conducting nonprofit educational programs designed to demonstrate the American private enterprise system to children and young people and that operates under a state or national organization that is organized and operated for the same purpose is entitled to an exemption from taxation of the tangible property that it owns and uses exclusively if it is reasonably necessary for the association's operation.

(f) Buffalo and Cattalo. A person is entitled to an exemption from taxation of the buffalo and cattalo he owns that are not held for gain and that are used in experimental breeding with cattle for the purpose of producing an improved strain of meat animal or kept in parks to preserve the species.

(g) Theater Schools. A corporation that is organized to promote the teaching and study of the dramatic arts is entitled to an exemption from taxation of the property it owns and uses in the operation of a school for the dramatic arts if:

(1) the corporation is organized as a nonprofit corporation as defined by the Texas Non-Profit Corporation Act;

(2) the corporation is not self-sustaining in any fiscal year from income other than gifts, grants, or donations;

(3) the corporation is exempt from federal income taxes;

(4) the school maintains a theater-school program with regular classes for at least four grades, formal textbooks and curriculum, an enrollment of 150 or more students during each of at least two semesters every calendar year, and a faculty substantially all of whom hold degrees in theater arts from an accredited school of higher education;

(5) the school offers apprenticeship or other practical training in theater management and operation for college students or offers similar training for playwrights, actors, and production personnel; and

(6) more than one-half of each season's theatrical productions for which admission is charged have significant literary merit of the character that contributes to the educational programs of secondary schools and schools of higher education.

(h) Biomedical Research Corporations. A nonprofit corporation as defined in the Texas Non-Profit Corporation Act is entitled to an exemption from taxation of the property it owns and uses exclusively for biomedical research and education for the public benefit.

(i) Community Service Clubs. An association that qualifies as a community service club is entitled to an exemption from taxation of the tangible property the club owns that qualifies under Article VIII, Section 2, of the constitution and that is not used for profit or held for gain. To qualify as a community service club for the purposes of this subsection, an association must:

(1) be organized to promote and must engage primarily in promoting:

(A) the religious, educational, and physical development of boys, girls, young men, or young women;

(B) the development of the concepts of patriotism and love of country; and

(C) the development of interest in community, national, and international affairs;

(2) be affiliated with a state or national organization of similar purpose;

(3) be open to membership without regard to race, religion, or national origin; and

(4) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain.

[Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980.]

[1] Civil Statutes, art. 1396–1.01 et seq.

§ 11.24. Historic Sites

The governing body of a taxing unit by official action of the body adopted in the manner required by law for official actions may exempt from taxation part or all of the assessed value of a structure and the land necessary for access to and use of the structure, if the structure is:

(1) designated as a Recorded Texas Historical Landmark by the Texas Historical Commission and by the governing body of the taxing unit; or

(2) designated as a historically significant site in need of tax relief to encourage its preservation pursuant to an ordinance or other law adopted by the governing body of the unit.

[Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 11.25. Automobiles

(a) A family or an individual who is not a member of a family is entitled to exemption from state ad valorem taxation of all automobiles that the family or individual owns and does not hold or use for production of income.

(b) Except as provided by Subsection (c) of this section, a family or an individual who is not a member of a family is entitled to exemption from ad valorem taxation by a taxing unit of all automobiles that the family or individual owns and does not hold or use for production of income.

(c) The governing body of a taxing unit, by ordinance, resolution, or order, depending on the method prescribed by law for official action by that governing body, may provide for taxation of all automobiles. If the governing body of a taxing unit provides for taxation of all automobiles as provided by this subsection, the exemption prescribed by Subsection (b) of this section does not apply to that unit.

(d) A family owns an automobile for the purposes of this section if any member of the family owns the automobile.

(e) In this section, "automobile" means a passenger car or a light truck as those terms are defined by Section 2, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).

[Acts 1979, 66th Leg., p. 2244, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1979, 66th Leg., p. 697, ch. 302, art. 11, § 1, eff. Jan. 1, 1980.]

§ 11.26. Limitation of School Tax on Homesteads of Elderly

(a) Except as provided by Subsection (b) of this section, a school district may not increase the total annual amount of ad valorem tax it imposes on the residence homestead of an individual 65 years or older above the amount of the tax it imposed in the first year the individual qualified that residence homestead for the exemption provided by Subsection (c) of Section 11.13 of this code. The tax officials shall continue to appraise the property and to calculate taxes as on other property, but if the tax so calculated exceeds the limitation imposed by this section, the tax imposed is the tax imposed in the first year the individual qualified the residence homestead for the exemption.

(b) If an individual makes improvements to his residence homestead, other than improvements required to comply with governmental requirements or repairs, the school district may increase the tax on the homestead in the first year the value of the homestead is increased on the appraisal roll because of the enhancement of value by the improvements. The amount of the tax increase is determined by applying the current tax rate to the difference in the assessed value of the homestead with the improvements and the assessed value it would have had without the improvements. The limitations imposed by Subsection (a) of this section then apply to the increased amount of tax until more improvements, if any, are made.

(c) The limitation on tax increases required by this section expires if on January 1:

(1) none of the owners of the structure who qualify for the exemption and who owned the structure when the limitation first took effect is using the structure as a residence homestead; or

(2) none of the owners of the structure qualifies for the exemption.

[Acts 1979, 66th Leg., p. 2244, ch. 841, § 1, eff. Jan. 1, 1980.]

[Sections 11.27 to 11.40 reserved for expansion]

SUBCHAPTER C. ADMINISTRATION OF EXEMPTIONS

§ 11.41. Partial Ownership of Exempt Property

(a) Except as provided by Subsection (b) of this section, if a person who qualifies for an exemption as provided by this chapter is not the sole owner of the property to which the exemption applies, the exemption is limited to the value of the property interest the person owns.

(b) If a person who qualifies for an exemption as provided by Section 11.13 or 11.22 of this code is not the sole owner of the property to which the exemption applies, the amount of the exemption is calcu-

lated on the basis of the value of the property interest the person owns.

(c) In the application of this section, community ownership by a person who qualifies for the exemption and his spouse is treated as if the person owns the community interest of his spouse.

[Acts 1979, 66th Leg., p. 2244, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 11.42. Exemption Qualification Date

(a) Except as provided by Subsection (b) of this section, eligibility for and amount of an exemption authorized by this chapter for any tax year are determined by a claimant's qualifications on January 1. A person who does not qualify for an exemption on January 1 of any year may not receive the exemption that year.

(b) An exemption authorized by Section 11.11 of this code is effective immediately on qualification for the exemption.

[Acts 1979, 66th Leg., p. 2244, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 11.43. Application for Exemption

(a) To receive an exemption, a person claiming the exemption, other than an exemption authorized by Section 11.11, 11.12, 11.14, 11.15, 11.16, or 11.25 of this code, must apply for the exemption. To apply for an exemption from county taxes, a person must file an exemption application form with the county assessor-collector for each county in which the property subject to the claimed exemption has situs. To apply for an exemption from state taxes or taxes by a taxing unit other than the county, a person must file an exemption application form with the chief appraiser for each appraisal district in which the property subject to the claimed exemption has situs.

(b) Except as provided by Subsection (c) of this section, a person required to apply for an exemption must apply each year he claims entitlement to the exemption.

(c) An exemption provided by Section 11.19, 11.20, or 11.21 of this code, once allowed, need not be claimed in subsequent years, and except as otherwise provided by Subsection (e) of this section, the exemption applies to the property until it changes ownership or the person's qualification for the exemption changes. However, the chief appraiser or the county assessor-collector, as applicable, may require a person allowed one of the exemptions in a prior year to file a new application to confirm his current qualification for the exemption by delivering a written notice that a new application is required, accompanied by an appropriate application form, to the person previously allowed the exemption.

(d) A person required to claim an exemption must file a completed exemption application form before April 1 and must furnish the information required by the form. For good cause shown the chief appraiser or the county assessor-collector, as applicable, may extend the deadline for filing an exemption application by written order for a single period not to exceed 15 days.

(e) If a person required to apply for an exemption in a given year fails to file timely a completed application form, he may not receive the exemption for that year.

(f) The State Property Tax Board, in prescribing the contents of the application form for each kind of exemption, shall ensure that the form requires an applicant to furnish the information necessary to determine the validity of the exemption claim. The board shall include on the forms a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement.

[Acts 1979, 66th Leg., p. 2244, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 11.44. Notice of Application Requirements

(a) Before February 1 of each year, the chief appraiser or the county assessor-collector, as applicable, shall deliver an appropriate exemption application form to each person who in the preceding year was allowed an exemption that must be applied for annually. He shall include a brief explanation of the requirements of Section 11.43 of this code.

(b) Each year the chief appraiser for each appraisal district and each county assessor-collector shall publicize, in a manner reasonably designed to notify all residents of the district or county, the requirements of Section 11.43 of this code and the availability of application forms.

(c) The State Property Tax Board shall prescribe by rule the content of the explanation required by Subsection (a) of this section.

[Acts 1979, 66th Leg., p. 2244, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 11.45. Action on Exemption Applications

(a) The chief appraiser or the county assessor-collector, as applicable, shall determine separately each applicant's right to an exemption. After considering the application and all relevant information, the chief appraiser or the county assessor-collector, as applicable, shall, as the law and facts warrant:

(1) approve the application and allow the exemption;

(2) modify the exemption applied for and allow the exemption as modified;

(3) disapprove the application and request additional information from the applicant in support of the claim; or

(4) deny the application.

(b) If the chief appraiser or the county assessor-collector requests additional information from an applicant, the applicant must furnish it within 30 days after the date of the request or before April 15, whichever is earlier, or the application is denied.

However, for good cause shown the chief appraiser or the county assessor-collector, as applicable, may extend the deadline for furnishing the information by written order for a single period not to exceed 15 days.

(c) The chief appraiser and the county assessor-collector each shall determine the validity of each application for exemption filed with him before he submits the appraisal records for review and determination of protests as provided by Chapter 41 of this code.

(d) If the chief appraiser or the county assessor-collector modifies or denies an exemption, he shall deliver a written notice of the modification or denial to the applicant within five days after the date he makes the determination. He shall include with the notice a brief explanation of the procedures for protesting his action.

[Acts 1979, 66th Leg., p. 2244, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 11.46. Compilation of Partial Exemptions

Each year the chief appraiser shall compile and make available to the public a list showing for each taxing unit in the district the number of each kind of partial exemption allowed in that tax year and the total assessed value of each taxing unit that is exempted by each kind of partial exemption. The county assessor-collector shall compile and make available to the public a similar list for county tax purposes.

[Acts 1979, 66th Leg., p. 2244, ch. 841, § 1, eff. Jan. 1, 1982.]

SUBTITLE D. APPRAISAL AND ASSESSMENT

CHAPTER 21. TAXABLE SITUS

Section

21.01. Real Property.
21.02. Tangible Personal Property Generally.
21.03. Interstate Allocation.
21.04. Railroad Rolling Stock.
21.05. Livestock Whose Range Overlaps Taxing Unit Boundaries.
21.06. Intangible Property Generally.
21.07. Intangibles of Certain Transportation Businesses.
21.08. Intangibles of Certain Financial Institutions.
21.09. Bank Stock.

§ 21.01. Real Property

Real property is taxable by a taxing unit if located in the unit on January 1.

[Acts 1979, 66th Leg., p. 2247, ch. 841, § 1, eff. Jan. 1, 1979.]

§ 21.02. Tangible Personal Property Generally

Except as provided by Sections 21.04 and 21.05 of this code, tangible personal property is taxable by a taxing unit if:

(1) it is located in the unit on January 1 for more than a temporary period;

(2) it normally is located in the unit, even though it is outside the unit on January 1, if it is outside the unit only temporarily;

(3) it normally is returned to the unit between uses elsewhere and is not located in any one place for more than a temporary period; or

(4) the owner resides (for property not used for business purposes) or maintains his principal place of business in this state (for property used for business purposes) in the unit and the property is taxable in this state but does not have a taxable situs pursuant to Subdivisions (1) through (3) of this section.

[Acts 1979, 66th Leg., p. 2247, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 21.03. Interstate Allocation

(a) If personal property that is taxable by a taxing unit is used continually outside this state, whether regularly or irregularly, the appraisal office shall allocate to this state the portion of the total market value of the property that fairly reflects its use in this state.

(b) The State Property Tax Board shall adopt rules:

(1) identifying the kinds of property subject to this section; and

(2) establishing formulas for calculating the proportion of total market value to be allocated to this state.

[Acts 1979, 66th Leg., p. 2247, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 21.04. Railroad Rolling Stock

(a) A portion of the total market value of railroad rolling stock that is appraised as provided by Subchapter B of Chapter 24 of this code [1] is taxable by the state and each county in which the railroad operates.

(b) The portion of the total market value that is taxable by a county is determined by the provisions of Subchapter B of Chapter 24 of this code.

[Acts 1979, 66th Leg., p. 2247, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Section 24.31 et seq.

§ 21.05. Livestock Whose Range Overlaps Taxing Unit Boundaries

(a) A portion of the total market value of livestock that normally ranges on land that on January 1 is partially outside and partially inside a taxing unit's boundaries is taxable by the taxing unit.

(b) The portion of the total market value that is taxable by a taxing unit as provided by Subsection (a) of this section is determined by multiplying the total market value of the livestock by a fraction, the denominator of which is the total number of acres on which the livestock normally ranges and the numerator of which is the number of acres on which the livestock normally ranges inside the unit's boundaries.

[Acts 1979, 66th Leg., p. 2247, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 21.06. Intangible Property Generally

(a) Except as provided by Sections 21.07 through 21.09 of this code, intangible property is taxable by a taxing unit if the owner of the property resides in the unit on January 1, unless the property normally is used in this state for business purposes outside the unit. In that event, the intangible property is taxable by each taxing unit in which the property normally is used for business purposes.

(b) Depositing intangible property with an agency of the state pursuant to a law requiring or authorizing the deposit is not using it for a business purpose at the depository.

[Acts 1979, 66th Leg., p. 2247, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 21.07. Intangibles of Certain Transportation Businesses

(a) A portion of the total intangible value of a transportation business whose intangibles are appraised as provided by Subchapter A of Chapter 24 of this code [1] is taxable by the state and by each county in which the business operates.

(b) The portion of the total value that is taxable as provided by Subsection (a) of this section is determined by the provisions of Subchapter A of Chapter 24 of this code.

[Acts 1979, 66th Leg., p. 2247, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Section 24.01 et seq.

§ 21.08. Intangibles of Certain Financial Institutions

(a) The taxable situs of intangible property owned by an insurance company incorporated under the laws of this state is determined as provided by Article 4.01, Insurance Code.

(b) The taxable situs of intangible property owned by a savings and loan association is determined as provided by Section 11.09, Texas Savings and Loan Act.[1]

[Acts 1979, 66th Leg., p. 2247, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Civil Statutes, art. 852a, § 11.09.

§ 21.09. Bank Stock

Stock in a banking corporation is taxable by a taxing unit if the bank is located in the unit on January 1.

[Acts 1979, 66th Leg., p. 2247, ch. 841, § 1, eff. Jan. 1, 1982.]

CHAPTER 22. RENDITIONS AND OTHER REPORTS

SUBCHAPTER A. INFORMATION FROM TAXPAYER

Section
22.01. Rendition Generally.
22.02. Rendition of Property Losing Exemption During Tax Year.
22.03. Report of Decreased Value.
22.04. Report by Bailee, Lessee, or Other Possessor.
22.05. Rendition by Railroad.
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SUBCHAPTER B. REQUIREMENTS AND PROCEDURES
22.21. Publicizing Requirements.
22.22. Method for Requiring Rendition or Report.
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22.24. Rendition and Report Forms.
22.25. Place and Manner of Filing.
22.26. Signature.
22.27. Renditions and Reports Confidential.

SUBCHAPTER A. INFORMATION FROM TAXPAYER

§ 22.01. Rendition Generally

(a) Except as provided by Chapter 24 of this code, a person shall render for taxation all tangible personal property used for the production of income that he owns or that he manages and controls as a fiduciary on January 1.

(b) When required by the chief appraiser or the county assessor-collector, a person shall render for taxation any other taxable property that he owns or that he manages and controls as a fiduciary on January 1.

(c) A person may render for taxation any property that he owns or that he manages and controls as a fiduciary on January 1, although he is not required to render it by Subsection (a) or (b) of this section.

(d) A fiduciary who renders property shall indicate his fiduciary capacity and shall state the name and address of the owner.

[Acts 1979, 66th Leg., p. 2249, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 22.02. Rendition of Property Losing Exemption During Tax Year

If an exemption applicable to a property on January 1 terminates during the tax year, the person who owns or acquires the property on the date applicability of the exemption terminates shall render the property for taxation within 30 days after the date of termination.

[Acts 1979, 66th Leg., p. 2249, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 22.03. Report of Decreased Value

(a) A person who believes the appraised value of his property decreased during the preceding tax year for any reason other than normal depreciation may file an information report describing the property involved and stating the nature and cause of the decrease.

(b) Before determining the appraised value of property that is the subject of a completed and timely filed report as provided by Subsection (a) of this section, the chief appraiser or the county assessor-collector, as applicable, must view the property to verify any reported change in appraised value and its cause and nature. The person who views the

property shall note on the back of the property owner's report his name, the date he viewed the property, and his determination of any decrease in appraised value and its cause and nature.

(c) The chief appraiser or the county assessor-collector, as applicable, shall deliver a written notice to the property owner of the determination made as provided by Subsection (b) of this section.

[Acts 1979, 66th Leg., p. 2249, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 22.04. Report by Bailee, Lessee, or Other Possessor

(a) When required by the chief appraiser or the county assessor-collector, a person shall file a property information report listing all tangible personal property that is owned by another but is in his possession or under his management on January 1 by bailment, lease, consignment, or other arrangement and stating the name and address of the owner.

(b) When required by the chief appraiser or the county assessor-collector, a person who leases or otherwise provides space to another for storage of personal property shall file an information report stating the name and address of each person to whom he leased or otherwise provided storage space on January 1.

[Acts 1979, 66th Leg., p. 2249, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 22.05. Rendition by Railroad

(a) In addition to other reports required by Chapter 24 of this code, a railroad corporation shall render the property the railroad corporation owns or possesses in each taxing unit as of January 1.

(b) The rendition shall:

(1) list all real property other than the property covered by Subdivision (2) of this subsection;

(2) list the number of miles of railroad together with the market value per mile, which value shall include right-of-way, roadbed, superstructure, and all buildings and improvements used in the operation of the railroad; and

(3) list all personal property as required by Section 22.01 of this code.

[Acts 1979, 66th Leg., p. 2249, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 22.06. Rendition by Bank

A bank located in this state shall file a rendition statement listing the bank's assets and liabilities.

[Acts 1979, 66th Leg., p. 2250, § 1, ch. 841, eff. Jan. 1, 1982.]

[Sections 22.07 to 22.20 reserved for expansion]

SUBCHAPTER B. REQUIREMENTS AND PROCEDURES

§ 22.21. Publicizing Requirements

Each year the director of the State Property Tax Board, each chief appraiser, and each county assessor-collector shall publicize in a manner reasonably designed to notify all property owners the requirements of the law relating to filing rendition statements and property reports and of the availability of forms.

[Acts 1979, 66th Leg., p. 2250, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 22.22. Method for Requiring Rendition or Report

The chief appraiser or county assessor-collector may require a rendition statement or property report he is authorized to require by this chapter by delivering written notice that the statement or report is required to the person responsible for filing it. He shall attach to the notice a copy of the appropriate form.

[Acts 1979, 66th Leg., p. 2250, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 22.23. Filing Date

(a) Rendition statements and property reports must be delivered to the chief appraiser or county assessor-collector, as applicable, after January 1 and before April 1, except as provided by Section 22.02 of this code.

(b) For good cause shown the chief appraiser or the county assessor-collector, as applicable, may extend a deadline for filing a rendition statement or property report by written order but no single extension may exceed 15 days and in no event may he extend the filing deadline beyond April 15.

[Acts 1979, 66th Leg., p. 2250, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 22.24. Rendition and Report Forms

(a) A person required to render property or to file a report as provided by this chapter shall use the appropriate form prescribed by the State Property Tax Board.

(b) A person filing a rendition or report shall include all information required by the form.

(c) The State Property Tax Board may prescribe different forms for different kinds of property but shall ensure that each form requires a property owner to furnish the information necessary to identify the property and to determine its ownership, taxability, situs, and market value. The board may approve forms designed by the appraisal office or the county assessor-collector for unusual or special circumstances. A form may not require a property owner to furnish information not relevant to the appraisal of property for tax purposes or to the assessment or collection of property taxes.

(d) A rendition or report form shall permit but may not require a property owner to state his opinion about the market value of his property.
[Acts 1979, 66th Leg., p. 2250, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 22.25. Place and Manner of Filing

A rendition statement or property report required or authorized by this chapter must be filed with the chief appraiser for each district and with the county assessor-collector for the county in which the property listed in the statement or report is taxable.
[Acts 1979, 66th Leg., p. 2250, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 22.26. Signature

(a) Each rendition statement or property report required or authorized by this chapter must be signed by an individual who is required to file the statement or report.

(b) When a corporation is required to file a statement or report, an officer of the corporation or an employee or agent who has been designated in writing by the board of directors or by an authorized officer to sign in behalf of the corporation must sign the statement or report.
[Acts 1979, 66th Leg., p. 2250, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 22.27. Renditions and Reports Confidential

(a) Rendition statements and property reports filed with an appraisal office or a county assessor-collector are confidential and not open to public inspection. The statements and reports and the information they contain about specific property or a specific property owner may not be disclosed to anyone other than an employee of the appraisal office or of the county assessor-collector who appraises property except as authorized by Subsection (b) of this section.

(b) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who filed the statement or report or the owner of property subject to the statement or report or to a representative of either authorized in writing to receive the information;

(3) to the director of the State Property Tax Board and his employees authorized by him in writing to receive the information or to an assessor or a chief appraiser if requested in writing;

(4) in a judicial or administrative proceeding relating to property taxation to which the person who filed the statement or report or the owner of the property that is a subject of the statement or report is a party;

(5) for statistical purposes if in a form that does not identify specific property or a specific property owner; or

(6) if and to the extent the information is required to be included in a public document or record that the appraisal office or the county assessor-collector is required to prepare or maintain.

(c) A person who legally has access to a statement or report or who legally obtains the confidential information a statement or report contains commits a Class B misdemeanor if he knowingly:

(1) permits inspection of the statement or report by a person not authorized to inspect it by Subsection (b) of this section; or

(2) discloses confidential information contained in the statement or report to a person not authorized to receive the information by Subsection (b) of this section.
[Acts 1979, 66th Leg., p. 2250, ch. 841, § 1, eff. Jan. 1, 1982.]

CHAPTER 23. APPRAISAL METHODS AND PROCEDURES

SUBCHAPTER A. APPRAISALS GENERALLY

Section
23.01. Appraisals Generally.

SUBCHAPTER B. SPECIAL APPRAISAL PROVISIONS

23.11. Banking Corporation.
23.12. Inventory.
23.13. Taxable Leaseholds.
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23.15. Intangibles of an Insurance Company.
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SUBCHAPTER A. APPRAISALS GENERALLY

§ 23.01. Appraisals Generally

(a) Except as otherwise provided by this chapter, all taxable property is appraised at its market value as of January 1.

(b) The market value of property shall be determined by the application of generally accepted appraisal techniques, and the same or similar appraisal techniques shall be used in appraising the same or similar kinds of property.

[Acts 1979, 66th Leg., p. 2252, ch. 841, § 1, eff. Jan. 1, 1982.]

[Sections 23.02 to 23.10 reserved for expansion]

SUBCHAPTER B. SPECIAL APPRAISAL PROVISIONS

§ 23.11. Banking Corporation

(a) The stock of a banking corporation that is located in this state is appraised by subtracting the market value of the real property owned by the bank from the actual cash value of the bank's stock.

(b) Real property owned by a banking corporation subject to this section is appraised in the same manner as other real property, but a banking corporation's personal property is not subject to taxation except as provided by Section 25.15 of this code.

[Acts 1979, 66th Leg., p. 2253, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.12. Inventory

The market value of an inventory is the price for which it would sell as a unit to a purchaser who would continue the business.

[Acts 1979, 66th Leg., p. 2253, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.13. Taxable Leaseholds

A taxable leasehold or other possessory interest in real property that is exempt from taxation to the owner of the estate or interest encumbered by the possessory interest is appraised at the market value of the leasehold or other possessory interest. However, the appraised value may not be less than the total rental paid for the interest for the current tax year.

[Acts 1979, 66th Leg., p. 2253, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.14. Unincorporated Bank

(a) Except as provided by Subsection (b) of this section, the real property and the tangible and intangible personal property owned by an unincorporated bank are appraised at market value.

(b) Money on hand, in transit, or on deposit and notes and accounts receivable, unpaid interest accrued, and other credits are appraised by deducting the total amount of the bank's deposit liability from the total market value of all of those items.

[Acts 1979, 66th Leg., p. 2253, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.15. Intangibles of an Insurance Company

Intangible property owned by an insurance company incorporated under the laws of this state is appraised as provided by Article 4.01, Insurance Code.

[Acts 1979, 66th Leg., p. 2253, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.16. Intangibles of a Savings and Loan Association

Intangible property owned by a savings and loan association is appraised as provided by Section 11.09, Texas Savings and Loan Act.[1]

[Acts 1979, 66th Leg., p. 2253, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Civil Statutes, art. 852a, § 11.09.

§ 23.17. Mineral Interest Not Being Produced

An interest in a mineral that may be removed by surface mining or quarrying from a deposit and that is not being produced is appraised at the price for which the interest would sell while the mineral is in place and not being produced. The appraised value is determined by applying a per acre value to the number of acres covered by the interest. The aggregate of the appraised value of the interest and the appraised value of all other interests that if not under separate ownership would constitute a fee simple estate in real property may not exceed the appraised value that would be placed on the fee estate if the interest in minerals were not owned separately.

[Acts 1979, 66th Leg., p. 2253, ch. 841, § 1, eff. Jan. 1, 1982.]

[Sections 23.18 to 23.40 reserved for expansion]

SUBCHAPTER C. LAND DESIGNATED FOR AGRICULTURAL USE

§ 23.41. Appraisal

(a) Land designated for agricultural use is appraised at its value based on the land's capacity to produce agricultural products. The value of land based on its capacity to produce agricultural products is determined by capitalizing the average net income the land would have yielded under prudent management from production of agricultural products during the five years preceding the current year. However, if the value of land as determined by capitalization of average net income exceeds the market value of the land as determined by other generally accepted appraisal methods, the land shall be appraised by application of the other appraisal methods.

(b) The State Property Tax Board shall promulgate rules specifying the methods to apply and the procedures to use in appraising land designated for agricultural use.

(c) The board shall compile, publish, and distribute to the appraisal offices and county assessors-collec-

tors information about soil type, general topography, general weather conditions, and other factors affecting land's capacity to produce agricultural products for use in classifying agricultural land.

(d) Each year the board shall compile, publish, and distribute to appraisal offices and county assessors-collectors schedules of the agricultural costs and prices for use in calculating average net income for each type of agricultural operation. The board shall use information provided by other state agencies and educational institutions, federal agencies, and other entities interested in agriculture in developing the classifications of land and the schedules.

(e) Improvements other than appurtenances to the land, the mineral estate, and all land used for residential purposes and for processing harvested agricultural products are appraised separately at market value. Riparian water rights, private roads, dams, reservoirs, water wells, and canals, ditches, terraces, and similar reshapings of or additions to the soil for agricultural purposes are appurtenances to the land, and the effect of each on the value of the land for agricultural use shall be considered in appraising the land. However, the State Property Tax Board shall provide that in calculating average net income from land a deduction from income be allowed for an appurtenance subject to depreciation or depletion.

[Acts 1979, 66th Leg., p. 2254, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.42. Eligibility

(a) An individual is entitled to have land he owns designated for agricultural use if, on January 1:

(1) the land has been devoted exclusively to or developed continuously for agriculture for the three years preceding the current year;

(2) he is using and intends to use the land for agriculture as an occupation or a business venture for profit during the current year; and

(3) agriculture is his primary occupation and primary source of income.

(b) Use of land for nonagricultural purposes does not deprive an owner of his right to an agricultural designation if the nonagricultural use is secondary to and compatible with the agricultural use of the land.

(c) Agriculture is an individual's primary occupation and primary source of income if as of January 1 he devotes a greater portion of his time to and derives a greater portion of his gross income from agriculture than any other occupation. The time an individual devotes to each occupation and the gross income he derives from each is determined by averaging the time he devoted to each and the gross income he derived from each for any number of consecutive years not exceeding five years immediately preceding January 1 of the current year, that he has engaged in agriculture as an occupation. However, if he has not been engaged in agriculture as an occupation for the entire year preceding January 1, the time he has devoted to and the income he has derived from each occupation since the date he began engaging in agriculture as an occupation determine whether agriculture is his primary occupation and primary source of income.

(d) For purposes of this section:

(1) "Agriculture" means the use of land to produce plant or animal products, including fish or poultry products, under natural conditions but does not include the processing of plant or animal products after harvesting or the production of timber or forest products.

(2) "Occupation" includes employment and a business venture that requires continual supervision or management.

[Acts 1979, 66th Leg., p. 2254, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.43. Application

(a) An individual claiming the right to have his land designated for agricultural use must apply for the designation each year he claims it. Application for the designation for county taxes is made by filing a sworn application form with the county assessor-collector for each county in which the land is located. Application for the designation for state taxes and the taxes of all taxing units other than the county is made by filing a sworn application form with the chief appraiser for each appraisal district in which the land is located.

(b) A claimant must deliver a completed application form to the chief appraiser or the county assessor-collector, as applicable, before April 1 and must furnish the information required by the form. For good cause shown the chief appraiser or the county assessor-collector, as applicable, may extend the deadline for filing the application by written order for a single period not to exceed 15 days.

(c) If a claimant fails to timely file a completed application form in a given year, he may not receive the agricultural designation for that year.

(d) The State Property Tax Board in prescribing the contents of the application forms shall ensure that each form requires a claimant to furnish the information necessary to determine the validity of the claim. The board shall require that the form permit a claimant who has previously been allowed an agricultural designation to indicate that previously reported information has not changed and to supply only the eligibility information not previously reported.

(e) Before February 1 the chief appraiser or the county assessor-collector, as applicable, shall deliver an application form to each individual whose land was designated for agricultural use during the preceding year. He shall include with the application a brief explanation of the requirements for obtaining agricultural designation.

[Acts 1979, 66th Leg., p. 2254, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.44. Action on Application

(a) The chief appraiser or the county assessor-collector, as applicable, shall determine individually each claimant's right to the agricultural designation. After considering the application and all relevant information, the chief appraiser or the county assessor-collector, as applicable, shall, as the law and facts warrant:

(1) approve the application and designate the land for agricultural use;

(2) disapprove the application and request additional information from the claimant in support of the claim; or

(3) deny the application.

(b) If the chief appraiser or the county assessor-collector requests additional information from a claimant, the claimant must furnish the information within 30 days after the date of the request or before April 15, whichever is earlier, or the application is denied. However, for good cause shown the chief appraiser or the county assessor-collector, as applicable, may extend the deadline for furnishing additional information by written order for a single period not to exceed 15 days.

(c) The chief appraiser or the county assessor-collector, as applicable, shall determine the validity of each application for agricultural designation filed with him before he submits the appraisal records for review and determination of protests as provided by Chapter 41 of this code.

(d) If the chief appraiser or the county assessor-collector denies an application, he shall deliver a written notice of the denial to the claimant within five days after the date of denial. The notice must include a brief explanation of the procedures for protesting the denial.

[Acts 1979, 66th Leg., p. 2254, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.45. Application Confidential

(a) An application for agricultural designation filed with a chief appraiser or a county assessor-collector is confidential and not open to public inspection. The application and the information it contains about specific property or a specific owner may not be disclosed to anyone other than an employee of the appraisal office or of the county assessor-collector who appraises property except as authorized by Subsection (b) of this section.

(b) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who filed the application or to his representative authorized in writing to receive the information;

(3) to the director of the State Property Tax Board and his employees authorized by him in writing to receive the information or to an assessor or a chief appraiser if requested in writing;

(4) in a judicial or administrative proceeding relating to property taxation to which the person who filed the application is a party;

(5) for statistical purposes if in a form that does not identify specific property or a specific property owner; or

(6) if and to the extent the information is required to be included in a public document or record that the appraisal office or the county assessor-collector is required to prepare or maintain.

(c) A person who legally has access to an application for agricultural designation or who legally obtains the confidential information the application contains commits a Class B misdemeanor if he knowingly:

(1) permits inspection of the application by a person not authorized to inspect it by Subsection (b) of this section; or

(2) discloses confidential information contained in the report to a person not authorized to receive the information by Subsection (b) of this section.

[Acts 1979, 66th Leg., p. 2254, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.46. Deferred Taxation

(a) When appraising land designated for agricultural use, the chief appraiser or the county assessor-collector, as applicable, also shall appraise the land at its market value and shall record both the market value and the value based on its capacity to produce agricultural products in the appraisal records.

(b) Property taxes imposed on land designated for agricultural use are based on the land's agricultural use value determined as provided by Section 23.41 of this code after the appropriate assessment ratio has been applied to that value. When an assessor calculates the amount of tax due on the land, however, he shall also calculate the amount of tax that would have been imposed had the land not been designated for agricultural use. The difference in the amount of tax imposed and the amount that would have been imposed is the amount of deferred tax for that year, and the assessor shall enter that amount in his tax records relating to the property.

(c) If land that has been designated for agricultural use in any year is sold or diverted to a nonagricultural use, the total amount of taxes deferred in the three years preceding the year in which the land is sold or diverted plus interest at the rate provided for delinquent taxes becomes due. The assessor for each taxing unit shall include the amount of deferred tax plus interest as back taxes on the next bill for taxes on the land.

[Acts 1979, 66th Leg., p. 2254, ch. 841, § 1, eff. Jan. 1, 1982.]

[Sections 23.47 to 23.50 reserved for expansion]

SUBCHAPTER D. APPRAISAL OF AGRICULTURAL LAND

§ 23.51. Definitions

In this subchapter:

(1) "Qualified open-space land" means land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area and that has been devoted principally to agricultural use for five of the preceding seven years or land that is used principally as an ecological laboratory by a public or private college or university. Qualified open-space land includes all appurtenances to the land. For the purposes of this subdivision, appurtenances to the land means private roads, dams, reservoirs, water wells, canals, ditches, terraces, and other reshapings of the soil, fences, and riparian water rights.

(2) "Agricultural use" includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed, or planting seed or for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(3) "Category" means the value classification of land considering the agricultural use to which the land is principally devoted. Categories of land include but are not limited to irrigated cropland, dry cropland, improved pasture, native pasture, orchard, and waste and may be further divided according to soil type, soil capability, irrigation, general topography, geographical factors, and other factors which influence the productive capacity of the category. The chief appraiser and the county assessor-collector shall obtain information from the Texas Agricultural Extension Service, Soil Conservation Service, and other recognized agricultural sources for the purposes of determining the categories of production existing in the appraisal district or county.

(4) "Net to land" means the average annual net income derived from the use of open-space land that would have been earned from the land during the five-year period preceding the appraisal by an owner using ordinary prudence in the management of the land and the farm crops or livestock produced or supported on the land and, in addition, any income received from hunting or recreational leases. The chief appraiser and the county assessor-collector shall calculate net to land using an owner-operator budget, subtracting all ordinary and prudent expenses incurred in pursuit of agricultural use, including all ordinary and prudent expenses incurred in connection with hunting and recreational leases and including owner labor and fixed and variable costs, from the five-year average agricultural income using estimates available from the Texas Agricultural Extension Service, U.S. Agricultural Stabilization and Conservation Service, the Soil Conservation Service, the Texas Department of Agriculture Crop and Livestock Reporting Service, and universities and colleges within this state. Only if insufficient data is available to calculate net to land on the basis of an owner-operator budget, net to land may be determined by considering the income that would be due to the owner of the land under cash lease, share lease, or whatever lease arrangement is typical in that area for that category of land, and all expenses directly attributable to the agricultural use of the land by the owner shall be subtracted from this owner income and the results shall be used in income capitalization. Net to land shall be determined by the same method for all land in the same category located in the same appraisal district or county, as applicable. In calculating net to land, a reasonable deduction shall be made for any depletion that occurs of underground water used in the agricultural operation.

(5) "Income capitalization" means the process of dividing net to land by the capitalization rate to determine the appraised value.

[Acts 1979, 66th Leg., p. 2257, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.52. Appraisal of Qualified Agricultural Land

(a) The appraised value of qualified open-space land is determined on the basis of the category of the land, using accepted income capitalization methods applied to average net to land. The appraised value so determined may not exceed the market value as determined by other appraisal methods.

(b) The chief appraiser and county assessor-collector shall determine the appraised value according to this subchapter and, when requested by a landowner, the appraised value according to Subchapter C of this chapter [1] of each category of open-space land owned by that landowner and shall make each value and the market value according to the preceding year's appraisal roll available to a person seeking to apply for appraisal as provided by this subchapter or as provided by Subchapter C of this chapter.

(c) The chief appraiser and the county assessor-collector may not change the appraised value of a parcel of open-space land unless the owner has applied for and the land has qualified for appraisal as provided by this subchapter or by Subchapter C of this chapter or unless the change is made as a result of a reappraisal.

(d) The State Property Tax Board by rule shall develop and distribute to each appraisal office and county assessor-collector appraisal manuals setting forth this method of appraising qualified open-space land, and each appraisal office and county assessor-collector shall use the appraisal manuals in appraising qualified open-space land. The State Property Tax Board by rule shall develop and the appraisal office and county assessor-collector shall enforce procedures to verify that land meets the conditions contained in Subdivision (1) of Section 23.51 of this code. The rules, before taking effect, must be approved by a majority vote of a committee comprised of the following officials or their designees: the governor, the comptroller, the attorney general, the agriculture commissioner, and the Commissioner of the General Land Office.

(e) For the purposes of Section 23.55 of this code, the chief appraiser and county assessor-collector also shall determine the market value of qualified open-space land and shall record both the market value and the appraised value in the appraisal records.

(f) The appraisal of minerals or subsurface rights to minerals is not within the provisions of this subchapter.

[Acts 1979, 66th Leg., p. 2257, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Section 23.41 et seq.

§ 23.53. Capitalization Rate

The capitalization rate to be used in determining the appraised value of qualified open-space land as provided by this subchapter is 10 percent or the interest rate specified by the Federal Land Bank of Houston on December 31 of the preceding year plus 2-½ percentage points, whichever percentage is greater.

[Acts 1979, 66th Leg., p. 2257, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.54. Application

(a) A person claiming that his land is eligible for appraisal under this subchapter must file a valid application with the chief appraiser for purposes of appraisal by the appraisal district or the county assessor-collector for purposes of appraisal by that officer.

(b) To be valid, the application must:

(1) be on a form provided by the appraisal office or the county assessor-collector, if applicable, and prescribed by the State Property Tax Board; and

(2) contain the information necessary to determine the validity of the claim.

(c) The State Property Tax Board shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement.

(d) The form must be filed before April 1. However, for good cause the tax assessor may extend the filing deadline for not more than 60 days.

(e) If a person fails to file a valid application on time, the land is ineligible for appraisal as provided by this subchapter for that year.

(f) The appraisal office and the county assessor-collector shall make a sufficient number of printed application forms readily available at no charge and shall mail a form each year at least 90 days before the filing deadline to each person owning land that was appraised as provided by this subchapter in the preceding year.

[Acts 1979, 66th Leg., p. 2259, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.55. Change of Use of Land

(a) If the use of land that has been appraised as provided by this subchapter changes, an additional tax is imposed on the land equal to the difference between the taxes imposed on the land for each of the five years preceding the year in which the change of use occurs that the land was appraised as provided by this subchapter and the tax that would have been imposed had the land been taxed on the basis of market value in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(b) A tax lien attaches to the land on the date the change of use occurs to secure payment of the additional tax and interest imposed by this section and any penalties incurred. The lien exists in favor of the state and all taxing units for which the additional tax is imposed.

(c) The additional tax imposed by this section does not apply to a year for which the tax has already been imposed.

(d) If the change of use applies to only part of a parcel that has been appraised as provided by this subchapter, the additional tax applies only to that part of the parcel and equals the difference between the taxes imposed on that part of the parcel and the taxes that would have been imposed had that part been taxed on the basis of market value.

(e) The assessor shall prepare and deliver a statement for the additional taxes as soon as practicable after the change of use occurs. The taxes become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next date on which the unit's taxes become delinquent that is more than 10 days after the date the statement is delivered.

(f) The sanctions provided by Subsection (a) of this section do not apply if the change of use occurs as a result of a sale for right-of-way or a condemnation.

(g) If the use of the land changes to a use that qualifies under Subchapter E of this chapter,[1] the

sanctions provided by Subsection (a) of this section do not apply.

(h) Additional taxes, if any, for a year in which land was designated for agricultural use as provided by Subchapter C of this chapter [2] (or Article VIII, Section 1–d, of the constitution) are determined as provided by that subchapter, and the additional taxes imposed by this section do not apply for that year.

[Acts 1979, 66th Leg., p. 2257, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Section 23.71 et seq.
[2] Section 23.41 et seq.

§ 23.56. Land Ineligible for Appraisal as Open-Space Land

Land is not eligible for appraisal as provided by this subchapter if:

(1) the land is located inside the corporate limits of an incorporated city or town, unless:

(A) the city or town is not providing the land with governmental and proprietary services substantially equivalent in standard and scope to those services it provides in other parts of the city or town with similar topography, land utilization, and population density; or

(B) the land has been devoted principally to agricultural use continuously for the preceding five years;

(2) the land is owned by an individual who is a nonresident alien or by a foreign government if that individual or government is required by federal law or by rule adopted pursuant to federal law to register his ownership or acquisition of that property; or

(3) the land is owned by a corporation, partnership, trust, or other legal entity if the entity is required by federal law or by rule adopted pursuant to federal law to register its ownership or acquisition of that land and a nonresident alien or a foreign government or any combination of nonresident aliens and foreign governments own a majority interest in the entity.

[Acts 1979, 66th Leg., p. 2257, ch. 841, § 1, eff. Jan. 1, 1982.]

[Sections 23.57 to 23.70 reserved for expansion]

SUBCHAPTER E. APPRAISAL OF TIMBER LAND

§ 23.71. Definitions

In this subchapter:

(1) "Category of the land" means the value classification of land for timber production, based on soil type, soil capability, general topography, weather, location, and other pertinent factors, as determined by competent governmental sources.

(2) "Net to land" means the average net income that would have been earned by a category of land over the preceding five years by a person using ordinary prudence in the management of the land and the timber produced on the land. The net income for each year is determined by multiplying the land's potential average annual growth, expressed in cords or board feet of wood, by the average stumpage value, taking into consideration the three general types of timber as produced on the four different soil types, as determined by using information from the U.S. Forest Service, U.S. Geological Survey, the Soil Conservation Service, the Texas Forest Service, and colleges and universities within this state, and by subtracting from the product reasonable management costs and other reasonable expenses directly attributable to the production of the timber.

[Acts 1979, 66th Leg., p. 2261, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.72. Qualification for Productivity Appraisal

Land qualifies for appraisal as provided by this subchapter if it is currently and actively devoted principally to production of timber or forest products to the degree of intensity generally accepted in the area with intent to produce income and has been devoted principally to production of timber or forest products for five of the preceding seven years.

[Acts 1979, 66th Leg., p. 2261, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.73. Appraisal of Qualified Timber Land

(a) The appraised value of qualified timber land is determined on the basis of the category of the land, using accepted income capitalization methods applied to average net to land. The appraised value so determined may not exceed the market value of the land as determined by other appraisal methods.

(b) The State Property Tax Board by rule shall develop and distribute to each appraisal office and county assessor-collector appraisal manuals setting forth this method of appraising qualified timber land, and each appraisal office and county assessor-collector shall use the appraisal manuals in appraising qualified timber land. The State Property Tax Board by rule shall develop and the appraisal office and county assessor-collector shall enforce procedures to verify that land meets the conditions contained in Section 23.72 of this code. The rules, before taking effect, must be approved by majority vote of a committee comprised of the following officials or their designees: the governor, the comptroller, the attorney general, the agriculture commissioner, and the Commissioner of the General Land Office.

(c) For the purposes of Section 23.76 of this code, the chief appraiser and the county assessor-collector also shall determine the market value of qualified timber land and shall record both the market value and the appraised value in the appraisal records.

(d) The appraisal of minerals or subsurface rights to minerals is not within the provisions of this subchapter.

[Acts 1979, 66th Leg., p. 2261, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.74. Capitalization Rate

The capitalization rate to be used in determining the appraised value of qualified timber land as provided by this subchapter is the interest rate specified by the Federal Land Bank of Houston on December 31 of the preceding year plus 2-½ percentage points.

[Acts 1979, 66th Leg., p. 2261, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.75. Application

(a) A person claiming that his land is eligible for appraisal as provided by this subchapter must file a valid application with the chief appraiser for purposes of appraisal by the appraisal district or the county assessor-collector for purposes of appraisal by that officer.

(b) To be valid, the application must:

(1) be on a form provided by the appraisal office or the county assessor-collector, if applicable, and prescribed by the State Property Tax Board; and

(2) contain the information necessary to determine the validity of the claim.

(c) The State Property Tax Board shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement.

(d) The form must be filed before April 1. However, for good cause the tax assessor may extend the filing deadline for not more than 60 days.

(e) If a person fails to file a valid application on time, the land is ineligible for appraisal as provided by this subchapter for that year.

(f) The appraisal office and the county assessor-collector shall make a sufficient number of printed application forms readily available at no charge and shall mail a form each year at least 90 days before the filing deadline to each person owning land that was appraised as provided by this subchapter in the preceding year.

[Acts 1979, 66th Leg., p. 2261, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.76. Change of Use of Land

(a) If the use of land that has been appraised as provided by this subchapter changes, an additional tax is imposed on the land equal to the difference between the taxes imposed on the land for each of the five years preceding the year in which the change of use occurs that the land was appraised as provided by this subchapter and the tax that would have been imposed had the land been taxed on the basis of market value in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(b) A tax lien attaches to the land on the date the change of use occurs to secure payment of the additional tax and interest imposed by this section and any penalties incurred. The lien exists in favor of the state and all taxing units for which the additional tax is imposed.

(c) The additional tax imposed by this section does not apply to a year for which the tax has already been imposed.

(d) If the change of use applies to only part of a parcel that has been appraised as provided by this subchapter, the additional tax applies only to that part of the parcel and equals the difference between the taxes imposed on that part of the parcel and the taxes that would have been imposed had that part been taxed on the basis of market value.

(e) The assessor shall prepare and deliver a statement for the additional taxes as soon as practicable after the change of use occurs. The taxes become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next date on which the unit's taxes become delinquent that is more than 10 days after the date the statement is delivered.

(f) The sanctions provided by Subsection (a) of this section do not apply if the change of use occurs as a result of a sale for right-of-way or a condemnation.

(g) If the use of the land changes to a use that qualifies under Subchapter C or D of this chapter,[1] the sanctions provided by Subsection (a) of this section do not apply.

[Acts 1979, 66th Leg., p. 2261, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Sections 23.41 et seq. and 23.51 et seq.

§ 23.77. Land Ineligible for Appraisal as Timber Land

Land is not eligible for appraisal as provided by this subchapter if:

(1) the land is located inside the corporate limits of an incorporated city or town, unless:

(A) the city or town is not providing the land with governmental and proprietary services substantially equivalent in standard and scope to those services it provides in other parts of the city or town with similar topography, land utilization, and population density; or

(B) the land has been devoted principally to production of timber or forest products continuously for the preceding five years;

(2) the land is owned by an individual who is a nonresident alien or by a foreign government if that individual or government is required by federal law or by rule adopted pursuant to

federal law to register his ownership or acquisition of that property; or

(3) the land is owned by a corporation, partnership, trust, or other legal entity if the entity is required by federal law or by rule adopted pursuant to federal law to register its ownership or acquisition of that land and a nonresident alien or a foreign government or any combination of nonresident aliens and foreign governments own a majority interest in the entity.

[Acts 1979, 66th Leg., p. 2261, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.78. Minimum Appraisal of Timber Land

The value for ad valorem tax purposes of qualified timber land appraised as provided by this article may not be less than the appraised value of that land for the 1978 tax year, except that the value used for any tax year may not exceed the fair market value of the land as determined by other generally accepted appraisal methods.

[Acts 1979, 66th Leg., p. 2261, ch. 841, § 1, eff. Jan. 1, 1982.]

CHAPTER 24. CENTRAL APPRAISAL

SUBCHAPTER A. TRANSPORTATION BUSINESS INTANGIBLES

Section
24.01. Appraisal by State Property Tax Board.
24.02. Property Information Report.
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24.04. Penalty for Failure or Refusal to Deliver Required Information.
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24.38. Certification of Apportioned Value.
24.39. Imposition of Tax.
24.40. Omitted Property.

This chapter is effective January 1, 1980, under the provisions of § 3(e) of Acts 1979, 66th Leg., p. 2315, ch. 841.

SUBCHAPTER A. TRANSPORTATION BUSINESS INTANGIBLES

§ 24.01. Appraisal by State Property Tax Board

The State Property Tax Board shall appraise for taxation the intangible value of the transportation operation in this state of the following businesses:

(1) railroads;

(2) toll roads, toll bridges, and ferries;

(3) motor bus carriers subject to regulation by the railroad commission;

(4) common or contract motor carriers subject to regulation by the railroad commission; and

(5) oil pipelines and common carrier pipelines engaged in the transportation of oil.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.02. Property Information Report

(a) In addition to any reports required by Chapter 22 or Section 24.32 of this code, a person who on January 1 owns or manages and controls as a fiduciary a transportation business described by Section 24.01 of this code shall file a property information report with the board annually.

(b) The report must be on a form prescribed and furnished by the board. In prescribing the forms, the board shall ensure that each requires a taxpayer to furnish the information necessary for the board to perform its duties under this subchapter.

(c) The report must contain all the information required by the form and must be signed by the individual required to file the report by Subsection (a) of this section. When a corporation is required to file the report, an officer of the corporation must sign the report.

(d) Reports must be filed before May 1. For good cause shown the board may extend the filing deadline by written order for a single period not to exceed 30 days.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.03. Additional Information

(a) If the board determines that it needs information in addition to that furnished in a transportation business's property information report, the board may require the business to supply the additional information by written notice delivered to the business by registered or certified mail, return receipt requested.

(b) A business shall furnish any additional information required as provided by Subsection (a) of this section within 15 days after the date notice is mailed. For good cause shown the board may extend the deadline for a single period not to exceed 15 days.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.04. Penalty for Failure or Refusal to Deliver Required Information

(a) If a transportation business knowingly fails or refuses to deliver a completed report in the time and manner required by Section 24.02 of this code or knowingly fails or refuses to deliver additional information in the time and manner required by Section 24.03, the business is liable to the state for a civil penalty not exceeding $5,000.

(b) The attorney general shall collect the penalty in a suit on the board's behalf. Venue for suit is in Travis County.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.05. Assistance from State Agencies

The board may call on the railroad commission or any other state entity that may have information or expertise relevant to the board's duties under this chapter for assistance in determining the amount, value, interstate allocation, and intrastate apportionment of a transportation business's property.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.06. Method of Appraisal

(a) To appraise the intangible value of the transportation operation in this state of a transportation business described by Section 24.01 of this code, the board shall determine the market value of the operating portion of the business as of January 1.

(b) If the business has property used in its transportation business located in another state or country or used both inside and outside this state, the board shall allocate to this state the proportion of the total market value of the business's transportation operation that fairly reflects its use in this state.

(c) The board shall deduct the market value of the business's tangible operating property located in or allocable to this state from the market value of all the transportation operation allocable to this state determined as provided by Subsection (b) of this section. The remainder is the market value of the intangibles of the business in this state.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.07. Intrastate Apportionment

The board shall apportion to each county in which a transportation business described by Section 24.01 of this code operates the proportion of the market value of its intangibles in this state determined as provided by Section 24.06 of this code that fairly reflects its use in the county.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.08. Protest Hearing

(a) After it apportions intangible values among the counties, the board shall determine the date, time, and place it will convene for a public hearing to decide protests of its appraisal, interstate allocation, or intrastate apportionment.

(b) The board shall convene a hearing to determine protests before June 15 of each year. The board shall finally decide all protests before July 15 of each year.

(c) Section 19 and Subsections (c) through (f) of Section 16, Administrative Procedure and Texas Register Act,[1] do not apply to hearings under this section. The board's decision may be appealed as provided by Chapter 42 of this code.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

[1] Civil Statutes, art. 6252–13a.

§ 24.09. Notice

(a) Before May 31 of each year and at least 10 days before the date fixed for protest hearings pursuant to Section 24.08 of this code, the board shall notify each transportation business whose intangible value in this state it has appraised of the board's determination of:

(1) the market value of the business's transportation operation;

(2) the amount of that value allocated to this state in the case of an interstate or international business;

(3) the market value of its tangible property located in or allocable to this state;

(4) the market value of its intangibles in this state; and

(5) the amount of intangible value apportioned to each county in which the business operates.

(b) The notice shall be in writing, delivered by registered or certified mail, return receipt requested, and shall include the date, time, and place the board will convene a hearing to decide protests.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.10. Rules

The board shall adopt rules to implement this subchapter. The rules shall prescribe, among other matters:

(1) the evidences of value and appraisal formulas used in appraising property under this subchapter;

(2) the formulas applied to each kind of transportation business in making interstate allocations and intrastate apportionments;

(3) the requirements of report forms; and

(4) the nature of the good cause required to extend the reporting deadline.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.11. Certification of Apportioned Value

(a) Before August 1, the board shall certify to the assessor-collector for each county in which a business described by Section 24.01 of this code operates:

(1) the name and address of each business that operates in the county; and

(2) the amount of the market value of the business's intangibles apportioned to the county.

(b) Before August 1, the board also shall certify to the comptroller:

(1) the name and address of each business described by Section 24.01 of this code that operates in this state;

(2) the market value of each business's intangibles in this state; and

(3) the amount of the market value of the business's intangibles that is apportioned to each county.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.12. Omitted Property

(a) If the board discovers that the intangible value of the transportation operation in this state of a business described by Section 24.01 of this code has not been appraised and apportioned to the counties in one of the two preceding years, the board shall appraise the property and apportion its value as of January 1 for each year it was omitted.

(b) The board shall note that the appraisal and allocation are for intangibles that escaped taxation in a prior year and shall indicate the year and the appraised value for each year.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.13. Imposition of Tax

The county assessor-collector and commissioners court may not change the apportioned values certified as provided by this subchapter. The county assessor-collector shall add each business's intangibles and the value apportioned to the county as certified to him to the appraisal roll certified to him by the chief appraiser pursuant to Section 26.01 of this code for state tax purposes and to the county appraisal roll for county tax purposes. He shall calculate the state and county tax due on the intangible value as provided by Section 26.09 of this code.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.14. Exemption from Gross Receipts Tax

A transportation business described by Section 24.01 of this code that pays all ad valorem taxes imposed on its intangible value in full and before delinquent is not liable in that year for any occupation tax measured by gross receipts imposed by any law of this state.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

[Sections 24.15 to 24.30 reserved for expansion]

SUBCHAPTER B. RAILROAD ROLLING STOCK

§ 24.31. Appraisal at Headquarters

The county assessor-collector for the county in which the owner of rolling stock used by a railroad resides or maintains a principal place of business in this state shall appraise for taxation the rolling stock owned on January 1. However, if the owner does not reside or maintain a place of business in this state, the county assessor-collector for the county in which a railroad that leases the rolling stock maintains its principal place of business in this state shall appraise it.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.32. Rolling Stock Information Reports

(a) In addition to any reports required by Chapter 22 or Section 24.02 of this code, a person who on January 1 owns or manages and controls as a fiduciary any rolling stock used in the operation of a railroad shall file a property information report listing the rolling stock with the county assessor-collector for the county in which the owner maintains his principal place of business in this state.

(b) If the owner of a railroad is leasing or otherwise using rolling stock on January 1 for use in the operation of the railroad, he shall file a separate report, attached to the report required by Subsection (a) of this section, listing the rolling stock, the name and business address of the owner, and the full consideration for the lease or use.

(c) A report required by this section must be on a form prescribed by the State Property Tax Board. In prescribing the form, the board shall ensure that it requires the information necessary to determine market value of rolling stock used in this state.

(d) The report must contain all the information required by the form and must be signed by the individual required to file the report by Subsection (a) of this section. When a corporation is required to file the report, an officer of the corporation must sign the report.

(e) A report must be filed before April 1. For good cause shown the county assessor-collector may extend the filing deadline by written order for a single period not to exceed 15 days.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.33. Report of Leased Rolling Stock Forwarded

If the owner of leased rolling stock resides in this state or maintains a place of business in this state, the county assessor-collector receiving the lessee's report required by Subsection (b) of Section 24.32 of this code shall deliver a certified copy of the report by registered or certified mail to the county assessor-collector responsible for appraising the rolling stock as provided by Section 24.31 of this code.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.34. Interstate Allocation

(a) If the railroad operates in another state or country, the county assessor-collector shall allocate to this state the proportion of the total market value of the rolling stock that fairly reflects its use in this state during the preceding tax years.

(b) The State Property Tax Board shall adopt rules establishing formulas for interstate allocation of the value of railroad rolling stock.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.35. Notice, Review, and Protest

(a) The county assessor-collector shall deliver notice to the owner of the rolling stock as provided by Section 25.19 of this code and present the appraised value for review and protest as provided by Chapter 41 of this code.

(b) Review and protests of appraisals of railroad rolling stock must be completed by June 1 or as soon thereafter as practicable and for that reason shall be given priority.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.36. Certification to State Property Tax Board

On approval of the appraised value of the rolling stock as provided by Chapter 41 of this code, the county assessor-collector shall certify to the State Property Tax Board the amount of market value allocated to this state for each owner whose rolling stock is appraised in the county and the name and business address of each owner.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.37. Intrastate Apportionment

The State Property Tax Board shall apportion the appraised value of each owner's rolling stock to each county in which the railroad using it operates according to the ratio the mileage of road owned by the railroad in the county bears to the total mileage of road the railroad owns in this state.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.38. Certification of Apportioned Value

(a) Before August 1, the State Property Tax Board shall certify to the county assessor-collector for each county in which a railroad operates:

(1) the county's apportioned amount of the market value of each owner's rolling stock; and

(2) the name and business address of each owner.

(b) Before August 1 the board also shall certify to the comptroller:

(1) the name and address of each owner of railroad rolling stock that is appraised pursuant to this subchapter;

(2) the market value of each owner's rolling stock; and

(3) the amount of the market value that is apportioned to each county.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.39. Imposition of Tax

The county assessor-collector and commissioners court may not change the apportioned values certified as provided by this subchapter. The county assessor-collector shall add each owner's rolling stock and the value apportioned to the county as certified to him to the appraisal roll certified to him by the chief appraiser as provided by Section 26.01 of this code for state tax purposes and to the county appraisal roll for county tax purposes. He shall calculate the state and county tax due on the rolling stock as provided by Section 26.09 of this code.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.40. Omitted Property

(a) If a county assessor-collector discovers that rolling stock used in this state and subject to appraisal by him has not been appraised and apportioned to the counties in one of the two preceding years, he shall appraise the property as of January 1 for each year it was omitted, submit the appraisal for review and protest, and certify the approved value to the State Property Tax Board.

(b) The certification shall show that the appraisal is for property that escaped taxation in a prior year and shall indicate the year and the appraised value for each year.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1980.]

CHAPTER 25. LOCAL APPRAISAL

Section

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§ 25.01. Preparation of Appraisal Records

(a) By April 15 or as soon thereafter as practicable, the chief appraiser and the county assessor-collector shall prepare appraisal records listing all property that is taxable in the county or the district, as applicable, except the property appraised as provided by Chapter 24 of this code, and stating the appraised value of each.

(b) The chief appraiser with the approval of the board of directors of the district may contract with a private appraisal firm to perform appraisal services for the district, subject to his approval. The commissioners court with the approval of the county assessor-collector may contract with a private appraisal firm to perform appraisal services for the county, subject to the county assessor-collector's approval. A contract for private appraisal services is void if the amount of compensation to be paid the private appraisal firm is contingent on the amount of or increase in appraised, assessed, or taxable value of property appraised by the appraisal firm.

(c) A contract for appraisal services for an appraisal district or a county is invalid if it does not provide that copies of the appraisal, together with supporting data, must be made available to the appraisal district or county, and such appraisals and supporting data shall be public records. "Supporting data" shall not be construed to include personal notes, correspondence, working papers, thought processes, or any other matters of a privileged or proprietary nature.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.02. Form and Content

The appraisal records shall be in the form prescribed by the State Property Tax Board and shall include:

(1) the name and address of the owner or, if the name or address is unknown, a statement that it is unknown;

(2) real property;

(3) separately taxable estates or interests in real property, including taxable possessory interests in exempt real property;

(4) personal property;

(5) the appraised value of land and, if the land is appraised as provided by Subchapter C, D, or E, Chapter 23 of this code,[1] the market value of the land;

(6) the appraised value of improvements to land;

(7) the appraised value of a separately taxable estate or interest in land;

(8) the appraised value of personal property;

(9) the kind of any partial exemption the owner is entitled to receive, whether the exemption applies to appraised or assessed value, and, in the case of an exemption authorized by Section 11.23 of this code, the amount of the exemption;

(10) the tax year to which the appraisal applies; and

(11) in the case of appraisal records prepared by the chief appraiser, an identification of each taxing unit in which the property is taxable.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Sections 23.41 et seq., 23.51 et seq., and 23.71 et seq.

§ 25.03. Description

(a) Property shall be described in the appraisal records with sufficient certainty to identify it.

(b) The State Property Tax Board may adopt rules establishing minimum standards for descriptions of property.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.04. Separate Estates or Interests

Except as otherwise provided by this chapter, when different persons own land and improvements in separate estates or interests, each separately owned estate or interest shall be listed separately in the name of the owner of each if the estate or interest is described in a duly executed and recorded instrument of title.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.05. Life Estates

Real property owned by a life tenant and remainderman shall be listed in the name of the life tenant.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.06. Property Encumbered by Possessory or Security Interest

Except as provided by Sections 25.07 and 25.15 of this code, property encumbered by a leasehold or other possessory interest or by a mortgage, deed of trust, or other interest securing payment or performance of an obligation shall be listed in the name of the owner of the property so encumbered.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.07. Leasehold and Other Possessory Interests in Exempt Property

(a) Except as provided by Subsection (b) of this section, a leasehold or other possessory interest in property that is exempt from taxation to the owner of the estate or interest encumbered by the possessory interest shall be listed in the name of the owner of the possessory interest if the duration of the interest may be at least one year.

(b) Except as provided by Subsections (b) and (c) of Section 11.11 of this code, a leasehold or other possessory interest in exempt property may not be listed if:

(1) the property is permanent university fund land;

(2) the property is county public school fund agricultural land;

(3) the property is a part of a public transportation facility owned by an incorporated city or town and:

(A) is an airport passenger terminal building or a building used by certified air carriers primarily for maintenance of aircraft or other aircraft services, for aircraft equipment storage, or for air cargo;

(B) is an airport fueling system facility servicing certified air carriers; or

(C) is in a foreign-trade zone established and operating pursuant to federal law if the area of the zone does not exceed 250 acres;

(4) the interest is in a part of a park, market, fairground, or similar public facility that is owned by an incorporated city or town; or

(5) the interest involves only the right to use the property for grazing or other agricultural purposes.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.08. Improvements

(a) Except as provided by Subsections (b) through (d) of this section, an improvement may be listed in the name of the owner of the land on which the improvement is located.

(b) If a person who is not entitled to exemption owns an improvement on exempt land, the improvement shall be listed in the name of the owner of the improvement.

(c) When a person other than the owner of an improvement owns the land on which the improvement is located, the land and the improvement shall be listed separately in the name of the owner of each if either owner files with the chief appraiser or the county assessor-collector, as applicable, before April 1 a written request for separate taxation on a form furnished for that purpose together with proof of separate ownership. After an improvement qualifies for taxation separate from land, the qualification remains effective in subsequent tax years and need not be requested again. However, the qualification ceases when ownership of the land or the improvement is transferred or either owner files a request to cancel the separate taxation.

(d) Within 30 days after an owner of land or an improvement qualifies for separate taxation or cancels a qualification, the chief appraiser or the county assessor-collector, as applicable, shall deliver a written notice of the qualification or cancellation to the other owner.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.09. Condominiums and Planned Unit Developments

(a) A separately owned apartment or unit in a condominium as defined in the Condominium Act[1] shall be listed in the name of the owner of each particular apartment or unit. The value of each apartment or unit shall include the value of its fractional share in the common elements of the condominium.

(b) Property owned by a planned unit development association may be listed and taxes imposed proportionately against each member of the association if the association files with the chief appraiser or the county assessor-collector, as applicable, before April 1 a resolution adopted by vote of a majority of all members of the association authorizing the proportionate imposition of taxes. A resolution adopted as provided by this subsection remains effective in subsequent tax years unless it is revoked by a similar resolution.

(c) If property is listed and taxes imposed proportionately as authorized by Subsection (b) of this section, the amount of tax to be imposed on the association's property shall be divided by the number of parcels of real property in the development. The quotient is the proportionate amount of tax to be imposed on each parcel, and a tax lien attaches to each parcel to secure payment of its proportionate share of the tax on the association's property.

(d) For purposes of this section, "planned unit development association" means an association that owns and maintains property in a real property development project for the benefit of its members, who are owners of individual parcels of real property in the development and are members of the association because of that ownership.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Civil Statutes, art. 1301a.

§ 25.10. Standing Timber

(a) Except as provided by Subsections (b) and (c) of this section, standing timber may be listed together with the land on which it is located in the name of the owner of the land.

(b) If a person who is not entitled to exemption owns standing timber on exempt land, the timber shall be listed separately in the name of the owner of the timber.

(c) When a person other than the owner of standing timber owns the land on which the timber is located, the land and the timber shall be listed separately in the name of the owner of each if either owner files with the chief appraiser or the county assessor-collector, as applicable, before April 1 a written request for separate taxation on a form furnished for that purpose together with proof of separate ownership. A qualification for separate taxation of timber expires at the end of the tax year.

(d) Within 30 days after an owner of land or timber qualifies for separate taxation, the chief appraiser or the county assessor-collector, as applicable, shall deliver a written notice of the qualification to the other owner.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.11. Undivided Interests

(a) Except as provided by Section 25.12 of this code and by Subsection (b) of this section, a property owned in undivided interests may be listed jointly in the name of all owners of undivided interests in the property or in the name of any one or more owners.

(b) An undivided interest in a property shall be listed separately from other undivided interests in the property in the name of its owner if the interest is described in a duly executed and recorded instrument of title and the owner files with the appraisal office or the county assessor-collector, as applicable, before April 1 a written request for separate taxation on a form furnished for that purpose together with proof of ownership and of the proportion his interest bears to the whole. After an undivided interest qualifies for separate taxation, the qualification remains effective in subsequent tax years and need not be requested again. However, the qualification ceases when ownership is transferred or when any owner files a request to cancel separate taxation.

(c) Within 30 days after an owner qualifies for separate taxation or cancels a qualification, the chief appraiser or the county assessor-collector, as applicable, shall deliver a written notice of the qualification or cancellation to the other owners.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.12. Mineral Interest

(a) Except as provided by Subsection (b) of this section, each separate interest in minerals in place shall be listed separately from other interests in the minerals in place in the name of the owner of the interest.

(b) Separate interests in minerals in place shall be listed jointly in the name of the operator designated with the railroad commission or the name of all owners or any combination of owners if the designated operator files with the appraisal office or the county assessor-collector, as applicable, before April 1 a written request for joint taxation on a form furnished for that purpose. A qualification pursuant to this subsection for joint taxation expires at the end of the tax year.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.13. Exempt Property Subject to Contract of Sale

Property that is exempt from taxation to the titleholder but is subject on January 1 to a contract of sale to a person not entitled to exemption shall be listed in the name of the purchaser.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.14. Stock in Banking Corporation

Stock in a banking corporation may be listed in the name of the bank as agent for its stockholders.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.15. Bank Personal Property Subject to Lease

Tangible personal property owned by a banking corporation that is not liable for taxes on its tangible personal property and is leased to another shall be listed in the name of the lessee.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.16. Property Losing Exemption During Tax Year

(a) If an exemption applicable to a property on January 1 terminates during the tax year, the property shall be listed in the name of the person who owns or acquires the property on the date applicability of the exemption terminates.

(b) The chief appraiser or the county assessor-collector, as applicable, shall make an entry on the appraisal records showing that taxes on the property are to be calculated as provided by Section 26.09 of this code and showing the date on which exemption terminated.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.17. Property Overlapping Taxing Unit Boundaries

If real property is located partially outside and partially inside a taxing unit's boundaries, the portion inside the unit's boundaries shall be listed separately from the remaining portion.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.18. Periodic Review of Values

(a) Each appraisal office and each county assessor-collector shall implement a plan for periodic review of property to update appraised values.

(b) The plan shall provide for review of all real property in the district or county, as applicable, at least once every five years.

(c) If an appraisal office's plan does not provide for annual review of property to update appraised values, a taxing unit by resolution adopted by its governing body may require the appraisal office to review all property within the unit's boundaries annually. A taxing unit that requires annual review as permitted by this subsection must pay the appraisal district for the additional expense incurred in making an annual review of the property in the unit.

(d) A taxing unit containing not more than 1,000 acres by resolution adopted by its governing body

may require the appraisal office to appraise all property within the unit or to identify and appraise newly annexed territory and new improvements in the unit as of a date specified in the resolution. On or before the deadline requested by the taxing unit, which deadline may not be less than 30 days after the date the resolution is delivered to the appraisal office, the chief appraiser shall complete the appraisal and certify to the unit an estimate of the total appraised value of property taxable by the unit as of the date specified in such resolution. The unit must pay the appraisal district for the cost of making the appraisal. The chief appraiser shall provide sufficient personnel to make the appraisals required by this subsection on or before the deadline requested by the taxing unit.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.19. Notice of Appraised Value

(a) By April 15 or as soon thereafter as practicable and, in any event, not later than the 20th day before the date the appraisal review board or commissioners court begins considering a protest on a property, the chief appraiser and the county assessor-collector shall deliver a written notice to a property owner of the appraised value of his property if:

(1) the appraised value of the property is greater than it was in the preceding year; or

(2) the property was not on the appraisal roll in the preceding year.

(b) The county assessor-collector shall include in the notice:

(1) the appraised, assessed, and taxable value of the property in the preceding year;

(2) the amount of county taxes imposed on the property in the preceding year;

(3) the appraised value of the property for the current year;

(4) the amount of county taxes that will be imposed on the property for the current year if neither the tax rate nor the assessment ratio in effect in the county in the preceding year is reduced; and

(5) a brief explanation of the time and procedure for protesting the appraisal.

(c) The chief appraiser shall include in the notice:

(1) a list of the taxing units in which the property is taxable;

(2) the appraised value of the property in the preceding year;

(3) the assessed and taxable value of the property in the preceding year for each taxing unit taxing the property and the amount of taxes each imposed in the preceding year;

(4) the appraised value of the property for the current year;

(5) the amount of taxes each taxing unit will impose on the property in the current year if neither the tax rate nor the assessment ratio in effect in that unit in the preceding year is reduced; and

(6) a brief explanation of the time and procedure for protesting the value.

(d) Failure to receive the notice required by this section does not affect the validity of the appraisal of the property, the imposition of any tax on the basis of the appraisal, the existence of any tax lien, or any proceeding instituted to collect the tax.

(e) The chief appraiser, with the approval of the appraisal district board of directors, or the county assessor-collector may dispense with the notice required by Subdivision (1) of Subsection (a) of this section if the amount of increase in appraised value is $1,000 or less.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.20. Notice to Taxing Units

(a) By April 15 or as soon thereafter as practicable, the chief appraiser shall submit to each taxing unit in the district a certified estimate of the total appraised value of all property in the district that is taxable by the unit.

(b) The chief appraiser shall give the assessor for a taxing unit in the district reasonable access to the appraisal records at any time.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.21. Omitted Property

(a) If the county assessor-collector in the case of county taxes or the chief appraiser in the case of state taxes or taxes for a taxing unit other than the county discovers that real property was not taxed in any one of the 10 preceding years or that personal property was not taxed in one of the two preceding years, he shall appraise the property as of January 1 of each year that it escaped taxation and enter the property and its appraised value in the appraisal records.

(b) The entry shall show that the appraisal is for property that escaped taxation in a prior year and shall indicate the year and the appraised value for each year.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.22. Submission for Review and Protest

(a) By April 15 or as soon thereafter as practicable, the chief appraiser shall submit the completed appraisal records to the appraisal review board for review and determination of protests. However, the chief appraiser may not submit the records until he has delivered the notices required by Subsection (d) of Section 11.45, Subsection (d) of Section 23.44, and Sections 25.19 and 25.20 of this code.

(b) By April 15 or as soon thereafter as practicable, the county assessor-collector shall submit the completed appraisal records for county purposes to the commissioners court for review and determination of protests. However, the county assessor-collector may not submit the records until he has delivered the notices required by Subsection (d) of Section 11.45, Subsection (d) of Section 23.44, and Section 25.19 of this code.

(c) The chief appraiser and the county assessor-collector shall make and subscribe an affidavit on the submission substantially as follows:

"I, _____, (Chief Appraiser or County Assessor-Collector, as applicable) for _____ solemnly swear that I have made or caused to be made a diligent inquiry to ascertain all property in the county subject to appraisal by me and that I have included in the records all property that I am aware of at an appraised value determined as required by law."

(d) The chief appraiser or the county assessor-collector may require of his employees who are engaged in listing and appraising property an affidavit similar to his own.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.23. Supplemental Appraisal Records

(a) After submission of appraisal records, the chief appraiser or the county assessor-collector, as applicable, shall prepare supplemental appraisal records listing each taxable property he discovers that is not included in the records already submitted, including property that escaped taxation in a prior tax year.

(b) Supplemental appraisal records shall be in the form prescribed by the State Property Tax Board and shall include the items required by Section 25.02 of this code.

(c) As soon as practicable after determining the appraised value of a property listed in supplemental appraisal records, the chief appraiser or the county assessor-collector, as applicable, shall deliver the notices required by Sections 25.19 and 25.20 of this code, if applicable, and submit the records for review and determination of protest as provided by Section 25.22 of this code.

(d) Supplemental appraisal records are subject to review and protest as provided by Chapters 41 and 42 of this code. However, a property owner must file a protest petition within 10 days after the date the records are submitted for review, and the appraisal review board or the commissioners court, as applicable, shall complete its review within 30 days after the date the records are submitted or as soon thereafter as practicable.

(e) The chief appraiser shall add supplemental appraisal records, as changed by the appraisal review board and approved by that board, to the appraisal roll for the district and certify the addition to the taxing units. The county assessor-collector shall add supplemental appraisal records prepared by him, as changed and approved by the commissioners court acting as a board of equalization, to the appraisal roll for county tax purposes.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.24. Appraisal Roll

The appraisal records, as changed by order of the appraisal review board and approved by that board, constitute the appraisal roll for the district. The appraisal records, as changed by order of the commissioners court acting as a board of equalization and approved by it, constitute the appraisal roll for county tax purposes.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 25.25. Correction of Appraisal Roll

(a) Except as provided by Chapters 41 and 42 of this code and by this section, the appraisal roll may not be changed.

(b) The chief appraiser or the county assessor-collector, as applicable, may change the appraisal roll at any time to correct a name or address, a description of property, or a clerical error that does not affect the amount of tax liability.

(c) At any time, the commissioners court acting as a board of equalization or the appraisal review board, as applicable, on motion of the county assessor-collector or the chief appraiser, as applicable, or of a property owner may direct by written order changes in the appraisal roll to correct:

(1) clerical errors that affect a property owner's liability for a tax; or

(2) multiple appraisals of a property in a single tax year.

(d) The chief appraiser shall certify each change made as provided by this section to the assessor for each unit affected by the change within five days after the date the change is entered.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982.]

CHAPTER 26. ASSESSMENT

Section

26.01. Submission of Rolls to Taxing Units.
26.02. Assessment Ratios Prohibited.
26.03. State Assessment Ratio.
26.04. Submission of Roll to Governing Body.
26.05. Tax Rate.
26.06. Notice, Hearing, and Vote on Tax Increase.
26.07. Election to Repeal Increase.
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26.09. Calculation of Tax.
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26.12. Units Created During Tax Year.
26.13. Taxing Unit Consolidation During Tax Year.

Section
26.14. Annexation of Property During Tax Year.
26.15. Correction of Tax Roll.

§ 26.01. Submission of Rolls to Taxing Units

(a) By June 25 or as soon thereafter as practicable, the chief appraiser shall prepare and certify to the assessor for each taxing unit participating in the district that part of the appraisal roll for the district that lists the property taxable by the unit. The part certified to the assessor is the appraisal roll for the unit.

(b) When the chief appraiser submits appraisal rolls to the taxing units, he also shall certify to the county assessor-collector an appraisal roll for state tax purposes listing all property in the county. However, if the district is not appraising property in a part of the county as authorized by Subsection (d) of Section 6.02 of this code, the chief appraiser shall certify a roll showing all property the district is appraising in the county. The county assessor-collector shall combine the rolls certified to him for state tax purposes by more than one appraisal district.

(c) When a chief appraiser submits an appraisal roll for state taxes to a county assessor-collector, he also shall certify the roll to the State Property Tax Board. However, the State Property Tax Board by rule may provide for submission of only a summary of the appraisal roll. In that event, the chief appraiser shall certify the summary in the form and manner prescribed by the board's rule.

[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 26.02. Assessment Ratios Prohibited

Text of section effective January 1, 1981

Except as provided by Section 26.03 of this code, the assessment of property for taxation on the basis of a percentage of its appraised value is prohibited. All property shall be assessed on the basis of 100 percent of its appraised value.

[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1981.]

§ 26.03. State Assessment Ratio

Text of section effective January 1, 1980

The assessment ratio for calculating taxes for state purposes is .0001 percent.

[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 26.04. Submission of Roll to Governing Body

(a) On receipt of the appraisal roll, the assessor for a taxing unit shall determine the total appraised value, the total assessed value, and the total taxable value of property taxable by the unit. He shall also determine, using information provided by the appraisal office, the appraised, assessed, and taxable value of property added to the appraisal roll since the preceding tax year by annexation of territory and the appraised, assessed, and taxable value of the improvements on the roll that were made after January 1 of the preceding tax year. The sum of the taxable value of annexed property and the taxable value of improvements made after January 1 of the preceding tax year is the taxable value of new property.

(b) The assessor shall submit the appraisal roll for the unit showing the total appraised, assessed, and taxable values of all property and the total taxable value of new property to the governing body of the unit by July 1 or as soon thereafter as practicable.

(c) An officer or employee designated by the governing body shall subtract from the total amount of property taxes imposed by the unit in the preceding year:

(1) the amount of taxes imposed in the preceding year to pay principal of and interest on bonds, warrants, certificates of obligation, or other lawfully authorized evidences of indebtedness issued or assumed by the unit and to pay lawfully incurred contractual obligations providing security for the payment of principal of and interest on bonds or other evidences of indebtedness issued on behalf of the unit by another political subdivision;

(2) the amount of taxes imposed in the preceding year on property in territory that has ceased to be a part of the unit;

(3) the amount of taxes imposed in the preceding year on taxable value that is exempt in the current year; and

(4) the amount of taxes imposed in the preceding year on taxable value that is not taxable in the current year because property appraised at market value in the preceding year is required by law to be appraised at less than market value in the current year.

(d) The designated officer or employee shall calculate the tax rate that if applied to the total taxable value submitted to the governing body less the taxable value of new property would impose the amount of property taxes determined as provided by Subsection (c) of this section. He shall add to that rate the amount that, if applied to the total taxable value submitted to the governing body, will impose the amount of taxes needed to pay the principal of and interest on bonds, warrants, certificates of obligation, or other lawfully authorized evidences of indebtedness issued or assumed by the unit and to pay lawfully incurred contractual obligations providing security for the payment of principal of and interest on bonds or other evidences of indebtedness issued on behalf of the unit by another political subdivision.

(e) By July 7 or as soon thereafter as practicable, the designated officer or employee shall publicize the

tax rate calculated as provided by this section and the calculations used to determine it in a manner designed to come to the attention of all residents of the unit and shall submit the rate to the governing body of the unit.

(f) If as a result of consolidation of taxing units a taxing unit includes territory that was in two or more taxing units in the preceding year, the amount of taxes imposed in each in the preceding year is combined for purposes of calculating the tax rate under this section.

[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 26.05. Tax Rate

(a) By August 1 or as soon thereafter as practicable, the governing body of each taxing unit shall adopt a tax rate for the current tax year and shall notify the assessor for the unit of the rate adopted.

(b) A taxing unit may not impose property taxes in any year until the governing body has adopted a tax rate for that year, and the annual tax rate must be set by ordinance, resolution, or order, depending on the method prescribed by law for adoption of a law by the governing body. The vote on the ordinance, resolution, or order setting the tax rate must be separate from the vote adopting the budget.

(c) The governing body may not adopt a tax rate that exceeds the tax rate calculated as provided by Section 26.04 of this code until it has given notice of its intention to adopt a higher rate, has held a public hearing on the proposed increase, and has otherwise complied with Section 26.06 of this code.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 26.06. Notice, Hearing, and Vote on Tax Increase

(a) A public hearing required by Section 26.05 of this code may not be held before the seventh day after the date the notice of intent to increase the tax rate is given. The hearing must be on a weekday that is not a public holiday and must begin after 5 p. m. and before 9 p. m. The hearing must be held inside the boundaries of the unit in a publicly owned building or, if a suitable publicly owned building is not available, in a suitable building to which the public normally has access. At the hearing, the governing body must afford adequate opportunity for proponents and opponents of the tax increase to present their views.

(b) The notice of a public hearing may not be smaller than one-quarter page of a standard-size or a tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type. The notice must be in the following form:

"NOTICE OF TAX INCREASE

"The (name of the taxing unit) proposes to increase your property taxes by (percentage of increase over the tax rate submitted pursuant to Section 26.04 of this code) percent.

"A public hearing on the increase will be held on (date and time) at (meeting place).

"(Names of all members of the governing body, showing how each voted on the proposal to raise taxes or, if one or more were absent, indicating the absences.)"

(c) The notice may be delivered by mail to each registered voter residing in the unit, or it may be published in a newspaper. If the notice is published in a newspaper, it may not be in the part of the paper in which legal notices and classified advertisements appear.

(d) At the public hearing the governing body shall announce the date, time, and place of the meeting at which it will vote on the proposed tax increase. After the hearing it shall give notice of the meeting in the form and manner provided by Subsection (b) of this section, except that the second paragraph of the notice must state:

"A public meeting to vote on the proposed increase will be held on (date and time) at (meeting place)."

(e) The meeting to vote on the increase may not be earlier than the third day or later than the 14th day after the date of the public hearing. The meeting must be held inside the boundaries of the unit in a publicly owned building or, if a suitable publicly owned building is not available, in a suitable building to which the public normally has access. If the governing body does not adopt an increased rate by the 14th day, it must give a new notice under Subsection (d) of this section before it may adopt a rate that exceeds the tax rate calculated as provided by Section 26.04 of this code.

[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 26.07. Election to Repeal Increase

(a) If the governing body of a taxing unit other than a school district adopts a tax rate that exceeds the rate calculated as provided by Section 26.04 of this code by more than five percent, the qualified voters of the taxing unit by petition may require that an election be held to determine whether or not to reduce the tax rate adopted for the current year to a rate that exceeds the rate calculated as provided by Section 26.04 of this code by only five percent.

(b) A petition is valid if:

(1) it states that it is intended to require an election in the taxing unit on the question of reducing the tax rate for the current year;

(2) it is signed by 15,000 qualified voters or by a number of qualified voters of the taxing unit equal to at least 15 percent of the number of qualified voters of the taxing unit according to the most recent official list of qualified voters, whichever number is less; and

(3) it is submitted to the governing body on or before the 60th day after the date on which the governing body adopted the tax rate for the current year.

(c) Not later than the 20th day after the day a petition is submitted, the governing body shall determine whether or not the petition is valid and pass a resolution stating its finding. If the governing body fails to act within the time allowed, the petition is treated as if it had been found valid.

(d) If the governing body finds that the petition is valid (or fails to act within the time allowed), it shall order that an election be held in the taxing unit on a date not less than 30 or more than 90 days after the last day on which it could have acted to approve or disapprove the petition. A state law requiring local elections to be held on a specified date does not apply to the election unless a specified date falls within the time permitted by this section. At the election, the ballots shall be prepared to permit voting for or against the proposition: "Reducing the tax rate in (name of taxing unit) for the current year from (the rate adopted) to (the rate that is only five percent greater than the rate calculated as provided by Section 26.04 of this code)."

(e) If a majority of the qualified voters voting on the question in the election favor the proposition and the number of qualified voters voting on the question in the election exceeds 25 percent of the qualified voters residing in the taxing unit, the tax rate for the taxing unit for the current year is the tax rate that is five percent greater than the rate calculated as provided by Section 26.04 of this code; otherwise, the tax rate for the current year is the one adopted by the governing body.

(f) If the tax rate is reduced by an election called under this section after tax bills for the unit are mailed, the assessor for the unit shall prepare and mail corrected tax bills. He shall include with the bill a brief explanation of the reason for and effect of the corrected bill. The date on which the taxes become delinquent for the year is extended by a number of days equal to the number of days between the date the first tax bills were sent and the date the corrected tax bills were sent.

(g) If a property owner pays taxes calculated using the higher tax rate when the rate is reduced by an election called under this section, the taxing unit shall refund the difference between the amount of taxes paid and the amount due under the reduced rate.

[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 26.08. Election to Limit School Taxes

(a) If the governing body of a school district adopts a rate that exceeds the rate calculated as provided by Section 26.04 of this code by more than five percent, the qualified voters of the district by petition may require that an election be held to determine whether or not to limit the tax rate the governing body may adopt for the following year. When increased expenditure of funds by a school district is necessary to respond to a disaster, such as a tornado, hurricane, flood, or other calamity (not including a drought) which has impacted a school district and the governor has requested federal disaster assistance for the area in which the school district is located, a petition is not valid under this section to repeal a tax increase adopted the next time the district adopts a tax rate after the date the disaster occurs.

(b) A petition is valid if:

(1) it states that it is intended to require an election in the school district on the question of limiting the tax rate for the following year;

(2) it is signed by 15,000 qualified voters or by a number of qualified voters of the school district equal to at least 15 percent of the number of qualified voters of the district according to the most recent official list of qualified voters, whichever number is less; and

(3) it is submitted to the governing body on or before the 60th day after the date on which the governing body adopted the tax rate for the current year.

(c) Not later than the 20th day after the day a petition is submitted, the governing body shall determine whether or not the petition is valid and pass a resolution stating its finding. If the governing body fails to act within the time allowed, the petition is treated as if it had been found valid.

(d) If the governing body finds that the petition is valid (or fails to act within the time allowed), it shall order that an election be held in the school district on a date not less than 30 or more than 90 days after the last day on which it could have acted to approve or disapprove the petition. A state law requiring local elections to be held on a specified date does not apply to the election unless a specified date falls within the time permitted by this section. At the election, the ballots shall be prepared to permit voting for or against the proposition: "Limiting the ad valorem tax rate in (name of school district) for (the following year)."

(e) If a majority of the qualified voters voting on the question in the election favor the proposition and the number of qualified voters voting on the question in the election exceeds 25 percent of the qualified voters residing in the taxing unit, the governing body may not adopt a tax rate in the following year

that exceeds the rate calculated as provided by Section 26.04 of this code for that year by more than five percent, except that in making the calculation under Subsection (d) of Section 26.04 of this code, the assessor shall use the amount of taxes determined as provided by Subsection (c) of Section 26.04 of this code in the year in which the tax increase that initiated the referendum occurred rather than the year in which the calculation occurs.
[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 26.09. Calculation of Tax

(a) On receipt of notice of the tax rate for the current tax year, the assessor for a taxing unit other than a county shall calculate the tax imposed on each property included on the appraisal roll for the unit.

(b) The county assessor-collector shall add the properties and their values certified to him as provided by Chapter 24 of this code to the appraisal roll for state tax purposes as certified to him as provided by Subsection (b) of Section 26.01 of this code and to the appraisal roll for county tax purposes. The county assessor-collector shall use the appraisal roll certified to him as provided by Subsection (b) of Section 26.01 with the added properties and values to calculate state taxes and shall use the appraisal roll for county tax purposes, with the added properties and values, to calculate county taxes.

(c) The tax is calculated by:

(1) subtracting from the appraised value of a property as shown on the appraisal roll for the unit the amount of any partial exemption allowed the property owner that applies to appraised value to determine net appraised value;

(2) multiplying the net appraised value by the assessment ratio to determine assessed value;

(3) subtracting from the assessed value the amount of any partial exemption allowed the property owner to determine taxable value; and

(4) multiplying the taxable value by the tax rate.

(d) If a property is subject to taxation for a prior year in which it escaped taxation, the assessor shall calculate the tax for each year separately. In calculating the tax, he shall use the assessment ratio and tax rate in effect in the unit for the year for which back taxes are being imposed. To the amount of back taxes due, he shall add interest calculated at the rate provided by Subsection (c) of Section 33.01 of this code from the date the tax would have become delinquent had the tax been imposed in the proper tax year.

(e) The assessor shall enter the amount of tax determined as provided by this section in the appraisal roll and submit it to the governing body of the unit for approval. The appraisal roll with amounts of tax entered as approved by the governing body constitutes the unit's tax roll.
[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 26.10. Prorating Taxes—Loss of Exemption

If the appraisal roll shows that a property is eligible for taxation for only part of a year because an exemption applicable on January 1 of that year terminated during the year, the tax due against the property is calculated by multiplying the tax due for the entire year as determined as provided by Section 26.09 of this code by a fraction, the denominator of which is 365 and the numerator of which is the number of days the exemption is not applicable.
[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 26.11. Prorating Taxes—Acquisition by Government

(a) If the federal government, the state, or a political subdivision of the state acquires the right to possession of taxable property under a court order issued in condemnation proceedings or acquires title to taxable property, the amount of the tax due on the property is calculated by multiplying the amount of taxes imposed on the property for the entire year as determined as provided by Section 26.09 of this code by a fraction, the denominator of which is 365 and the numerator of which is the number of days that elapsed prior to the date of the conveyance or the date of the order granting the right of possession.

(b) If the amount of taxes to be imposed on the property for the year of transfer has not been determined at the time of transfer, the assessor for each taxing unit in which the property is taxable may use the taxes imposed on the property for the preceding tax year as the basis for determining the amount of taxes to be imposed for the current tax year.

(c) If the amount of prorated taxes determined to be due as provided by this section is tendered to the collector for the unit, he shall accept the tender. The payment absolves the transferor of liability for taxes by the unit on the property for the year of the transfer.
[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 26.12. Units Created During Tax Year

(a) If a taxing unit is created after January 1, the chief appraiser shall prepare and deliver an appraisal roll for the unit as provided by Section 26.01 of this code as if the unit had existed on January 1.

(b) If the taxing unit created after January 1 imposes taxes for the year, it shall do so as provided by this chapter as if it had existed on January 1.

(c) If a taxing unit is created too late for observance of the deadlines required by this code, the chief appraiser shall submit the appraisal roll as provided by Section 26.01 of this code as soon as practicable.

The assessor for the unit shall submit the appraisal roll to the governing body of the unit within five days after receipt from the appraisal office. The limitations imposed by Section 26.02 of this code do not apply to the unit in the year it is created. The governing body of the unit shall adopt an assessment ratio and a tax rate and notify the assessor as provided by Section 26.05 of this code within 20 days after receipt of the appraisal roll. The assessor shall calculate the taxes and prepare and mail tax bills not later than 60 days after the date the appraisal office submits the unit's appraisal roll.

[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 26.13. Taxing Unit Consolidation During Tax Year

(a) If two or more taxing units consolidate into a single taxing unit after January 1, the governing body of the consolidated unit may elect to impose taxes for the current tax year either as if the unit as consolidated had existed on January 1 or as if the consolidation had not occurred.

(b) The chief appraiser shall prepare and deliver an appraisal roll for the unit or units in accordance with the election made by the governing body.

(c) Whatever the election, the assessor and collector for the unit, as consolidated shall assess and collect taxes on property that is taxable by the unit as consolidated.

[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 26.14. Annexation of Property During Tax Year

(a) Except as provided by Subsection (b) of this section, a taxing unit may not impose a tax on property annexed by the unit after January 1.

(b) If a taxing unit annexes territory during a tax year that was located in another taxing unit of like kind on January 1, each unit shall impose taxes on property located within its boundaries on the date the appraisal review board approves the appraisal roll for the district. The chief appraiser shall prepare and deliver an appraisal roll for each unit in accordance with the requirements of this subsection.

(c) For purposes of this section, "taxing units of like kind" are taxing units that are authorized by the laws by or pursuant to which they are created to perform essentially the same services.

[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 26.15. Correction of Tax Roll

(a) Except as provided by Chapters 41 and 42 of this code and in this section, the tax roll for a taxing unit may not be changed after it is completed.

(b) The assessor for a unit shall enter on the tax roll the changes made in the appraisal roll as provided by Section 25.25 of this code.

(c) At any time, the governing body of a taxing unit, on motion of the assessor for the unit or of a property owner, may direct by written order changes in the tax roll to correct errors in the mathematical computation of a tax. The assessor shall enter the corrections ordered by the governing body.

(d) Except as provided by Subsection (e) of this section, if a correction in the tax roll that changes the tax liability of a property owner is made after the tax bill is mailed, the assessor shall prepare and mail a corrected tax bill in the manner provided by Chapter 31 of this code for tax bills generally. He shall include with the bill a brief explanation of the reason for and effect of the corrected bill.

(e) If a correction that increases the tax liability of a property owner is made after the tax is paid, the assessor shall prepare and mail a supplemental tax bill in the manner provided by Chapter 31 of this code for tax bills generally. He shall include with the supplemental bill a brief explanation of the reason for and effect of the supplemental bill. The additional tax is due on receipt of the supplemental bill and becomes delinquent if not paid before the delinquency date prescribed by Chapter 31 of this code or before the first day of the next month after the date of the mailing that will provide at least 21 days for payment of the tax, whichever is later.

(f) If a correction decreases the tax liability of a property owner after he has paid the tax, the taxing unit shall refund to the property owner the difference between the tax paid and the tax legally due.

[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1982.]

SUBTITLE E. COLLECTIONS AND DELINQUENCY

CHAPTER 31. COLLECTIONS

Section

31.01. Tax Bills.
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31.03. Split Payment of Texas.
31.04. Postponement of Delinquency Date.
31.05. Discounts.
31.06. Medium of Payment.
31.07. Certain Payments Accepted.
31.08. Tax Certificate.
31.09. Reports and Remittances of State Taxes.
31.10. Reports and Remittances of Other Taxes.

§ 31.01. Tax Bills

(a) Except as provided by Subsection (f) of this section, the assessor for each taxing unit shall prepare and mail a tax bill to each person in whose name the property is listed on the tax roll or to his authorized agent. The assessor shall mail tax bills by October 1 or as soon thereafter as practicable.

(b) The county assessor-collector shall mail the tax bill for Permanent University Fund land to the comptroller. The comptroller shall pay all county

tax bills on Permanent University Fund land with warrants drawn on the General Revenue Fund and mailed to the county assessors-collectors before February 1.

(c) The tax bill or a separate statement accompanying the tax bill shall:

(1) identify the property subject to the tax;

(2) state the appraised value, assessed value, and taxable value of the property;

(3) if the property is land appraised as provided by Subchapter C, D, or E, Chapter 23 of this code,[1] state the market value and the taxable value for purposes of deferred or additional taxation as provided by Section 23.46, 23.55, or 23.76, as applicable, of this code;

(4) state the assessment ratio for the unit;

(5) state the type and amount of any partial exemption applicable to the property, indicating whether it applies to appraised or assessed value;

(6) state the total tax rate for the unit;

(7) state the amount of tax due and the due date;

(8) explain the payment options and discounts provided by Sections 31.03 and 31.05 of this code, if available to the unit's taxpayers;

(9) state the rates of penalty and interest imposed for delinquent payment of the tax; and

(10) include any other information required by the State Property Tax Board.

(d) The tax bill for the county shall also state the amount of penalty, if any, imposed pursuant to Section 22.27 of this code.

(e) An assessor may include taxes for more than one taxing unit in the same tax bill, but he shall include the information required by Subsection (c) of this section for the tax imposed by each unit included in the bill.

(f) The governing body of a taxing unit may provide in the manner required by law for official action by the body that a tax bill not be sent until the total amount of unpaid taxes the unit collects on the property is $5 or more. Penalties and interest do not accrue during a period when a bill is not sent because of the provisions of this section.

(g) Except as provided by Subsection (f) of this section, failure to send or receive the tax bill required by this section does not affect the validity of the tax, penalty, or interest, the due date, the existence of a tax lien, or any procedure instituted to collect a tax.

[Acts 1979, 66th Leg., p. 2284, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Sections 23.41 et seq., 23.51 et seq., and 23.71 et seq.

§ 31.02. Delinquency Date

Except as provided by Sections 31.03 and 31.04 of this code, taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed.

[Acts 1979, 66th Leg., p. 2284, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 31.03. Split Payment of Taxes

(a) If a person pays one-half of state and county taxes before December 1, he may pay the remaining one-half of the taxes without penalty or interest at any time before July 1 of the following year.

(b) The governing body of a taxing unit, other than a county, that collects its own taxes may adopt, in the manner required by law for official action by the body, the split-payment option provided by Subsection (a) of this section. The split-payment option, if adopted, applies to taxes for all units for which the adopting taxing unit collects taxes.

[Acts 1979, 66th Leg., p. 2284, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 31.04. Postponement of Delinquency Date

(a) If tax bills are mailed after January 10, the delinquency date provided by Section 31.02 of this code is postponed to the first day of the next month that will provide a period of at least 21 days after the date of mailing for payment of taxes before delinquent.

(b) If the delinquency date is postponed as provided by this section, the assessor who mails the bills shall notify the governing body of each taxing unit whose taxes are included in the bills of the postponement. If the due date for state taxes is postponed, the county assessor-collector shall notify the State Property Tax Board of the postponement.

(c) A payment option provided by Section 31.03 of this code or a discount provided by Section 31.05 of this code does not apply to taxes that are calculated too late for it to be available.

[Acts 1979, 66th Leg., p. 2284, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 31.05. Discounts

(a) A person is entitled to a discount from the amount of state tax due if he pays the tax before January. The amount of discount is:

(1) three percent if the tax is paid in October;

(2) two percent if the tax is paid in November; and

(3) one percent if the tax is paid in December.

(b) The governing body of a taxing unit that collects its own taxes may adopt the discounts provided by Subsection (a) of this section in the manner required by law for official action by the body. The discounts, if adopted, apply to taxes for all units for which the adopting taxing unit collects taxes.

[Acts 1979, 66th Leg., p. 2284, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 31.06. Medium of Payment

(a) Taxes are payable only in currency of the United States. However, a collector may accept a check or money order in payment of taxes.

(b) Acceptance by a collector of a check or money order constitutes payment of a tax as of the date of acceptance if the check or money order is duly paid or honored. If the check or money order is not duly paid or honored, the collector shall deliver written notice of nonpayment to the person who attempted payment by check or money order. Until payment is made in full by cash or by a check or money order that is duly paid or honored, the lien securing payment of the tax remains in effect, whether or not the person receives notice of nonpayment.

[Acts 1979, 66th Leg., p. 2284, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 31.07. Certain Payments Accepted

(a) A person may pay the tax imposed on any one property without simultaneously paying taxes imposed on other property he owns.

(b) A person may not pay the tax imposed on a property by the state or a taxing unit separate from taxes imposed on that property by the state or other taxing units using the same collector unless the tax is included in a separate bill.

[Acts 1979, 66th Leg., p. 2284, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 31.08. Tax Certificate

(a) At the request of any person, a collector for a taxing unit shall issue a certificate showing the amount of delinquent taxes, penalties, and interest due the unit on a property according to the unit's current tax records. The collector shall charge a fee of $2 for each certificate issued. The collector shall pay all fees collected under this section into the treasury of the taxing unit that employs him.

(b) Except as provided by Subsection (c) of this section, if a person transfers property accompanied by a tax certificate erroneously showing that no delinquent taxes, penalties, or interest are due a taxing unit on the property, the unit's tax lien on the property is extinguished and the purchaser of the property is absolved of liability to the unit for delinquent taxes, penalties, or interest on the property. The person who was liable for the tax for the year it was imposed remains personally liable for the delinquent tax, penalties, and interest.

(c) A tax certificate issued through fraud or collusion is void.

[Acts 1979, 66th Leg., p. 2284, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 31.09. Reports and Remittances of State Taxes

(a) The State Property Tax Board shall adopt rules prescribing methods of accounting for and remitting state property taxes and shall prescribe and furnish forms for periodic reports.

(b) A county assessor-collector shall file with the State Property Tax Board at the times and in the manner required by the rules sworn reports accounting for all state property taxes, collected or delinquent, on the tax roll for state taxes.

(c) A county assessor-collector shall remit the state property taxes he collects at the times and in the manner required by the rules.

(d) The State Property Tax Board shall periodically examine the records of each county assessor-collector's office to verify the accuracy of reports accounting for state property taxes.

[Acts 1979, 66th Leg., p. 2284, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 31.10. Reports and Remittances of Other Taxes

(a) Each month the collector of taxes for a taxing unit shall prepare and submit to the governing body of the unit a written report made under oath accounting for all taxes collected for the unit during the preceding month. Reports of collections made in the months of October through January are due on the 25th day of the month following the month that is the subject of the report. Reports of collections made in all other months are due on the 15th day of the month following the month that is the subject of the report. A collector for more than one taxing unit may prepare one report accounting for taxes collected for all units, and he may submit a certified copy of the report as his monthly report to the governing body of each unit.

(b) The collector for a taxing unit shall prepare and submit to the governing body of the unit an annual report made under oath accounting for all taxes of the unit collected or delinquent on property taxed by the unit during the preceding 12-month period. Annual reports are due August 1.

(c) At least monthly the collector for a taxing unit shall deposit in the unit's depository all taxes collected for the unit. The governing body of a unit may require deposits to be made more frequently.

[Acts 1979, 66th Leg., p. 2284, ch. 841, § 1, eff. Jan. 1, 1982.]

CHAPTER 32. TAX LIENS AND PERSONAL LIABILITY

Section

32.01. Tax Lien.
32.02. Restrictions on a Mineral Interest Tax Lien.
32.03. Restrictions on Personal Property Tax Lien.
32.04. Priorities Among Tax Liens.
32.05. Priority of Tax Liens Over Other Property Interests.
32.06. Transfer of Tax Lien.
32.07. Personal Liability for Tax.

§ 32.01. Tax Lien

On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on

that property, whether or not the taxes are imposed in the year the lien attaches. The lien exists in favor of the state and each taxing unit having power to tax the property.

[Acts 1979, 66th Leg., p. 2287, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 32.02. Restrictions on a Mineral Interest Tax Lien

(a) If a mineral estate is severed from a surface estate and if different persons own the mineral estate and surface estate, the lien resulting from taxes imposed against each interest in the mineral estate exists only for the duration of the interest it encumbers. After an interest in the mineral estate terminates, the lien encumbering it expires and is not enforceable:

(1) against any part of the surface estate not owned by the owner of the interest encumbered by the lien;

(2) against any part of the mineral estate not owned by the owner of the interest encumbered by the lien; or

(3) against the owner of the surface estate as a personal obligation, unless he also owns the interest encumbered by the lien.

(b) Taxes imposed on a severed interest in a mineral estate that has terminated remain the personal liability of the person who owned the interest on January 1 of the year for which the tax was imposed.

[Acts 1979, 66th Leg., p. 2287, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 32.03. Restrictions on Personal Property Tax Lien

A tax lien may not be enforced against personal property transferred to a bona fide purchaser for value who does not have actual notice of the existence of the lien.

[Acts 1979, 66th Leg., p. 2287, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 32.04. Priorities Among Tax Liens

(a) Whether or not a tax lien provided by this chapter takes priority over a tax lien of the United States is determined by federal law. In the absence of federal law, a tax lien provided by this chapter takes priority over a tax lien of the United States.

(b) Tax liens provided by this chapter have equal priority.

[Acts 1979, 66th Leg., p. 2287, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 32.05. Priority of Tax Liens Over Other Property Interests

(a) A tax lien on real property takes priority over a homestead interest in the property.

(b) Except as provided by Subsection (c) of this section, a tax lien provided by this chapter takes priority over the claim of any creditor of a person whose property is encumbered by the lien and over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before attachment of the tax lien.

(c) A tax lien provided by this chapter is inferior to claims for any survivor's allowance, funeral expenses, or expenses of the last illness of a decedent made against the estate of a decedent as provided by law.

[Acts 1979, 66th Leg., p. 2287, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 32.06. Transfer of Tax Lien

(a) A person may authorize another person to pay the taxes imposed by a taxing unit on his real property by filing with the collector for the unit a sworn document stating the authorization, naming the person authorized to pay the taxes, and describing the property.

(b) If a person authorized to pay another's taxes pursuant to Subsection (a) of this section pays the taxes and any penalties and interest imposed, the collector shall issue a tax receipt to the person paying the taxes. In addition, the collector shall certify on the sworn document that payment of the taxes and any penalties and interest on the described property has been made by a person other than the person liable for the taxes when imposed and that the taxing unit's tax lien is transferred to the person paying the taxes. The collector shall attach to the document his seal of office and deliver the document to the person paying the taxes. The collector shall keep a record of all tax liens transferred as provided by this section.

(c) Except as otherwise provided by this section, the transferee of a tax lien and any successor in interest is entitled to foreclose the lien in the manner provided by law for foreclosure of tax liens.

(d) To be enforceable, a tax lien transferred as provided by this section must be recorded in the deed records of each county in which the property encumbered by the lien is located.

(e) A person holding a tax lien transferred as provided by this section may not charge a greater rate of interest than 10 percent a year on the taxes, penalties, interest, and recording expenses paid to acquire and record the lien.

(f) The holder of a preexisting lien on property encumbered by a tax lien transferred as provided by this section is entitled, within six months after the date on which the tax lien is recorded in all counties in which the property is located, to pay the holder of the tax lien the amount paid for the lien, plus interest accrued and recording expenses, and becomes subrogated to all rights in the lien.

(g) A suit to foreclose a tax lien transferred as provided by this section may not be instituted within one year from the date on which the lien is recorded in all counties in which the property is located.

(h) After one year from the date on which a tax lien transferred as provided by this section is recorded in all counties in which the property is located, the holder of the lien may file suit to foreclose the lien unless a contract between the holder of the lien and the owner of the property encumbered by the lien provides otherwise. If the suit results in foreclosure of the lien, the person filing suit is entitled to recover attorney's fees in an amount not to exceed 10 percent of the judgment. The proceeds of a sale following foreclosure as provided by this subsection shall be applied first to the payment of court costs, then to payment of the judgment, including accrued interest, and then to the payment of any attorney's fees fixed in the judgment. Any remaining proceeds shall be paid to other holders of liens on the property in the order of their priority and then to the person whose property was sold at the tax sale.

(i) The person whose property is sold as provided by this section or any person holding a first lien against the property is entitled, within one year after the date the property is sold, to redeem the property from the purchaser at the tax sale by paying him the tax sale purchase price, plus costs and interest accrued on the judgment to the date of redemption or 110 percent of the amount of the judgment, whichever is less. If a person redeems the property as provided by this subsection, the purchaser at the tax sale shall deliver a deed to the property to the person redeeming the property. If the person who owned the property at the time of foreclosure redeems the property, all liens existing on the property at the time of the tax sale remain in effect to the extent not paid from the sale proceeds.

(j) This section does not abridge the right of an owner of real property to enter into a contract for the payment of taxes with the holder of a lien on the property or affect a contract between the owner and holder of a lien for the payment of taxes on the property.

[Acts 1979, 66th Leg., p. 2287, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 32.07. Personal Liability for Tax

(a) Except as provided by Subsection (b) of this section, property taxes are the personal obligation of the person who owns or acquires the property on January 1 of the year for which the tax is imposed. A person is not relieved of the obligation because he no longer owns the property.

(b) The person in whose name a property is required to be listed by Section 25.13 or 25.15 of this code is personally liable for the taxes imposed on the property.

[Acts 1979, 66th Leg., p. 2287, ch. 841, § 1, eff. Jan. 1, 1980.]

CHAPTER 33. DELINQUENCY

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SUBCHAPTER A. GENERAL PROVISIONS

§ 33.01. Penalties and Interest

(a) A delinquent tax incurs a penalty of four percent of the amount of the tax for the first calendar month it is delinquent plus one percent for each additional month or portion of a month the tax remains unpaid prior to July 1 of the year in which it becomes delinquent. However, a tax delinquent on July 1 incurs a total penalty of eight percent of the amount of the delinquent tax without regard to the number of months the tax has been delinquent.

(b) If a person who exercises the split-payment option provided by Section 31.03 of this code fails to make the second payment before July 1, the second payment is delinquent and incurs a penalty of eight percent of the amount of unpaid tax.

(c) A delinquent tax accrues interest at a rate of three-fourths of one percent for each month or portion of a month the tax remains unpaid.

[Acts 1979, 66th Leg., p. 2290, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.02. Installment Payment of Delinquent Taxes

(a) The collector for a taxing unit that collects its own taxes may enter an agreement with a person delinquent in the payment of the tax for payment of the tax, penalties, and interest in installments. The agreement must be in writing and may not extend for a period of more than 36 months.

(b) Interest accrues as provided by Subsection (c) of Section 33.01 of this code on the unpaid balance during the period of the agreement.

(c) A property owner's execution of an installment agreement under this section is an irrevocable admission of liability for all taxes, penalties, and interest that are subject to the agreement.

(d) Property may not be seized and sold and a suit may not be filed to collect a delinquent tax subject to an installment agreement unless the property owner:

(1) fails to make a payment as required by the agreement;

(2) fails to pay other property taxes collected by the unit when due as required by the collector; or

(3) breaches any other condition of the agreement.

(e) Execution of an installment agreement tolls the limitation periods provided by Section 33.05 of this code for the period during which enforced collection is barred by Subsection (d) of this section.

[Acts 1979, 66th Leg., p. 2290, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.03. Delinquent Tax Roll

Each year the collector for each taxing unit shall prepare a current and a cumulative delinquent tax roll for the unit.

[Acts 1979, 66th Leg., p. 2290, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.04. Notice of Delinquency

(a) At least once each year the collector for a taxing unit shall deliver a notice of delinquency to each person whose name appears on the current delinquent tax roll. However, the notice need not be delivered if a bill for the tax was not mailed pursuant to the authorization provided by Subsection (f) of Section 31.01 of this code.

(b) In addition to the notice required by Subsection (a) of this section, the tax collector for each taxing unit in each year divisible by five shall deliver a written notice of delinquency to each person who owes a tax that has been delinquent more than one year. He shall state in the notice the amount of the delinquent tax, penalties, and interest due, the description of the property on which the tax was imposed, and the year for which the tax is delinquent. If the person owes delinquent taxes for more than one year or on more than one property, the collector may include all the delinquent taxes the person owes in a single notice.

(c) The collector shall deliver the notice required by Subsection (b) of this section by certified mail, return receipt requested, if the collector knows or by exercising reasonable diligence can determine the delinquent taxpayer's name and mailing address. However, if the collector cannot determine the delinquent taxpayer's name or mailing address by exercising reasonable diligence, he may deliver the notice by publishing it in a newspaper.

(d) Penalties and interest on a tax delinquent more than five years or a multiple of five years are cancelled and may not be collected if the collector has not delivered the notice required by Subsection (b) of this section in each year that is divisible by five following the date on which the tax first became delinquent for one year.

[Acts 1979, 66th Leg., p. 2290, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.05. Limitation on Collection of Taxes

(a) Personal property may not be seized and a suit may not be filed:

(1) to collect a tax on personal property that has been delinquent more than four years; or

(2) to collect a tax on real property that has been delinquent more than 20 years.

(b) A tax delinquent for more than the limitation period prescribed by this section and any penalty and interest on the tax is presumed paid unless a suit to collect the tax is pending.

[Acts 1979, 66th Leg., p. 2290, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.06. Deferred Collection of Certain Taxes

(a) An individual is entitled to defer or abate a suit to collect a delinquent tax if he is 65 or older and he owns and occupies as a residence homestead the property on which the tax subject to the suit is delinquent.

(b) To obtain a deferral, an individual must file with the chief appraiser for the appraisal district in which the property is located an affidavit stating the facts required to be established by Subsection (a) of this section. The chief appraiser shall notify the county and each taxing unit participating in the district of the filing. After an affidavit is filed under this subsection, a taxing unit may not file suit to collect delinquent taxes on the property until the individual no longer owns and occupies the property as a residence homestead.

(c) To obtain an abatement, the individual must file in the court in which suit is pending an affidavit stating the facts required to be established by Subsection (a) of this section. If no controverting affidavit is filed by the taxing unit filing suit or if, after a hearing, the court finds the individual is entitled to the deferral, the court shall abate the suit until the individual no longer owns and occupies the property as a residence homestead.

(d) A tax lien remains on the property and penalties and interest continue to accrue during the period collection of taxes is deferred as provided by this section. A plea of limitation, laches, or want of prosecution does not apply against the taxing unit because of deferral of collection as provided by this section.

(e) Each year the chief appraiser for each appraisal district and each county assessor-collector shall publicize in a manner reasonably designed to notify all residents of the district or county the provisions of this section and, specifically, the method by which eligible persons may obtain a deferral.

[Acts 1979, 66th Leg., p. 2290, ch. 841, § 1, eff. Jan. 1, 1982.]

[Sections 33.07 to 33.20 reserved for expansion]

SUBCHAPTER B. SEIZURE OF PERSONAL PROPERTY

§ 33.21. Property Subject to Seizure

(a) A person's personal property is subject to seizure for the payment of a delinquent tax, penalty, and interest he owes the state or a taxing unit on property.

(b) A person's personal property is subject to seizure for the payment of a tax imposed by the state or a taxing unit on his property before the tax becomes delinquent if:

(1) the collector discovers that property on which the tax has been or will be imposed is about to be removed from the county; and

(2) the collector knows of no other personal property in the county from which the tax may be satisfied.

(c) Current wages in the possession of an employer are not subject to seizure.

[Acts 1979, 66th Leg., p. 2292, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.22. Institution of Seizure

(a) At any time after a tax becomes delinquent, a collector may apply for a tax warrant to any court in any county in which the person liable for the tax has personal property. If more than one collector participates in the seizure, all may make a joint application.

(b) A collector may apply at any time for a tax warrant authorizing seizure of property as provided by Subsection (b) of Section 33.21 of this code.

(c) The court shall issue the tax warrant if the applicant shows by affidavit that:

(1) the person whose property he intends to seize is delinquent in the payment of taxes, penalties, and interest in the amount stated in the application; or

(2) the applicant has reason to believe the property owner is about to remove from the county personal property on which a tax has been or will be imposed, the applicant knows of no other personal property the person owns in the county from which the tax may be satisfied, and taxes in a stated amount have been imposed on the property or taxes in an estimated amount will be imposed on the property.

[Acts 1979, 66th Leg., p. 2292, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.23. Tax Warrant

(a) A tax warrant shall direct a peace officer in the county and the collector to seize as much of the person's personal property as may be reasonably necessary for the payment of all taxes, penalties, and interest included in the application and all costs of seizure and sale. The warrant shall direct the person whose property is seized to disclose to the officer executing the warrant the name and the address if known of any other person having an interest in the property.

(b) A bond may not be required of the state or a taxing unit for issuance or delivery of a tax warrant, and a fee or court cost may not be charged for issuance or delivery of a warrant.

(c) After a tax warrant is issued, the collector shall take possession of the property pending its sale. The person against whom a tax warrant is issued or another person having possession of property of the person against whom a tax warrant is issued shall surrender the property on demand.

[Acts 1979, 66th Leg., p. 2292, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.24. Bond for Payment of Taxes

A person may prevent seizure of property or sale of property seized by delivering to the collector a cash or surety bond conditioned on payment of the tax before delinquency. The bond must be approved by the collector in an amount determined by him, but he may not require an amount greater than the amount of tax if imposed or the collector's reasonable estimate of the amount of tax if not yet imposed.

[Acts 1979, 66th Leg., p. 2292, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.25. Notice of Tax Sale

(a) After a seizure of personal property, the collector shall make a reasonable inquiry to determine the identity and address of any person having an interest in the property other than the person against whom the tax warrant is issued. He shall deliver as soon as possible a written notice stating the time and place of the sale and briefly describing the property seized to the person against whom the warrant is issued and to any other person he discovers has an interest in the property whose address he ascertains.

(b) Failure to send or receive the notice provided by this section does not affect the validity of the sale or title to the seized property.

[Acts 1979, 66th Leg., p. 2292, ch. 841, § 1, eff. Jan. 1, 1982.]

[Sections 33.26 to 33.40 reserved for expansion]

SUBCHAPTER C. DELINQUENT TAX SUITS

§ 33.41. Suit to Collect Delinquent Tax

(a) At any time after its tax on property becomes delinquent, a taxing unit may file suit to foreclose

the lien securing payment of the tax, to enforce personal liability for the tax, or both. The suit must be in a court of competent jurisdiction for the county in which the tax was imposed.

(b) A suit to collect a delinquent tax takes precedence over all other suits pending in trial and appellate courts.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.42. Taxes Included in Foreclosure Suit

(a) In a suit to foreclose a lien securing payment of its tax on real property, a taxing unit shall include all delinquent taxes due the unit on the property.

(b) If a taxing unit's tax on real property becomes delinquent after the unit files suit to foreclose a tax lien on the property but before entry of judgment, the court shall include the amount of the tax and any penalty and interest in its judgment.

(c) If a tax required by this section to be included in a suit is omitted from the judgment in the suit, the taxing unit may not enforce collection of the tax at a later time.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.43. Petition

(a) A petition initiating a suit to collect a delinquent property tax is sufficient if it alleges that:

(1) the taxing unit is legally constituted and authorized to impose and collect ad valorem taxes on property;

(2) tax in a stated amount was legally imposed on each separately described property for each year specified and on each person named if known who owned the property on January 1 of the year for which the tax was imposed;

(3) the tax was imposed in the county in which the suit is filed;

(4) the tax is delinquent;

(5) penalties, interest, and costs authorized by law in a stated amount for each separately assessed property are due;

(6) the person sued owned the property on January 1 of the year for which the tax was imposed if the suit seeks to enforce personal liability;

(7) the person sued owns the property when the suit is filed if the suit seeks to foreclose a tax lien;

(8) the taxing unit asserts a lien on each separately described property to secure the payment of all taxes, penalties, interest, and costs due if the suit seeks to foreclose a tax lien;

(9) all things required by law to be done have been done properly by the appropriate officials; and

(10) the attorney signing the petition is legally authorized to prosecute the suit on behalf of the taxing unit.

(b) If the petition alleges that the person sued owns the property on which the taxing unit asserts a lien, the prayer in the petition shall be for foreclosure of the lien and payment of all taxes, penalties, interest, and costs that are due or will become due and that are secured by the lien. If the petition alleges that the person sued owned the property on January 1 of the year for which the taxes were imposed, the prayer shall be for personal judgment for all taxes, penalties, interest, and costs that are due or will become due on the property. If the petition contains the appropriate allegations, the prayer may be for both foreclosure of a lien on the property and personal judgment.

(c) If the suit is for personal judgment against the person who owned personal property on January 1 of the year for which the tax was imposed on the property, the personal property may be described generally.

(d) The petition need not be verified.

(e) The State Property Tax Board shall prepare forms for petitions initiating suits to collect delinquent taxes. An attorney representing a taxing unit may use the forms or develop his own form.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.44. Joinder of Other Taxing Units

(a) A taxing unit filing suit to foreclose a tax lien on real property shall join other taxing units that have claims for delinquent taxes against all or part of the same property.

(b) For purposes of joining the state and a county, citation may be served on the county tax assessor-collector. For purposes of joining any other taxing unit, citation may be served on the officer charged with collecting taxes for the unit or on the presiding officer or secretary of the governing body of the unit. Citation may be served by certified mail, return receipt requested. A person on whom service is authorized by this subsection may waive the issuance and service of citation in behalf of his taxing unit.

(c) A taxing unit joined in a suit as provided by this section must file its claim for delinquent taxes against the property or its lien on the property is extinguished. The court's judgment in the suit shall reflect the extinguishment of a lien under this subsection.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.45. Pleading and Answering to Claims Filed

A party to the suit must take notice of and plead and answer to all claims and pleadings filed by other parties that have been joined or have intervened, and each citation must so state.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.46. Partition of Real Property

(a) If suit is filed to foreclose a tax lien on real property owned in undivided interests by two or more persons, one or more of the owners may have the property partitioned in the manner prescribed by law for the partition of real property in district court.

(b) The court shall apportion the taxes, penalties, interest, and costs sued for to the owners of the property in proportion to the interest of each. If an owner pays the taxes, penalties, interest, and costs apportioned to him, the property partitioned to him is free from further claim or lien for the taxes involved in the suit. If an owner refuses to pay the amount apportioned to him, the suit shall proceed against him for that amount.

(c) The court shall allow reasonable attorney's fees and costs of partitioning for each property partitioned. The fee shall be taxed as costs against each owner in proportion to his interest and constitutes a lien against the property until paid.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.47. Tax Records as Evidence

(a) In a suit to collect a delinquent tax, the taxing unit's current tax roll and delinquent tax roll or certified copies of the entries showing the property and the amount of the tax imposed constitute prima facie evidence that each person charged with a duty relating to the imposition of the tax has complied with all requirements of law and that the amount of tax alleged to be delinquent against the property listed is the correct amount.

(b) If the description of a property in the tax roll or delinquent tax roll is insufficient to identify the property, the records of the appraisal office are admissible to identify the property.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.48. Recovery of Costs and Expenses

(a) In addition to other costs authorized by law, a taxing unit is entitled to recover the following costs and expenses in a suit to collect a delinquent tax:

(1) all usual court costs, including the cost of serving process;

(2) expenses of foreclosure sale;

(3) reasonable expenses approved by the court that are incurred by the taxing unit in determining the name, identity, and location of necessary parties and in procuring necessary legal descriptions of the property on which a delinquent tax is due; and

(4) reasonable attorney's fees approved by the court and not exceeding 15 percent of the total amount of taxes, penalties, and interest adjudged due the unit.

(b) Each item specified by Subsection (a) of this section is a charge against the property subject to foreclosure in the suit and shall be collected out of the proceeds of the sale of the property or, if the suit is for personal judgment, charged against the defendant.

(c) Fees collected for attorneys and other officials are fees of office, except that fees for contract attorneys representing a taxing unit that is joined or intervenes shall be applied toward the compensation due the attorney under the contract.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.49. Liability of Taxing Unit for Costs

(a) Except as provided by Subsection (b) of this section, a taxing unit is not liable in a suit to collect taxes for court costs, including any fees for service of process, and may not be required to post security for the costs.

(b) A taxing unit shall pay the cost of publishing citations, notices of sale, or other notices from the unit's general fund as soon as practicable after receipt of the publisher's claim for payment. The taxing unit is entitled to reimbursement from other taxing units that are parties to the suit for their proportionate share of the publication costs on satisfaction of any portion of the tax indebtedness before further distribution of the proceeds. A taxing unit may not pay a word or line rate for publication of citation or other required notice that exceeds the rate the newspaper publishing the notice charges private entities for similar classes of advertising.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.50. Adjudged Value

(a) In a suit for foreclosure of a tax lien on property, the court shall determine the market value of the property on the date of trial. The appraised value of the property according to the most recent appraisal roll approved by the appraisal review board is presumed to be its market value on the date of trial, and the person being sued has the burden of establishing that the market value of the property differs from that appraised value. The court shall incorporate a finding of the market value of the property on the date of trial in the judgment.

(b) If the judgment in a suit to collect a delinquent tax is for the foreclosure of a tax lien on property, the order of sale shall specify that the property may not be sold to a person owning an interest in the property or to any party to the suit, other than a taxing unit, for less than the market value of the property stated in the judgment or the aggregate amount of the judgments against the property, whichever is less.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.51. Writ of Possession

If the court orders the foreclosure of a tax lien and the sale of real property, the judgment shall provide for the issuance of a writ of possession to the purchaser at the sale or his assigns within 20 days after the period of redemption expires.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.52. Judgment for Current Taxes

(a) If the court orders the foreclosure of a tax lien and the sale of real property, the judgment shall order that the taxing unit recover from the proceeds of the sale the amount of tax on the property for the current tax year prorated to the day of judgment.

(b) If the amount of tax for the current tax year has not been determined on the date of judgment, the court shall order recovery of the amount of tax imposed on the property for the preceding tax year, prorated to the date of judgment.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.53. Order of Sale

If judgment in a suit to collect a delinquent tax is for foreclosure of a tax lien, the court shall order the property sold in satisfaction of the amount of the judgment.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 33.54. Limitation on Actions Relating to Property Sold for Taxes

(a) Except as provided by Subsection (b) of this section, a cause of action relating to the title to property may not be maintained against the purchaser of the property at a tax sale unless the action commences within three years after the deed executed to the purchaser at the tax sale is filed of record.

(b) If a person other than the purchaser at the tax sale or his successor in interest pays taxes on the property during the three years following the date the deed is filed and that person was not served citation in the suit to foreclose the tax lien, the three-year limitations period does not apply to that person.

(c) When actions are barred by this section, the purchaser at the tax sale or his successor in interest shall be held to have full title to the property, precluding all other claims.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

CHAPTER 34. TAX SALES AND REDEMPTION

SUBCHAPTER A. TAX SALES

Section
34.01. Sale of Property.
34.02. Distribution of Proceeds.
34.03. Disposition of Excess Proceeds.
34.04. Claims for Excess Proceeds.
34.05. Resale by Taxing Unit.
34.06. Distribution of Proceeds of Resale.
34.07. Subrogation of Purchaser at Void Sale.
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SUBCHAPTER B. REDEMPTION

34.21. Right of Redemption.
34.22. Evidence of Title to Redeem Real Property.
34.23. Distribution of Redemption Proceeds.

SUBCHAPTER A. TAX SALES

§ 34.01. Sale of Property

(a) Property seized or ordered sold pursuant to foreclosure of a tax lien shall be sold in the manner similar property is sold under execution except as otherwise provided by this subchapter.

(b) The owner of real property subject to sale may file with the officer charged with the sale a written request that the property be divided and that only as many portions be sold as is necessary to pay the tax, penalties, interest, and costs adjudged due against the property. In the request the owner shall describe the desired portions and shall specify the order in which the portions should be sold.

(c) If a sufficient bid is not received, the officer making the sale shall bid the property off to a taxing unit that is a party to the judgment for the aggregate amount of the judgment against the property or for the market value of the property as specified in the judgment, whichever is less. The taxing unit takes title to the property for the use and benefit of itself and all other taxing units that established tax liens in the suit. Payments in satisfaction of the judgment and any costs or expenses may not be required until the property is redeemed or resold by the purchasing taxing unit.

(d) The officer making the sale shall prepare a deed to the purchaser of real property at the sale or to any other person whom the purchaser may specify. The deed vests good and perfect title in the purchaser or his assigns to the interest owned by the defendant in the property subject to the foreclosure, subject to the defendant's right of redemption. The deed may be impeached only for fraud.

[Acts 1979, 66th Leg., p. 2298, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 34.02. Distribution of Proceeds

(a) The proceeds of a tax sale shall be applied first to the payment of costs. The remainder shall be distributed to all taxing units participating in the sale in satisfaction of the taxes, penalties, and interest due each.

(b) If the proceeds are not sufficient to pay the costs and taxes, penalties, and interest due all participants in the sale, each participant is entitled to a share of the proceeds after payment of costs in an

amount equal to the proportion its taxes, penalties, and interest bear to the total amount of taxes, penalties, and interest due all participants in the sale.

(c) If the sale is pursuant to foreclosure of a tax lien, the officer conducting the sale shall pay any excess proceeds after payment of all costs and of all taxes, penalties, and interest due all participants in the sale to the clerk of the court issuing the order of sale.

(d) If the sale is pursuant to seizure of personal property, the officer conducting the sale shall distribute any excess of proceeds as provided by law for excess proceeds in the case of execution.

[Acts 1979, 66th Leg., p. 2298, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 34.03. Disposition of Excess Proceeds

(a) The clerk of the court shall keep the excess proceeds paid into court as provided by Subsection (c) of Section 34.02 of this code for a period of seven years after the date of the sale unless otherwise ordered by the court.

(b) If no claimant establishes entitlement to the proceeds within seven years, the clerk shall transmit the proceeds to the State Treasurer along with a statement on a form prescribed by the comptroller showing the style and number of the case and the court from which execution issued. The treasurer shall pay the proceeds into the General Revenue Fund. A copy of each statement shall be sent to the comptroller, who shall keep an account of the excess proceeds transmitted to the treasurer.

(c) The clerk shall note on the execution docket in each case the amount of the excess proceeds, the date they were received, and the date they were transmitted to the State Treasurer.

[Acts 1979, 66th Leg., p. 2298, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 34.04. Claims for Excess Proceeds

(a) A person may file a petition in the court that ordered the sale setting forth a claim to the excess proceeds within seven years from the date of the sale of the property.

(b) A copy of the petition shall be served on the county attorney or, if there is no county attorney, the district attorney and on all parties to the suit that ordered the sale, if any, not later than the 20th day before the date set for a hearing on the petition. The county attorney or district attorney shall represent the state at the hearing.

(c) At the hearing if the court finds that the claimant is entitled to recover the excess proceeds, it shall order that the proceeds be paid to him. Interest or costs may not be allowed.

(d) A claim for the excess proceeds may not be filed after the expiration of seven years from the date the property is sold.

[Acts 1979, 66th Leg., p. 2298, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 34.05. Resale by Taxing Unit

(a) If property is sold to a taxing unit that is a party to the judgment, the taxing unit may sell the property at any time, subject to any right of redemption existing at the time of the sale. If property is sold to the state, the commissioners court of the county in which the property is located may act for the state.

(b) Unless the property is sold pursuant to Subsections (c) and (d) of this section, it may not be sold for less than the market value specified in the judgment of foreclosure or the total amount of the judgments against the property, whichever is less, without the consent of each taxing unit entitled to receive proceeds of the sale under the judgment. Joinder of the taxing units in the conveyance of the property constitutes consent. The collector for the county in which the property is located may consent in behalf of the state. The presiding officer of the governing body of a taxing unit may consent in behalf of the taxing unit.

(c) The taxing unit purchasing the property by resolution of its governing body may request the sheriff to sell the property at a public sale. If the purchasing taxing unit has not sold the property within six months after the date on which the owner's right of redemption terminates, any taxing unit that is entitled to receive proceeds of the sale by resolution of its governing body may request the sheriff in writing to sell the property at a public sale. On receipt of a request made under this subsection, the sheriff shall sell the property as provided by Subsection (d) of this section.

(d) Except as provided by this subsection, all public sales requested as provided by Subsection (c) of this section shall be conducted in the manner prescribed by the Rules of Civil Procedure for the sale of property under execution. The notice of the sale must contain a description of the property to be sold, which must be a legal description in the case of real property, the number and style of the suit under which the property was sold at the tax foreclosure sale, and the date of the tax foreclosure sale. The officer conducting the sale shall reject any bid for the property if it is his judgment that the amount bid is insufficient. If all bids are insufficient, the property shall be readvertised and offered for sale again. The acceptance of a bid by the officer conducting the sale is conclusive and binding on the question of its sufficiency. An action to set aside the sale on the grounds that the bid is insufficient may not be sustained in court, except that a taxing unit that participates in distribution of proceeds of the sale may file an action within one year after the date of the sale to set aside the sale on the grounds of fraud or collusion between the officer making the sale and the purchaser.

(e) The presiding officer of a taxing unit or the sheriff selling real property pursuant to this section shall execute a deed to the property conveying to the purchaser the right, title, and interest acquired or held by each taxing unit that was a party to the judgment foreclosing tax liens on the property. The conveyance shall be made subject to any remaining right of redemption at the time of the sale.

(f) An action attacking the validity of a resale of property pursuant to this section may not be instituted after the expiration of one year after the date of the resale.

[Acts 1979, 66th Leg., p. 2298, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 34.06. Distribution of Proceeds of Resale

(a) The proceeds of a resale of property purchased by a taxing unit at a tax foreclosure sale shall be paid to the purchasing taxing unit.

(b) The purchasing taxing unit shall pay all costs and expenses of court and sale and shall distribute the remainder of the proceeds as provided by Section 34.02 of this code for distribution of proceeds after payment of costs.

[Acts 1979, 66th Leg., p. 2298, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 34.07. Subrogation of Purchaser at Void Sale

(a) The purchaser at a void or defective tax sale is subrogated to the rights of the taxing unit in whose behalf the property was sold to the same extent a purchaser at a void or defective sale conducted in behalf of a judgment creditor is subrogated to the rights of the judgment creditor.

(b) Except as provided by Subsection (c) of this section, the purchaser at a void or defective tax sale is subrogated to the tax lien of the taxing unit in whose behalf the property was sold to the same extent a purchaser at a void or defective mortgage or other lien foreclosure sale is subrogated to the lien of the lienholder, and the purchaser is entitled to a reforeclosure of the lien to which he is subrogated.

(c) If the purchaser at a void or defective tax sale paid less than the total amount of the judgment against the property, he is subrogated to the tax lien only in the amount he paid at the sale.

(d) In lieu of pursuing the rights to which he is subrogated, a purchaser at a void tax sale may elect to file an action against the taxing units to which the proceeds of the sale were distributed to recover the amount paid at the sale. A purchaser who files a suit authorized by this subsection waives all rights to which he would otherwise be subrogated.

[Acts 1979, 66th Leg., p. 2298, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 34.08. State a Taxing Unit

For the purposes of this chapter, the state is a taxing unit.

[Acts 1979, 66th Leg., p. 2298, ch. 841, § 1, eff. Jan. 1, 1982.]

[Sections 34.09 to 34.20 reserved for expansion]

SUBCHAPTER B. REDEMPTION

§ 34.21. Right of Redemption

(a) The owner of real property sold at a tax sale may redeem the property within two years after the date on which the purchaser's deed is filed for record by paying the purchaser the amount he bid for the property, the amount of the deed recording fee, and the amount paid by the purchaser as taxes, penalties, interest, and costs on the property, plus 25 percent of the aggregate total if the property is redeemed during the first year of the redemption period or 50 percent of the aggregate total if the property is redeemed during the second year of the redemption period.

(b) If the owner of the property makes an affidavit that he has made diligent search in the county in which the property is located for the purchaser at the tax sale and has failed to find him, that the purchaser at the sale is not a resident of the county in which the property is located, that he and the purchaser cannot agree on the amount of redemption money due, or that the purchaser refuses to give him a quitclaim deed to the property, the owner may redeem the land by paying the required amount to the assessor-collector for the county in which the property is located. The assessor-collector receiving the payment shall give the owner a signed receipt witnessed by two persons. The receipt, when recorded, is notice to all persons that the property described has been redeemed. The assessor-collector shall on demand pay the money received by him to the purchaser at the tax sale.

[Acts 1979, 66th Leg., p. 2300, ch. 841, § 1, eff. Jan. 1, 1979.]

§ 34.22. Evidence of Title to Redeem Real Property

(a) A person asserting ownership of real property sold for taxes is entitled to redeem the property if he had title to the property or he was in possession of the property in person or by tenant either at the time suit to foreclose the tax lien on the property was instituted or at the time the property was sold. A defect in the chain of title to the property does not defeat an offer to redeem.

(b) A person who establishes title to real property that is superior to the title of one who has previously redeemed the property is entitled to redeem the property during the redemption period by paying the amounts provided by law to the person who previously redeemed the property.

[Acts 1979, 66th Leg., p. 2300, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 34.23. Distribution of Redemption Proceeds

(a) If the owner of property sold for taxes to a taxing unit redeems the property before the property is resold, the taxing unit shall distribute the redemption proceeds in the manner that proceeds of the resale of property are distributed.

(b) If the owner of property sold for taxes redeems the property from the taxing unit after the property has been resold, the taxing unit shall pay the purchaser at the resale the amount he paid for the property, plus 25 percent of that amount if the redemption occurs within one year after the date the property is resold or 50 percent of that amount if the redemption occurs more than one year after the date the property is resold. The taxing unit shall distribute the redemption proceeds remaining after payment of the amount due the purchaser at resale to the taxing units adjudged to have tax liens against the property in the proportion the amount of each unit's lien bears to the total amount of all liens established in the foreclosure suit.

[Acts 1979, 66th Leg., p. 2300, ch. 841, § 1, eff. Jan. 1, 1982.]

SUBTITLE F. REMEDIES

CHAPTER 41. LOCAL REVIEW

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SUBCHAPTER A. REVIEW OF APPRAISAL RECORDS BY APPRAISAL REVIEW BOARD

§ 41.01. Scope of Review

The appraisal review board may examine the appraisal records for the appraisal district to determine whether:

(1) appraisals are substantially uniform in terms of their relationship to the appraised value required by law;

(2) an exemption or a partial exemption is improperly granted;

(3) land is improperly granted appraisal as provided by Subchapter C, D, or E, Chapter 23 of this code; [1] or

(4) the records do not conform to the requirements of law in any other respect.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Sections 23.41 et seq., 23.51 et seq., and 23.71 et seq.

§ 41.02. Action by Board

If after reviewing the appraisal records the appraisal review board finds that appraisals are not substantially uniform or that the records do not conform to the requirements of law in some other respect, the board shall refer the matter to the appraisal office and by written order shall direct the chief appraiser to make the reappraisals or corrections in the records that are necessary to conform the records to the requirements of law.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.03. Challenge by Taxing Unit

A taxing unit is entitled to challenge before the appraisal review board:

(1) a determination of the appraised value of property or, in the case of land appraised as provided by Subchapter C, D, or E, Chapter 23 of this code,[1] a determination of its appraised value or market value;

(2) an exclusion of property from the appraisal records;

(3) a grant in whole or in part of a partial exemption;

(4) a determination that land qualifies for appraisal as provided by Subchapter C, D, or E, Chapter 23 of this code; or

(5) failure to identify the taxing unit as one in which a particular property is taxable.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Sections 23.41 et seq., 23.51 et seq., and 23.71 et seq.

§ 41.04. Challenge Petition

The appraisal review board is not required to hear or determine a challenge unless the taxing unit initiating the challenge files a petition with the board before May 1 or within 10 days after the date that the appraisal records are submitted to the appraisal review board, whichever is later. The petition must include an explanation of the grounds for the challenge.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.05. Hearing on Challenge

(a) On the filing of a challenge petition, the appraisal review board shall schedule a hearing on the challenge.

(b) The taxing unit initiating the challenge and each taxing unit in which property involved in the challenge is or may be taxable are entitled to an opportunity to appear to offer evidence or argument.

(c) The chief appraiser shall appear at each hearing to represent the appraisal office.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.06. Notice of Challenge Hearing

(a) The secretary of the appraisal review board shall deliver to the presiding officer of the governing body of each taxing unit entitled to appear at a challenge hearing written notice of the date, time, and place fixed for the hearing. The secretary shall deliver the notice not later than the 10th day before the date of the hearing.

(b) The secretary shall give the chief appraiser advance notice of the date, time, place, and subject matter of each challenge hearing.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.07. Determination of Challenge

(a) The appraisal review board shall determine each challenge and make its decision by written order.

(b) If on determining a challenge the board finds that the appraisal records are incorrect in some respect raised by the challenge, the board shall refer the matter to the appraisal office and by its order shall direct the chief appraiser to make the reappraisals or corrections in the records that are necessary to conform the records to the requirements of law.

(c) The board shall determine all challenges before approval of the appraisal records as provided by Section 41.12 of this code.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.08. Correction of Records on Order of Board

The chief appraiser shall make the reappraisals or other corrections of the appraisal records ordered by the appraisal review board as provided by this subchapter. The chief appraiser shall submit a copy of the corrected records to the board for its approval as promptly as practicable.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.09. Clerical Errors

At any time before approval of the appraisal records as provided by Section 41.12 of this code, the appraisal review board in writing may correct a clerical error in the records without referring the matter to the appraisal office if the correction will not affect the tax liability of a property owner and if the chief appraiser does not object in writing.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.10. Correction of Records on Recommendation of Chief Appraiser

At any time before approval of the appraisal records as provided by Section 41.12 of this code, the chief appraiser may submit written recommendations to the appraisal review board for corrections in the records. If the board approves a recommended correction and it will not result in an increase in the tax liability of a property owner, the board may make the correction by written order.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.11. Notice to Property Owner of Change in Records

(a) Not later than the 15th day before the date the appraisal review board approves the appraisal records as provided by Section 41.12 of this code, the secretary of the board shall deliver written notice to a property owner of any change in the records that is ordered by the board as provided by this subchapter and that will result in an increase in the tax liability of the property owner.

(b) The secretary shall include in the notice a brief explanation of the procedure for protesting the change.

(c) Failure to deliver notice to a property owner as required by this section nullifies the change in the records to the extent the change is applicable to that property owner.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.12. Completion of Review by Board

The appraisal review board shall complete its review of the appraisal records, approve the records, and submit a list of its approved changes in the records to the chief appraiser by June 20 or as soon thereafter as practicable.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982.]

[Sections 41.13 to 41.20 reserved for expansion]

SUBCHAPTER B. EQUALIZATION BY COMMISSIONERS COURT

§ 41.21. Scope of Review

The county commissioners court acting as a board of equalization may examine the appraisal records for county tax purposes to determine whether:

(1) appraisals are substantially uniform in terms of their relationship to the appraised value required by law;

(2) an exemption or a partial exemption is improperly granted;

(3) land is improperly designated for agricultural use; or

(4) the records do not conform to the requirements of law in any other respect.

[Acts 1979, 66th Leg., p. 2304, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.22. Action by Commissioners Court

If after reviewing the appraisal records the commissioners court finds that appraisals are not substantially uniform or that the records do not conform to the requirements of law in some other respect, the court shall refer the matter to the county assessor-collector and by written order shall direct the assessor-collector to make the reappraisals or corrections in the records that are necessary to conform the records to the requirements of law.

[Acts 1979, 66th Leg., p. 2304, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.23. Correction of Records on Order of Commissioners Court

The county assessor-collector shall make the reappraisals or other corrections of the appraisal records ordered by the commissioners court as provided by this subchapter. The assessor-collector shall submit a copy of the corrected records to the court for its approval as promptly as practicable.

[Acts 1979, 66th Leg., p. 2304, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.24. Clerical Errors

At any time before approval of the appraisal records as provided by Section 41.27 of this code, the commissioners court in writing may correct a clerical error in the records without referring the matter to the county assessor-collector if the correction will not affect the tax liability of a property owner and if the assessor-collector does not object in writing.

[Acts 1979, 66th Leg., p. 2304, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.25. Correction of Records on Recommendation of Assessor-Collector

At any time before approval of the appraisal records as provided by Section 41.27 of this code, the county assessor-collector may submit written recommendations to the commissioners court for corrections in the records. If the court approves a recommended correction and it will not result in an increase in the tax liability of a property owner, the court may make the correction by written order.

[Acts 1979, 66th Leg., p. 2304, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.26. Notice to Property Owner of Change in Records

(a) Not later than the 15th day before the date the commissioners court approves the appraisal records as provided by Section 41.27 of this code, the court shall deliver written notice to a property owner of any change in the records that is ordered by the court as provided by this subchapter and that will result in an increase in the tax liability of the property owner.

(b) The commissioners court shall include in the notice a brief explanation of the procedure for protesting the change.

(c) Failure to deliver notice to a property owner as required by this section nullifies the change in the records to the extent the change is applicable to that property owner.

[Acts 1979, 66th Leg., p. 2304, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.27. Completion of Review by Commissioners Court

The commissioners court shall complete its review of the appraisal records, approve the records, and submit a list of its approved changes in the records to the county assessor-collector by June 20 or as soon thereafter as practicable.

[Acts 1979, 66th Leg., p. 2304, ch. 841, § 1, eff. Jan. 1, 1982.]

[Sections 41.28 to 41.40 reserved for expansion]

SUBCHAPTER C. TAXPAYER PROTEST

§ 41.41. Right of Protest

A property owner is entitled to protest before the commissioners court acting as a board of equalization for county tax purposes or before the appraisal review board for all other tax purposes the following actions:

(1) determination of the appraised value of his property or, in the case of land appraised as provided by Subchapter C, D, or E, Chapter 23 of this code,[1] determination of its appraised or market value;

(2) unequal appraisal of his property in comparison to the aggregate mean level of appraisals of other property in the county for county tax purposes or in the appraisal district for all other tax purposes;

(3) inclusion of his property on the appraisal records for the county for county tax purposes or for the appraisal district for all other tax purposes;

(4) denial to him in whole or in part of a partial exemption;

(5) determination that his land does not qualify for appraisal as provided by Subchapter C, D, or E, Chapter 23 of this code;

(6) identification of the taxing units in which his property is taxable in the case of the appraisal district's appraisal roll;

(7) determination that he is the owner of property; or

(8) any other action that applies to the property owner and adversely affects him.

[Acts 1979, 66th Leg., p. 2305, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Sections 23.41 et seq., 23.51 et seq., and 23.71 et seq.

§ 41.42. Protest of Situs

A protest against the inclusion of property on the appraisal records for a particular county or appraisal district on the ground that the property does not have taxable situs in that county or district may not be determined in favor of the protesting party unless he establishes that the property is on the appraisal records for another county or district, as applicable, or that the property is not taxable in this state.

[Acts 1979, 66th Leg., p. 2305, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.43. Protest of Inequality of Appraisal

A protest on the ground of unequal appraisal of property may not be determined in favor of the protesting party unless he establishes that his property is appraised at a level greater than the aggregate mean level of appraisals in the county or in the appraisal district, as applicable.

[Acts 1979, 66th Leg., p. 2305, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.44. Protest Petition

(a) Except as provided by Subsection (b) of this section, to be entitled to a hearing and determination of a protest, the property owner initiating the protest must file a petition with the appraisal review board or the commissioners court having authority to hear the matter protested:

(1) before May 11 or within 20 days after the date the appraisal records are submitted as provided by Section 25.22 of this code, whichever is later; or

(2) in the case of a protest of a change in the appraisal records ordered as provided by Subchapter A or B of this chapter, within 10 days after the date notice of the change is delivered to the property owner.

(b) A property owner who files his protest petition after the deadline prescribed by Subsection (a) of this section but before the appraisal review board or commissioners court, as applicable, approves the appraisal records is entitled to a hearing and determination of the protest if he shows good cause as determined by the board or court for failure to file the petition on time.

(c) The petition must include an explanation of the grounds for the protest.

[Acts 1979, 66th Leg., p. 2305, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.45. Hearing on Protest

(a) On the filing of a petition as required by Section 41.44 of this code, the appraisal review board or the commissioners court in which the petition is filed shall schedule a hearing on the protest.

(b) The property owner initiating the protest is entitled to an opportunity to appear to offer evidence or argument. The property owner may offer his evidence or argument by affidavit without personally appearing if he attests to the affidavit before an officer authorized to administer oaths and submits the affidavit to the board or court hearing the protest before it begins the hearing on the protest. On receipt of an affidavit, the board shall notify the chief appraiser or the court shall notify the county assessor-collector. The chief appraiser or county assessor-collector may inspect the affidavit and is entitled to a copy on request.

(c) The chief appraiser shall appear at each protest hearing before the appraisal review board to represent the appraisal office. The county assessor-collector shall appear at each protest hearing before the commissioners court to represent his office.

(d) An appraisal review board consisting of more than three members may sit in panels of not fewer than three members to conduct protest hearings. However, the determination of a protest heard by a panel must be made by the board.

[Acts 1979, 66th Leg., p. 2305, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.46. Notice of Protest Hearing

(a) The appraisal review board or commissioners court before which a protest hearing is scheduled shall deliver written notice to the property owner initiating a protest of the date, time, and place fixed for the hearing on the protest. The board or court shall deliver the notice not later than the 15th day before the date of the hearing.

(b) In the case of protests before the appraisal review board, the board shall give the chief appraiser advance notice of the date, time, place, and subject matter of each protest hearing. In the case of protests before the commissioners court, the court shall give the notice to the county assessor-collector.

[Acts 1979, 66th Leg., p. 2305, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.47. Determination of Protest

(a) The appraisal review board or commissioners court hearing a protest shall determine the protest and make its decision by written order.

(b) If on determining a protest the board or court finds that the appraisal records are incorrect in some respect raised by the protest, the board or court by its order shall correct the appraisal records by changing the appraised value placed on the protesting property owner's property or by making the other changes in the appraisal records that are necessary to conform the records to the requirements of law.

(c) The board or court shall include in its order the findings of fact and conclusions of law on which the order is based. In making the fact findings, the board or court may consider only the evidence presented at the hearing and matters officially noticed.

(d) The board and court shall determine all protests before each before approval of the appraisal records as provided by Subchapter A or B of this chapter.[1]

(e) The board or court shall deliver by certified mail a notice of issuance of the order and a copy of the order to the property owner and the chief appraiser or county assessor-collector.

[Acts 1979, 66th Leg., p. 2305, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Sections 41.01 et seq. and 41.21 et seq.

[Sections 41.48 to 41.60 reserved for expansion]

SUBCHAPTER D. ADMINISTRATIVE PROVISIONS

§ 41.61. Issuance of Subpoena

(a) If reasonably necessary in the course of a proceeding provided by this chapter, the appraisal review board or the commissioners court on its own motion or at the request of a party may subpoena witnesses or books, records, or other documents.

(b) On the written request of a party to a proceeding provided by this chapter, the appraisal review board or commissioners court shall issue a subpoena if the requesting party:

(1) shows good cause for issuing the subpoena; and

(2) deposits with the issuing board or court a sum the board or court determines is reasonably sufficient to insure payment of the costs estimated to accrue for issuance and service of the subpoena and for compensation of the individual to whom it is directed.

[Acts 1979, 66th Leg., p. 2307, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.62. Service and Enforcement of Subpoena

(a) A sheriff or constable shall serve a subpoena issued as provided by this subchapter.

(b) If the person to whom a subpoena is directed fails to comply, the issuing board or commissioners court or the party requesting the subpoena may bring suit in the district court to enforce the subpoena. If the district court determines that good cause exists for issuance of the subpoena, the court shall order compliance. The district court may modify the requirements of a subpoena that the court determines are unreasonable. Failure to obey the order of the district court is punishable as contempt.

(c) The county attorney or, if there is no county attorney, the district attorney shall represent the board and the commissioners court in a suit to enforce a subpoena.

[Acts 1979, 66th Leg., p. 2307, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.63. Compensation for Subpoenaed Witness

(a) An individual who is not a party to the proceeding and who complies with a subpoena issued as provided by this subchapter is entitled to:

(1) the reasonable costs of producing the documents;

(2) mileage of 15 cents a mile for going to and returning from the place of the proceeding; and

(3) a fee of $10 a day for each whole or partial day that the individual is necessarily present at the proceedings.

(b) The appraisal review board and commissioners court each by rule may prescribe greater mileage or fee, but an increase is not effective unless uniformly applicable to all individuals who are entitled to mileage or fee as provided by Subsection (a) of this section.

(c) Compensation authorized as provided by this section is paid by the appraisal office if the subpoena is issued on the motion of the appraisal review board, by the commissioners court if issued on its own motion, or by the party requesting the subpoena.

(d) Compensation is not payable unless the amount claimed is approved by the appraisal review board or commissioners court that issued the subpoena.

[Acts 1979, 66th Leg., p. 2307, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.64. Inspection of Tax Records

The appraisal review board and the commissioners court each may inspect the records or other materials of the appraisal office or the county assessor-collector's office, as applicable, that are not made confidential under this code. On demand of the board or commissioners court, the chief appraiser or county assessor-collector, as applicable, shall produce the materials as soon as practicable.

[Acts 1979, 66th Leg., p. 2307, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.65. Request for State Assistance

The appraisal review board and the commissioners court each may request the State Property Tax Board to assist in determining the accuracy of appraisals by the appraisal office or by the county

assessor-collector's office or to provide other professional assistance. The appraisal office or commissioners court shall reimburse the costs of providing assistance if the State Property Tax Board requests reimbursement.

[Acts 1979, 66th Leg., p. 2307, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.66. Hearing Procedures

(a) The appraisal review board shall establish by rule the procedures for hearings it conducts as provided by Subchapters A and C of this chapter.[1] The commissioners court shall establish by rule the procedures for hearings it conducts as provided by Subchapters B and C of this chapter.[2]

(b) Hearing procedures to the greatest extent practicable shall be informal.

(c) A property owner who is entitled as provided this chapter to appear at a hearing may appear by himself or by his agent authorized in writing. A taxing unit may appear by a designated agent.

(d) Hearings conducted as provided by this chapter are open to the public.

[Acts 1979, 66th Leg., p. 2307, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Sections 41.01 et seq. and 41.41 et seq.
[2] Sections 41.21 et seq. and 41.41 et seq.

§ 41.67. Evidence

(a) A member of the appraisal review board or the commissioners court may swear witnesses who testify in proceedings under this chapter. All testimony must be given under oath.

(b) Documentary evidence may be admitted in the form of a copy if the appraisal review board or commissioners court conducting the proceeding determines that the original document is not readily available. A party is entitled to an opportunity to compare a copy with the original document on request.

(c) Official notice may be taken of any fact judicially cognizable. A party is entitled to an opportunity to contest facts officially noticed.

[Acts 1979, 66th Leg., p. 2307, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.68. Record of Proceeding

The appraisal review board and the commissioners court each shall keep a record of their proceedings in the form and manner prescribed by the State Property Tax Board.

[Acts 1979, 66th Leg., p. 2307, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 41.69. Conflict of Interest

A member of the appraisal review board or commissioners court may not participate in the determination of a taxpayer protest in which he is interested or in which he is related to a party by affinity within the second degree or by consanguinity within the third degree.

[Acts 1979, 66th Leg., p. 2307, ch. 841, § 1, eff. Jan. 1, 1982.]

CHAPTER 42. JUDICIAL REVIEW

SUBCHAPTER A. IN GENERAL

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SUBCHAPTER A. IN GENERAL

§ 42.01. Right of Appeal by Property Owner

A property owner is entitled to appeal:

(1) an order of the appraisal review board or commissioners court determining a protest by the property owner as provided by Subchapter C of Chapter 41 of this code; [1]

(2) an order of the State Property Tax Board determining a protest by the property owner of the appraisal, interstate allocation, or intrastate apportionment of transportation business intangibles as provided by Subchapter A, Chapter 24 of this code; [2] or

(3) an order of the State Property Tax Board issued as provided by Subchapter B, Chapter 24 of this code [3] apportioning among the counties the appraised value of railroad rolling stock owned by the property owner.

[Acts 1979, 66th Leg., p. 2309, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Section 41.41 et seq.
[2] Section 24.01 et seq.
[3] Section 24.31 et seq.

§ 42.02. Right of Appeal by Chief Appraiser

The chief appraiser is entitled to appeal an order of the appraisal review board determining a taxpayer protest as provided by Subchapter C, Chapter 41 of this code [1] if he has written approval of the local appraisal district board of directors to appeal.

[Acts 1979, 66th Leg., p. 2309, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Section 41.41 et seq.

§ 42.03. Right of Appeal by County

A county may appeal the order of the State Property Tax Board issued as provided by Subchapter B, Chapter 24 of this code[1] apportioning among the counties the appraised value of railroad rolling stock.

[Acts 1979, 66th Leg., p. 2309, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Section 24.31 et seq.

§ 42.04. Right of Appeal by County Assessor-Collector

The county assessor-collector is entitled to appeal an order of the commissioners court determining a taxpayer protest as provided by Subchapter C, Chapter 41 of this code.[1]

[Acts 1979, 66th Leg., p. 2309, ch. 841, § 1, eff. Jan. 1, 1982.]

[1] Section 41.41 et seq.

§ 42.05. State Property Tax Board as Party

The State Property Tax Board is an opposing party in an appeal by:

(1) a property owner of an order of the board determining a protest of the appraisal, interstate allocation, or intrastate apportionment of transportation business intangibles; or

(2) a county or a property owner of an order of the board apportioning among the counties the appraised value of railroad rolling stock.

[Acts 1979, 66th Leg., p. 2309, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.06. Notice of Appeal

(a) To exercise his right of appeal, a party must file written notice of appeal within 15 days after the date he receives the notice required by Section 41.47 of this code that the order appealed has been issued.

(b) The notice must be filed with the body that issued the order appealed.

(c) If the chief appraiser, the county assessor-collector, or a county appeals, the body with which the notice of appeal is filed shall deliver a copy of the notice to the property owner whose property is involved in the appeal within 10 days after the date the notice is filed.

(d) On the filing of a notice of appeal, the chief appraiser or county assessor-collector shall indicate where appropriate those entries on the appraisal records that are subject to the appeal.

[Acts 1979, 66th Leg., p. 2309, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.07. Costs of Appeal

The reviewing court in its discretion may charge all or part of the costs of an appeal taken as provided by this chapter against any of the parties.

[Acts 1979, 66th Leg., p. 2309, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.08. Forfeiture of Remedy for Nonpayment of Taxes

(a) The pendency of an appeal as provided by this chapter does not affect the date taxes become delinquent.

(b) A property owner who appeals as provided by this chapter must pay the tax due on the amount of value of the property involved in the pending action that is not in dispute or the amount of tax paid on the property in the preceding year, whichever is greater, before the delinquency date or he forfeits his right to proceed to a final determination of the pending action. In that event, the reviewing court on its own motion or on the motion of an opposing party shall dismiss the pending action.

[Acts 1979, 66th Leg., p. 2309, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.09. Remedies Exclusive

The procedures prescribed by this title for adjudication of the grounds of protest authorized by this title are exclusive, and a property owner may not raise any of those grounds:

(1) in defense to a suit to enforce collection of delinquent taxes; or

(2) as a basis of a claim for relief in a suit by the property owner to arrest or prevent the tax collection process or to obtain a refund of taxes paid.

[Acts 1979, 66th Leg., p. 2309, ch. 841, § 1, eff. Jan. 1, 1982.]

[Sections 42.10 to 42.20 reserved for expansion]

SUBCHAPTER B. REVIEW BY DISTRICT COURT

§ 42.21. Petition for Review

A party who appeals as provided by this chapter must file a petition for review with the district court within 45 days after the party received notice that a final order has been entered from which an appeal may be had; failure to timely file a petition bars any appeal under this section. Citation is issued and served in the manner provided by law for civil suits generally.

[Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.22. Venue

Venue is in the county in which the appraisal review board or commissioners court that issued the order appealed is located. Venue is in Travis County if the order appealed was issued by the State Property Tax Board.

[Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.23. Scope of Review

(a) Review is by trial de novo. The district court shall try all issues of fact and law raised by the pleadings in the manner applicable to civil suits generally.

(b) The court may not admit in evidence the fact of prior action by the appraisal review board, commissioners court, or State Property Tax Board, except to the extent necessary to establish its jurisdiction.

(c) Any party is entitled to trial by jury on demand.

[Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.24. Action by Court

In determining an appeal, the district court may:

(1) fix the appraised value of property in accordance with the requirements of law if the appraised value is at issue;

(2) enter the orders necessary to ensure equal treatment under the law for the appealing property owner if inequality in the appraisal of his property is at issue; or

(3) enter other orders necessary to preserve rights protected by and impose duties required by the law.

[Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.25. Remedy for Excessive Appraisal

If the court determines that the appraised value of property according to the appraisal roll exceeds the appraised value required by law, the property owner is entitled to a reduction of the appraised value on the appraisal roll to the appraised value determined by the court.

[Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.26. Remedy for Unequal Appraisal

The district court may not grant relief on the ground that a property is appraised unequally in comparison to the level of appraisals of other property in the county or in the appraisal district unless the appraised value of the property varies at least 10 percent from its value calculated on the basis of the aggregate mean level of appraisals in the county or district, as applicable. In that event, the court shall order the appraised value changed to the value as calculated on the basis of the aggregate mean level of appraisals in the county or district, as applicable.

[Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.27. Additional Remedy for Erroneous Value

(a) The issue to be determined by the district court in an appeal under this section is whether or not the market value of the property in question according to the appraisal roll is in error.

(b) If the trier of fact finds that the market value is in error, meaning it is higher than the value set out by the property owner in a property information report properly filed pursuant to Chapter 22 of this code, then the trier of fact shall fix a market value for the property in question as of January 1 of the tax year of controversy. In order for a taxpayer to prevail on appeal, the variance in market value must be found to be in excess of 5 percent of the market value as contended by the taxpayer.

(c) The market value fixed by the court or jury pursuant to Subsection (b) of this section shall be binding on the taxing units or unit involved in the law suit for the tax year in question and for the succeeding tax year.

(d) A taxpayer who prevails in an appeal to the court shall be entitled to reimbursement for reasonable attorneys fees.

[Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.28. Appeal of District Court Judgment

A party may appeal the final judgment of the district court as provided by law for appeal of civil suits generally, except that an appeal bond is not required of the chief appraiser, the county, the State Property Tax Board, or the commissioners court.

[Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982.]

[Sections 42.29 to 42.40 reserved for expansion]

SUBCHAPTER C. POSTAPPEAL ADMINISTRATIVE PROCEDURES

§ 42.41. Correction of Rolls

The chief appraiser or county assessor-collector, as applicable, shall correct the appraisal roll and other appropriate records as necessary to reflect the final determination of an appeal, and the assessor for each affected taxing unit shall correct the tax roll and other appropriate records for which he is responsible.

[Acts 1979, 66th Leg., p. 2312, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.42. Corrected and Supplemental Tax Bills

(a) Except as provided by Subsection (b) of this section, if the final determination of an appeal that changes a property owner's tax liability occurs after the tax bill is mailed, the assessor for each affected taxing unit shall prepare and mail a corrected tax bill in the manner provided by Chapter 31 of this code for tax bills generally. The assessor shall include with the bill a brief explanation of the reason for and effect of the corrected bill.

(b) If the final determination of an appeal that increases a property owner's tax liability occurs after the property owner has paid his taxes, the assessor for each affected taxing unit shall prepare and mail a supplemental tax bill in the manner provided by Chapter 31 of this code for tax bills generally. The assessor shall include with the bill a brief explanation of the reason for and effect of the supplemental bill. The additional taxes due on receipt of the supplemental bill and becomes delinquent if not paid before the delinquency date prescribed by

Chapter 31 of this code or before the first day of the next month after the date of mailing that will provide at least 21 days for payment of the tax, whichever is later.

(c) If the final determination of an appeal occurs after the property owner has paid a portion of the tax finally determined to be due as required by Section 42.08 of this code, the assessor for each affected taxing unit shall prepare and mail a supplemental tax bill in the form and manner prescribed by Subsection (b) of this section. The additional tax is due and becomes delinquent as provided by Subsection (b), but the property owner is liable for interest on the tax included in the supplemental bill at the rate prescribed by this code for delinquent taxes.

[Acts 1979, 66th Leg., p. 2312, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.43. Refund

If the final determination of an appeal that decreases a property owner's tax liability occurs after the property owner has paid his taxes, the taxing unit shall refund to the property owner the difference between the amount of taxes paid and amount of taxes for which the property owner is liable.

[Acts 1979, 66th Leg., p. 2312, ch. 841, § 1, eff. Jan. 1, 1982.]

CHAPTER 43. SUIT AGAINST APPRAISAL OFFICE

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43.01. Authority to Bring Suit.
43.02. Venue.
43.03. Action by Court.

§ 43.01. Authority to Bring Suit

A taxing unit may sue the appraisal district that appraises property for the unit to compel the appraisal district to comply with the provisions of this title, rules of the State Property Tax Board, or other applicable law.

[Acts 1979, 66th Leg., p. 2313, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 43.02. Venue

Venue is in the county in which the appraisal district is established.

[Acts 1979, 66th Leg., p. 2313, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 43.03. Action by Court

The court as the evidence warrants shall enter those orders necessary to compel compliance by the appraisal office.

[Acts 1979, 66th Leg., p. 2313, ch. 841, § 1, eff. Jan. 1, 1982.]

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TITLE 122. TAXATION

CHAPTER ONE. LEVY OF TAXES AND OCCUPATION TAXES

Article
7041a. Application of Sunset Act.
7057g. Validation of Unenforceable Tax Levies and Junior College District Boundary Changes.
7057h. Validation of School Tax Levies.

Art. 7041. Board Constituted

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7041a. Application of Sunset Act

The board to calculate the ad valorem tax rate is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.170, eff. Aug. 29, 1977.]

[1] Article 5429k.

Arts. 7042 to 7045.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7048. County Occupation, etc.

Text of article effective January 1, 1982

Each commissioners court shall have the right to levy one-half of the occupation tax levied by the State upon all occupations not herein otherwise specially exempted; provided any one wishing to pursue any of the vocations named in this chapter, upon which any county occupation tax may be levied, may do so by paying the same quarterly. The receipt of the proper officer under seal shall be prima facie evidence of the payment of such taxes as are herein named. The provisions of this law shall not be deemed to affect the provisions of any law specially authorizing any commissioners court to levy a different rate of tax. No person shall be allowed license for keeping any nine or ten pin alley, or anything of the kind used for profit, for a period of less than twelve months. The governing body of any incorporated town or city shall in no case levy a greater tax on any occupation than that authorized by this chapter to be levied by the commissioners court. In all cases where any dealer in merchandise, wares or goods of any kind, subject to occupation taxes under the provisions of this law, who shall after becoming liable for any occupation tax, become bankrupt or make assignment of said merchandise, wares or goods, then the tax collector shall at once demand of the receiver or assignee of said dealer payment of the amount due for said taxes by said dealer; and in case of failure of said receiver or assignee to at once pay the amount of said taxes, the said collector shall levy upon, seize and sell from the said merchandise, wares or goods, enough to satisfy the amount of said taxes, and said taxes, until paid, shall constitute a prior lien on said merchandise, goods and wares in default of said taxes.

[Amended by Acts 1979, 66th Leg., p. 2329, ch. 841, § 4(g), eff. Jan. 1, 1982.]

For text of article effective until January 1, 1982, see Compact Edition Volume 2

Art. 7057b. Payment of License or Privilege Taxes Under Protest

[See Compact Edition, Volume 2 for text of 1]

Suits for Recovery of Taxes or Fees

Sec. 2. Upon the payment of such taxes or fees, accompanied by such written protest, the tax-payer shall have ninety (90) days from said date within which to file suit for the recovery thereof in any court of competent jurisdiction in Travis County, Texas, and none other. Such suit shall be brought against the public official charged with the duty of collecting such tax or fees, the State Treasurer and the Attorney General. The issues to be determined in such suit shall be only those arising out of the grounds or reasons set forth in such written protest as originally filed. The trial of the issues raised by a suit shall be by trial de novo. The right of appeal shall exist as in other cases provided by law. Provided, however, where a class action is brought by any tax-payer all other tax-payers belonging to the class and represented in such class action who have properly protested as herein provided shall not be required to file separate suits but shall be entitled to and governed by the decision rendered in such class action. A class action shall include any suit filed by any two or more persons, firms, corporations or association of persons who have paid under protest such taxes or fees referred to in Section 1 hereof.

[See Compact Edition, Volume 2 for text of 2a to 8]

[Amended by Acts 1979, 66th Leg., p. 98, ch. 59, § 4, eff. Aug. 27, 1979.]

Art. 7057c. Repealed by Acts 1975, 64th Leg., p. 2306, ch. 719, art. V, § 1, eff. Sept. 1, 1975

Art. 7057g. Validation of Unenforceable Tax Levies and Junior College District Boundary Changes

Unenforceable Tax Levies and Boundary Changes

Sec. 1. (a) All tax levies and junior college district boundary changes heretofore made by and for any tax unit, which levies or boundary changes are unenforceable because not made in strict compliance with the form and manner required by statute or because of any other defect which may be cured by the legislature, are hereby validated and declared enforceable the same as though they had been regularly made in proper form and manner.

(b) If for any cause any tax unit hereafter fails to make a valid tax levy for any year or years, the tax unit's last valid tax levy prior to such omitted year or years shall be continued in force as the tax levy of such tax unit for each year in which a valid levy was not made, so that there shall never be a year hereafter for which some valid levy is not in force.

Levies Not Recorded

Sec. 2. Should any tax unit fail to make a proper record of a tax levy for any year or years, but taxes were assessed and collected by the tax unit for that year or years and the tax rate(s) used can be determined by examining the tax rolls for such year or years, the tax unit's governing body may take testimony and make other inquiry and determine that a proper tax levy was regularly and validly made for each such year but was not recorded, and the governing body may order that a proper tax levy ordinance or other order for each such year be entered in the official records nunc pro tunc, and this record shall be prima facie evidence that the tax unit's levy for such year was properly and regularly made. This provision shall be cumulative of and in addition to all other rights and remedies now available to any tax unit in such cases.

Tax Unit Defined

Sec. 3. A tax unit or unit as used in this Act is any governmental agency or subdivision of the state which levies a property tax (ad valorem or otherwise).

Inapplicability of this Act

Sec. 4. This Act shall not affect nor apply to any suit pending in any court on the effective date of this Act in which the invalidity or nonrecord of any tax levy, or both of them, has heretofore been pleaded.

Savings Clause

Sec. 5. This Act will not affect pending litigation nor any disputed property valuation notice of which has been given to the tax unit involved.

Partial Invalidity

Sec. 6. If any provision of this Act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1977, 65th Leg., p. 1441, ch. 586, §§ 1 to 6, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 803, ch. 362, § 4, eff. Aug. 27, 1979.]

Art. 7057h. Validation of School District Tax Levies

Sec. 1. The governmental acts and proceedings performed by the governing bodies of all school districts relating to the setting of tax rates or assessment ratios are validated as of the date of the act or proceeding insofar as these acts or proceedings may be invalid because they were not accomplished by ordinance.

Sec. 2. This Act does not apply to any act or proceeding involved in litigation on the date this Act takes effect if the litigation, ultimately results against the legality of the act or proceeding. This Act does not apply to any act or proceeding which has been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1979, 66th Leg., p. 803, ch. 362, §§ 1, 2, eff. Aug. 27, 1979.]

CHAPTER TWO. TAXES BASED UPON GROSS RECEIPTS

Art. 7083a. Allocation of Revenue Derived from Certain Occupations and Gross Receipts Taxes; Appropriations and Allocations for Certain Funds

[See Compact Edition, Volume 2 for text of 1]

Sec. 2.

[See Compact Edition, Volume 2 for text to 2(4–c)]

(4–d) (A) After the above allocations and payments have been made from the Clearance Fund, other than those provided by Subsections (4–a) and (5) of this section, there is allocated and shall be transferred and credited to the State Highway Fund an amount determined by the Highway Cost Index Committee as provided in this subsection.

(B) The Highway Cost Index Committee consists of the Governor, the Lieutenant Governor, and the State Comptroller of Public Accounts. In

the absence of the Governor, the Secretary of State of Texas serves in place of the Governor.

(C) On or before November 1 of each even-numbered year, the committee created by this subsection shall certify to the Comptroller the estimated amount to be allocated, transferred, and credited to the State Highway Fund under this subsection for the succeeding fiscal biennium, except that the certification of the amount for the biennium beginning on September 1, 1977, must be made not later than 30 days after the effective date of H.B. No. 3, Acts of the 65th Legislature, Regular Session, 1977.

(D) On or before August 1 of each year, the committee shall certify to the Comptroller the amount to be allocated, transferred, and credited to the State Highway Fund under this subsection for the succeeding fiscal year.

(E) Funds allocated and appropriated from the Clearance Fund to the State Highway Fund shall be paid no later than the sixth working day of each month in equal monthly installments. If for any month the amount remaining to the credit of the Clearance Fund is insufficient to provide for the transfer and allocation to the State Highway Fund under this subsection, the difference between the amount transferred and the amount required to be transferred under this subsection shall be transferred and paid from the General Revenue Fund or from funds due to the General Revenue Fund.

(F) On or before November 1, 1978, and on or before each succeeding November 1, the committee shall determine the actual amount of dedicated revenue earned for the State Highway Fund and the actual highway cost index for the preceding fiscal year (except that for fiscal years beginning September 1, 1977, and September 1, 1978, the actual highway cost index is 1.00) and shall determine the amount by which the amount allocated, transferred, and credited to the State Highway Fund under this subsection during the preceding fiscal year differs from the amount that would have been allocated, transferred, and credited to the State Highway Fund during the preceding fiscal year based on the actual dedicated revenue and the actual highway cost index. The committee shall certify to the Comptroller the amount of the difference, if any, and shall certify to the Comptroller the amount by which allocations, transfers, and credits for the remainder of the current fiscal year are to be adjusted to compensate for the amount of the difference.

(G) The amount to be transferred, allocated, and credited each fiscal year to the State Highway Fund shall be determined by application of the following formula:

Amount = (Base Amount × Cost Index) − Dedicated Revenue

In this formula:

(i) "Amount" means the amount to be allocated from the Clearance Fund to the State Highway Fund.

(ii) "Base Amount" means $700 million for the fiscal year beginning September 1, 1977, and $750 million for each fiscal year beginning on or after September 1, 1978.

(iii) "Highway Cost Index" means the number determined as provided in Paragraph (H) of this subsection, except that for the fiscal years beginning on September 1, 1977, and September 1, 1978, the highway cost index is 1.00.

(iv) "Dedicated Revenue" means the revenue credited to the State Highway Fund under Articles 9.25, 10.22, 10.72, and 20.13, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended; Article 6686, Revised Civil Statutes of Texas, 1925, as amended; Sections 1 through 16, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a–1 et seq., Vernon's Texas Civil Statutes); Chapter 18, General Laws, Acts of the 41st Legislature, 5th Called Session, 1930, as amended (Article 6675a–6e, Vernon's Texas Civil Statutes); Section 2, Chapter 178, General Laws, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 6675a–13½, Vernon's Texas Civil Statutes); Chapter 298, Acts of the 56th Legislature, Regular Session, 1959 (Article 6675a–5b, Vernon's Texas Civil Statutes); Chapter 456, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 6675a–6b, Vernon's Texas Civil Statutes); Chapter 517, Acts of the 58th Legislature, 1963, as amended (Article 6675a–6c, Vernon's Texas Civil Statutes); Chapter 707, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 6675a–6d, Vernon's Texas Civil Statutes); and Chapter 338, Acts of the 64th Legislature, 1975 (Article 6675a–5e.1, Vernon's Texas Civil Statutes).

(H) The highway cost index shall be determined by the State Department of Highways and Public Transportation according to procedures approved by the Highway Cost Index Committee. The index shall be based on the weighted combined costs of highway operations, maintenance, and construction for the appropriate fiscal year compared to the costs of those items used for the fiscal year beginning on September 1, 1978.

(I) This subsection does not authorize the transfer of any funds from the State Highway Fund to the Clearance Fund or any other fund even

though the actual amount of dedicated revenue exceeds the base amount times the cost index.

[See Compact Edition, Volume 2 for text of 2(5) to (9)]

[Amended by Acts 1977, 65th Leg., p. 112, ch. 55, § 2, eff. April 12, 1977.]

CHAPTER FOUR. INTANGIBLE TAX BOARD

Article
7098b. Application of Sunset Act.

Arts. 7079, 7098a.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7098b. Application of Sunset Act

The State Tax Board is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.168, eff. Aug. 29, 1977.]

[1] Article 5429k.

Art. 7099. Bond of Commissioner

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7100. Repealed by Acts 1975, 64th Leg., p. 898, ch. 334, § 11, eff. Sept. 1, 1975

Arts. 7105 to 7116. Repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(c), eff. Jan. 1, 1980

Acts 1979, 66th Leg., ch. 841, repealing these articles, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER SIX. PROPERTY SUBJECT TO TAXATION AND RENDITION

Article
7150.1. Exemption of Solar and Wind-Powered Energy Devices From Ad Valorem Taxes.
7150.2 to 7150.6. Repealed.
7150i. Repealed.
7150j. Notice of Homestead Exemption Availability to Person 65 or Older.
7150k. Repealed.
7150l. Valuation of Property Owned by Nonprofit Associations or Corporations.
7150m. Assessment of Property Taxes in Planned Unit Development.
7150n. Appraisal of Land Limited in Use to Recreational, Park, or Open Space Purposes by Deed or Voluntary Restrictions.
7150o. Reappraisal of Property Damaged in Natural Disaster Area.
7174A. Appraisal of Agricultural Land.
7174B. Appraisal of Timber Land.

Art. 7145. Repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(d), eff. Jan. 1, 1980

Acts 1979, 66th Leg., ch. 841, repealing this article, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7146. "Real property"

(a) Real property for the purpose of taxation, shall be construed to include the land itself, whether laid out in town lots or otherwise and all buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all the rights and privileges belonging or in anywise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same, and mobile homes as defined by Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), except those located within the boundaries of an assessing unit for less than 60 days or unoccupied and for sale. The value of any mobile home shall not be included in the assessment of the land on which it is located, unless both the land and the mobile home are owned by the same person. If the owner of the mobile home is not the owner of the land, the mobile home shall be rendered for taxation separately from the land and taxes assessed shall be a liability of the owner of the mobile home, and not a liability of the landowner. Land on which a mobile home is located shall not be subject to execution for the collection of taxes assessed against a mobile home unless both are owned by the same person.

(b) For the purpose of enforcing the tax lien, a mobile home is personal property.

[Amended by Acts 1979, 66th Leg., p. 479, ch. 220, § 1, eff. Aug. 27, 1979.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 7147 to 7149.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7150. Repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(d), eff. Jan. 1, 1980

Acts 1979, 66th Leg., ch. 841, repealing this article, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Prior to repeal, this article was amended by:
Acts 1975, 64th Leg., p. 2314, ch. 719, art. XIV, § 1, art. XIX, § 1.
Acts 1977, 65th Leg., p. 1909, ch. 760, § 1.
Acts 1977, 65th Leg., p. 2192, ch. 865, § 1.
Acts 1979, 66th Leg., p. 697, ch. 302, art. 12, § 1.

Art. 7150.1. Exemption of Solar and Wind-Powered Energy Devices From Ad Valorem Taxes

(a) There are exempted from all property taxes levied by the state and any city, town, county, school district, special district, or other political subdivision of the state the value of assessed property arising from the construction or installation of any solar energy device on the assessed property primarily for on-site use.

(b) "Solar energy" means radiant energy from the sun that may be collected and converted into useful thermal, mechanical, or electrical energy, including biomass energy that is imparted to living plants through photosynthesis.

(c) "Wind energy" means the energy available in the wind that may be captured and converted into useful thermal, mechanical, or electrical energy.

(d) "Solar energy device" means a solar or wind energy collector or solar or wind energy storage mechanism that provides for the collection, storage, or distribution of solar or wind energy for subsequent use as thermal, mechanical, or electrical energy. This definition does not include energy conservation devices that can be used regardless of the energy source.

(e) "Solar or wind energy collector" means any assembly, structure, or design, including passive elements, used to absorb, concentrate, convert, reflect, or otherwise capture or redirect solar or wind energy for subsequent use as thermal, mechanical, or electrical energy.

(f) "Solar or wind energy storage mechanism" means equipment, components, or elements designed and used to store for subsequent use solar or wind energy captured by a solar or wind energy collector, either in the same form as the energy will eventually be used or in an intermediate form, including thermal, electrochemical, chemical, electrical, or mechanical storage mechanisms.

(g) The tax assessor-collector of each taxing unit responsible for assessing and collecting property taxes in this state is prohibited from considering in his assessment of property value the value of any solar energy device installed or constructed on the assessed property.

(h) The comptroller of public accounts, with the assistance of the Texas Energy Advisory Council,[1] shall develop guidelines to assist tax assessor-collectors in the performance of their duties under this article.

(i) The purpose of this article is to provide for exemptions under the authority of Article VIII, Section 2(a), of the Texas Constitution.

[Added by Acts 1979, 66th Leg., p. 197, ch. 107, § 1, eff. Jan. 1, 1980.]

[1] Texas Energy Advisory Council avolished and succeeded by Texas Energy and Natural Resources Advisory Council. See art. 4413(47c).

Arts. 7150.2 to 7150.6. Repealed by Acts 1979, 66th Leg., p. 2331, ch. 841, § 6(f)(1), eff. Jan. 1, 1980

Acts 1979, 66th Leg., ch. 841, repealing these articles, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Former art. 7150.2, relating to household goods and personal effects, was added by Acts 1979, 66th Leg., p. 687, ch. 302, art. 4, § 1.

Former art. 7150.3, relating to exemption of automobiles, was added by Acts 1979, 66th Leg., p. 688, ch. 302, art. 5, § 1.

Former art. 7150.4, relating to definition of residence homestead, was added by Acts 1979, 66th Leg., p. 689, ch. 302, art. 6, § 1.

Former art. 7150.5, relating to residence homesteads, was added by Acts 1979, 66th Leg., p. 690, ch. 302, art. 7, § 1.

Former art. 7150.6, relating to exemption of intangible property, was added by Acts 1979, 66th Leg., p. 686, ch. 302, art. 3, § 1.

Arts. 7150b to 7150i. Repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(d), eff. Jan. 1, 1980

Acts 1979, 66th Leg., ch. 841, repealing these articles, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Prior to repeal, art. 7150f was amended by Acts 1977, 65th Leg., p. 1332, ch. 530, § 1.

Prior to repeal, art. 7150h was amended by Acts 1975, 64th Leg., p. 2316, ch. 719, art. XX, § 1.

Former art. 7150i, relating to exemption of historic sites, was added by Acts 1977, 65th Leg., p. 950, ch. 358, § 1.

Art. 7150j. Notice of Homestead Exemption Availability to Person 65 or Older

If a county or other political subdivision adopts the residence homestead exemption for persons 65 years of age or older as permitted by Article VIII, Section 1-b(b), of the Texas Constitution, and requires persons to make a timely claim for the exemption, the subdivision shall include in at least one written communication mailed to its taxpayers each year a notice that the exemption is available and a form that a claimant may complete and return to the subdivision's tax office by mail to claim the exemption.

[Acts 1975, 64th Leg., p. 2322, ch. 719, art. XXVII, § 1, eff. Sept. 1, 1975.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Articles I to XXVII of the 1975 Act revised and amended certain tax laws; art. XXVIII, § 1, thereof provided: "This Act takes effect September 1, 1975, unless otherwise specified within an Article."

Art. 7150k. Repealed by Acts 1979, 66th Leg., p. 697, ch. 302, art. 12, § 1, eff. May 31, 1979; Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Acts 1979, 66th Leg., ch. 841, repealing this article, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7150*l*. Valuation of Property Owned by Nonprofit Associations or Corporations

Policy of State

Sec. 1. The legislature recognizes as an existing condition the fact that many residential subdivisions are developed on the basis of a nonprofit association

or corporation maintaining nominal ownership to certain property which will be held for the use, benefit, and enjoyment of the members of such association or corporation, such nominally owned property consisting of such items as swimming pools, parks, meeting halls, parking lots, tennis courts, and many other similar and related items of property. The legislature further recognizes that the existence of such an association or corporation holding nominal title to such facilities for the use, benefit, and enjoyment of its members greatly enhances the valuation for tax purposes of the individual properties owned by members of the association or corporation who are entitled to the use and enjoyment thereof. The legislature further recognizes that the valuation for tax purposes of the property thus nominally held by such associations or corporations is actually reflected in the enhanced valuation of the property owned by the individual members thereof, and to assess such nominally owned property on the basis of its fair market value would result in double taxation of such property. It is therefore declared to be the policy of the State of Texas that all political subdivisions of the State of Texas take cognizance of the existence of such subdivision developments and recognize that all property nominally owned by such associations or corporations should be assessed and taxed on a nominal basis rather than at fair market value.

Assessment at Nominal Value

Sec. 2. All property, real, personal, or mixed, owned by an association, corporation, or similar nonprofit organization, as herein defined, shall be assessed for tax purposes on the basis of a nominal value with respect to all property taxes levied by the State of Texas or any political subdivision of the State of Texas if:

(a) all property owned by said association or corporation is held for the use, benefit, and enjoyment of all members of said association equally; and

(b) each member of the association or corporation owns or possesses an easement, license, or other nonrevokable right for the use and enjoyment on an equal basis of all the property so held by such association or corporation, subject to any restrictions imposed by the instruments conveying such right or interest or granting such easement and any rules, regulations, or bylaws imposed by the association or corporations pursuant to the authority granted by the articles of incorporation, declaration of covenants, conditions and restrictions, the bylaws, or the articles of association of such corporation or association; and

(c) each easement, license, or other nonrevokable right to the use and enjoyment of all association property is appurtenant to and an integral part of the taxable real property owned by such members.

Enhanced Value as Assessment Factor

Sec. 3. In appraising individual properties owned by members of the association or corporation who are entitled to the use and enjoyment of facilities owned by the association or corporation, the enhanced value of the individual properties because of the right to the use and benefit of the facilities shall be a factor taken into consideration by the appraiser.

Qualifications for Benefits of Act

Sec. 4. Any nonprofit association, corporation, or other organization shall qualify for the benefits provided in this Act if:

(a) such association or corporation is engaged in residential real estate management; and

(b) such association or corporation is organized and operated to provide for the acquisition, construction, management, maintenance, and care of property nominally owned by such association or corporation and held for the use, benefit, and enjoyment of its members; and

(c) 60 percent or more of the gross income of such association or corporation consists of amounts received as membership dues, fees, or assessments from owners of residences or residential lots within the area subject to jurisdiction and assessment power of such association or corporation; and

(d) 90 percent or more of the expenditures of the association or corporation is made for the purpose of acquiring, constructing, managing, maintaining, and caring for the property nominally held by such association or corporation; and

(e) all members of the association or corporation own easement, license, or other nonrevokable rights for the use and enjoyment on an equal basis of all the property nominally owned by such association or corporation subject to any restrictions imposed by the instruments conveying such right or interest or granting such easement and any rules, regulations, or bylaws imposed by the association or corporation pursuant to the authority granted by the articles of incorporation, declaration of covenants, conditions and restrictions, the bylaws, or the articles of association of such corporation or association; and

(f) no part of the net earning, if any, of such association or corporation shall inure to the benefit of any member or individual, other than by acquiring, constructing, or providing management, maintenance, and care of association or corporation property, or other than by a rebate of excess membership dues, fees, or assessments; and

(g) such nonprofit corporation, association, or organization shall qualify for treatment under Section 1301 of the Tax Reform Act of 1976

amending Internal Revenue Code, Section 528, "Certain Homeowners Associations."

Repeal of Conflicting Laws; Cumulative Effect

Sec. 5. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict but only to the extent of such conflict, and this Act shall be cumulative of all existing laws relative hereto and not inconsistent herewith.

[Acts 1977, 65th Leg., p. 1975, ch. 790, §§ 1 to 5, eff. Aug. 29, 1977.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7150m. Assessment of Property Taxes in Planned Unit Development

Sec. 1. For purposes of this Act, "planned unit development" means a real property development project in which the owners of individual parcels of real property in the development each have a membership in an association that owns and maintains property in the development for the use of its members.

Sec. 2. A property tax on the property in a planned unit development that is owned by the association may be assessed proportionately against each member of the association if the association files with the tax collector a resolution adopted by majority vote of all members of the association authorizing the proportionate assessment.

Sec. 3. If taxes are assessed proportionately as authorized in this Act, the amount of tax to be imposed on the association's property shall be divided by the number of separately owned parcels of real property in the development. The quotient is the proportionate amount of tax to be assessed against each separately owned parcel in the development, and a tax lien attaches to each parcel to secure payment of its proportionate share of the tax on the association's property. Each separate parcel, together with the quotient portion applicable thereto, shall be rendered and assessed separately and the tax lien to secure the payment of the taxes assessed upon each such separate parcel, together with the quotient portion applicable to that parcel, shall apply only to such respective parcel together with its applicable quotient portion, and the tax lien securing the payment of taxes upon any other parcel or parcels, and the respective quotient or quotients applicable thereto, shall not apply to any other parcel and the respective quotient applicable thereto.

[Acts 1977, 65th Leg., p. 2037, ch. 815, §§ 1 to 3, eff. Aug. 29, 1977.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7150n. Appraisal of Land Limited in Use to Recreational, Park, or Open Space Purposes by Deed or Voluntary Restrictions

Definitions

Sec. 1. In this Act:

(1) "Recreational, park, or open space use" means the employment or application of real property for individual or group sporting activities, for park or camping activities, or for the conservation and preservation of scenic areas, and includes the use of real property for walking, jogging, running, swimming, boating, fishing, hunting, golfing, horseback riding, shooting, tennis, and the development of historical, archaeological, scenic, or scientific sites.

(2) "Deed restriction" means a valid and enforceable provision in a conveyance of land of five or more acres filed and recorded in the deed records of the county in which the land is located and which provision limits or restricts the use of the land conveyed.

(3) "Improvements" includes all valuable additions to real property except appurtenances to land.

(4) "Appurtenances to land" means riparian water rights, private roads, dams, reservoirs, water wells, and canals, ditches, and similar reshapings or additions to the soil.

Voluntary Restrictions

Sec. 2. (a) The owner of the fee simple title to a five or more acre tract of real estate may limit the use of the land to recreational, park, or open space use by filing with the county clerk an instrument executed in the form and manner of a deed.

(b) The restriction instrument must include a description of the property, the name of the owner or owners of the property, and a statement that the land may not be used for any purpose other than recreational, park, or open space uses for a term of years which term must be expressed in the instrument.

(c) An instrument complying with the requirements of this section may be enforced in the same manner as a valid deed restriction by action of the county attorney or any person owning or having an interest in the restricted property.

Appraisal of Restricted Land

Sec. 3. (a) For the purpose of assessing ad valorem taxes imposed by each tax authority, land that is subject to a deed restriction or a restriction instrument executed and filed as provided in Section 2 of this Act and that limits the use of the land to recreational, park, or open space uses for a term of 10 or more years and which land is actually used exclusively for recreational, park, or open space purposes on January 1 of the tax year and during all of the preceding tax year shall be appraised and valued as provided in Subsection (b) of this section.

(b) The tax assessor or appraiser shall consider no factor other than those relative to the value of the land as restricted. Sales of comparable land not subject to such restrictions may not be used.

(c) Improvements on land and the mineral estate shall be valued at actual cash value to be determined by comparable sales or other methods to determine market value.

(d) If the land has been subjected to a deed restriction or a restriction established as provided in Section 2 of this Act during the calendar year immediately preceding January 1 of the tax year and if the restriction is for a term of 10 or more years, the land is entitled to be valued as provided in Subsection (b) of this section, if the owner of the land presents to the tax assessor or appraiser an affidavit stating that for the tax year the land will be used exclusively for recreational, park, or open space purposes. If the valuation of the land is made according to the methods prescribed by Subsection (b) of this section based on an affidavit, the tax assessor or appraiser shall, at the end of the tax year, determine if the property was used exclusively for recreational, park, or open space uses, and if the land was not used exclusively for recreation, park, or open space uses, he shall assess additional taxes equal to the difference in the amount of the taxes assessed for the property based on recreational, park, or open space uses and the amount of taxes that would have been assessed if the property had been valued for tax purposes at market value of unrestricted land.

Reassessment of Taxes

Sec. 4. (a) When property valued as provided in Subsection (b), Section 3 of this Act is no longer subject to a deed restriction or a restriction instrument executed as provided in Section 2 of this Act, or when the property is not used exclusively for recreational, park, or open space uses, the tax assessor of each taxing authority shall determine the amount of taxes which would have been payable to the taxing authority had the land been valued at market value without restriction for the current tax year and for the previous five tax years and shall assess against the property and the owner additional taxes equal to the amount of the taxes assessed according to the value of the property as restricted for recreational, park, or open space uses and the amount of the taxes based on its value without restriction as to use for the current tax year and for the previous five tax years.

(b) The tax assessor for the taxing unit shall include the amount of the additional tax assessed under Subsection (a) of this section, plus interest, on the next tax notice issued after the additional assessment is made. Additional tax under this section shall be treated as back taxes.

Penalty for Violation of Restriction

Sec. 5. If, at any time before the expiration of a restriction which limits the use of land to recreational, park, or open space use, the land is used for a purpose other than recreational, park, or open space use, there shall be assessed as a penalty an amount equal to the difference in the amount of the taxes assessed for the tax year in which the restriction is not observed on the property based on recreational, park, or open space uses and the amount of taxes that would have been assessed for the tax year in which the restriction is not observed if the property had been valued for tax purposes at market value of unrestricted land. The penalty imposed by this section is in addition to taxes imposed under Sections 3 and 4 of this Act. Penalties become due and are payable in the same manner as is the tax.

Effective Date

Sec. 6. This Act applies to each tax year beginning after December 31, 1977.

[Acts 1977, 65th Leg., p. 2065, ch. 818, §§ 1 to 6, eff. Jan. 1, 1978.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1, of the Tax Code.

Art. 7150o. Reappraisal of Property Damaged in Natural Disaster Area

(a) The governing body of a political subdivision that is located partly or entirely inside an area declared to be a natural disaster area by the governor and by the President of the United States may authorize reappraisal of all property damaged in the disaster at its value immediately after the disaster.

(b) If property damaged in a natural disaster is reappraised as provided by this section, the governing body shall provide for prorating the ad valorem taxes on the property for the year in which the disaster occurred. If the taxes are prorated, taxes due on the property are determined as follows: the taxes on the property based on its value on January

1 of that year are multiplied by a fraction, the denominator of which is 365 and the numerator of which is the number of days before the date the disaster occurred; the taxes on the property based on its reappraised value are multiplied by a fraction, the denominator of which is 365 and the numerator of which is the number of days, including the date the disaster occurred, remaining in the year; and the total of the two amounts is the amount of taxes on the property for the year.

(c) This section does not apply to ad valorem taxes imposed for state purposes.

[Added by Acts 1979, 66th Leg., p. 336, ch. 153, § 3, eff. May 11, 1979.]

Arts. 7151 to 7155.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 7156 to 7168.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7169. Repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(c), eff. Jan. 1, 1980

Acts 1979, 66th Leg., ch. 841, repealing this article, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 7169a to 7172.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7173. Leasehold Interests in Land, Buildings, or Improvements Owned in Whole or in Part by the State, a County, a City or Cities, a School District or any other Governmental or Public Entity or Body Politic

(a) Property held under a lease for a term of one year or more, or held under a contract for the purchase thereof, belonging to the State, a county, a city or cities, a school district, or any other governmental or public entity, authority or body politic or that is exempt by law from taxation in the hands of the owner thereof, except for properties held, owned or dedicated, in trust or otherwise, to the support, maintenance or benefit of institutions of higher education, shall be considered for all the purposes of taxation, as the property of person so holding the same, except as otherwise specially provided by law; however this shall not include:

(1) A lease, concession or other use of an airport passenger building or a building used by certified air carriers primarily for aircraft maintenance, air cargo or aircraft services and equipment storage; an aircraft fueling systems facility servicing certified air carriers; or property in a foreign-trade zone established and operating pursuant to federal law, if the area of the zone does not exceed 250 acres, or

(2) A use by way of concession in or relative to the use of a public park, public market, fairground or similar public property, or

(3) A grazing or agricultural lease on property owned by such a governmental or public entity.

(b) Timber held by persons or corporations, heretofore or hereafter purchased from the State under the various laws for that purpose, shall likewise be subject to assessment for taxes, and the value thereof for taxation shall be ascertained as the value of other property is ascertained. And should the owner of such timber fail or refuse to pay the taxes assessed against it, the same shall be sold for the taxes thereon, as provided in this title for the sale of personal property for taxes, provided that the same can be found by the collector; but, if the timber cannot be found, then the collector shall collect the taxes due as the taxes on other personal property are collected; provided, further, that the Land Commissioner shall furnish by the first of January each year to the various commissioners courts and the tax assessors of this State a full and complete list of all timber sold by the State belonging to the school funds, giving the number of acres, price and to whom sold, in the respective counties where the timber so sold is situated. In case of the sale of such timber for taxes as herein provided, the purchaser shall take and hold the same under the same terms and conditions as the original purchaser thereof from the State.

[Amended by Acts 1977, 65th Leg., p. 1523, ch. 617, § 1, eff. Aug. 29, 1977.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7173a. Mineral Rights in Public School Lands Sold Subject to Tax While under Lease by Owner

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7174. Valuation of Property for Taxation

(a) Each separate parcel of real property shall be valued at its true and full value in money, excluding the value of crops growing or ungathered thereon.

(b) In determining the true and full value of real and personal property the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which such property would sell at auction or a forced sale or in the aggregate with all the property in his county; but he shall value each tract or lot by itself, and at such sum and price as he believes the same to be fairly worth in money at the time such assessment is made.

(c) In valuing any real property on which there is a coal or other mine, or stone or other quarry, or springs possessing medicinal properties, the same shall be valued at such price as such property, including a mine, or quarry or spring, would probably sell at a fair voluntary sale for cash.

(d) An interest in a mineral which may be removed by surface mining or quarrying from a deposit that is not being produced shall be valued at the price for which the interest would sell while the mineral is in place and not being produced. The value shall be determined by applying a per acre value to the number of acres covered by the interest. The aggregate of the value of such an interest, and all other interests that, if not under separate ownership, would constitute a fee simple estate in any real property, may not exceed the value which would be placed upon the fee estate, if the interest in minerals were not owned separately.

(e) Taxable leasehold estates on non-exempt property shall be valued at such price as such leasehold estates would bring at a voluntary sale for cash, and taxable leasehold estates on exempt property shall be valued at such price as such leasehold estates would bring at a voluntary sale thereof for cash, based upon the value of a comparable improvement if located on non-exempt property, with reductions for reversionary interests, restrictions on use, and credit for normal rental, except that the value of a leasehold may not be less than the total annual rental for the leasehold for the year in which it is valued.

(f) Personal property of every description shall be valued at its true and full value in money.

(g) Money, whether in possession or on deposit, or in the hands of any member of the family, or any person whatsoever, shall be entered in the statement at the full amount thereof.

(h) Every credit for a sum certain, payable either in money or property of any kind, shall be valued at the full value of the same so payable. If for a specified article or for a specified number or quantity of property of any kind, it shall be valued at the current price of such property at the place where payable. Annuities or moneys payable at stated periods shall be valued at the price that the person listing the same believes them to be worth in money.

[Amended by Acts 1977, 65th Leg., p. 1195, ch. 461, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1524, ch. 617, § 2, eff. Aug. 29, 1977.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7174A. Appraisal of Agricultural Land

Definitions

Sec. 1. In this article:

(1) "Qualified open-space land" means land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area and that has been devoted principally to agricultural use for at least five of the preceding seven years or land that is used principally for ecological laboratories by public and private colleges and universities. Qualified open-space land includes all appurtenances to the land. For the purposes of this subdivision, appurtenances to the land means private roads, dams, reservoirs, water wells, canals, ditches, terraces, and other reshapings of the soil, fences, and riparian water rights.

(2) "Agricultural use" includes, but is not limited to, the following activities: cultivating the soil, producing crops for human food, animal feed, planting seed, and for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; and planting cover crops or leaving land idle for the purpose of participating in any governmental program, or normal crop or livestock rotation procedure.

(3) "Category" means the value classification of land in each taxing unit considering the agricultural use to which the land is principally devoted. Categories of land shall include, but not be limited to, irrigated cropland, dry cropland, improved pasture, native pasture, orchard, and waste and may be further divided according to soil type, soil capability, irrigation, general topography, geographical factors, and other factors which influence the productive capacity of the category. Each local tax assessor shall obtain information from the Texas Agricultural Extension Service, Soil Conservation Service, and recognized agricultural sources for the purposes of determining the categories of production existing within the taxing unit's jurisdiction.

(4) "Net to land" means the average annual net income derived from the use of the open-space land that would have been earned by the owner of the land over the five-year period immediately preceding the valuation by a person using ordinary prudence in the management of the land and the farm crops or livestock produced or supported thereon, and in addition any income received from hunting or recreational leases. The local tax assessor shall calculate net to land with an owner-operator budget by subtracting all ordinary and prudent expenses incurred in pursuit of agricultural use as defined in Subdivision (2) of this section, including all ordinary and prudent expenses incurred in connection with hunting and recreational leases and including owner labor and fixed and variable costs, from the five-year average agricultural income using estimates available from the Texas Agricultural Extension Service, U.S. Agricultural Stabilization and Conservation Service, the Soil Conservation Service, Texas Department of Agricultural Crop and Livestock Reporting Service, and universities and colleges within Texas. Only in the event there is insufficient data available to calculate net to land on the basis of an owner-operator budget, net to land may be determined by considering the income that would be due to the owner of the land under cash lease, share lease, or whatever lease arrangement is typical in that taxing unit for that category of land, and all expenses directly attributable to the agricultural use of the land by the owner of the land shall be subtracted from this owner income and the results shall be used in income capitalization. Net to land shall be determined by the same method for all land in the same category located in the same taxing unit. In calculating net to land, a reasonable deduction shall be made for any depletion that occurs of underground water used in the agricultural operation.

(5) "Income capitalization" means the process of dividing net to land by the capitalization rate in order to determine the value for ad valorem tax purposes.

Valuation of Agricultural Land

Sec. 2. (a) The value for ad valorem tax purposes of qualified open-space land shall be determined by the tax assessor for the taxing unit on the basis of the category of the land, using accepted income capitalization methods applied to average net to land. The value so determined may not exceed the fair market value as determined by other generally accepted appraisal methods.

(b) The tax assessor for each taxing unit shall determine the value according to this article of each category of open-space land and, when requested by a landowner, the value according to Article VIII, Section 1-d, of the Texas Constitution of each category of land owned by that landowner and shall make each value and the market value of the owner's land according to the preceding year's tax roll available to a person seeking to apply for appraisal under this article or under Article VIII, Section 1-d, of the Texas Constitution.

(c) A tax assessor may not change the value of a parcel of open-space land unless the owner has applied for and the land has qualified for appraisal as provided by this article or by Article VIII, Section 1-d, of the Texas Constitution, or unless the change is made as a result of a reappraisal.

(d) Pursuant to rulemaking authority, the School Tax Assessment Practices Board shall develop and distribute to all taxing units appraisal manuals setting forth this method of valuing qualified open-space land, and each taxing unit shall use the appraisal manuals in determining the value. The School Tax Assessment Practices Board shall develop and the local taxing authority shall enforce procedures to verify that the land in question meets the conditions contained in Section 1(1) of this article. All rules and regulations shall be approved before taking effect pursuant to the Administrative Procedure and Texas Register Act, as amended (Article 6252—13a, Vernon's Texas Civil Statutes), by a majority vote of a committee comprised of the following officials or their designees: the governor, the comptroller, the attorney general, the agriculture commissioner, and the commissioner of the General Land Office. If the School Tax Assessment Practices Board is abolished, the authority granted the board herein shall be transferred to its successor, or if none, to the comptroller.

(e) For the purposes of Section 5 of this article, the tax assessor shall also determine and submit to the board of equalization both the value as determined under this article and the fair market value of qualified open-space land.

(f) The valuation and assessment of any minerals or subsurface rights to minerals shall not come within the provisions of this article.

Capitalization Rate

Sec. 3. The capitalization rate to be used in determining the value of qualified open-space land shall be 10 percent or the interest rate specified by the Federal Land Bank of Houston on December 31 of the preceding year plus 2-½ percentage points, whichever percentage is the greater.

Application

Sec. 4. (a) A person claiming that land is eligible for appraisal under this article must file a valid application with the tax assessor for each taxing unit in which the land is taxable.

(b) To be valid, the application must be on a form provided by the assessor, as prescribed by the School Tax Assessment Practices Board, and must contain the information necessary to determine the validity of the claim. The School Tax Assessment Practices Board shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The form must be filed during the rendition period for the taxing unit. However, for good cause the tax assessor may extend the filing deadline for not more than 60 days.

(c) If a person fails to timely file a valid application, the land is ineligible for appraisal under this article.

(d) The tax assessor shall make a sufficient number of printed application forms readily available at no charge and shall mail a form each year, at least 90 days before the filing deadline, to each person owning land that qualified under this article in the preceding year.

Change of Use of Land

Sec. 5. (a) If the use of land that has been appraised as provided by this article changes, an additional tax is imposed on the land equal to the difference between the taxes imposed on the land for each of the five years preceding the year in which the change of use occurs that the land was appraised as provided by this article and the tax that would have been imposed had the land been taxed on the basis of fair market value in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(b) A tax lien attaches to the land on the date the change of use occurs to secure payment of the additional tax and interest imposed by this section and any penalties incurred. The lien exists in favor of the state and all taxing units for which the additional tax is imposed.

(c) The additional tax imposed by this section does not apply to a year for which the tax has already been imposed.

(d) If the change of use applies to only part of a parcel that has been appraised as provided by this article, the additional tax applies only to that part of the parcel and equals the difference between the taxes imposed on that part of the parcel and the taxes that would have been imposed had that part been taxed on the basis of fair market value.

(e) The tax assessor shall prepare and deliver a statement for the additional taxes as soon as practicable after the change of use occurs. The taxes become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next date on which the unit's ad valorem taxes become delinquent that is more than 10 days after the date the statement is delivered.

(f) The sanctions provided by Subsection (a) of this section do not apply if the change of use occurs as a result of a sale for right-of-way or a condemnation.

(g) If the use of the land changes to a use that qualifies under the Article 7174B, Revised Civil Statutes of Texas, 1925, the sanctions provided by Subsection (a) of this section do not apply.

(h) Additional taxes, if any, for a year in which land was designated for agricultural use as provided by Article VIII, Section 1-d, of the Texas Constitution are determined as provided by that section, and the additional taxes imposed by this section do not apply for that year.

Land Ineligible for Designation as Open-space Land

Sec. 6. This article does not apply to:

(1) land located inside the corporate limits of an incorporated city or town, unless:

(A) the city or town is not providing the land with governmental and proprietary services substantially equivalent in standard and scope to those services it provides in other parts of the city or town with similar topography, land utilization, and population density; or

(B) the land has been devoted principally to agricultural use continuously for the preceding five years;

(2) land owned by an individual who is a nonresident alien or by a foreign government if that individual or government is required by federal law or by rule adopted pursuant to federal law to register his ownership or acquisition of that property; or

(3) land owned by a corporation, partnership, trust, or other legal entity if the entity is required by federal law or by rule adopted pursuant to federal law to register its ownership or acquisition of that land and if a nonresident alien or a foreign government or any combination of nonresident aliens or foreign governments own a majority interest in the entity.

[Added by Acts 1979, 66th Leg., p. 680, ch. 302, art. 1, § 1, eff. May 31, 1979.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2331, ch. 841, § 6(f) (2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Subsections (a), (b), (e), and (f) of § 1 of art. 13 of Acts 1979, 66th Leg., ch. 302, provided:

"(a) The legislature believes that implementation of Articles 1 and 2 of this Act in the 1979 tax year is both feasible and desirable and hereby expresses its intent that all taxing units in this state implement those articles for taxes imposed for the 1979 tax year unless it is impossible to do so.

"(b) Articles 1 and 2 of this Act take effect immediately and apply to ad valorem taxes imposed by a taxing unit for the 1979 tax year, except as provided by Subsection (e) of this section. However, the governing body of a taxing unit, by order, resolution, or ordinance (depending on the method required by law for official action by the body) may prescribe that those articles shall not apply to 1979 taxes. Should the governing body so prescribe, Articles 1 and 2 of this Act apply to ad valorem taxes imposed for 1980 and subsequent years."

"(e) If the board of equalization for a taxing unit has finally approved and certified the unit's tax roll before Articles 1 and 2 take effect, those articles do not apply to a unit's taxes until 1980. Provided, however, that no taxing unit shall so certify the unit's tax roll before July 15, 1979.

"(f) For the purpose of administering Articles 7150.5, 7174A, and 7174B, Revised Civil Statutes of Texas, 1925, as added by this Act, in 1979, an application is timely if it is filed within 45 days after the date the governor signs this Act into law or, if the governor does not sign it, after it becomes law without the governor's signature."

Art. 7174B. Appraisal of Timber Land

Definitions

Sec. 1. In this article:

(1) "Category of the land" means the value classification of land for timber production, based on soil type, soil capability, general topography, weather, location, and other pertinent factors, as determined by competent governmental sources.

(2) "Net to land" means the average net income that would have been earned by a category of land over the preceding five years by a person using ordinary prudence in the management of the land and the timber produced on the land. The net income for each year is determined by multiplying the land's potential average annual growth, expressed in cords and/or board feet of wood, by the average stumpage value, taking into consideration the three general types of timber as produced on the four different soil types, as determined by using information from the U.S. Forest Service, U.S. Geological Survey, the Soil Conservation Service, Texas Forest Service, and colleges and universities within Texas, and by subtracting from the product reasonable management costs and other reasonable expenses directly attributable to the production of the timber.

Qualification for Productivity Appraisal

Sec. 2. Land qualifies for appraisal under this article if, with the intent to produce income, it is currently and actively devoted principally to production of timber or forest products to the degree of intensity generally accepted in the area and has been devoted principally to production of timber or forest products for at least five of the preceding seven years.

Valuation of Timber Land

Sec. 3. (a) The value for ad valorem tax purposes of qualified timber land is determined on the basis of the category of the land, using accepted income capitalization methods applied to average net to land. The value so determined may not exceed the fair market value of the land as determined by other appraisal methods.

(b) Pursuant to rulemaking authority, the School Tax Assessment Practices Board shall develop and distribute to all taxing units appraisal manuals setting forth this method of valuing qualified timber land, and each taxing unit shall use the appraisal manuals in determining the value. The School Tax Assessment Practices Board shall develop and the local taxing authority shall enforce procedures to verify that the land in question meets the conditions contained in Section 2 of this article. All rules and regulations shall be approved before taking effect pursuant to the Administrative Procedure and Texas Register Act, as amended (Article 6252—13a, Vernon's Texas Civil Statutes), by majority vote of a committee comprised of the following officials or their designees: the governor, the comptroller, the attorney general, the agriculture commissioner, and the commissioner of the General Land Office. If the School Tax Assessment Practices Board is abolished, the authority granted the board herein shall be transferred to its successor, or if none, to the comptroller.

(c) For the purposes of Section 6 of this article, the tax assessor shall also determine and submit to the board of equalization both the value as determined under this article and the fair market value of qualified timber land.

(d) The valuation and assessment of any minerals or subsurface rights to minerals shall not come within the provisions of this article.

Capitalization Rate

Sec. 4. The capitalization rate to be used in determining the value of qualified open-space land shall be the interest rate specified by the Federal Land Bank of Houston on December 31 of the preceding year plus 2-½ percentage points.

Application

Sec. 5. (a) A person claiming that land is eligible for appraisal under this article must file a valid application with the tax assessor for each taxing unit in which the land is taxable.

(b) To be valid, the application must be on a form provided by the assessor, as prescribed by the School Tax Assessment Practices Board, and must contain the information necessary to determine the validity of the claim. The School Tax Assessment Practices Board shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The form must be filed during the rendition period for the taxing unit. However, for good cause the tax assessor may extend the filing deadline for not more than 60 days.

(c) If a person fails to file timely a valid application, the land is ineligible for appraisal under this article.

(d) The tax assessor shall make a sufficient number of printed application forms readily available at

no charge and shall mail a form each year, at least 90 days before the filing deadline, to each person owning land that qualified under this article in the preceding year.

Change of Use of Land

Sec. 6. (a) If the use of land that has been appraised as provided by this article changes, an additional tax is imposed on the land equal to the difference between the taxes imposed on the land for each of the five years preceding the year in which the change of use occurs that the land was appraised as provided by this article and the tax that would have been imposed had the land been taxed on the basis of fair market value in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(b) A tax lien attaches to the land on the date the change of use occurs to secure payment of the additional tax and interest imposed by this section and any penalties incurred. The lien exists in favor of the state and all taxing units for which the additional tax is imposed.

(c) The additional tax imposed by this section does not apply to a year for which the tax has already been imposed.

(d) If the change of use applies to only part of a parcel that has been appraised as provided by this article, the additional tax applies only to that part of the parcel and equals the difference between the taxes imposed on that part of the parcel and the taxes that would have been imposed had that part been taxed on the basis of fair market value.

(e) The tax assessor shall prepare and deliver a statement for the additional taxes as soon as practicable after the change of use occurs. The taxes become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next date on which the unit's ad valorem taxes become delinquent that is more than 10 days after the date the statement is delivered.

(f) The sanctions provided by Subsection (a) of this section do not apply if the change of use occurs as a result of a sale for right-of-way or a condemnation.

(g) If the use of the land changes to a use that qualifies under Article 7174A, Revised Civil Statutes of Texas, 1925, the sanctions provided by Subsection (a) of this section do not apply.

Land Ineligible for Productivity Appraisal

Sec. 7. This article does not apply to:

(1) land located inside the corporate limits of an incorporated city or town, unless:

(A) the city or town is not providing the land with governmental and proprietary services substantially equivalent in standard and scope to those services it provides in other parts of the city or town with similar topography, land utilization, and population density; or

(B) the land has been devoted principally to production of timber or forest products continuously for the preceding five years;

(2) land owned by an individual who is a nonresident alien or by a foreign government if that individual or government is required by federal law or by rule adopted pursuant to federal law to register his ownership or acquisition of that property; or

(3) land owned by a corporation, partnership, trust, or other legal entity if the entity is required by federal law or by rule adopted pursuant to federal law to register its ownership or acquisition of that land and if a nonresident alien or a foreign government or any combination of nonresident aliens or foreign governments own a majority interest in the entity.

Minimum Appraisal of Timber Land

Sec. 8. The value for ad valorem tax purposes of qualified timber land appraised as provided by this article may not be less than the appraised value of that land for the 1978 tax year, except that the value used for any tax year may not exceed the fair market value of the land as determined by other generally accepted appraisal methods.

[Added by Acts 1979, 66th Leg., p. 684, ch. 302, art. 2, § 1, eff. May 31, 1979.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2331, ch. 841, § 6(f)(2), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

For effective date and implementation provisions regarding this article, see note under art. 7174A.

Arts. 7175, 7176.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER SEVEN. ASSESSMENT AND ASSESSORS

Article

7244b. Assessors Registration and Professional Certification Act.
7244c. Increases in Effective Tax Rate by Taxing Unit.

Art. 7181a. Construction of "Assessor" and "Collector"

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 7183 to 7227.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 7242 to 7244a.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7244b. Assessors Registration and Professional Certification Act

Purpose of Act

Sec. 1. The Constitution of Texas requires that taxation be equal and uniform. It provides for taxation in proportion to value. The responsibility for assessing property in compliance with constitutional requirements is that of the tax assessor-collector. The purpose of the legislature by this Act is to assure the people of Texas that the responsibility of assessing property for taxation is entrusted only to those persons duly registered and competent according to the regulations provided by this Act. The legislature further intends that the assessing of property for taxation be practiced and regulated as a learned profession and that the practitioners in this state be accountable to the public.

Definitions

Sec. 2. In this Act:

(1) "Assessor" means a person who assesses property or otherwise determines, recommends, or certifies the value of property for ad valorem tax purposes for a political subdivision of this state.

(2) "Assessors code of ethics" means an ethical standard of conduct for assessors established by the Board of Tax Assessor Examiners according to Section 7 of this Act.

(3) "Board" means the Board of Tax Assessor Examiners.

(4) "Candidate" means a person who is qualified and duly authorized by the board to seek certification as a registered professional assessor.

(5) "Governing body" means a county commissioners court, city council, board of trustees, or governmental board of a political subdivision of this state.

(6) "Practicing assessor" means a person who is engaged in the practice of assessing property for a county, school district, city, or other political subdivision of the state.

(7) "Registered Texas assessor" means a person who is duly registered and qualified to act as an assessor or to engage in the duties of assessing property for taxation according to the terms of this Act.

(8) "Registered professional assessor" means a person who is registered and holds a certificate for professional assessors issued by the Board of Tax Assessor Examiners according to Section 18 of this Act.

Short Title

Sec. 3. This Act shall be known as "The Texas Assessors Registration and Professional Certification Act."

Board of Tax Assessor Examiners; Establishment; Vacancies; Qualifications; Term of Office

Sec. 4. (a) The Board of Tax Assessor Examiners is established.

(b) The board consists of six members appointed by the governor with the advice and consent of the senate. A vacancy on the board is filled in the same manner for the unexpired portion of the term.

(c) To be eligible to serve on the board an individual must be a resident of this state, be actively engaged in assessing property for property tax purposes, and have at least five years experience in property appraisals. At least four of the members must hold a certificate issued under this Act. However, for the members first appointed, certification by a recognized professional association of assessors or appraisers satisfies the certification requirement for eligibility.

(d) Members hold office for terms of six years, with the terms of two members expiring on March 1 of each odd-numbered year. In making the initial appointments, the governor shall designate two members for terms expiring on March 1, 1979, two members for terms expiring on March 1, 1981, and two members for terms expiring on March 1, 1983.

Expenses

Sec. 5. Board members receive no compensation for their services, but each is entitled to be reimbursed for the necessary expenses incurred in the discharge of his duties.

Regular and Special Meetings; Election of Officers; Quorum

Sec. 6. (a) The board shall hold at least four regular meetings each year. Special meetings shall

be held at such times as are required, according to the bylaws and rules of procedure enacted by the board.

(b) Members of the board shall receive notice of special meetings at least 15 days in advance of the meeting date.

(c) The board shall elect annually from its membership a chairman, vice-chairman, and secretary-treasurer. The election of officers shall be held at the first regular meeting of each calendar year. A majority of the members constitute a quorum.

Rules and Regulations; Examination of Applicants and Issuance of Certificates

Sec. 7. (a) The board may make and enforce all rules and regulations necessary for the performance of its duties, establish standards of professional practice, conduct, education and ethics for assessors in keeping with the purposes and intent of the Act, and insure strict compliance with and enforce all provisions of this Act.

(b) The board may promulgate and amend rules of professional conduct appropriate to establish and maintain a high standard of integrity in the practice of assessing and collecting ad valorem taxes, after all persons registered under Section 12 of this Act are notified. The notice shall set forth the proposed rules of professional conduct or amendments to the rules. No rule or amendment shall become operative until it is approved by a majority of the registered professional assessors practicing in this state. The board shall adopt reasonable means for voting on such measures and shall declare the results of elections and proclaim the effective date of the rules or amendments and notify all persons registered by this Act.

(c) Members of the board who are registered professional assessors have the sole authority, responsibility, and duty of performing all acts relating to the examination of applicants for candidacy and the issuance of certificates for professional assessors, registered according to Sections 17 and 18 of this Act.

Receipt and Accounting of Money; Assessors Registration Fund; Record of Proceedings; Roster of Registrants

Sec. 8. (a) The board shall receive and account for all money derived under the provisions of this Act and shall pay it to the State Treasurer. The State Treasurer shall designate a separate fund to be known as the "Assessors Registration Fund," which may be used only by the board for the purpose of administering this Act.

(b) The board shall keep an accurate record of all proceedings, which shall be available to the public at all times. The board shall also maintain a roster of all assessors registered with the board, showing their names and places of employment as well as the type of registration. Copies of the roster shall be mailed to all persons registered with the board, and the roster shall be placed on file with the Secretary of State. Copies of the roster shall be made available to the public on request.

Executive Director; Clerical and Other Personnel

Sec. 9. The board may employ an executive director and clerical and other personnel to assist it in the performance of its duties under this Act. The board may delegate its powers and duties to the executive director.

Initiation of Proceedings; Notice

Sec. 10. The board may initiate proceedings under this Act, either on its own motion or on the complaint of any person, to insure strict compliance with this Act and the enforcement of this Act and of all rules and regulations adopted by the board. The violation of a provision of this Act, or a rule or regulation of the board, by a person practicing assessing in Texas is sufficient reason or ground to refuse, suspend, or revoke his registration granted under the terms of this Act. The board may institute action in its own name against an individual person to enjoin a violation of a provision of this Act or a rule or regulation of the board. The board is not required to give an appeal bond in a cause arising under this Act. Prior to the initiation of proceedings for a violation of this Act, a written notice shall be sent by certified mail to the prospective defendant stating the nature of the charge and the time and place of the hearing before the board. The notice shall be mailed at least 20 days before the hearing.

Persons Required to Register

Sec. 11. The following persons shall register with the board:

(1) all persons elected or appointed to act as assessors for a county, independent school district, city, municipal water district, navigation district, or other political subdivision requiring the services of a tax assessor;

(2) all supervisors of assessing, including chief deputy assessor-collectors, assistant assessor-collectors, assessing supervisors, or any person with authority to render judgment, recommend, or certify assessed values to a board of equalization; and

(3) all persons engaged in appraisals of real or personal property for ad valorem tax purposes for a taxing authority.

Identification Card; Classifications

Sec. 12. While on official duty, persons duly registered and authorized to engage in the practice of assessing shall carry a serially numbered card of identification issued by the board stating the expiration date, if any, of the registration and describing

the classification into which the holder is placed for purposes of registration. The classifications are:

(1) registration permit holder, which includes newly elected or newly appointed assessors without previous experience as assessors or employees of a tax department, evidenced by an identification card that bears the title "Registration Permit to Practice Assessing in Texas";

(2) registered Texas assessor, which class includes persons who have sufficient experience and training to engage in the practice of assessing, and which is evidenced by an identification card describing the holder as a "Registered Texas Assessor" and, for persons initially registered, a letter of confirmation;

(3) registered Texas assessor and candidate for certification, which class includes persons engaged in the practice of assessing who are eligible to meet the provisions required for registered Texas assessors and the prerequisites required for candidates described under Section 17 of this Act, in which case the board shall issue a letter listing the achievements of each candidate and a card of identification showing the holder to be a "Registered Texas Assessor and Candidate for Professional Certification"; and

(4) registered professional assessor, which class includes persons engaged in assessing who hold a comparable certificate awarded by a recognized professional association of assessors issued prior to January 1, 1978, and candidates registered after January 1, 1978, under the provisions of this Act, who shall be awarded the title of professional assessor following the completion of all requirements described under Section 18 of this Act to the satisfaction of the board, and to each of these persons, the board shall issue a Certificate for Professional Achievement, a letter testifying to the qualifications required for professional status, and an identification card identifying the person as a "Registered Professional Assessor of Texas."

Annual and Renewal Fees; Reinstatement

Sec. 13. Registrants shall pay to the board an annual fee not to exceed $25. The annual registration period expires on December 31 of each year, but may be renewed annually for a period of one year. The board shall determine the amount of the renewal fee for each coming year on or before December 1 of each year and mail notices to all persons registered under the terms of this Act on or before that date. A person registered under this Act who fails to pay the annual renewal fee on or before January 31 of each year shall be deleted from the list of persons duly registered to practice assessing in Texas according to the provisions of this Act. Persons applying for reinstatement within 30 days shall pay a penalty, not to exceed $25, set by the board. Reinstatement thereafter shall be denied except on regular application and examination satisfactory to the board. The board may not waive the collection of a fee or penalty described under this Act.

Applications for Registration; Processing Fee; Examination; Remission of Fee

Sec. 14. All original applications for registration shall be made on printed forms provided by the board, and applications made otherwise may not be accepted. Information required on the form shall include the applicant's name, residence address, educational background, work experience, character and employment references, a recent photograph of the applicant, and other information as the board deems necessary. The form shall be accompanied by the code of ethics and the other limiting conditions required by the rules and regulations prescribed by the board. All applications, including the code of ethics, shall be subscribed and sworn to before a notary public or other person qualified to administer oaths. Initial application for registration shall be accompanied by a processing fee of $30 which shall be retained by the board without regard to the disposition of the application. The board shall act on all applications within 60 days after they are received by the secretary-treasurer. Applicants approved by the board shall be notified of the time and place where examination for all classes of registration will be conducted. Applicants shall be allowed a maximum of one year to pass the required examinations for classifications described under Subdivisions (1) and (2), Section 12 of this Act. The maximum time for complying with classifications described under Subdivisions (3) and (4), Section 12 of this Act shall be in accord with the rules and regulations for professional certification prescribed by the board. After notification that all requirements for registration are in compliance with the provisions of this Act, the applicant shall remit the annual registration fee to the secretary-treasurer before he is duly registered to practice assessing.

Qualifications of Applicants

Sec. 15. An applicant qualifying for a registration permit shall be a resident of the State of Texas and a person of good moral character. A registrant in this class shall have favorable recommendations from at least three persons, one of whom is a practicing assessor duly registered under the provisions of this Act. Each shall subscribe the assessors code of ethics and pass an examination for minimum qualifications in accordance with the rules and regulations of the board.

Qualifications of Registrants

Sec. 16. A registered Texas assessor shall be at least 21 years of age and a resident of the State of Texas. He shall be a person of good moral character confirmed by at least five persons who have known

the applicant for at least three years. In addition, the application for registered Texas assessor shall list at least three persons who can vouch for the applicant's qualifications, one of whom shall be a registered professional assessor. The minimum educational requirement is satisfactory completion of the 12th grade of high school or the equivalent. Registered Texas assessors with birthdates prior to January 1, 1950, may substitute special training and experience for the minimum educational requirement at the discretion of the board. All registered Texas assessors shall subscribe the assessors code of ethics and pass a written examination prepared by the board to confirm the assessor's ability to value and assess property for taxation. Registered Texas assessors shall furnish satisfactory evidence of their work experience and qualification as practicing assessors in compliance with the rules and regulations prescribed by the board. All persons qualifying under this section must within five years from the date of their original registration satisfactorily demonstrate to the board a level of competence gained through educational achievement and experience to qualify under the requirements of Section 17 of this Act.

Qualifications of Certification Candidates; Level of Competence

Sec. 17. (a) A candidate for certification shall be an assessor for a taxing jurisdiction, qualified to register under Section 16 of this Act and shall:

(1) be recommended by at least three registered professional assessors having knowledge of the applicant's qualifications to become registered as a candidate for certification;

(2) have at least two years of education above the high school level, or have equivalent education and training beyond high school deemed satisfactory by the board;

(3) have at least three years of experience in some phase of assessing or work related to ad valorem taxation, one year of which must be in-service training deemed satisfactory to the board; and

(4) pass an examination conducted by the board for the purpose of testing the applicant's knowledge of fundamental valuation theory and the assessors code of professional ethics as set forth by the board's rules and regulations.

(b) All persons qualifying under this section must within five years from the date of qualification under Section 17 of this Act satisfactorily demonstrate to the board a level of competence gained through educational achievement and experience to qualify under the requirements of Section 18 of this Act.

Issuance of Certificates; Contents of Examinations

Sec. 18. (a) Certificates for registered professional assessors shall be issued by the board to persons:

(1) who hold a comparable certificate issued by a recognized professional association of assessors prior to January 1, 1978; or

(2) who are registered candidates authorized by this Act who are at least 25 years of age and have at least 5 years experience in the practice of assessing, 1 year of which must be in-service training meeting requirements set forth by the board and have:

(A) completed the educational training courses required by the board's regulations or furnished evidence of passing grades for related examinations conducted by professional organizations approved by the board;

(B) submitted demonstration appraisals required by the board's regulations; and

(C) passed a written examination conducted by the board to test the candidate's knowledge of real and personal property valuation theory, the three approaches to value, collection, accounting, and general ad valorem tax administration, and an oral examination if the board deems it necessary.

(b) Examinations conducted by the board shall be prepared to test the candidate's knowledge and ability to estimate value by use of the income, cost, and market approaches to value. The candidate shall be tested for knowledge and ability to apply and calculate all forms of depreciation and obsolescence. A candidate must show by examination the ability to estimate value by use of the mass appraisal concept. The examination shall include general tax administration and test the candidate's knowledge and understanding of the assessors code of ethics described in the board's rules and regulations.

Unauthorized Use of Title

Sec. 19. No person may assume or use the title of registered Texas assessor, candidate for certification, or registered professional assessor, unless he holds a valid registration approved by the Board of Tax Assessor Examiners. No person may indicate or imply that he is a registered Texas assessor, candidate for certification, or registered professional assessor, unless he is registered under the terms of this Act. A person who violates this section is subject to board action under Section 10 of this Act.

Official Acts Unrestricted

Sec. 20. This Act does not restrict an official act required by the Texas Constitution and performed according to law.

Discrimination Prohibited

Sec. 21. No person may be denied the right to register under the terms of this Act because of race, color, creed, sex, or ethnic origin.

Unprofessional Manner or Violation of Act Required by Governing Body Prohibited

Sec. 22. No governing body of a taxing jurisdiction of this state may, as a necessity for employment, require that an assessor act in an unprofessional manner or commit acts in violation of this Act. A complaint of a violation of this section shall be thoroughly investigated by the board. A proceeding for a violation shall be conducted according to Section 10 of this Act.

Rights and Prohibited Acts of Registrants; Suspension or Revocation for Violations

Sec. 23. (a) An assessor registered under the terms of this Act shall:

(1) assess property in his jurisdiction on a fair and equal basis to the best of his ability, using the estimated true market value as the basis for judgment except when required otherwise by the Texas Constitution or by law; and

(2) hold confidential any information received while performing duties as an assessor which could be used for personal gain, unless the information is public information or is required by law to be public.

(b) An assessor registered under the terms of this Act may not:

(1) give or use an arbitrary opinion of value for any property in his jurisdiction unless the opinion is based on available and known facts;

(2) accept an assignment for assessing services, if his or her employment is contingent on the reporting of a specific predetermined amount of value or is contingent on the reporting of specific findings other than those known by the assessor to be facts at the time of the accepting of the assignment;

(3) accept remuneration other than the official salary or fee for assessing services rendered;

(4) act in a manner or engage in a practice that is dishonest or fraudulent or involves deceit or misrepresentation that will bring discredit on the honor and dignity of the assessing profession; or

(5) violate the board's rules and regulations, the assessors code of ethics, or any part of this Act.

(c) Violations named in this section are sufficient reason for the board to suspend or revoke the registration of such persons.

Penalty for Failure to Register

Sec. 24. A person who is required under Section 11 of this Act to register with the board commits a Class C misdemeanor if he fails to register.

Compliance With Educational and Examination Requirements

Sec. 24A. Notwithstanding any provision of this Act, it is expressly provided that any person who is able to comply with the educational and examination requirements of this Act for the registration classifications pursuant to Section 12 of this Act shall be entitled to receive from the board a statement of certification evidencing same.

[Acts 1977, 65th Leg., p. 1068, ch. 391, §§ 1 to 24A, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 206, ch. 116, § 14, eff. May 9, 1979.]

Art. 7244c. Increases in Effective Tax Rate by Taxing Unit

Calculation of Effective Tax Rate

Sec. 1. (a) After the board of equalization has approved and certified the tax roll for a taxing unit, the tax assessor for the unit shall subtract from the total assessed value of all property on the roll the assessed value of all property added to the roll since the preceding tax year by annexation of territory and the assessed value of all improvements made after January 1 of the preceding tax year.

(b) The assessor shall subtract from the total amount of property taxes levied by the unit in the preceding year:

(1) the total amount levied in that year on real property that is not on the roll for the current year;

(2) the total amount levied to pay the principal of and interest on bonds, warrants, certificates of obligation, or other lawfully authorized evidences of indebtedness issued or assumed by the unit;

(3) the total amount levied to provide for lawfully incurred contractual obligations providing security for the payment of principal of and interest on bonds or other evidences of indebtedness issued on behalf of the unit by another political subdivision; and

(4) the total amount levied in the preceding year on taxable value that is exempt in the current year.

(c) The assessor shall calculate the tax rate necessary for the current tax year to pay:

(1) principal of and interest on bonds, warrants, certificates of obligation, or other lawfully authorized evidences of indebtedness issued or assumed by the unit; and

(2) lawfully incurred contractual obligations providing security for the payment of principal of and interest on bonds or other evidences of indebtedness issued on behalf of the unit by another political subdivision.

(d) The assessor shall then calculate the tax rate that, if applied to the total assessed value remaining after subtracting the assessed value of annexed

property and new improvements, would impose the total dollar amount of taxes determined as provided by Subsection (b) of this section.

(e) The assessor shall add the debt-service rate calculated as provided by Subsection (c) of this section and the operating-expense rate calculated as provided by Subsection (d) of this section. That total rate is the tax rate that is subject to the tax rate limitations provided by this Act. The assessor shall publicize that rate in a manner designed to come to the attention of all residents and submit the rate to the governing body of the unit.

Limitations on Increasing Effective Rate

Sec. 2. A taxing unit may not impose property taxes in any year until the governing body has adopted a tax rate for that year, and the governing body may not adopt a tax rate that exceeds the rate calculated and announced under Section 1 of this Act by more than three percent until it has given public notice of its intention to adopt a higher rate and has held a public hearing on the proposed increase.

Notice and Public Hearing on Increase

Sec. 3. (a) A public hearing required by this Act may not be held before the seventh day after the date the notice of intent to increase the tax rate is given. The hearing must be on a weekday that is not a public holiday and must begin after 5 p. m. and before 9 p. m. The hearing must be held in a public building inside the geographical boundaries of the taxing unit. If no public building is available, the hearing may be held in some other suitable building inside the geographical boundaries of the unit. At the hearing, the governing body must afford adequate opportunity for proponents and opponents of the tax increase to present their views.

(b) The notice of a public hearing may not be smaller than one-quarter page of a standard-size or a tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type. The notice must be in the following form:

"NOTICE OF TAX INCREASE

"The (name of the taxing unit) proposes to increase your property taxes by (percentage of increase over the rate submitted under Section 1 of this Act) percent.

"A public hearing on the increase will be held on (date and time) at (meeting place).

"(Names of all members of the governing body, showing how each voted on the proposal to raise taxes and, if one or more were absent, indicating the absences.)"

(c) The notice may be mailed by first-class mail to each registered voter residing in the unit or it may be published in a newspaper. If the notice is published in a newspaper, it may not be in the part of the paper in which legal notices and classified advertisements appear.

Adoption of Increased Tax Rate

Sec. 4. (a) At the public hearing the governing body shall announce the date, time, and place of the meeting at which it will vote on the proposed tax increase. After the hearing it shall give notice of the meeting in the form and manner provided by Section 3 of this Act, except that the second paragraph of the notice must state:

"A public meeting to vote on the proposed increase will be held on (date and time) at (meeting place)."

(b) The meeting to vote on the increase may not be earlier than the 3rd day or later than the 14th day after the date of the public hearing. The meeting must be held in a public building inside the geographical boundaries of the taxing unit. If no public building is available, the meeting may be held in some other suitable building inside the geographical boundaries of the unit. If the governing body does not adopt the increase by the 14th day, it must give a new notice under Subsection (a) of this section before it may adopt a rate higher than that announced under Section 1 of this Act.

(c) The annual tax rate for a taxing unit must be set by ordinance, resolution, or order, depending on the method prescribed by law for adoption of a law by the governing body. The vote on the ordinance, resolution, or order setting the tax rate must be separate from the vote adopting the budget.

(d) The governing body of a taxing unit may decrease the official tax rate for the current year at any time.

Notice of Reappraisal

Sec. 5. (a) Not later than the 20th day before the date the board of equalization for a taxing unit begins holding public hearings, the assessor for the unit shall mail a written notice to each property owner whose property value has been increased by more than $100 above its value in the preceding year.

(b) The assessor shall include in the notice:

(1) the value of the property in the preceding year;

(2) the amount of taxes imposed on the property the preceding year;

(3) the value of the property for the current year; and

(4) the amount of taxes that will be imposed on the basis of that value if neither the tax rate nor the ratio of assessment in effect for the unit in the preceding year is reduced.

Taxing Unit Defined

Sec. 6. For purposes of this Act, "taxing unit" means a county, an incorporated city or town, including a home-rule city, a school district, a special district or authority, or any other political subdivision of this state, whether created by or under the constitution or a local, special, or general law, that is authorized to impose and is imposing ad valorem taxes on property.

City Fiscal Year

Sec. 6.1. The governing body of a home-rule city may establish by ordinance a fiscal year different from that fixed in its charter if a different fiscal year is necessary or desirable to adapt to the procedures prescribed by this Act.

Effective Date

Sec. 7. This Act takes effect January 1, 1979. [Added by Acts 1978, 65th Leg., 2nd C.S., p. 18, ch. 8, §§ 1 to 7, eff. Jan. 1, 1979. Amended by Acts 1979, 66th Leg., p. 1475, ch. 644, § 1, eff. Aug. 27, 1979.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER EIGHT. COLLECTION AND COLLECTOR

Article

7261.1. Refunds of Overpayments or Erroneous Payments.
7261a. Acceptance of Checks by Tax Collector for Payment of Fees and Taxes.

Arts. 7245 to 7255.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 7255b to 7258.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 7258b, 7259.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7260. Monthly Reports

Text of article effective until January 1, 1982

[See Compact Edition, Volume 2 for text of 1 to 7]

8. (a) The Tax Collector shall, on proof of error, be entitled to deduct amounts of ad valorem tax payments, if paid in error, from the amounts of taxes due the State of Texas; and same shall be by him refunded to claimants; and the State Comptroller shall, on proof of error, honor such deductions the same as if made in the month in which the payment was actually made.

(b) This section applies only in a case of mistake acknowledged by the tax collector and does not apply to a case involving a dispute between a taxpayer and the tax collector.

(c) The comptroller may honor a deduction made under the authority of this section only after an independent examination of the evidence offered in proof of the claim and on a finding that the claim is valid and arises from a mistake.

[Amended by Acts 1975, 64th Leg., p. 629, ch. 260, § 1, eff. Sept. 1, 1975.]

For text of article effective January 1, 1982, see art. 7260, post

Art. 7260. Poll Tax Reports and Remittances

Text of article effective January 1, 1982

(a) The comptroller shall promulgate rules prescribing methods of accounting for and remitting the state poll tax and shall prescribe and furnish forms for periodic reports.

(b) A county assessor-collector shall file with the comptroller, at the times and in the manner required by the rules, sworn reports accounting for all state poll taxes, collected or delinquent.

(c) A county assessor-collector shall remit the state poll taxes he collects at the times and in the manner required by the rules.

[Amended by Acts 1975, 64th Leg., p. 629, ch. 260, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 2317, ch. 841, § 4(h), eff. Jan. 1, 1982.]

For text of article effective until January 1, 1982, see Compact Edition, Volume 2, and art. 7260, ante

Section 7(a) of the 1979 amendatory act provided:

"Every power or duty relating to the administration of ad valorem taxation that is conferred on the comptroller of public accounts by a law that is repealed by this Act is transferred to the State Property Tax Board. The powers and duties relating to administration of ad valorem taxation that are conferred on the comptroller of public accounts by Article 7260, Revised Civil Statutes of Texas, 1925, as amended, are transferred to the State Property Tax Board."

Art. 7261. Duties of Clerk and Collector

[See Compact Edition, Volume 2 for text of 1 to 6]

7. When the Tax Collector determines that county ad valorem taxes or other ad valorem taxes collected by the Tax Collector on behalf of other Tax Units have been erroneously paid or overpaid, through mistake of law or fact, the Tax Collector, upon verification by the County Auditor of the erroneous payment or overpayment, may refund such erroneous payment or overpayment from available tax-collection revenues received or other available funds appropriated for this purpose. Application for a refund must be made by the taxpayer affected and filed with the Tax Collector within three (3) years of the date of the erroneous payment or overpayment. For all refunds in excess of $500 the Tax Collector must present the application for the refund to the Tax Unit's governing body for verification and approval.

[Amended by Acts 1975, 64th Leg., p. 1347, ch. 506, § 1, eff. Sept. 1, 1975.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7261.1. Refunds of Overpayments or Erroneous Payments

(a) If a taxpayer applies to the tax collector of a taxing unit other than the county for a refund of an overpayment or erroneous payment of ad valorem taxes and the auditor for the unit determines that the payment was erroneous or excessive, the tax collector shall refund the amount of the excessive or erroneous payment from available, current tax collections or from funds appropriated by the unit for making refunds. However, if the amount of the refund exceeds $500, the collector may not make the refund unless the governing body of the taxing unit also determines that the payment was erroneous or excessive and approves the refund.

(b) An application for a refund must be made within three years after the date of the payment or the taxpayer waives the right to the refund.

[Acts 1979, 66th Leg., p. 803, ch. 362, § 3, eff. Aug. 27, 1979.]

Art. 7261a. Acceptance of Checks by Tax Collector for Payment of Fees and Taxes

Definitions

Sec. 1. In this Act:

(1) "Tax collector" means the county tax assessor-collector.

(2) "Check" means an instrument signed by the maker; containing an unconditional promise or order to pay a sum certain in money and containing no other promise, order, obligation, or power given by the maker; payable on demand; and drawn on a bank.

(3) "Maker" means the drawer of a check.

Acceptance of Check for Payment of Certain Fees Permitted

Sec. 2. A tax collector may, but is not required to, accept a check for the payment of motor vehicle registration fees (Article 6675a–1 et seq., Vernon's Texas Civil Statutes); motor vehicle sales taxes imposed by Chapter 6, Title 122A, Taxation–General, Revised Civil Statutes of Texas, 1925; occupation taxes paid to the tax collector under Chapter 19, Title 122A, Taxation–General, Revised Civil Statutes of Texas, 1925; motor vehicle title transfer fees under the Certificate of Title Act (Article 6687–1, Vernon's Texas Civil Statutes); license or permit fees under the Texas Liquor Control Act (Article 666–1 et seq., Vernon's Texas Penal Auxiliary Laws), and property taxes.

Issuance Conditional on Bank's Honoring Check

Sec. 3. The acceptance of a check for the payment of taxes and fees listed in Section 2 of this Act does not constitute payment of the tax or fee, and the tax or fee is not considered paid until the check is honored by the bank on which the check is drawn. This section does not prohibit a tax collector from issuing receipts, license plates, certificates, or other instruments on the receipt of a check, but the issuance is conditional on the payment of the check by the drawee bank.

Identification Required

Sec. 4. When a tax collector receives a check as conditional payment of a tax or fee listed in Section 2 of this Act, he shall require adequate identification of the maker and note on the check or otherwise record the type of identification of the maker and information from the identification to assist in locating the maker in the event the check is not honored.

Liability of Tax Collector and Bondsman

Sec. 5. Except as provided in Section 8 of this Act, a tax collector and his bondsman are not liable for the amount of any taxes and fees for which the tax collector has accepted a check that is not honored by the drawee bank if the tax collector complied with the requirements of Section 4 of this Act and if the tax collector did not know or should not reasonably have known that the check was not properly drawn or that it would not be honored.

Procedures for Collection of Dishonored Checks

Sec. 6. A tax collector may establish procedures for the collection of dishonored checks. The procedures may include:

(1) official notification to the maker that the check has not been honored and that the receipt, registration, certificate, or other instrument issued on the receipt of the check is not valid until payment of the tax or fee is made;

(2) notification of the sheriff or other law enforcement officers that a check has not been honored and that the receipt, registration, certificate, or other instrument held by the maker is not valid; and

(3) notification to the State Department of Highways and Public Transportation, the State Comptroller of Public Accounts, or the Department of Public Safety that the receipt, registration, certificate, or instrument held by the maker is not valid.

Dishonored Checks; Remission Not Required; Notice; Assistance in Collection

Sec. 7. If taxes and fees listed in Section 2 of this Act are required to be remitted to the State Comptroller of Public Accounts or the State Department of Highways and Public Transportation and if payment was made to the tax collector by a check that was not honored by the drawee bank, the amount of the tax or fee is not required to be remitted, but the tax collector shall notify the appropriate department of the amount of the fee or tax, the type of fee or tax involved, and the name and address of the maker. The State Department of Highways and Public Transportation and the State Comptroller of Public Accounts shall assist the tax collector in collecting the fee or tax and may cancel or revoke any receipt, registration, certificate, or instrument issued in the name of the state conditioned on the payment of the fee or tax.

Liability of Tax Collector for Violations of Act

Sec. 8. If the State Comptroller of Public Accounts or the State Department of Highways and Public Transportation determines that the tax collector of a county has accepted payment for fees and taxes to be remitted to that department in violation of Section 4 of this Act or that more than two percent of the fees and taxes to be received from the tax collector are not remitted because of the acceptance of checks that are not honored by the drawee bank, the department may notify the tax collector that he may not accept a check for the payment of any fee or tax to be remitted to that department. A tax collector who, after notice that he may not receive a check for the payment of fees or taxes to be remitted to a department, accepts a check for the payment of a fee or tax, is liable to the state for the amount of the check accepted.

Rules for Acceptance of Checks and Collection of Dishonored Checks

Sec. 9. The State Comptroller of Public Accounts and the State Department of Highways and Public Transportation may make rules concerning the acceptance of checks by tax collectors and for the collection of dishonored checks.

[Acts 1977, 65th Leg., p. 2121, ch. 847, §§ 1 to 9, eff. Aug. 29, 1977.]

Arts. 7262 to 7264a.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 7265 to 7294.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 7295 to 7297.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7298. Limitation Not Available

No delinquent taxpayer shall have the right to plead in any court or in any manner rely upon any Statute of Limitation by way of defense against the payment of taxes due from him or her to the State, or any county, city, town, Navigation District, Drainage District, Road District, Levee Improvement District, Reclamation District, Irrigation District, Water Improvement District, Water Control and Improvement District, Water Control and Preservation District, Fresh Water Supply District, School District or other taxing authority; provided that this law shall not apply to collection of delinquent school taxes assessed prior to July 1, 1941; and provided further that no suit shall be brought for the collection of delinquent personal property taxes (including taxes on mobile homes that are not fixtures) of any taxing authority unless instituted within four (4) years from the time the same shall become delinquent.

[Amended by Acts 1979, 66th Leg., p. 479, ch. 220, § 2, eff. Aug. 27, 1979.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7298a. Repealed by Acts 1979, 66th Leg., p. 158, ch. 86, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Acts 1979, 66th Leg., ch. 841, repealing this article, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER NINE. BACK TAXES ON UNRENDERED LANDS

Arts. 7299 to 7318.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER TEN. DELINQUENT TAXES

Article

7328.2. Procedure for Sale of Property Under Tax Foreclosure Sale.
7345b–3. Limitations on Actions to Recover Real Property Sold at Tax Sale.
7345f. Right of Appeal by Property Owner.

Arts. 7319 to 7328.1.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7328.2. Procedure for Sale of Property Under Tax Foreclosure Sale

(a) In addition to information required by any other law or rule, notice of a sale of real property at a tax foreclosure sale, or a sale of real property purchased at the tax foreclosure sale by the state or a taxing unit, shall specify the hour that the sale will begin and which one of several entrances is the courthouse door where the sale will be held.

(b) Notwithstanding any other provision of the law or rules, the sheriff, a deputy sheriff, or an authorized agent of the sheriff may conduct the tax foreclosure sale or sale of real property purchased at a tax foreclosure sale by the state or a taxing unit. If the sheriff appoints an agent to conduct the sale, the notice of the sale shall contain the name, address, and telephone number of the agent. A bidder at the sale must be registered at the time the sale begins with the sheriff, deputy sheriff, or agent conducting the sale.

[Acts 1977, 65th Leg., p. 145, ch. 70, § 1, eff. April 25, 1977.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 7328a, 7329.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7329a. Homestead Owned by Person 65 or Older; Collection of Delinquent Taxes Deferred or Abated

Suit to Collect Delinquent Taxes Prohibited; Affidavit

Sec. 1. No suit to collect delinquent ad valorem taxes on real property shall be filed by any tax unit of this state against property owned and occupied as a homestead, as defined in Article XVI, Section 51, of the Texas Constitution, by a person sixty-five (65) years of age or older during the time that it remains the homestead of such person; and provided further, that such person shall have filed for record with the county clerk of the county in which the land, or a part thereof, is located, prior to institution of suit by any tax unit, an affidavit containing the following:

(1) the birth date of the affiant;

(2) a description by metes and bounds, or other sufficient description to identify the property claimed as a homestead; and

(3) the signature of the affiant and acknowledgement or proof as in other instruments for record.

Defendant's Sworn Plea; Abatement of Suit

Sec. 2. In a suit for the collection of delinquent ad valorem taxes, the defendant may file a sworn plea stating that he is sixty-five (65) years old or older and that he is entitled to a residential homestead in the property. If the tax unit fails to file an affidavit controverting the sworn plea, or if on a hearing the court determines that the plea is true, the suit shall be abated until the property is no longer owned and occupied by the person sixty-five (65) years or older filing such sworn plea.

Right to Delinquent Taxes Not Extinguished or Released; Delay

Sec. 3. This Act does not extinguish or release the right of a tax unit to delinquent ad valorem taxes, and penalties (including "interest") against any property. In any suit upon which action is deferred or abated pursuant to this Act, such delay is not the basis for a plea of limitation, laches, or want of prosecution against a tax unit.

Penalties and Interest

Sec. 4. Penalties and interest continue to accrue during a period of deferment or abatement of suit as a result of this Act. Delinquent ad valorem taxes, penalties, and interest at all times remain a first priority lien upon the land and all mutations thereof until paid. A tax unit may sue for and foreclose its liens on all accrued delinquent ad valorem taxes and

penalties (including "interest") when the homestead is no longer owned and occupied by the person sixty-five (65) years old or older who has claimed protection of this Act.

Payment of Taxes Due Not Precluded

Sec. 5. Nothing in this Act precludes any person sixty-five (65) years old or older from paying the ad valorem taxes due on residential homestead property. He or she may pay for any year(s) without losing his rights to protection under this Act for any year(s) when he is unable to pay or chooses not to pay.

[Amended by Acts 1977, 65th Leg., p. 1677, ch. 661, § 1, eff. Aug. 29, 1977.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 7330, 7331.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 7332 to 7336a.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 7336c to 7345a.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7345b. Suits for Delinquent Taxes by Taxing Units

[See Compact Edition, Volume 2 for text of 1 to 7]

Sale for Less Than Adjusted Value or Aggregate of Judgments in Suit to Party Other Than Taxing Unit Prohibited; Distribution of Proceeds

Sec. 8. No property sold for taxes under decree in such suit shall be sold to the owner of said property, directly or indirectly or to anyone having an interest therein, or to any party other than a taxing unit which is a party to the suit, for less than the amount of the adjudged value aforesaid of said property or the aggregate amount of the judgments against the property in said suit, whichever is lower, and the net proceeds of any sale of such property made under decree of court in said suit to any party other than any such taxing unit shall belong and be distributed to all taxing units which are parties to the suit which by the judgment in said suit have been found to have tax liens against such property, pro rata and in proportion to the amounts of their respective tax liens as established in said judgment, but any excess in the proceeds of sale over and above the amount necessary to defray the costs of suit and sale and other expenses hereinabove made chargeable against such proceeds, and to fully discharge the judgments against said property, shall be paid by the sheriff or constable making the sale to the clerk of the court out of which execution or other final process issued to be retained and disposed of by him as follows:

Such excess funds shall be retained by the clerk of the court for a period of three (3) years from the date received, unless otherwise ordered by the court, after which time he shall forward such excess funds to the State Treasurer, who shall hold the same in trust to be paid to the owner against whom said taxes were assessed or the heirs or legal representative of a deceased owner. The clerk shall note upon the execution docket in each such case the amount of such excess funds, the date received by him, and the date transmitted to the State Treasurer, and shall accompany such remittance with a statement upon a form to be prescribed by the Comptroller showing the style and number of the case, the court from which execution issued, which statement shall be filed and kept by the Treasurer and a duplicate thereof shall be forwarded to the Comptroller, who shall also keep an account of such excess funds transmitted to the Treasury.

At any time during the three (3) year period such excess funds are retained by the clerk of the court, anyone claiming the same may file a petition in the case out of which execution or other process issued, setting forth in said petition the basis upon which claimant claims such excess funds, and the court shall set the same for hearing. A full copy of such petition and date set shall be served on the County or District Attorney of the county at least twenty (20) days prior to the date set for the hearing, and if there be intervening plaintiffs or attorney ad litem in the case previously, then a full copy of such petition shall also be timely served on each such plaintiff or attorney. Signed approval or waiver must be obtained from each such plaintiff or attorney before the petition may be approved and granted.

At any time within four (4) years from the date such excess funds are forwarded to the State Treasurer by the clerk of the court, anyone claiming the same may file a petition in the case out of

which execution or other final process issued, setting forth in said petition the basis upon which claimant claims such excess funds, and the court shall set the same for hearing. A copy of such petition shall be served on the County or District Attorney of the county, at least twenty (20) days prior to the date of hearing, and a copy of such petition shall be forwarded to the State Treasurer and the Comptroller. The County Attorney, or District Attorney if there be no County Attorney, of such county, shall represent the State at such hearing.

If the court shall find that such claimant is entitled to recover such excess funds, it shall make an order directing the Comptroller to issue his warrant on the Treasury against such trust funds for the payment of same, but without interest or cost; a copy of which order under the seal of the court shall be sufficient voucher for issuing such warrant.

After expiration of four (4) years from date such excess funds are received by the Treasurer he shall transfer the same from the trust fund to the general revenue fund unless there is then pending a petition by a claimant of such excess funds not acted upon, and if such claimant has not within four (4) years as herein provided filed a petition for such excess funds, the same shall be forever barred, and no claim shall be thereafter filed or allowed.

This Act shall apply to and govern the handling and disposition of excess funds arising from delinquent tax sales in the hands of the District Clerk or the State Treasurer at the effective date of this Act. The District Clerk shall submit to the State Treasurer all such excess funds which have been in his hands three (3) years or more prior to the effective date of this Act, but the District Clerk shall have thirty (30) days from the effective date of this Act to comply herewith, and such excess funds may be claimed within (4) years from the effective date of this Act in the same manner as such funds transmitted to the State Treasurer under the terms of this Act after its effective date.

After the expiration of four (4) years from the effective date of this Act such excess funds remaining in the trust fund, unless a petition is then pending claiming such funds, the State Treasurer shall transfer all of such unclaimed funds from the trust fund to the general revenue fund and thereafter the claim for such funds shall be forever barred and no claim shall be thereafter filed or allowed.

Purchasing Taxing Unit to Hold Property for Itself and Other Taxing Units Adjudged to Have Liens; Sale by Purchasing Taxing Unit; Proceeds; Failure to Sell Within Six Months After Redemption Period Expires

Sec. 9. If the property be sold to any taxing unit which is a party to the judgment under decree of Court in said suit, the title to said property shall be bid in and held by the taxing unit purchasing same for the use and benefit of itself and all other taxing units which are parties to the suit and which have been adjudged in said suit to have tax liens against such property, pro rata and in proportion to the amount of the tax liens in favor of said respective taxing units as established by the judgment in said suit, and costs and expenses shall not be payable until sale by such taxing unit so purchasing same. During the time the taxing unit has title to the property, it shall preserve the status and value of the property by fencing, leasing, or other reasonable means until the property is redeemed or resold. If the property is leased during the redemption period, the rental income shall be used to maintain and improve the property, and the taxing unit shall keep records of the amount of rental income and its disposition. The taxing unit may sell and convey said property so purchased by it, or which has heretofore been purchased in the name of any officer thereof, at any time in any manner determined to be most advantageous to said taxing unit or units either at public or private sale, subject to any then existing right of redemption; and the purchaser of the property at any such sale shall receive all of the right, title and interest in said property as was acquired and is then held by said taxing unit under such tax foreclosure sale to it; but such property shall not be sold by the taxing unit purchasing the same, at private sale, for less than the adjudged value thereof, if any, as established in the tax judgment, or the total amount for which such judgment was rendered against the property in said suit, whichever is lower, without the written consent of all taxing units which in said judgment shall have been found to have tax liens against said property. All such consents shall be evidenced by the joinder in the conveyance by the consenting taxing units, acting by the officers herein authorized to give such consents. Consent to such sales in behalf of the State of Texas may be given by the County Tax Collector of the county in which the property is located; and consents on behalf of other taxing units may be given by the presiding officers of their governing bodies. Deeds executed hereunder by taxing units shall be executed in their behalf by the presiding officer of their governing body and whose authority to so act in any given case shall be prima facie presumed. When such property is so sold at public or private sale, the proceeds thereof shall be received by or paid over to the taxing unit which purchased said property at the tax foreclosure sale, for the account of itself and all other taxing units

adjudged to have a tax lien against such property, and all taxing units so receiving said proceeds shall first pay out of the same all costs and expenses of Court and of sale, and distribute the remainder among all taxing units for which purchasing taxing unit purchased and held said property, pro rata and in proportion to the amounts of their tax liens against said property as established in said judgment. Public sales hereinabove provided for may either be made by the Sheriff, at the request of the taxing unit purchasing the property at the tax foreclosure sale, or by any Commissioner appointed by such taxing unit by resolution of its governing body. If the State of Texas is the taxing unit which purchased said property at the tax foreclosure sale, the Commissioners Court of the county in which the property is located shall have authority to act for the State of Texas in making private sales and conveyances of said property, as herein provided, or in requesting the Sheriff, or in appointing a Commissioner, to make public sale thereof, and in receiving and distributing the proceeds of such sales; and all sales and conveyances made in behalf of the State of Texas by the Commissioners Court, or made by the Sheriff or any Commissioner appointed by the Commissioners Court, under the provisions hereof, shall operate to transfer to the purchaser at such sale all right, title and interest acquired or held by the State of Texas as purchaser at the tax foreclosure sale. Any taxing unit, Sheriff, or Commissioner appointed by a taxing unit, making any sale under provisions hereof shall execute and deliver to the purchaser at such sale a deed of conveyance, conveying all right, title and interest of all the taxing units interested in the tax foreclosure judgment in and to the property so sold; provided, if the period for the redemption of said property from said tax foreclosure sale has not expired at the time of said sale, said conveyance shall be made expressly subject to the right of redemption provided in Section 12 of said Act.

Provided, however, that the methods of sale above set out shall not be exclusive and that if sale has not been made by, or at the instance of, the purchasing taxing unit within six (6) months after the redemption period has expired, any taxing unit which has obtained judgment in said suit may force the sale of said property by the Sheriff by written request to the Sheriff, and in the event such written request is so made to the Sheriff it shall be his duty to sell said property at public sale as hereinafter provided. All public sales provided for in this Section shall be made in the manner prescribed for the sale of real estate under execution. The notice of the sale shall contain a legal description of the property to be sold, the number and style of the suit under which same was sold at tax foreclosure sale and the date of said tax foreclosure sale; and the Sheriff or other officer making such sale is hereby authorized and it is hereby made his duty, to reject any and all bids for said land when in his judgment the amount bid is insufficient or inadequate, and in the event said bid or bids are rejected, the land shall be readvertised and offered for sale as herein provided, but the acceptance by the Sheriff or other officer authorized to make such sale of a bid for said land shall be conclusive and binding on the question of the sufficiency of the bid, and no action shall be sustained in any Court of this State to set aside said sale on the grounds of the inadequacy of the amount bid and accepted. Nothing herein shall be construed as prohibiting any taxing unit participating in said judgment from instituting action to set aside the said sale on the grounds of fraud or collusion between the officer making the sale and the purchaser, provided that such action be brought within two (2) years after such sale is made, and not afterward. The Sheriff or other officer making any such sale shall receive and pay over the proceeds thereof as hereinabove provided, and the same shall be distributed as herein provided.

All sales and conveyances heretofore made by taxing units, or officers thereof, of property purchased by them, or in the name of any officer thereof, at tax foreclosure sales, for the benefit of themselves and all other taxing units interested in the tax judgment, and all sales heretofore made by the Commissioners Courts, or the Attorney General joined by the County Tax Collector, of property purchased by the State of Texas at tax foreclosure sales for the benefit of itself and other taxing units, are hereby in all things confirmed and validated; provided that this validating provision shall in no way apply to or validate any such sale the validity of which is challenged in any now pending litigation; nor shall the same apply to or validate any such sale, in cases where the Sheriff upon written request of any taxing unit, has thereafter made sale of the same property at public outcry and all such so made by the Sheriff as provided in Section 9 of said Act prior to the taking effect of this Amendment, and all such sales so made by the Sheriff are hereby in all things confirmed and validated.

No action attacking the validity of any resale of property purchased by a taxing unit at a tax foreclosure sale, or any of said sale hereafter made in accordance with, or purporting to be made in accordance with, this Section shall be commenced after the expiration of one (1) year from the date of such sale.

[See Compact Edition, Volume 2 for text of 10 to 15]

[Amended by Acts 1977, 65th Leg., p. 1240, ch. 479, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1244, ch. 481, § 1, eff. Aug. 29, 1977.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 7345b–1, 7345b–2.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7345b–3. Limitations On Actions to Recover Real Property Sold at Tax Sale

(a) No cause of action or defense may be asserted or maintained on a claim respecting any land sold for delinquent taxes at a tax sale pursuant to a judicial foreclosure of a tax lien, unless the cause of action or defense is asserted in an action commenced within three years after the filing of record of the deed executed to the purchaser at the tax sale.

(b) If the purchaser's deed was filed before the effective date of this Act, the cause of action or defense may be asserted in an action commenced within three years after the effective date of this Act.

(c) Notwithstanding any other provision of this Act, if a person other than the purchaser at the tax sale or his successor in interest pays taxes on the property during the three consecutive years following the tax sale, the three-year limitations period provided in this Act does not run against the person who paid the taxes unless that person was duly served by process in the previous suit involving foreclosure of the tax lien for delinquent taxes.

(d) When an action for recovery of real property is barred by the provisions of this Act, the purchaser at the tax sale or his successor in interest shall be held to have full title to the land, precluding all other claims.

[Acts 1977, 65th Leg., p. 1680, ch. 663, § 1, eff. Aug. 29, 1977.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Arts. 7345c to 7345e.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7345f. Right of Appeal by Property Owner

Time for Filing Petition for Review

Sec. 1. A property owner is entitled to appeal a decision of any board of equalization to a district court of the State of Texas. A party who appeals to a district court must file a petition for review with the district court within 45 days after the tax roll containing the value involved is approved by the taxing authority.

Venue

Sec. 2. Venue is in the county in which the board of equalization that made the decision is located.

Trial by Jury

Sec. 3. Any party is entitled to a trial by jury on demand.

Value of Property Fixed

Sec. 4. (a) The issue to be determined by the district court in an appeal is whether or not the value of the property in question as ascertained by the board of equalization is in error.

(b) If the court or jury finds that the value as ascertained by the board of equalization is in error, meaning it is higher than the value set out by the property owner in a rendition filed prior to the board of equalization hearings as required by law, then the court or jury shall fix a value for the property in question as of January 1 of the tax year in controversy. In fixing the value of the property in question, the court or jury shall determine the cash market value and multiply that value by the assessment ratio, if any, in effect for the taxing authority involved.

(c) The value affixed by the court or jury pursuant to Subsection (b) above shall be binding on the taxing authority or authorities involved in the lawsuit for the tax year in question and for the succeeding tax year. However, in the succeeding tax year the taxing authority may add the value of subsequent improvements to the property, if any, to the value affixed by the court or jury.

Defense to Appeal

Sec. 5. When established by a preponderance of the evidence, it shall be a defense to an appeal under this article that the taxpayer failed to exercise good faith in estimating the cash market value set out in the rendition required in Subsection (b) of Section 4 of this article. A taxpayer does not fail to exercise good faith for purposes of this section if he makes a good faith effort to estimate the cash market value of the property and the assessment ratio, if any, in effect for the taxing authority and renders the value determined by multiplying his estimate of cash market value by the assessment ratio. A taxpayer shall be required to file with the board of equalization a sworn affidavit, in addition to the rendition, prior to

invoking the provisions of this article but shall not be required to appear personally or by a representative.

Rights Cumulative

Sec. 6. The rights afforded taxpayers under this article are cumulative and do not preempt other remedies granted by statute or evolving by common law.

Injunctive or Restraining Order Relief

Sec. 7. The cause of action herein granted does not expand upon taxpayers' rights to sue for an injunction or restraining order as a member of a class. Rights granted hereunder are specifically prohibited from being the basis of injunctive or restraining order relief in a class action suit seeking to enjoin the putting into effect of a tax plan of a taxing authority.

[Added by Acts 1977, 65th Leg., p. 1912, ch. 764, § 1, eff. June 16, 1977.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER ELEVEN. IN CERTAIN CASES

Arts. 7346 to 7358.

Repeal

These articles are repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 7359. City May Use County Officers

Any incorporated city, town or village in this State is hereby authorized by ordinance to authorize the county tax assessor and county tax collector of the county in which said city, town or village is situated, to act as tax assessor and tax collector respectively for said city, town or village. The property in said city, town or village utilizing such county assessor and collector shall be assessed at the same value as it is assessed for county and State purposes, except that real property in an incorporated city in a county of 830,460 population, or greater, according to the last preceding federal census, by ordinance of the city government may be assessed at a greater rate of value than the same property is assessed for state and county purposes. When an ordinance is so passed making available their services, said assessor shall assess the taxes for said city, town or village and perform the duties of tax assessor for said city, town or village according to the ordinances of said city, town or village and according to law; and said collector shall collect the taxes and assessments for said city, town or village and turn over as soon as collected to the city depository of said city or other authority authorized to receive such taxes or assessments, all taxes or money so collected, and shall perform the duties of tax collector of said city, town or village according to the ordinances thereof and according to law, deducting from the taxes so collected his fees provided for herein; and they shall respectively receive for such services one percent of the taxes so collected, except the fee for the collection of taxes of a city in a county having a population of 830,460 or more, according to the last preceding federal census, may be determined by agreement between the county tax assessor-collector and the city of an amount not to exceed the actual costs to the county.

[Amended by Acts 1975, 64th Leg., p. 663, ch. 278, § 2, eff. Sept. 1, 1975.]

Repeal

This article is repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER TWELVE. MULTISTATE TAX COMPACT

Art. 7359a. Multistate Tax Compact

[See Compact Edition, Volume 2 for text of 1]

Appointment of Commission Member

Sec. 2.

[See Compact Edition, Volume 2 for text of 2(a) and (b)]

(c) The office of Multistate Tax Compact Commissioner for Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1989.

[See Compact Edition, Volume 2 for text of 3 to 5]

[Amended by Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.172, eff. Aug. 29, 1977.]

[1] Article 5429k.

TITLE 122A. TAXATION—GENERAL

CHAPTER 1. GENERAL PROVISIONS

Article

1.032A. Compromises or Settlements.
1.034. Dates for Filing Reports and Making Payments.
1.035. Confidentiality of Federal Tax Information.
1.07A–1. Filing State Tax Liens and Statement of Fees.
1.13A. Repealed.

Art. 1.032A. Compromises or Settlements

(a) The comptroller of public accounts may compromise or settle any tax including penalty and interest due the State of Texas pursuant to the provisions of this title in an order or decision of the comptroller upon a petition for redetermination if:

(1) the cost of collection exceeds the amount of tax due provided the total amount of tax due does not exceed $1,000; or

(2) the taxpayer is in liquidation, insolvent, or has ceased to do business and has no property in this or any other state that may be seized by the courts of this or any other state or if the property owned by the taxpayer is insufficient to pay the taxes and any debts against the property; or

(3) collection of the entire tax due would make the taxpayer insolvent; provided the taxpayer must submit all financial records including income tax reports and an inventory of all property owned regardless of its location.

(b) Subsequent to an examination of taxpayer's records and prior to a redetermination, the comptroller or his designee may compromise or settle any tax including penalty and interest due the State of Texas pursuant to the provisions of this title if the cost of collection exceeds the amount of tax due; provided the total amount of tax due does not exceed $300 and provided the compromise or settlement is approved by the assistant comptroller for legal services.

(c) The comptroller or his designee may compromise or settle any penalty or interest provided by this title if the taxpayer exercised reasonable diligence to comply with the provisions of this title and provided the compromise or settlement is approved by the assistant comptroller for legal services.

[Added by Acts 1977, 65th Leg., p. 1357, ch. 538, § 1, eff. Aug. 29, 1977.]

Art. 1.034. Dates for Filing Reports and Making Payments

The Comptroller of Public Accounts is authorized to prescribe the date for filing reports and payments required to be made pursuant to the provisions of this Title notwithstanding other specific requirements for reporting or payments contained in the Title except those specific provisions of Chapter 20 of this Title.

[Added by Acts 1975, 64th Leg., p. 2315, ch. 719, art. XV, § 1, eff. Sept. 1, 1975.]

Art. 1.035. Confidentiality of Federal Tax Information

(1) In the event any person is required to submit any federal tax return or include federal tax return information with a state tax return or report required under any article of this title, such federal return or return information shall be confidential.

(2) No official, employee, or former official or employee of the comptroller of public accounts shall disclose in any manner federal returns or return information required to be submitted by any person, except for the purposes of a judicial proceeding for the collection of delinquent taxes in which the State of Texas is a party. If any official or employee or former official or employee of the comptroller shall make known in any manner, except as provided by law, federal tax returns or return information required to be submitted by any person, he shall be punished by a fine not exceeding $1,000 or confinement in jail not exceeding one year, or both.

[Added by Acts 1977, 65th Leg., p. 1342, ch. 534, § 1, eff. Aug. 29, 1977.]

Art. 1.045. Limitation for Collection and Refunds

[See Compact Edition, Volume 2 for text of A to F]

(G) Limitation for Refunds and Credits. Notwithstanding any provision of this Title, the period of time during which a person may request a refund or credit or the Comptroller may refund any overpayment of tax or issue a credit for overpayment of any tax imposed by this Title shall not expire prior to the expiration of the period of time within which the Comptroller may assess a deficiency with respect to such tax. The Comptroller shall not issue any such refund or credit after the time for assessment of a deficiency has expired unless the refund or credit is requested under the provisions of Article 1.05 of this Title or Chapter 214, General Laws, Acts of the 43rd Legislature, Regular Session, 1933, as

amended (Article 7057b, Vernon's Texas Civil Statutes), and such refund or credit is made under court order or the refund or credit is requested under the provisions of Article 1.11A of this Title.

[Amended by Acts 1979, 66th Leg., p. 98, ch. 59, § 2, eff. Aug. 27, 1979.]

Art. 1.05. Payment of License or Privilege Taxes Under Protest

[See Compact Edition, Volume 2 for text of (1)]

Suits for recovery of taxes or fees

(2) Upon the payment of such taxes or fees, accompanied by such written protest, the taxpayer shall have ninety (90) days from said date within which to file suit for the recovery thereof in any court of competent jurisdiction in Travis County, Texas, and none other. Such suit shall be brought against the public official charged with the duty of collecting such tax or fees, the State Treasurer and the Attorney General. The issues to be determined in such suit shall be only those arising out of the grounds or reasons set forth in such written protest as originally filed. The trial of the issues raised by a suit shall be by trial de novo. The right of appeal shall exist as in other cases provided by law. Provided, however, where a class action is brought by any taxpayer all other taxpayers belonging to the class and represented in such class action who have properly protested as herein provided shall not be required to file separate suits but shall be entitled to and governed by the decision rendered in such class action. A class action shall include any suit filed by any two or more persons, firms, corporation or association of persons who have paid under protest such taxes or fees referred to in section (1) hereof.

[See Compact Edition, Volume 2 for text of (3) to (5)]

[Amended by Acts 1979, 66th Leg., p. 98, ch. 59, § 5, eff. Aug. 27, 1979.]

Art. 1.07A–1. Filing State Tax Liens and Statement of Fees

Notwithstanding any other provision of law, a county clerk shall immediately file a state tax lien upon receipt of the lien from the comptroller of public accounts and thereafter send to the comptroller a statement of the fee due for the filing and recording including indexing.

[Acts 1979, 66th Leg., p. 909, ch. 417, § 1, eff. Aug. 27, 1979.]

Art. 1.11A. Tax Refunds

(1) This article applies to any sales or use, occupation, excise, gross receipts, gross production (as levied by Section 81.111, Natural Resources Code), franchise, license, or other tax or fee collected or administered by the comptroller of public accounts. It does not apply to the state ad valorem tax.

(2) When the comptroller determines that any tax, penalty, or interest has been collected erroneously or illegally, the excess amount may be credited against any amount then due and payable. Any balance may be refunded to the person by whom it was paid from funds appropriated for this purpose.

(3) Any person or his attorney, assignee, executor, or administrator, who has paid any of the taxes listed in Section (1) of this article directly to the state, may file a claim for refund with the comptroller within the applicable limitation periods provided under this title or within six months after any jeopardy or deficiency determination becomes final under this title, whichever expires later. If a refund claim is filed within six months after any jeopardy or deficiency determination becomes final under this title, the claim may only be for the tax, penalty, and interest and the period of time for which the jeopardy or deficiency determination was issued. Failure to timely file a claim constitutes a waiver of any demand against the state for the alleged overpayment.

(4) A claim for refund must be in writing and shall state the specific grounds upon which the claim is founded. The comptroller shall consider the claim and, if requested, shall grant the person an oral hearing with 20 days' notice of the time and place of the hearing.

(5) The decision of the comptroller upon a claim for refund becomes final 15 days after it is issued.

(6) A claimant who is dissatisfied in whole or part with the comptroller's decision upon a claim for refund may file a motion for rehearing before the decision becomes final. The motion for rehearing, which is prerequisite to filing an action in the courts of this state, must set forth in writing each specific ground upon which the claimant believes the decision of the comptroller is erroneous. If the comptroller denies the motion for rehearing, the claimant may bring an action against the comptroller on the grounds set forth in the claim by filing a petition in a district court of Travis County, Texas, within 30 days of the issue date of the denial of the motion for rehearing. Only the issues set forth in the motion for rehearing may be raised in the court action. The attorney general shall represent the comptroller in the suit. Failure to bring an action within the time specified constitutes a waiver of any demand against the state for the alleged overpayment.

(7) Any amount found due in any jeopardy or deficiency determination that has become final must be paid in full prior to a person filing a court action pursuant to this article.

(8) The trial of the issues raised by a suit shall be by trial de novo, and the reviewing court shall try all issues of fact and law in the manner applicable to other civil suits in this state. The action will cover only the liability periods reflected in the comptroller's decision.

(9) The amount of any judgment rendered in favor of the plaintiff shall be credited against any taxes, penalties, or interest levied by any article of this title or Section 81.111, Natural Resources Code, and due from the plaintiff. The remainder of the judgment shall be refunded to the plaintiff.

(10) In any judgment, interest shall be allowed at the rate of six percent per annum upon the amount found to have been erroneously paid from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date within 10 days of the date of the refund warrant, the date to be determined by the comptroller.

(11) The remedies provided by this article are cumulative and in addition to any other remedy for which provision is made in this title or other laws of this state.

(12) The rule of res judicata is applicable only if the refund amount involved is for the same time period and the issues are the same as were decided in a previous final judgment entered by a court of record of the State of Texas in a suit between the same parties.

(13) The comptroller may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought within one year from the date of refund or credit in the name of the state in a district court of Travis County, Texas.

[Amended by Acts 1979, 66th Leg., p. 97, ch. 59, § 1, eff. Aug. 27, 1979.]

Art. 1.13. Timely Filing of Reports

[See Compact Edition, Volume 2 for text of (a) to (g)]

(h) Notwithstanding any other specific provision in this title to the contrary, the comptroller is authorized to grant upon written request by any person required to file or make any report by this title on or before a specified date a reasonable extension of time not to exceed 45 days to make or file the return or returns. In order to be eligible for an extension of time in which to file a return, the person must state in the request the reasons or grounds for the extension of time and remit 90 percent of the taxes estimated to be due on or before the filing date specified in other provisions of the title.

(i) The comptroller may grant to any person who the comptroller finds to be a victim of a natural disaster an extension of not more than 90 days to make or file a return or to pay any tax imposed by this title. The person owing the tax may file a request for an extension at any time before or after the due date of the return or tax payment and before the expiration of 90 days after the original due date. If an extension under this section is granted, interest on the unpaid tax does not begin to accrue until the day after the day on which the extension expires, and tax penalties shall be determined and assessed as though the last day of the extension were the original due date.

[Amended by Acts 1975, 64th Leg., p. 1092, ch. 412, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 336, ch. 153, § 1, eff. May 11, 1979.]

Section 2 of the 1975 amendatory act provided:

"This Act takes effect September 1, 1975."

Art. 1.13A. Repealed by Acts 1977, 65th Leg., p. 1357, ch. 538, § 2, eff. Aug. 29, 1977

The repealed article, waiving penalty and interest charges where taxpayer has exercised reasonable diligence to comply with this title, was derived from Acts 1975, 64th Leg., p. 1093, ch. 413, § 1.

See, now, art. 1.032A, § (c).

CHAPTER THREE. TAX ON PRODUCERS OF NATURAL GAS

Art. 3.03. Records and Payments

[See Compact Edition, Volume 2 for text of (1) to (3)]

(4) Provided that unless such payment of tax on all gas produced during any month or fractional part thereof shall be made on or before the date due as hereinabove specified, such payment shall become delinquent and a penalty of five per cent (5%) of the amount of the tax shall be added, and after the first thirty (30) days shall be forfeited an additional five per cent (5%) of such tax; said penalty shall never be less than One Dollar ($1). Delinquent taxes shall bear interest at the rate of seven per cent (7%) per annum beginning sixty (60) days from the date due.

[Amended by Acts 1979, 66th Leg., p. 80, ch. 51, § 1, eff. Jan. 1, 1980.]

Section 18 of the 1979 amendatory act provided:

"This Act takes effect January 1, 1980, and applies to all unpaid taxes that are delinquent on that date and become delinquent after that date."

CHAPTER FOUR. OCCUPATION TAX ON OIL PRODUCED

Art. 4.03. Primary Liability; Mode of Payment; Refunds, Penalties

[See Compact Edition, Volume 2 for text of (1) to (10)]

(10) Provided, that unless such payment of tax on all oil produced during any month or fractional part thereof shall be made on or before the twenty-fifth of the month immediately following, such payment shall become delinquent and a penalty of five per cent (5%) of the amount of the tax shall be added, and after the first thirty (30) days shall be forfeited an additional five per cent (5%) of such tax; said penalty shall never be less than One Dollar ($1). Delinquent taxes shall bear interest at the rate of seven per cent (7%) per annum beginning sixty (60) days from the date due.

[Amended by Acts 1979, 66th Leg., p. 80, ch. 51, § 2, eff. Jan. 1, 1980.]

Section 18 of the 1979 amendatory act provided:
"This Act takes effect January 1, 1980, and applies to all unpaid taxes that are delinquent on that date and become delinquent after that date."

Art. 4.06. Reports to Comptroller

Payment of Tax. At the time of filing the reports herein required, the first purchaser shall pay to the Comptroller by legal tender or cashier's check, payable to the State Treasurer, the tax herein required to be paid. Failure to pay said tax on the twenty-fifth day of the month immediately following shall cause said tax to become delinquent and a penalty of five per cent (5%) of the amount of said tax shall be added, and after the first thirty (30) days shall be forfeited an additional five per cent (5%) of said tax; said penalty shall never be less than One Dollar ($1). Delinquent taxes shall bear interest at the rate of seven per cent (7%) per annum beginning sixty (60) days from the date due.

[Amended by Acts 1979, 66th Leg., p. 80, ch. 51, § 3, eff. Jan. 1, 1980.]

Section 18 of the 1979 amendatory act provided:
"This Act takes effect January 1, 1980, and applies to all unpaid taxes that are delinquent on that date and become delinquent after that date."

CHAPTER FIVE. OCCUPATION TAX ON SULPHUR PRODUCTS

Art. 5.03. Failure to Pay Tax; Penalties

(1) Any person subject to the payment of said tax on sulphur failing to pay the tax levied in this Chapter within thirty (30) days after same is due and payable shall pay to the State as a penalty an additional amount equal to five per cent (5%) of the taxes due, and after the first thirty (30) days shall be forfeited an additional five per cent (5%) of said tax; said penalty shall never be less than One Dollar ($1). Delinquent taxes shall draw interest at the rate of seven per cent (7%) per annum beginning sixty (60) days from the date due. The Attorney General or any district or county attorney at the direction of the Attorney General shall bring suit in behalf of the State to recover the amount of taxes, penalties, and interest past due and payable by any person affected by this law. The word "person" as used in this law shall include persons, firms, partnerships, companies, corporations, associations, common law trusts, or other concern by whatever name or however organized, formed, or created.

[See Compact Edition, Volume 2 for text of (2)]

[Amended by Acts 1979, 66th Leg., p. 81, ch. 51, § 4, eff. Jan. 1, 1980.]

Section 18 of the 1979 amendatory act provided:
"This Act takes effect January 1, 1980, and applies to all unpaid taxes that are delinquent on that date and become delinquent after that date."

CHAPTER 6. MOTOR VEHICLE RETAIL SALES AND USE TAX

Article
6.041. Registration of Motor Vehicle Purchased for Rental.
6.042. Revocation; Suspension of Motor Vehicle Retail Seller's Permit; Procedure.

Art. 6.01. Imposition of Tax

(1) There is hereby levied a tax upon every retail sale of every motor vehicle sold in this State, such tax to be equal to four percent (4%) of the total consideration paid or to be paid for said motor vehicle. The tax shall be the obligation of and be paid by the purchaser of the motor vehicle.

(2) There is hereby levied a use tax upon every motor vehicle purchased at retail sale outside this State and brought into this State for use upon the public highways by any person who is a resident of this State or who is domiciled or doing business in this State. The tax imposed by this section shall be equal to four percent (4%) of the total consideration paid or to be paid for said vehicle at said retail sale. The tax shall be the obligation of and be paid by the person operating said motor vehicle upon the public highways of this State.

(3) There is hereby levied a use tax in the sum of Fifteen Dollars ($15) upon any motor vehicle which (i) is brought into this State by a new resident of this State and (ii) has been previously registered in the new resident's name in any other state or foreign country. The use tax is in lieu of the use tax imposed by Section (2) of this Article and shall be the obligation of and be paid by the new resident.

(4) There is hereby levied a tax in the sum of Five Dollars ($5) upon any transaction involving the even exchange of two (2) motor vehicles which tax shall be paid by each party to the transaction.

(5) There is hereby levied a tax in the sum of Ten Dollars ($10) upon any gift of a motor vehicle which tax shall be paid by the donee.

(6) There is hereby imposed a tax on the gross rental receipts from the rental of a motor vehicle; the tax shall be at the rate of four percent (4%) on the gross rental receipts. The tax shall be the obligation of and be paid to the Comptroller by the owner of the motor vehicle. Except for motor vehicles which are stolen and not recovered or destroyed, the total amount of gross rental receipts tax due and payable to the Comptroller by the owner, as defined in Section (J)(i) of Article 6.03, from the rental of a motor vehicle registered pursuant to the provisions of Article 6.041 may not be less than the amount of motor vehicle sales or use tax imposed by Section (1) or (2) of this Article. No motor vehicle sales or use tax is due as long as the motor vehicle is registered as a rental vehicle pursuant to the provisions of Article 6.041.

(7) There is hereby levied a use tax in the sum of Twenty Dollars ($20) upon any person to whom any metal dealer plate is issued by the Texas Highway Department pursuant to the provisions of Article 6686, Revised Civil Statutes of Texas, 1925, as amended. The tax shall be paid on each metal plate issued and shall be in lieu of any other tax levied under this Chapter. The taxes levied by this section

shall be paid to the Texas Highway Department, which Department shall deposit said funds in the State Treasury to be credited in the same manner as other taxes collected under this Chapter. The tax shall be paid at the same time application is made for the issuance of any metal dealer plate and the Texas Highway Department shall refuse to issue any such plate until said tax is paid.

(8) When a lessor-purchaser acquires a motor vehicle that is to be leased to a public agency, he is not required to pay the tax imposed by this Chapter if he presents to the Tax Assessor-Collector a form prescribed and provided by the Comptroller showing the identification of the motor vehicle and the name and address of the lessor and the lessee and verified by the lessor and an officer of the public agency to which the motor vehicle is to be leased and operated with exempt license number plates issued under Article 6675a–3aa, Title 116, Revised Civil Statutes of Texas, 1925, as amended. When a motor vehicle for which the tax has not been paid under this section is no longer leased to a public agency, the owner shall notify the Comptroller of Public Accounts of the fact on a form prescribed and provided by the Comptroller and shall pay the tax on the motor vehicle based on the owner's book value at the rate prescribed by this Article.

The taxes levied by or under this Chapter shall be in addition to any and all license fees and taxes levied by or under any other law of this State. [Amended by Acts 1975, 64th Leg., p. 167, ch. 71, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2308, ch. 719, art. X, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 629, ch. 233, § 1, eff. Sept. 1, 1977.]

Art. 6.03. Title Definitions

The following words shall have the following meaning unless a different meaning clearly appears from the context.

[See Compact Edition, Volume 2 for text of (A)]

(B) Retail Sale. The term "retail sale" as herein used shall include all sales of motor vehicles except those whereby the purchaser acquires a motor vehicle for the exclusive purpose of resale and not for use and shall not include those operated under and in accordance with the terms of Article 6686, Revised Civil Statutes of Texas, 1925, as amended.

[See Compact Edition, Volume 2 for text of (C)]

(D) Total Consideration.

[See Compact Edition, Volume 2 for text of (D)(1) and (2)]

(3) Any person engaging in the business of making sales, rentals, or leases of motor vehicles who has obtained a certificate of title to a motor vehicle which he uses for personal or business purposes may deduct the fair market value of such vehicle from the "total consideration" when such person purchases another motor vehicle upon which he obtains a certificate of title as a substitute vehicle for personal or business use and the original vehicle is offered for sale.

(E) Rental or Renting. Those terms as herein used shall mean the agreeing by the owner to give exclusive use of a motor vehicle to another for a consideration and for a period of time not to exceed 180 days under any one agreement. The term "rental" includes any agreement by an original manufacturer of motor vehicles to give exclusive use of a motor vehicle to another for consideration and any agreement to give exclusive use of a motor vehicle to another for re-rental purposes, regardless of the period of time covered by the agreement.

(F) Lease or Leasing. Those terms as herein used shall mean the agreeing by the owner to give exclusive use of a motor vehicle to another for a consideration and for a period of time exceeding 180 days under such agreement; provided an agreement by an original manufacturer to give exclusive use of a motor vehicle to another for consideration or an agreement to give exclusive use of a motor vehicle to another for re-rental purposes, regardless of the period of time covered by the agreement, is not included in the terms.

(G) "Public agency" means a department, commission, board, office, institution, or other agency of the State of Texas or of a county, city, town, school district, hospital district, water district, or other special district or authority or political subdivision created by or pursuant to the constitution or the statutes of this state. The term also means the unincorporated agencies and instrumentalities of the United States of America.

(H) Person. The term "person" includes individuals, firms, corporations, and associations.

(I) Gross rental receipts. "Gross rental receipts" means money or the value of property received or promised as consideration to the owner of a motor vehicle for the rental of the vehicle. Gross rental receipts does not include:

(i) separately stated fees or charges for insurance;

(ii) assessments for damages to the rental vehicle occurring during a rental agreement period;

(iii) receipts for motor fuel sold by the owner of the motor vehicle if the receipts from motor fuel sales are separately stated as motor fuel receipts; or

(iv) discounts.

(J) "Owner of a motor vehicle" means:

(i) a person named in the certificate of title of the vehicle as the owner; or

(ii) a person having the exclusive use of a vehicle by reason of a rental and who holds the motor vehicle for re-rental.

[Amended by Acts 1975, 64th Leg., p. 2308, ch. 719, art. X, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 629, ch. 233, § 1, eff. Sept. 1, 1977.]

Art. 6.04. Collection of Taxes

(1) Except as otherwise provided in this Article, the taxes levied by this Chapter shall be collected by the Tax Collector and Assessor of the county in which an application for registration and for a Texas Certificate of Title is made for a motor vehicle. The Tax Collector and Assessor shall refuse to accept an application for the registration of or for the Texas Certificate of Title to a motor vehicle until the applicable tax levied by this Chapter is paid.

(2) Persons doing business in Texas who register motor vehicles for use on the public highways of this State pursuant to the provisions of Section 14, Chapter 110, Acts of the 47th Legislature, Regular Session, 1941 (Article 6675a–16, Vernon's Texas Civil Statutes), shall pay the motor vehicle use tax imposed by Section (2) of Article 6.01 to the Comptroller on or before the date the motor vehicle is brought into this State.

(3) The tax on gross rental receipts levied by this Chapter shall be reported and paid to the Comptroller in the same manner as the Limited Sales, Excise and Use Tax is reported and paid by retailers under Article 20.05 of this Title. Motor vehicle owners required to collect, report, and pay taxes on gross rental receipts imposed by this Chapter shall register as retailers with the Comptroller and obtain from him a Motor Vehicle Retailer's Permit in the same manner as required by Article 20.031 of this Title.

(4) The motor vehicle owner required to collect, report, and pay the taxes on the gross rental receipts imposed by this Chapter shall add the tax to the rental charge, and when added, the tax shall constitute a part of the rental charge, shall be a debt of the person renting the motor vehicle to the owner until paid, and shall be recoverable at law in the same manner as the rental charge. Nothing in this Section or any other provision of this Chapter precludes the Comptroller from proceeding against the person renting the motor vehicle for unpaid gross rental receipts taxes on the rental.

(5) When an owner as defined in Section (J)(i) of Article 6.03 of a motor vehicle previously registered pursuant to the provisions of Article 6.041 ceases to use the vehicle for rental, he shall report and remit on the next succeeding report required to be filed with the Comptroller any unremitted portion of minimum gross rental receipts tax required by Section (6) of Article 6.01.

(6) When a motor vehicle upon which the motor vehicle sales or use tax has been paid is used for rental, the owner shall collect the gross rental receipts tax imposed by this Chapter from the person renting the vehicle but is entitled to credit an amount equal to the motor vehicle sales or use tax paid by such owner to the Comptroller against the amount of gross rental receipts tax due and payable to the Comptroller from the rental of the motor vehicle. The credit provided herein is not transferable and cannot be applied against the amount of gross rental receipts tax due and payable to the Comptroller from the rental of any other motor vehicle belonging to the same owner.

(7) The motor vehicle owner required to collect, report, and pay the taxes on the gross rental receipts imposed by this Chapter is entitled to credit an amount equal to the taxes on the gross rental receipts of a motor vehicle paid by such owner to any other state in calculating the amount of the minimum gross rental receipts tax due and payable to the Comptroller. The credit provided herein is not transferable and cannot be applied against the amount of minimum gross rental receipts tax due and payable to the Comptroller from the rental of any other motor vehicle belonging to the same owner.

[Amended by Acts 1977, 65th Leg., p. 629, ch. 233, § 1, eff. Sept. 1, 1977.]

Art. 6.041. Registration of Motor Vehicle Purchased for Rental

(1) When a motor vehicle is purchased for rental, the owner may furnish the County Tax Collector and Assessor a rental certificate in lieu of the motor vehicle sales or use tax imposed by Section (1) or (2) of Article 6.01; whereupon the Tax Collector and Assessor shall accept the motor vehicle for registration and issue a receipt for the license and title application.

(2) A rental certificate may be furnished by a dealer licensed pursuant to the provisions of Article 6686, Revised Civil Statutes of Texas, 1925, as amended, or by an owner for use in a rental business that rents at least five (5) different motor vehicles within any twelve (12) month period.

(3) The rental certificate shall be in a form promulgated by the Comptroller and shall:

(i) be signed by the owner and bear the name and the address of the owner; and

(ii) give the owner or dealer's license number or a statement by the owner that the rental business of the owner meets the activity requirement of Section (2) of this Article; and

(iii) include the Motor Vehicle Identification Number, the total consideration paid or to be paid, and the amount of motor vehicle sales or use tax that would have been due had a rental certificate not been furnished.

[Added by Acts 1977, 65th Leg., p. 634, ch. 233, § 2, eff. Sept. 1, 1977.]

Art. 6.042. Revocation; Suspension of Motor Vehicle Retail Seller's Permit; Procedure

(1) Whenever any motor vehicle owner required by Article 6.04 to obtain a Motor Vehicle Retail Seller's Permit fails to comply with any provision of this Chapter or with any rule or regulation of the Comptroller relating to such tax prescribed and adopted under this Chapter, the Comptroller upon hearing, after giving the person twenty (20) days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person.

(2) The Comptroller shall give to the person written notice of the suspension or revocation of any of his permits.

(3) The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(4) The Comptroller shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this Chapter and the rules and regulations of the Comptroller. The Comptroller may prescribe the terms under which a suspended permit may be reissued.

(5) The action of the Comptroller may be appealed by the taxpayer in the same manner as a final deficiency determination.

[Added as art. 6.041 by Acts 1975, 64th Leg., p. 2315, ch. 719, art. XVII, § 1, eff. Sept. 1, 1975. Renumbered as art. 6.042 by Acts 1977, 65th Leg., p. 634, ch. 233, § 3, eff. Sept. 1, 1977.]

Art. 6.05. Affidavits and Sales Invoices as to Consideration, Records

(1) The purchaser and seller shall make a joint affidavit setting forth the then value in dollars of the total consideration, whether in money or other things of value, received or to be received by the seller or his nominee in a retail sale. Where a transfer of title to a motor vehicle is made either as the result of an even exchange or of a gift, the two (2) principal parties to such a transaction shall make a joint affidavit setting forth the facts describing the nature of the transaction. In an even exchange no transfer of title shall be accomplished until the two (2) principal parties have paid a tax of Five Dollars ($5) each to the Tax Assessor and Collector. Where any party to a sale, exchange, even exchange or gift is a corporation, the president, vice president, secretary, manager or other authorized officer of the corporation shall make the affidavit for the corporation. When any tax imposed by this Chapter is paid to the Tax Assessor and Collector, the person upon whom the tax is imposed by this Act shall file with the Tax Assessor and Collector the joint affidavit required by this Article. The Tax Collector and Assessor shall keep copies of the affidavits until they are called for by the Comptroller of Public Accounts or his representative for auditing.

Any person who signs the joint affidavit knowing that it is false in any material fact is guilty of a felony and upon conviction is punishable by imprisonment for not more than five (5) years nor less than two (2) years or by a fine of not more than One Thousand Dollars ($1,000) or by both a fine and imprisonment.

[See Compact Edition, Volume 2 for text of (2)]

(3) The owner of a motor vehicle used for rental purposes is required to keep records and supporting documents containing the total consideration paid, or to be paid; the amount of motor vehicle sales or use tax paid, if any; the amount of gross rental receipts; and the amount of gross rental receipts tax remitted to the Comptroller with regard to each motor vehicle used for rental. The owner must keep the records and documents for at least four (4) years from the date of purchase of the motor vehicle. No mileage records are required.

[Amended by Acts 1977, 65th Leg., p. 629, ch. 233, § 1, eff. Sept. 1, 1977.]

Art. 6.06. Penalties and Interest; Redetermination and Hearings

(1) If the Comptroller upon audit of the records of the seller shall determine that the amount of tax due on any transaction was incorrectly reported on the joint affidavit so that the tax actually paid was less than that actually due or that the seller failed to execute and deliver to the purchaser a joint affidavit and any other documents necessary to register the vehicle, the seller shall then be liable for the full amount of tax determined to be due plus a penalty of ten per cent (10%) of the amount of tax due and interest on the amount of tax due computed at the rate of seven per cent (7%) per annum beginning sixty (60) days from the date on which the joint affidavit was executed. The Comptroller shall notify the seller in writing of his determination and the seller shall, within ten (10) days following the receipt of such notice pay to the Comptroller the amount of back taxes, penalty and interest. The Comptroller shall promulgate rules and regulations under which the seller may petition for a redetermination of liability and shall grant the seller an oral hearing. The Comptroller may decrease or increase the amount of his determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Comptroller at or before the hearing, in which case the seller shall be entitled to a thirty-day continuance of the hearing to allow him to obtain and produce further evidence applicable to the items upon which the increase is based.

[See Compact Edition, Volume 2 for text of (2)]

[Amended by Acts 1977, 65th Leg., p. 634, ch. 233, § 4, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 81, ch. 51, § 5, eff. Jan. 1, 1980.]

Section 18 of the amendatory act provided:

"This Act takes effect January 1, 1980, and applies to all unpaid taxes that are delinquent on that date and become delinquent after that date."

Art. 6.09. Exemptions

[See Compact Edition, Volume 2 for text of (1)]

(2) The taxes imposed by this Chapter do not apply to fire trucks, ambulances, or other motor vehicles used exclusively for fire fighting purposes or for emergency medical services when purchased by a volunteer fire department. "Volunteer fire department" means any company, department, or association organized for the purpose of answering fire alarms and extinguishing fires, or answering fire alarms, extinguishing fires, and providing emergency medical services, the members of which receive no compensation or nominal compensation for their services thus rendered.

[Text of Section (3) added by Acts 1977, 65th Leg., p. 635, ch. 233, § 5]

(3) The taxes imposed by this Chapter do not apply to the sale of a motor vehicle to or use of a motor vehicle by a public agency; provided the vehicle is operated with exempt license number plates issued pursuant to Section 3–AA, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a–3aa, Vernon's Texas Civil Statutes).

[Text of Section (3) added by Acts 1977, 65th Leg., p. 1011, ch. 375, § 1]

(3) There are exempted from the taxes imposed by this Chapter the receipts from the sale or rental and the use of a motor vehicle that is designed to carry more than six (6) passengers, is sold to or used by a church or religious society, and is used primarily for the purpose of providing transportation to and from church or religious services or meetings. This exemption does not apply to a vehicle registered as a passenger vehicle and the primary use of which is for the personal or official needs or duties of a minister.

[Text of Section (3) added by Acts 1977, 65th Leg., p. 1121, ch. 417, § 1]

(3)(a) There are exempted from the taxes imposed by this chapter the receipts from the sale and use of a motor vehicle that is driven primarily by an orthopedically handicapped person. Exemption under this section shall extend to privately owned vehicles which require modification for operation by an orthopedically handicapped person. Exemption under this section shall not extend to any vehicle owned or operated by any corporation, partnership, limited partnership, or association.

(b) The comptroller shall promulgate rules and regulations to ensure that any vehicle exempt from taxation under this section is used primarily for the purposes specified herein. Any person seeking exemption from taxation under this section shall present such information or documents as the comptroller may require pursuant to granting any exemption.

(c) For the purposes of this section, an "orthopedically handicapped person" is one who is so physically impaired that he is unable to operate a motor vehicle which has not been specially modified.

[Text of Sections (4) and (5) added by Acts 1977, 65th Leg., p. 635, ch. 233, § 5]

(4) The taxes imposed by this Chapter do not apply to the rental of a motor vehicle to a public agency. The tax which would have been remitted on gross rental receipts without this exemption shall be deemed to have been remitted for the purpose of calculating the minimum gross rental receipts tax due and payable to the Comptroller under the provisions of Section (6) of Article 6.01.

(5) The taxes imposed by this Chapter on the gross rental receipts from the rental of a motor vehicle do not apply to the rental of a motor vehicle for the purpose of re-rental. The minimum gross rental receipts tax imposed by Section (6) of Article 6.01 remains the obligation of the owner as defined in Section (J)(i) of Article 6.03; provided the owner may credit all gross rental receipts taxes remitted to the Comptroller on the re-rental of a motor vehicle registered in accordance with Article 6.041 for the purpose of calculating the amount of the minimum gross rental receipts tax due and payable to the Comptroller. A person authorized by Article 6.041 to register motor vehicles for rental may issue an exemption certificate to the owner of the motor vehicle. If the owner takes an exemption certificate in good faith he is relieved of the burden of proving that the vehicle was rented for the purpose of re-rental.

[Amended by Acts 1977, 65th Leg., p. 635, ch. 233, § 5, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1011, ch. 375, § 1, eff. June 10, 1977; Acts 1977, 65th Leg., p. 1121, ch. 417, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1393, ch. 559, § 1, eff. Aug. 29, 1977.]

CHAPTER 7. CIGARETTE TAX LAW

Article
7.061. Importation of Small Quantities.

Art. 7.02. Rate of Tax

(1) A tax of Two Dollars ($2) per thousand on cigarettes weighing not more than three (3) pounds per thousand and Four Dollars and Ten Cents ($4.10) per thousand on those weighing more than three (3) pounds per thousand is hereby imposed on all ciga-

rettes used or otherwise disposed of in this State for any purpose whatsoever. The said tax shall be paid only once by the person making the "first sale" in this State and shall become due and payable as soon as such cigarettes are subject to a first sale in Texas, it being intended to impose the tax as soon as such cigarettes are received by any person in Texas for the purpose of making a "first sale" of same. No person, however, shall be required to pay a tax on cigarettes brought into this State on or about his person in quantities of two hundred (200) cigarettes or less when such cigarettes are actually used by said person and not sold or offered for sale.

[See Compact Edition, Volume 2 for text of (2) and (3)]

[Amended by Acts 1979, 66th Leg., p. 901, ch. 411, § 1, eff. Aug. 27, 1979.]

Art. 7.06. Additional Tax

(1) In addition to the tax levied by Article 7.02 herein, there is hereby imposed a tax of Seven Dollars and Twenty-five Cents ($7.25) per thousand on cigarettes weighing not more than three (3) pounds per thousand and Seven Dollars and Twenty-five Cents ($7.25) per thousand on those weighing more than three (3) pounds per thousand on all cigarettes used or otherwise disposed of in this State for any purpose whatsoever. The tax shall be paid only once by the person making the "first sale" in this State and shall become due and payable as soon as such cigarettes are subject to a "first sale" in Texas, it being intended to impose the tax as soon as such cigarettes are received by any person in Texas for the purpose of making a "first sale" of same. No person, however, shall be required to pay a tax on cigarettes brought into this State on or about his person in quantities of two hundred (200) cigarettes or less when such cigarettes are actually used by said person and not sold or offered for sale.

[See Compact Edition, Volume 2 for text of (2)]

(3) The net revenue derived from the tax levied under this Article shall be allocated as follows:

(a) Fifty cents of the tax levied under this Article on each 1,000 cigarettes shall be credited to the State Parks Fund and may be used by the Parks and Wildlife Department for the operation, maintenance, acquisition, planning, and development of state parks and historic sites. In any year not more than 25 percent of the revenue credited to the State Parks Fund under this Article may be used for the operation and maintenance of State Parks and historic sites. Provided, no portion of the revenues allocated under this subsection shall be set aside to any fund for the administration and enforcement of the cigarette tax law of this State. Provided, further, the revenues allocated under this subsection may be credited daily to the Omnibus Clearance Fund hereafter referred to in this Act and on the first day of each month following the collection of the revenues allocated under this subsection, the said revenues shall be credited to the State Parks Fund, except that the revenues allocated under this subsection during the month of August of each year shall be credited to the State Parks Fund on the thirty-first day of August of each year; it being specifically understood that no portion of the said revenues allocated under this subsection shall remain or be distributed under the provisions governing the said Clearance Fund.

(b) For the period beginning on September 1, 1979, and extending through August 31, 1983, only, 50 cents of the tax levied under this Article on each 1,000 cigarettes shall be credited to the Texas Local Parks, Recreation, and Open Space Fund. Provided, no portion of the revenues allocated under this subsection shall be set aside to any fund for the administration and enforcement of the cigarette tax law of this State. Provided, further, the revenues allocated under this subsection may be credited daily to the Omnibus Clearance Fund hereafter referred to in this Act and on the first day of each month following the collection of the revenues allocated under this subsection, the said revenues shall be credited to the Texas Local Parks, Recreation, and Open Space Fund except that the revenues allocated under this subsection during the month of August of each year shall be credited to the Texas Local Parks, Recreation, and Open Space Fund on the thirty-first day of August of each year; it being specifically understood that no portion of the said revenues allocated under this subsection shall remain or be distributed under the provisions governing the said Clearance Fund.

(c) The remaining net revenue derived from the tax levied under this Article after allocating the amounts specified in Subsections (a) and (b) of this Section shall be credited to the General Fund of this State. Provided, no portion of the revenues allocated under this subsection shall be set aside to any fund for the administration and enforcement of the cigarette tax law of this State. Provided, further, the revenues allocated under this subsection may be credited daily to the Omnibus Clearance Fund hereafter referred to in this Act and on the first day of each month following the collection of the revenues allocated under this subsection, the said revenues shall be credited to the General Fund, except that the revenues allocated under this subsection during the month of August of each year shall be credited to the General Fund on the thirty-first day of August of each year; it being specifically understood that no portion of the said revenues allocated under this subsection

shall remain or be distributed under the provisions governing the said Clearance Fund.

[Amended by Acts 1979, 66th Leg., p. 901, ch. 411, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2021, ch. 793, § 1, eff. Sept. 1, 1979.]

Acts 1979, 66th Leg., p. 1737, ch. 710, § 2, eff. Sept. 1, 1979, amending subsec. (3) of this article was repealed by Acts 1979, 66th Leg., p. 2022, ch. 793, § 5, eff. Sept. 1, 1979.

Art. 7.061. Importation of Small Quantities

(a) A person who imports and personally transports cigarettes into the State must pay the taxes imposed by this Chapter on all cigarettes in excess of the two hundred (200) cigarettes he is permitted to import without the payment of the tax under the provisions of Articles 7.02 and 7.06 of this Chapter.

(b) Employees of the Texas Alcoholic Beverage Commission who collect taxes on alcoholic beverages at ports of entry shall also collect at said ports of entry the tax imposed by this Chapter on cigarettes imported into the State.

(c) The Comptroller and the Texas Alcoholic Beverage Commission shall promulgate rules and regulations concerning the administration of this Article, including rules and regulations relating to the issuance and affixing of tax stamps and the accounting for revenues received at the ports of entry.

[Added by Acts 1979, 66th Leg., p. 903, ch. 411, § 4, eff. Aug. 27, 1979.]

Art. 7.08. Authority of Comptroller

[See Compact Edition, Volume 2 for text of (1) to (8)]

(9) The State Treasurer shall require that payment in full for stamps or meter settings be made within fifteen (15) days from the date the stamps or the set meter are received by the distributor. Upon receipt of an order for stamps or the setting of a meter, the State Treasurer shall snip such stamps or set such meter in compliance with the order and transmit with the stamps or the meter a certified statement showing the amount due for said stamps or meter setting, and the distributor shall forward a remittance as payment in full of the amount certified as due by the State Treasurer within fifteen (15) days after receipt of the stamps or the set meter and the certified statement. However, in order to secure the payments of the tax as provided in this Section, a distributor must file with the State Treasurer a surety bond, approved by the State Treasurer and the Attorney General, with a corporate surety authorized to do business in this State, conditioned upon payment in full for the stamps or meter settings within the time specified in this Section. Payment by a company check or by personal check of a bonded distributor shall be treated as cash payment when received by the State Treasurer for payment of stamps or meter settings received by the bonded distributor. The State Treasurer shall fix the amount of the bond, in an amount equal to one and one-half times the credit in stamps and/or meter settings requested by the distributor and approved by the State Treasurer for the purchase of stamps and/or meter settings during the succeeding month. Any distributor who fails to forward the proper remittance by the due date shall be notified by the State Treasurer within five (5) days after the due date to appear within five (5) days before the Treasurer to show cause why he should not be denied the privilege of ordering stamps as herein provided, and if such distributor shall fail to show good cause, the Treasurer is hereby authorized to discontinue the shipment of stamps or the setting of meters as provided in this Section and to enforce payment of the bond.

[Amended by Acts 1975, 64th Leg., p. 2321, ch. 719, art. 26, § 1, eff. Sept. 1, 1975.]

Art. 7.25. Information Confidential

(a) Except information set forth in liens filed pursuant to this Title, or in permits issued under Articles 7.09 and 7.16 of this Chapter, all information secured, derived or obtained by the Attorney General or the Comptroller from any record, report, instrument, or copy thereof, required to be furnished under the terms of this Chapter, shall be and shall remain confidential and not open to public inspection. All information secured, derived, or obtained by the Attorney General or the Comptroller during the course of an examination of the taxpayer's books, records, papers, officers, employees, including the business affairs, operations, source of income, profits, losses or expenditures of the taxpayer, shall be and shall remain confidential and not open to public inspection.

(b) The Comptroller or the Attorney General may use such information, records, reports, instruments and copies thereof, for enforcing the provisions of this Chapter, and may authorize examination by other State officers and law enforcement officials, or by tax officials of another state and by officials of the federal government if a reciprocal arrangement exists.

[Amended by Acts 1979, 66th Leg., p. 1822, ch. 740, § 1, eff. June 13, 1979.]

Art. 7.26. Penalty for Disclosure of Records

Any employee of the Attorney General or of the Comptroller who (a) gives to any person, firm or corporation, any information secured, derived or obtained from the inspection or examination of books or records authorized under the terms of this Chapter or from the records, reports, instruments

and/or copies thereof, required to be furnished under the terms of this Chapter, or (b) permits the inspection by any person, firm or corporation, of any of the reports, records, instruments, or copies thereof required to be furnished under the terms of this Chapter, or (c) gives a copy or copies of any such records, reports, instruments, or copy thereof required to be furnished under the terms of this Chapter to any person, firm or corporation, or (d) gives any information to any person, firm or corporation concerning the records of all or any parts of the reports, records, instruments, or copies thereof required to be furnished under the provision of this Chapter, shall be guilty of a Class B misdemeanor. However, it shall not be an offense under the terms of this Chapter for an employee of the Attorney General or of the Comptroller to furnish any such information as is authorized under Article 7.25.
[Amended by Acts 1979, 66th Leg., p. 1822, ch. 740, § 2, eff. June 13, 1979.]

Art. 7.37. Penalties

(a) Whoever shall knowingly transport any cigarettes in quantities of more than two hundred (200) cigarettes without a stamp being then and there affixed to each individual package, or (b) while transporting cigarettes shall willfully refuse to stop the motor vehicle he is operating when called upon to do so by a person authorized to stop said motor vehicle, or (c) refuse to permit a full and complete inspection of his cargo by said authorized person, or (d) whoever shall refuse to permit a full and complete inspection by said authorized person of any premises where cigarettes are manufactured, produced, made, stored, transported, sold or offered for sale or exchange, or (e) whoever shall use, sell, offer for sale or possess for the purpose of use or sale, any previously used stamps, or (f) attach or cause to be attached to any individual package of cigarettes any previously used stamp, or (g) use or consent to the use of any previously used stamps in connection with the sale or offering for sale of any cigarettes, or (h) whoever shall purchase stamps from any person other than the Treasurer without then and there having a requisition from the Comptroller authorizing said purchase, or (i) whoever shall sell any lawfully issued stamps to any person other than the Treasurer without then and there having a requisition from the Comptroller authorizing said sale, or (j) whoever shall possess in violation of any provision of this Chapter, cigarettes upon which a tax is required to be paid in quantities of ten thousand (10,000) or more cigarettes, or (k) whoever as distributor or distributing agent, or as the agent, employee or representative of a distributor or a distributing agent shall knowingly make, deliver to and file with the Comptroller a false return or report, or an incomplete return or report, or (*l*) whoever shall knowingly fail to make and deliver to the Comptroller a return or report as required by the provisions of this Chapter to be made, or (m) whoever as distributor, wholesale dealer, retail dealer or distributing agent, or as the agent, employee or representative of a distributor, wholesale dealer, retail dealer or distributing agent, shall destroy, mutilate or secrete any of the books and records required herein to be kept, or (n) shall refuse to permit the Comptroller or the Attorney General to inspect, examine and audit any books and records required herein to be kept, or any other records incident to the conduct of the cigarette business that may be kept, or (*o*) shall knowingly make any false entry or fail to make entries in the books and records required by the provisions of this Chapter to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, or (p) shall fail to keep for a period of two (2) years in Texas any books and records required herein to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, shall be guilty of a felony and shall be punished by confinement in the State Penitentiary for not more than two (2) years or by confinement in the County Jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars ($100) nor more than Five Thousand Dollars ($5,000) or by both such fine and imprisonment.

Provided that if any penalties prescribed in Article 7.36 of this Chapter overlap as to offenses which are also punishable under Article 7.37 of this Chapter, then the penalties prescribed by this Article shall apply and control all other penalties.

Venue of a prosecution under Articles 7.36 or 7.37 shall be in Travis County, Texas, or in the county in Texas where the offense occurred.
[Amended by Acts 1979, 66th Leg., p. 901, ch. 411, § 3, eff. Aug. 27, 1979.]

CHAPTER 8. CIGARS AND TOBACCO PRODUCTS TAX

Article
8.32. Information Confidential

Art. 8.02. Tax Levy and Rate

There is hereby levied a tax upon the "first sale" of cigars and tobacco products as those terms are defined herein, which tax shall be determined by the following schedule:

(a) Upon cigars of all description weighing not more than three (3) pounds per one thousand (1,000),

one cent (1¢) for each ten (10) cigars or fraction thereof.

(b) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) sold at factory list price, exclusive of any trade discount, special discount, or deals for not more than three and three-tenths cents (3.3¢) each, seven dollars and fifty cents ($7.50) per one thousand (1,000).

(c)(1) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) sold at factory list price, exclusive of any trade discount, special discount, or deals for over three and three-tenths cents (3.3¢) each, containing no substantial amount of non-tobacco ingredients, eleven dollars ($11) per thousand (1,000).

(2) [Deleted]

(3) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) sold at factory list price exclusive of any trade discount, special discount, or deals for over three and three-tenths cents (3.3¢) each, containing a substantial amount of non-tobacco ingredients, fifteen dollars ($15) per thousand (1,000).

(4) All cigars described in this Paragraph (c) are presumed to contain a substantial amount of non-tobacco ingredients unless the report to the Comptroller made for the purpose of establishing the tax upon such cigars is accompanied by an affidavit, by the manufacturer when the manufacturer prepares such report or by both the manufacturer and the distributor, when the distributor prepares such report, stating that specific cigars described in such report contain no sheet wrapper, sheet binder, or sheet filler.

(d) Upon all chewing tobacco and all smoking tobacco including granulated, plug-cut, crimp-cut, ready-rubbed, and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette: the tax shall be twenty-five percent (25%) of the factory list price, exclusive of any trade discount, special discount, or deals.

[Amended by Acts 1975, 64th Leg., p. 2319, ch. 719, art. XXIII, § 1, eff. July 1, 1975; Acts 1977, 65th Leg., p. 1623, ch. 637, § 1, eff. Aug. 29, 1977.]

Section 2 of art. XXIII of the 1975 amendatory act provides: "This Article takes effect July 1, 1975."

Art. 8.32. Information Confidential

(a) Except information which appears in liens filed pursuant to this Title or in permits issued under Articles 8.06, 8.07, and 8.16 of this Chapter, all information secured, derived or obtained by the Attorney General or the Comptroller from any record, report, instrument or copy thereof, required to be furnished under the terms of this Chapter, shall be and shall remain confidential and not open to public inspection. All information secured, derived or obtained by the Attorney General or the Comptroller during the course of an examination of the taxpayer's books, records, papers, officers, employees, including the business affairs, operations, source of income, profits, losses or expenditures of the taxpayer, shall be and shall remain confidential and not open to public inspection.

(b) The Comptroller or the Attorney General may use such information, records, reports, instruments and copies thereof, for enforcing the provisions of this Chapter, and may authorize examination by other State officers and law enforcement officials, or tax officials of another state and by officials of the federal government if a reciprocal arrangement exists.

[Added by Acts 1979, 66th Leg., p. 1824, ch. 740, § 5, eff. June 13, 1979.]

CHAPTER 9. MOTOR FUEL TAXES

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This Chapter was revised and Chapter 10 was repealed by Acts 1979, 66th Leg., p. 626, ch. 291, §§ 1 and 3, effective January 1, 1980. Sections 4 and 5 of the 1979 Act provided:

"Sec. 4. (a) This Act does not affect rights, privileges, duties, obligations, or powers that matured, penalties that were incurred, or proceedings that were begun before its effective date.

"(b) The provisions of Chapters 9 and 10, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, as they existed before the effective date of this Act, remain in effect only for the purpose of collecting, administering, and allocating the taxes imposed under those chapters before the effective date of this Act, except in those circumstances that the comptroller of public accounts determines that the provisions of Chapter 9, Title 122A, as amended by this Act, may be applied to the collection and administration of taxes imposed before the effective date of this Act and except as provided by Subsections (c), (d), and (e) of this section.

"(c) A bond or other security provided by a permittee under Chapters 9 and 10, Title 122A, before the effective date of this Act continues in effect after the effective date of this Act according to the terms of the bond or security agreement, and if a reduction of the amount of a bond or security or if additional bonding or security is required or permitted under Chapter 9, Title 122A, as amended by this Act, the reduction or addition shall be made under the regulations of the comptroller.

"(d) A claim for a refund of taxes paid on motor fuels purchased after July 1, 1979, may be filed at any time before the expiration of one year after the date of the purchase.

"(e) Offenses defined by Chapter 9, Title 122A, as amended by this Act, apply only to conduct occurring on or after the effective date of this Act. Offenses defined by Chapters 9 and 10, Title 122A, as they existed before the effective date of this Act and the punishments for those offenses apply to conduct occurring before the effective date of this Act, and the provisions of Chapters 9 and 10, Title 122A, as amended before the effective date of this Act, are continued in effect for the purpose of the prosecution of and punishment for those offenses, except that a defendant found guilty of an offense committed before the effective date of this Act may elect before the sentencing hearing held after the effective date of this Act to be punished under the penalties in effect on and after the effective date of this Act if the offense for which the defendant is found guilty is defined by Chapter 9, Title 122A, as amended by this Act.

"Sec. 5. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 1980.

"(b) Effective September 1, 1979, the comptroller of public accounts may adopt rules and regulations in anticipation of the effective date of the amendment of Chapter 9, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, by this Act, and may prescribe, print, and distribute forms and other information that will be needed on the effective date of the amendment.

Disposition Table

Showing where provisions of former Chapter 9 are now covered in revised Chapter 9.

Former Article	New Article
9.01	9.001
9.02	9.101, 9.112
9.03	9.115
9.04	9.015, 9.017
9.05	—
9.06	9.102 to 9.105, 9.107, 9.109, 9.110
9.07	9.113
9.08	—
9.09	9.114
9.10	9.114
9.11	9.003, 9.114
9.12	—
9.13	9.116 to 9.120
9.14	—
9.15	9.007
9.16	9.006
9.17	—
9.18	9.012 to 9.014
9.19	9.008, 9.009
9.20	9.009, 9.010
9.21	9.020
9.22	9.011
9.23	9.021
9.24	—
9.25	9.120
9.26	9.015 to 9.017
9.27	9.015 to 9.017

SUBCHAPTER A. GENERAL PROVISIONS

Article 9.001. Definitions

In this chapter:

(1) "Motor vehicle" means any self-propelled vehicle licensed for highway use or used on the highway.

(2) "Motor fuel" includes all products which are usable as a propellant of a motor vehicle including gasoline, diesel fuel, and liquefied gas.

(3) "Gasoline" means any liquid offered for sale, sold, or used as the fuel for a gasoline-powered engine, but does not include diesel fuel or liquefied gas.

(4) "Diesel fuel" means any liquid including kerosene suitable for the propulsion of diesel-powered motor vehicles, but does not include gasoline or liquefied gas.

(5) "Liquefied gas" means all combustible gases which exist in the gaseous state at 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute, but does not include gasoline or diesel fuel.

(6) "Person" means an individual, firm, association, joint-stock company, syndicate, partnership, trustee, agency, or receiver, or a public, private, or municipal corporation.

(7) "Public highway" means a way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, even if the way or place is temporarily closed for the purpose of construction, maintenance, or repair.

(8) "Interstate trucker" means a person who imports motor fuel in the fuel supply tanks of a motor vehicle having an aggregate fuel tank capacity of 42 or more gallons, operated for commercial purposes, for taxable use on the public highways of this state, but who does not sell or distribute motor fuel to other persons within this state, except as provided in Subchapter D of this chapter.[1]

(9) "Distributor" means a person who regularly makes sales or distributions of gasoline which are not deliveries into the fuel supply tanks of motor vehicles, motorboats, or aircraft, or who refines, distills, manufactures, produces, or blends for sale or distribution tax-free gasoline in this state, imports or exports tax-free gasoline other than in the fuel supply tanks of motor vehicles, or in any other manner acquires or possesses tax-free gasoline.

(10) "Supplier" means a person who:

(A) refines, distills, manufactures, produces, or blends for sale or distribution diesel fuel in this state;

(B) imports or exports diesel fuel other than in the fuel supply tanks of motor vehicles;

(C) sells or delivers diesel fuel in bulk quantities to dealers, users, aviation fuel dealers, or other suppliers; or

(D) is engaged in the business of selling or delivering diesel fuel in bulk quantities to consumers for nonhighway uses.

(11) "Dealer" means a person who is the operator of a service station or other retail outlet who delivers motor fuel into the fuel supply tanks of motor vehicles or motorboats.

(12) "Aviation fuel dealer" means a person who:

(A) is the operator of an aircraft servicing facility;

(B) delivers gasoline or diesel fuel exclusively into the fuel supply tanks of aircraft or into equipment used solely for servicing aircraft and used exclusively off-highway; and

(C) does not use, sell, or distribute any gasoline or diesel fuel on which a fuel tax is required to be collected or paid to this state.

(13) "Gasoline or diesel bulk user" means a person who purchases tax-paid gasoline or diesel fuel in quantities of 2,500 or more gallons per delivery into storage facilities maintained by him primarily for delivery of the gasoline or diesel fuel into fuel supply tanks of motor vehicles or motorboats owned or operated by him.

(14) "Diesel user" means a person who delivers, or causes to be delivered, diesel fuel into the fuel supply tanks of motor vehicles owned or operated by him.

(15) "Wholesaler" or "Jobber" means a person who purchases tax-paid gasoline for resale or distribution at wholesale.

(16) "Diesel bulk delivery" means the delivery of any quantity of diesel fuel in excess of five gallons, except for deliveries into the fuel supply tanks of motor vehicles.

(17) "Lessor" means a person:

(A) whose principal business is the leasing or renting of motor vehicles for compensation to the general public;

(B) who maintains established places of business; and

(C) whose lease or rental contracts require the motor vehicles to be returned to the established places of business at the termination of the lease.

(18) "Passenger car" means a motor vehicle designed for carrying 10 or fewer passengers and used for the transportation of persons.

(19) "Light truck" means a motor vehicle designed, used, or maintained primarily for the transportation of property and that has a manufacturer's rated carrying capacity not exceeding 2000 pounds and is intended to include those trucks commonly known as pickup trucks, panel delivery trucks, and carryall trucks.

(20) "Cargo tanks" means an assembly used for transporting, hauling, or delivering liquids, comprising a tank, which may be one compartment or may be subdivided into two or more compartments mounted on a wagon, automobile, truck, trailer, or wheels, together with its accessory piping, valves, and meters, excluding fuel supply tanks connected to the carburetor or fuel injector of a motor vehicle.

(21) "Transit company" means a business that:

(A) transports persons in carriers designed for 12 or more passengers within a political subdivision;

(B) holds a franchise from a political subdivision; and

(C) has its rates regulated by the subdivision or must be owned or operated by the political subdivision.

(22) "Diesel tax prepaid user" means a person:

(A) whose purchases of diesel fuel are predominantly for nonhighway use;

(B) whose only diesel-powered motor vehicles are passenger cars or light trucks; and

(C) who elects to prepay an annual diesel fuel tax to the comptroller on each diesel-powered motor vehicle.

(23) "Liquefied gas tax decal user" means a person who owns or operates on the public highways of this state a motor vehicle:

(A) equipped with a liquefied gas carburetion system;

(B) required to be licensed by the State Department of Highways and Public Transportation; and

(C) required to have a Texas certificate of inspection.

(24) "Sale" means a transfer of title, exchange, or barter of motor fuel, but does not include transfer of possession of motor fuel on consignment.

(25) "Registered gross weight" or "RGW" means the total weight of the vehicle and carrying capacity shown on the registration certificate issued by the State Department of Highways and Public Transportation.

(26) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(27) "Comptroller" includes an authorized employee of the comptroller.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

[1] Article 9.301 et seq.

Art. 9.002. Tax Liability on Leased Motor Vehicles

(1) Except as otherwise provided in this article, a user or interstate trucker is liable for the tax on motor fuel imported into this state in fuel supply tanks of motor vehicles leased to him and used on the Texas highways to the same extent and in the same manner as motor fuel imported in his own motor vehicles and used on the public highways of Texas.

(2) A lessor who is engaged regularly in the business of leasing for compensation motor vehicles and equipment he owns to carriers or other lessees for interstate operation may be deemed to be the user or interstate trucker when he supplies or pays for the motor fuel consumed in those vehicles, and the lessor may be issued a permit as an interstate trucker when an application and bond have been properly filed with and approved by the comptroller.

(3) A lessee may exclude motor vehicles which he leases from his reports and liabilities under this chapter, but only if the motor vehicles in question have been leased from a lessor holding a valid permit as a bonded interstate trucker for the calender year.

(4) A lessor described in Section (2) of this article must file with his application for an interstate trucker permit one copy of the form-lease or service contract he enters into with the various lessees of his motor vehicles. When the interstate trucker permit has been secured, the lessor shall make and assign to each motor vehicle he leases for interstate operation a photocopy of the permit to be carried in the cab compartment of the motor vehicle, and on which shall be typed or printed on the back the unit or motor number of the motor vehicle to which it is assigned and the name of the lessee. The lessor is responsible for the proper use of the photocopy of the permit issued and for its return to him with the motor vehicle to which it is assigned.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.003. Carrier Records

(1) All common and contract carriers operating in this state shall keep for four years, open to inspection by the comptroller, a complete record of each transportation of motor fuel, showing the date of transportation, the consignor and consignee, the means of transportation, and the quantity and the kind of motor fuel transported. The record must show intrastate records separately from interstate records.

(2) There shall also be included in the records:

(A) full data concerning the diversion of shipments and of the number of gallons diverted from interstate to intrastate and intrastate to interstate commerce; and

(B) the points of origin and destination, the number of gallons shipped or transported, the date, the consignee and the consignor, and the kind of motor fuel which has been diverted.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.004. Motor Fuel Transporting Documents

(1) Except as provided in Section (3) of this article, a person who transports motor fuel, regardless of whether or not a tax is due on the motor fuel under this chapter, shall record the shipment of the cargo on a cargo manifest containing such information as may be required by the comptroller.

(2) The cargo manifest shall be carried with the motor fuel until the motor fuel is resold or removed from the cargo tank.

(3) This article does not apply to a pipeline operating as a common carrier or to the transporting of motor fuel in the fuel supply tanks of motor vehicles. A cargo manifest is not required for any motor fuel being transported by a person in his own cargo tanks for his own use and not for resale.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.005. Redetermination

(1) A person against whom a determination for any tax, penalty, or interest is made under this chapter may petition for a redetermination within 30 days after service of the notice of the determination.

(2) If a petition for redetermination is filed within the 30-day period, the comptroller shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him 20 days' notice of the time and place of the hearing. The notice may be served personally or by mail; if by mail, the notice shall be addressed to the permittee at his address as it appears in the records of the comptroller.

(3) In case of service by mail of any notice required by this chapter, the service is complete at the time of deposit in the United States Post Office.

(4) The order or decision of the comptroller on a petition for redetermination becomes final 30 days after service on the petitioner of notice of the order or decision.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.006. Cancellation of Permits

(1) The comptroller may cancel or refuse to issue or reissue a motor fuel permit to any person who has violated or has failed to comply with any of the provisions of this chapter or any duly promulgated rule and regulation of the comptroller.

(2) Before any permit may be cancelled, or the issuance or reissuance refused, the comptroller shall

give the permittee or permit applicant not less than 10 days' notice of a hearing at the office of the comptroller, in Austin, Texas, or at a specified comptroller's field office, granting the owner or applicant an opportunity to show cause before the comptroller why the proposed action should not be taken. If a permit is in effect, the permit remains in force pending the determination of the show-cause hearing. Notice must be in writing and may be mailed by United States registered mail or certified mail to the owner or applicant at his last known address, or may be delivered by the comptroller to the owner or applicant, and no other notice is necessary. In case of service by mail of any notice required by this chapter, the service is complete at the time of deposit in the United States Post Office.

(3) The comptroller may prescribe rules of procedure and evidence for the hearings in accordance with the Administrative Procedure and Texas Register Act.[1]

(4) If, after the hearing or the opportunity to be heard, the permit is cancelled or the issuance or reissuance refused by the comptroller, all taxes which have been collected or which have accrued, although the taxes are not then due and payable to the state, except by the provisions of this chapter, shall become due and payable concurrently with the notice of cancellation of the permit. The permittee shall within five days make a report covering the period of time not covered by preceding reports filed by the permittee and ending with the date of cancellation, and shall remit and pay to the comptroller all taxes which have been collected and which have accrued from the sale, use, or distribution of motor fuel in this state.

(5) On failure to file the reports required by this chapter and to remit all taxes due, the comptroller may examine any books and records incident to the conduct of the business of the person whose permit has been cancelled. The comptroller shall issue an audit deficiency determination of the amount of delinquent taxes, penalties, and interest, containing a demand for payment. The deficiency determination shall provide that if neither a payment is made nor a request for a redetermination is filed within 30 days from the date of the notice of the deficiency, the amount of the determination shall become due and payable. If the amount is not paid on or before the 44th day after service of the notice of the deficiency determination, the bond or other security required under this chapter shall be forfeited. The demand for payment shall be addressed to both the surety or sureties and the person who owes the delinquency.

(6) If the forfeiture of the bond or other security does not satisfy the delinquency, the comptroller shall certify the taxes, penalty, and interest delinquent to the attorney general, who may file suit against the person or his surety or both to collect the amount due. After being given notice of an order of cancellation, it shall be unlawful for any person to continue to operate his business under a cancelled permit. The attorney general may file suit to enjoin the person from continuing to operate under his permit until the person's permit is reissued by the comptroller.

(7) An appeal from an order of the comptroller cancelling or refusing the issuance or reissuance of a permit may be taken to the district court of Travis County, Texas, by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions:

(A) an appeal shall be perfected and filed within 30 days after the effective date of the order, decision, or ruling of the comptroller;

(B) the proceeding shall have precedence over all other causes of a different nature;

(C) the trial of the case shall commence within 10 days after its filing; and

(D) the order, decision, or ruling of the comptroller may be suspended or modified by the court pending a trial on the merits.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

[1] Civil Statutes, art. 6252–13a.

Art. 9.007. Inspection of Premises and Records

For the purpose of determining the amount of tax collected and payable to the state, the amount of tax accruing and due, and whether a tax liability has been incurred under this chapter, the comptroller may:

(A) inspect any premises where motor fuel, crude petroleum, natural gas, or any derivatives or condensates of crude petroleum, natural gas, or their products, methyl alcohol, ethyl alcohol, or other blending agents are produced, made, prepared, stored, transported, sold, or offered for sale or exchange;

(B) examine all of the books and records required to be kept, and any and all records incident to the business of any distributor, supplier, dealer, or any person, receiving or possessing, delivering, or selling motor fuel, crude oil, or derivatives or condensates of crude petroleum, natural gas, or their products, or any blending agents;

(C) examine and either gauge or measure the contents of all storage tanks, containers, and other property or equipment; and

(D) take samples of any and all of these products stored on the premises.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.008. Calibration: Cargo Tanks

(1) Before initially transporting gasoline or diesel fuel for sale or distribution, a person shall have the cargo tanks or other containers used for transporting gasoline or diesel fuel tested, measured, and calibrated by the comptroller, an authorized representative of another state, or a commercial calibration company which meets the calibration standards approved by the comptroller. Each person shall obtain a measurement certificate showing the capacity by liquid volume for each cargo tank or container and its compartments before transporting gasoline or diesel fuel.

(2) The owner of a cargo tank or container tested and measured by the comptroller may be required to pay to the state a reasonable fee for the water used to calibrate tank capacity.

(3) The measurement certificate or a duplicate measurement certificate shall be carried with the vehicle for which it was issued. The certificate number and the total capacities of each cargo tank must be marked on the rear of the vehicle. Compartment capacities must be marked on each compartment dome.

(4) Cargo tanks or containers that have been damaged, repaired, or modified in any way that might affect their capacity must be retested or remeasured before transporting gasoline or diesel fuel. The comptroller shall mark "out of order" on any cargo tank which is not in conformity with this article or with rules and regulations promulgated under this article.

[Amended by Acts 1979, 66th Leg., p. 631, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.009. Authority to Stop and Examine

In order to enforce the provisions of this chapter, the comptroller, a law enforcement officer of the Department of Public Safety, or any other peace officer may stop a motor vehicle that appears to be operating with or transporting motor fuel in order to examine the cargo manifest or invoices required to be carried, examine a permit or copy of a permit that may be required to be carried, take samples from the fuel supply or cargo tanks, and make any other investigation that could reasonably be made to determine whether the taxes have been paid or accounted for by a distributor, supplier, dealer, user, or any person required to be so permitted.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.010. Impoundment, Seizure, and Sale

(1) If after examination or other investigation, it is found that the owner or operator of any motor vehicle or cargo tanks has not paid all motor fuel taxes due, or does not possess a valid permit as a distributor, supplier, user, dealer, or interstate trucker to use or transport motor fuel in motor vehicles operating on the public highways, the comptroller or peace officer may impound the motor vehicle or cargo tanks. Unless proof is produced within 72 hours from the beginning of impoundment that the owner or operator has paid the taxes and has paid all other taxes established by audit or investigation by the comptroller to be due on the motor fuel used or transported, or that the owner or operator holds a valid permit to use or transport motor fuel for such purposes, the motor vehicle or cargo tanks and cargo may be held until all taxes, penalties, and interest found to be due this state and all costs of impoundment have been paid, or until the owner or operator has filed a bond with the comptroller payable to the state treasurer in an amount equal to twice the amount of taxes, penalties, interest, and costs found to be due, to guarantee the payment of such liabilities to the state.

(2) If the owner or operator does not produce the required permit, pay the taxes, penalties, and interest due, or post the bond required, the comptroller may seize the impounded property and proceed to sale.

(3) The comptroller may seize and sell:

(A) all motor fuel on which taxes are imposed by this chapter which is found in the possession, custody, or control of any person for the purpose of being sold, transported, removed, or used by him in violation of this chapter;

(B) all motor fuel that is removed or is deposited, stored, or concealed in any place with intent to avoid payment of taxes;

(C) any automobile, truck, tank truck, boat, conveyance, or other vehicle used in the removal or transportation of the motor fuel to avoid payment of taxes; and

(D) all equipment, paraphernalia, storage tanks, or tangible personal property incident to and used for avoiding the payment of taxes and found in the place, building, or vehicle where the motor fuel is found.

(4) The comptroller, when making a seizure under this article, shall immediately make a written report showing the name of the agent or representative making the seizure, the place where or the person from whom the property was seized, an inventory of the property, and an appraisal at the usual and ordinary retail price of each article seized. The report shall be prepared in duplicate and signed by the agent or representative making the seizure. The original report shall be given to the person from whom the property is taken, and the duplicate shall be filed in the office of the comptroller and be open to public inspection.

(5) Notice of the time and place of a sale shall be given to the delinquent person in writing by certi-

fied mail at least 20 days before the date set for the sale. The notice shall be enclosed in an envelope addressed to the person at his last known address or place of business. It shall be deposited in the United States mail, postage prepaid. The notice shall also be published once a week for two consecutive weeks before the date of the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county 14 days before the date set for the sale. The notice shall contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due, interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold at public auction in accordance with the law and the notice.

(6) At the sale, the comptroller shall sell the property and shall deliver to the purchaser a bill of sale for personal property and a deed for real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

(7) The proceeds of a sale shall be allocated according to the following priorities:

(A) the payment of expenses of seizure, appraisal, custody, advertising, auction, and any other expenses incident to the seizure and sale;

(B) the payment of the tax, penalty, and interest; and

(C) the repayment of the remaining balance to the person liable for the amounts unless a claim is presented before the sale by any other person who has an ownership interest evidenced by a financing statement or lien, in which case, the comptroller shall withhold the remaining balance pending a determination of the rights of the respective parties.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.011. Presumptions

(1) A distributor, supplier, dealer, interstate trucker, or user who fails to keep the records, issue the invoices, or file the reports required by this chapter, is presumed to have sold or used for taxable purposes all motor fuel shown by an audit by the comptroller to have been sold to the distributor, supplier, dealer, interstate trucker, or user. Any motor fuel unaccounted for shall be presumed to have been sold or used for taxable purposes. The comptroller may fix or establish the amount of taxes, penalties, and interest due the state from the records of deliveries or from any records or information available to him. If the tax claims as developed from this procedure are not paid, after the opportunity to request a redetermination, the claim and any audit made by the comptroller or any report filed by the distributor, supplier, dealer, interstate trucker, or user, are evidence in any suit or judicial proceedings filed by the attorney general, and are prima facie evidence of the correctness of the claim or audit. A prima facie presumption of the correctness of the claim may be overcome at the trial by evidence adduced by the distributor, supplier, dealer, interstate trucker, or user.

(2) In the absence of records showing the number of miles actually operated per gallon of motor fuel consumed, it is presumed that not less than one gallon of motor fuel was consumed for every four miles travelled. An interstate trucker may produce evidence of motor fuel consumption to establish another mileage factor. Whenever an examination or audit made by the comptroller from the records of an interstate trucker shows that a greater amount of motor fuel was consumed than was reported by the interstate trucker for tax purposes, the interstate trucker is liable for the tax, penalties, and interest on the additional amount shown or he is entitled to a credit or refund on overpayments of tax established by the audit.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.012. Civil Penalty: Failure to Pay or Report

If a person having a permit as a distributor, supplier, user, dealer, or interstate trucker does not make timely reports and remittances of any taxes due under this chapter, the permittee forfeits as a penalty two percent of the amount due and unpaid, and if the taxes are not remitted or paid within 30 days from the date the comptroller gives the permittee notice of either the amount due or notice of failure to report, the permittee forfeits an additional eight percent of the amount due as a penalty. All past due taxes and penalties draw interest at the rate of nine percent per year.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Former art. 9.18 was also amended by Acts 1979, 66th Leg., p. 81, ch. 51, § 6.

Prior to repeal, former art. 10.18 was amended by Acts 1979, 66th Leg., p. 83, ch. 51, § 7.

Prior to repeal, former art. 10.68 was amended by Acts 1979, 66th Leg., p. 83, ch. 51, § 8.

Art. 9.013. Venue of Collection Suits

The venue of a suit, injunction, or other proceeding at law available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing under this chapter and the enforcement of the terms and provisions of this chapter are

in Travis County, Texas or in any other county having venue under existing venue statutes.
[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.014. General Civil Penalties

A person forfeits to the state a civil penalty of not less than $25 nor more than $200 if the person:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on demand of a peace officer or the comptroller;

(2) operates a motor vehicle in this state without a valid interstate trucker's or a trip permit when the person is required to hold one of those permits;

(3) operates any liquefied gas-propelled motor vehicle that is required to be licensed in Texas, including motor vehicles equipped with dual carburetion, and does not display a current liquefied gas tax decal;

(4) transports gasoline or diesel fuel for sale or distribution in a cargo tank that has not been calibrated by the comptroller, or by an authorized representative of another state, or by a commercial calibration company that meets the calibration standards approved by the comptroller;

(5) transports motor fuel in any cargo tank designated "out of order" by the comptroller;

(6) makes tax-free sales or deliveries of liquefied gas into the fuel supply tanks of motor vehicles that do not display a current Texas liquefied gas tax decal;

(7) makes taxable sales or deliveries of liquefied gas without holding a valid bonded dealers permit;

(8) makes tax-free sales or deliveries of liquefied gas into the fuel supply tanks of motor vehicles bearing out-of-state license plates;

(9) makes tax-free or taxable sales or deliveries of liquefied gas into the fuel supply tanks of motor vehicles bearing Texas license plates and no Texas liquefied gas tax decal;

(10) transports gasoline or diesel fuel in any cargo tank which has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor or with the fuel supply tank feeding the fuel injector or carburetor of the motor vehicle transporting the products;

(11) sells or delivers gasoline or diesel fuel from any fuel supply tank connected with the fuel injector or carburetor of a motor vehicle;

(12) owns or operates any motor vehicle for which reports or mileage records are required by this chapter without an operating odometer or other device in good working condition to record accurately the miles travelled;

(13) furnishes a signed statement to a supplier for purchasing diesel fuel tax free when he owns, operates, or acquires diesel-powered motor vehicles;

(14) fails or refuses to comply with or violates a provision of this chapter; or

(15) fails or refuses to comply with or violates a rule or regulation promulgated under this chapter by the comptroller.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.015. Criminal Offenses

Except as provided in Article 9.016 of this chapter, a person commits an offense if he:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on the demand of a peace officer or the comptroller;

(2) is required to hold a valid trip permit or interstate trucker's permit, but operates a motor vehicle in this state without a valid trip permit or interstate trucker's permit;

(3) operates any liquefied gas-propelled motor vehicle that is required to be licensed in Texas, including motor vehicles equipped with dual carburetion, and does not display a current liquefied gas tax decal;

(4) transports gasoline or diesel fuel for sale or distribution in a cargo tank that has not been calibrated by the comptroller, by an authorized representative of another state, or by a commercial calibration company that meets the calibration standards approved by the comptroller;

(5) transports motor fuel in any cargo tank designated "out of order" by the comptroller;

(6) makes tax-free sales or deliveries of liquefied gas into the fuel supply tanks of motor vehicles that do not display a current Texas liquefied gas tax decal;

(7) makes sales or deliveries of liquefied gas on which he knows the tax is required to be collected, if at the time the sale is made he does not hold a valid bonded dealer's permit;

(8) makes tax-free sales or deliveries of liquefied gas into the fuel supply tanks of motor vehicles bearing out-of-state license plates;

(9) makes tax-free or taxable sales or deliveries of liquefied gas into the fuel supply tanks of motor vehicles bearing Texas license plates and no Texas liquefied gas tax decal;

(10) transports gasoline or diesel fuel in any cargo tank which has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor or with the fuel supply tank feeding the fuel injector or carburetor of the motor vehicle transporting the products;

(11) sells or delivers gasoline or diesel fuel from any fuel supply tank which is connected with the fuel injector or carburetor of a motor vehicle;

(12) owns or operates any motor vehicle for which reports or mileage records are required by this chapter without an operating odometer or other device in good working condition to record accurately the miles travelled;

(13) refuses to permit the comptroller, the attorney general, or their authorized representatives, to inspect, examine, and audit any books and records required to be kept by a distributor, supplier, user, dealer, interstate trucker, aviation fuel dealer, common or contract carrier, or any person required to hold a permit under this chapter;

(14) refuses to permit the comptroller, the attorney general, or their authorized representatives, to inspect and examine any plant, equipment, materials, or premises where motor fuel is produced, processed, stored, sold, delivered, or used;

(15) refuses to permit the comptroller, the attorney general, or their authorized representatives to measure or gauge the contents of or take samples from any storage tank or container on premises where motor fuel is produced, processed, stored, sold, delivered, or used;

(16) as a diesel tax prepaid user fails to prepay the tax on every diesel-powered motor vehicle owned or operated by him;

(17) mutilates, destroys, or secretes any books and records required by this chapter to be kept by a distributor, supplier, user, dealer, interstate trucker, aviation fuel dealer, or any person required to hold a permit under this chapter;

(18) is a distributor, bonded user, interstate trucker, or supplier and fails or refuses to make or deliver to the comptroller a report required by this chapter to be made and delivered to the comptroller;

(19) conceals motor fuel with the intent of engaging in any conduct proscribed by this chapter;

(20) refuses, while transporting motor fuel, to stop the motor vehicle he is operating when called on to do so by a person authorized to stop the motor vehicle;

(21) refuses to surrender a motor vehicle and cargo for impoundment after being ordered to do so by a person authorized to impound the motor vehicle and cargo;

(22) transports motor fuel in any quantity for which a cargo manifest is required to be carried without possessing or exhibiting on demand by an officer authorized to make the demand a cargo manifest containing the information required to be shown on the manifest;

(23) is a distributor, supplier, user, dealer, interstate trucker, aviation fuel dealer, or other person required to hold a permit under this chapter, or the agent or employee of one of those persons and makes a false entry or fails to make an entry in the books and records required under this chapter to be made by the person;

(24) transports in any manner motor fuel under a false cargo manifest;

(25) engages in a motor fuel transaction that requires that the person have a permit under this chapter without then and there holding the required permit;

(26) makes and delivers to the comptroller a report required under this chapter to be made and delivered to the comptroller, if the report contains false information;

(27) forges, falsifies, or alters an invoice prescribed by law;

(28) makes any statement, knowing said statement to be false, in a claim for a tax refund filed with the comptroller;

(29) furnishes to a supplier a signed statement for purchasing diesel fuel tax free when he owns, operates, or acquires diesel-powered motor vehicles;

(30) holds an aviation fuel dealer's permit and makes a taxable sale or use of any gasoline or diesel fuel;

(31) fails to remit any tax funds collected by a distributor, supplier, user, dealer, interstate trucker, or any other person required to hold a permit under this chapter;

(32) makes a sale of diesel fuel tax free into a storage facility of a person who:

(A) is not permitted as a supplier, as an aviation fuel dealer, as a bonded user, or as a diesel tax prepaid user of diesel fuel; or

(B) does not furnish to the permitted supplier a signed statement prescribed in Article 9.202 of this chapter; or

(33) makes sales of gasoline tax free to any person who is not permitted as either a distributor or an aviation fuel dealer.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.016. Criminal Offenses: Special Provisions

(1) A person does not commit an offense under Article 9.015 of this chapter unless he intentionally or knowingly engaged in conduct as the definition of the offense requires, except that no culpable mental state is required for an offense under Article 9.015(12) of this chapter.

(2) Each day that a refusal prohibited under Article 9.015(13), (14), or (15) continues is a separate offense.

(3) The prohibition under Article 9.015(32) does not apply to the tax-free sale or distribution of diesel fuel authorized by Articles 9.201(1)(A), (B), and (E) of this chapter.

(4) The prohibition under Article 9.015(33) does not apply to the tax-free sale or distribution of gasoline under Articles 9.101(1)(B) and (D) of this chapter.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.017. Criminal Penalties

(1) An offense under Articles 9.015(1) through (16) of this chapter is a Class C misdemeanor.

(2) An offense under Articles 9.015(17) through (19) is a Class B misdemeanor.

(3) An offense under Articles 9.015(20) through (22) is a Class A misdemeanor.

(4) An offense under Articles 9.015(23) through (33) is a felony of the third degree.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.018. Criminal Penalties: Corporations and Associations

(1) If a corporation or association is guilty of an offense that provides a penalty consisting of a fine only, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed the fine provided by the offense.

(2) If a corporation or association is adjudged guilty of an offense that provides a penalty including imprisonment, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed:

(A) $10,000 if the offense is a felony of any category; or

(B) $5,000 if the offense is a Class A or Class B misdemeanor.

(3) In lieu of the fines authorized by Sections (1) and (2) of this article, if a court finds that the corporation or association gained money or property or caused personal injury, property damage, or other loss through the commission of a felony or Class A or Class B misdemeanor, the court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed double the amount gained or caused by the corporation to be lost, whichever is greater.

(4) In addition to any sentence that may be imposed by this article, a corporation that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction to any person the court deems appropriate.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.019. Criminal Prosecutions: Venue

The venue for prosecutions under this chapter is in Travis County, Texas, or in the county in which the offense occurred.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.020. Remedies of State are Cumulative

The remedies of the state provided for in this chapter are cumulative, and no action taken by the comptroller or the attorney general constitutes an election by the state to pursue any remedy to the exclusion of any other remedy for which provision is made in this chapter.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.021. Rules and Regulations

The comptroller may promulgate rules and regulations that are necessary to enforce this chapter and are not inconsistent with the provisions of this chapter.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

SUBCHAPTER B. GASOLINE TAX

Art. 9.101. Tax Imposed

(1) There is imposed on the first sale or use of gasoline in this state an excise tax of five cents for each gross or volumetric gallon or fractional part sold or used in this state, except:

(A) gasoline brought into this state in the fuel tank of a vehicle with a capacity of less than 42 gallons when the tank is connected to the carburetor or fuel injection system of the power plant providing the propulsion of the vehicle;

(B) gasoline delivered by a permitted distributor to a common or contract carrier, oceangoing vessel (including ship, tanker, or boat), or a barge for export from this state if the gasoline is moved forthwith outside the state;

(C) gasoline sold by a permitted distributor to another permitted distributor;

(D) gasoline sold to the federal government for its exclusive use;

(E) gasoline delivered by a permitted distributor into a storage facility of a permitted aviation fuel dealer from which gasoline will be delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment; and

(F) gasoline sold to a transit company for exclusive use in its transit carrier vehicles under an exemption certificate promulgated by the comptroller in which event the rate of tax shall be four cents for each gallon.

(2) The tax shall be computed and paid over to the state on the gross or volumetric gallons of taxable gasoline sold to wholesalers or jobbers, dealers, or bulk users, as shown by the authorized measurement certificate issued for the cargo tank making deliveries or as shown by any other measuring device approved by the comptroller.

(3) For a distributor whose gasoline deliveries are made to retail outlets that are operated by him or deliveries by him on consignment, the tax on sales to users and consumers shall be computed on the basis of actual sales.

(4) If the comptroller is not satisfied with a tax return or the amount of tax required to be paid to the state by any distributor who elects to report on the basis of actual sales, the comptroller may compute and determine the amount required to be paid on the basis of the beginning inventory, showing the total gallons of gasoline in storage at the location on the first day of the calendar month, plus the total gallons of gasoline delivered into the storage facility during the month, less the total gallons of gasoline in the storage facility at the end of the calendar month.

(5) This article does not prohibit volume correction of gasoline under accepted practices when sold or distributed to or between permitted distributors, but reports filed with the comptroller must show tax-paid purchases, taxable sales, and distributions in gross quantities.

(6) The tax imposed by this article is in lieu of any other excise or occupation tax imposed by the state or any state political subdivision on the sale, use, or distribution of gasoline.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.102. Permits

A distributor, interstate trucker, or aviation fuel dealer shall file an application with the comptroller for one of the nonassignable permits provided for in this subchapter.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.103. Distributor's Permit

A person performing the functions of a distributor shall obtain a distributor's permit.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.104. Interstate Trucker's Permit

An interstate trucker's permit authorizes persons who import gasoline into Texas in the fuel supply tanks of motor vehicles having an aggregate capacity of 42 gallons or more to report and pay the tax due on the gasoline imported into this state or to claim a credit or refund of the tax paid on gasoline purchased in Texas and used in other states.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.105. Trip Permits

In lieu of an annual interstate trucker's permit, a person bringing a motor vehicle into this state for commercial purposes with fuel supply tanks having an aggregate capacity of 42 or more gallons may obtain a trip permit. The trip permit must be obtained prior to entry into the state or at the time of entry. No more than five trip permits for each person may be issued during a calendar year. A fee for each trip permit shall be collected from the applicant and shall be an amount equivalent to the tax payable on the quantity of gasoline that could be imported in the fuel supply tanks of the motor vehicle, but never less than $5. No reports are required with respect to the vehicle. Operating a motor vehicle without a valid interstate trucker's or trip permit may subject the operator to a penalty under Article 9.014 of this chapter.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.106. Aviation Fuel Dealer's Permit

A person delivering gasoline exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment shall obtain an aviation fuel dealer's permit.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.107. Permit Application Forms

The comptroller shall promulgate the application form which must contain the following information:

(A) the name under which the applicant transacts or intends to transact business;

(B) the principal office, residence, or place of business in Texas of the applicant;

(C) if the applicant is not an individual, the names of the principal officers of an applicant corporation, or the names of the members of an applicant partnership, and the office, street, or post office addresses of each; and

(D) other information required by the comptroller.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.108. Distributor May Perform Other Functions

A distributor may operate under his distributor's permit as an interstate trucker or an aviation fuel dealer without securing a separate permit, but shall be subject to all other conditions, requirements, and liabilities imposed on those permittees.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.109. Permits: Periods of Validity

(1) A distributor's permit is permanent and is valid so long as the permittee has in force and effect the required bond or security and furnishes timely reports as required, or until the permit is surrendered by the holder or cancelled by the comptroller.

(2) An aviation fuel dealer's permit is permanent and is valid until the permit is surrendered by the holder or cancelled by the comptroller.

(3) An interstate trucker's permit is valid from the date of its issuance through December 31 of each calendar year or until the permit is surrendered by the holder or cancelled by the comptroller. The comptroller may renew the permit for each ensuing calendar year if the permittee has in force and effect the required bond or security and furnishes timely reports as required. Interstate truckers exempted by provisions of this chapter from bonding and reporting requirements shall file an annual affidavit and on approval the comptroller shall issue the required permit.

(4) A trip permit is valid for the period prescribed thereon as determined by the comptroller.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.110. Display of Permits

(1) A permit must be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner. A copy of the permit must be kept at each place of business or other place of storage from which gasoline is sold, distributed, or used, and in each motor vehicle used by the permit holder to transport gasoline purchased by him for resale, distribution, or use.

(2) A person holding an interstate trucker's permit shall reproduce the permit and carry a photocopy with each motor vehicle being operated into or from the state.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.111. List of Permitted Distributors and Aviation Fuel Dealers

The comptroller shall, on or before the 20th day of December of each year, prepare and mail or distribute to all permitted distributors a printed alphabetical list of permitted distributors and aviation fuel dealers who are qualified to purchase gasoline tax free during the ensuing calendar year, and a supplemental list of additions and deletions shall be delivered to the distributors each month. A current and effective permit or the list furnished by the comptroller shall serve as evidence of the validity of the permit unless and until the comptroller notifies distributors of any change in the status of any permit holder.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.112. Computation and Collection of Tax

(1) A person who makes a sale or use of gasoline on which the tax has not been previously paid in this state for any purpose other than those exceptions listed in Article 9.101 of this chapter shall at the time of sale or use collect the tax from the purchaser or recipient of gasoline in addition to the selling price and shall also be liable to the state for the taxes collected at the time and in the manner as provided by this chapter. A person is liable to the state for the tax of five cents for each gallon of gasoline or fractional part thereof used or consumed by him in a taxable manner and shall report and pay the tax as provided by this chapter. In each subsequent sale of gasoline on which the tax of five cents for each gallon has been collected, the tax shall be added to the selling price so that the tax is paid ultimately by the person using or consuming the gasoline for the purpose of propelling any vehicle upon the public highways of this state.

(2) Gasoline shall be deemed to be used when it is delivered into the fuel supply tanks.

(3) The tax on two percent of the taxable gallons of gasoline sold in this state shall be allocated to the persons selling, distributing, or handling gasoline in this state, which allocation or allowance shall be deducted by the distributors in the payment to the state of the taxes herein levied and shall be apportioned as follows:

(A) one percent to the distributor making the first taxable sale or use of the gasoline and paying the tax to the state for the expense of collecting, accounting for, reporting, and remitting the tax collected and for keeping records;

(B) one-half of one percent to wholesalers or jobbers who pay taxes to a distributor on gasoline purchased for resale to dealers or bulk users to cover loss by evaporation, temperature changes in the gasoline, and ordinary handling from the time the gasoline is acquired tax-paid by wholesalers or jobbers until its sale or distribution and delivery to purchasers; and

(C) one-half of one percent to dealers or bulk users to cover losses by evaporation, temperature changes in gasoline, or other handling losses from the time the gasoline is delivered to the storage facilities of dealers or bulk users until it is sold or delivered into the fuel supply tanks of motor vehicles or motorboats. If the consignor retains title to gasoline consigned to a dealer or bulk user until the gasoline is delivered into the fuel supply tanks of motor vehicles or motorboats, the consignor is entitled to the allowance or allocation.

(4) In the sale and distribution of gasoline in this state, if any person performs more than one of the functions or activities of distributor, wholesaler or jobber, dealer, or bulk user, he shall be entitled to

the apportionment or allowance for each function or activity, but the aggregate allowance shall never exceed the total amount of two percent.

(5) The intent and purpose of the above allowance or allocation to wholesalers or jobbers, dealers, or bulk users is to reimburse fully persons acting in such capacities for losses sustained by them from evaporation, temperature changes, and ordinary handling of gasoline, and to facilitate the payment of tax refunds without volume adjustments of gasoline purchased tax-paid and thereafter used in other states.

(6) An interstate trucker who imports gasoline into Texas in the fuel supply tanks of motor vehicles having an aggregate capacity of 42 gallons or more for each vehicle, shall report and pay the tax at the imposed rate on gasoline that is imported and used on Texas highways. The number of gallons of gasoline used on Texas highways shall be computed by dividing the total miles travelled in all states by the total number of gallons of gasoline delivered into the fuel supply tanks of motor vehicles in all states. The mileage factor obtained shall be divided into the total Texas miles travelled in order to determine the number of gallons of gasoline used in Texas. An interstate trucker shall remit all taxes due by him based on five cents for each gallon on gasoline consumed within the state at the time of the filing of his quarterly reports. A permitted interstate trucker is entitled to deduct one-half of one percent of the taxable gallons of gasoline on payment of the taxes to the state for the expense of record keeping, reporting, and remitting the tax.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.113. Bonding Requirements

(1)(A) A distributor or interstate trucker shall post a surety bond equal to two times the highest tax that could accrue on tax-free gasoline purchased or acquired during a reporting period. The minimum bond is $1,000 for a distributor and $500 for an interstate trucker. The maximum bond for a distributor or interstate trucker is $100,000 unless the comptroller believes there is undue risk of loss of tax revenues, in which event he may require one or more bonds or securities in a total amount exceeding $100,000.

(B) A permitted interstate trucker who maintains all fuel records in Texas, and all or substantially all of whose highway use is made with gasoline purchased within this state with the tax paid may be exempted from the bonding requirements under an annual affidavit to the comptroller attesting to the intrastate or substantially intrastate tax-paid purchases of gasoline.

(2) A bond must be a continuing instrument, must constitute a new and separate obligation, in the penal sum named in the bond, for each calendar year or portion of a year while the bond is in force, and must remain in effect until the surety on the bond is released and discharged.

(3) In lieu of filing a surety bond, an applicant for a permit may substitute the following security:

(A) cash in the form of U.S. currency in an amount equal to the required bond to be deposited in the suspense account of the state treasury; or

(B) an assignment to the comptroller of a certificate of deposit in any bank or savings and loan association in Texas which is a member of the FDIC or the FSLIC. The amount of the certificate of deposit must be at least equal to the bond amount required.

(4) If the amount of any existing bond becomes insufficient or any security becomes unsatisfactory or unacceptable, the comptroller may require the filing of a new or of an additional bond or security.

(5) No surety bond or other form of security will be released until it is determined by examination or audit that no tax, penalty, or interest liability exists. When a permit holder has been cleared of all tax liability by the comptroller, the cash or securities shall be released within 60 days.

(6) The comptroller may use the cash or certificate of deposit security to satisfy a final determination of delinquent liability or a judgment secured in any action by this state to recover gasoline taxes, costs, penalties, and interest found to be due this state by any person in whose behalf the cash or certificate security was deposited.

(7) A surety on a bond furnished by a permittee shall be released and discharged from liability to the state accruing on the bond after the expiration of 30 days from the date on which the surety files with the comptroller a written request to be released and discharged. The request does not relieve, release, or discharge the surety from a liability already accrued, or which accrues before the expiration of the 30-day period. The comptroller shall promptly on receipt of the request notify the permittee who furnished such bond, and unless the permittee, before the expiration date of the existing security, files with the comptroller a new bond with a surety company duly authorized to do business under the laws of the state, or other authorized security, in the amount required in this article, the comptroller shall cancel the permit in the manner provided by this chapter.

(8) A permittee may request an examination or audit to obtain release of the security when he relinquishes the permit or when he desires to substitute one form of security for an existing one.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.114. Records

(1) A distributor shall keep a record in gallons showing:

(A) all gasoline inventories on hand at the first of each month;

(B) all gasoline refined, compounded, or blended;

(C) all gasoline purchased or received, showing the name of the seller and date of each purchase or receipt;

(D) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and

(E) all gasoline lost by fire or other accident.

(2) A dealer shall keep a complete record in gallons of:

(A) gasoline inventories on hand at the first of each month;

(B) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

(C) all gasoline sold or used, showing the date of the sale or use; and

(D) all gasoline lost by fire or other accident.

(3) An interstate trucker shall keep a record of:

(A) the total miles travelled in all states by all vehicles travelling into or from Texas and the total quantity of gasoline consumed in those vehicles; and

(B) the total miles travelled in Texas and the total quantity of gasoline purchased and delivered into the fuel supply tanks of motor vehicles in Texas.

(4) An aviation fuel dealer shall keep a complete record in gallons showing:

(A) all gasoline inventories on hand at the first of each month;

(B) all gasoline purchased or received, showing the name of the seller and date of each purchase or receipt;

(C) all gasoline sold or used in aircraft or aircraft servicing equipment, showing the name of the purchaser, the date of the sale or use, and the airplane registration or "N" number or aircraft servicing equipment number or description; and

(D) all gasoline lost by fire or other accident.

(5) The comptroller may require selective schedules from a distributor, dealer, aviation fuel dealer, interstate trucker, or common or contract carrier for any purchases, sales, or deliveries of gasoline when the schedules are not inconsistent with the requirements of this chapter.

(6) The records required must be kept for four years and are open to inspection at all times by the comptroller, the attorney general, or their authorized representatives.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.115. Reports

(1) On or before the 25th day of each month, a distributor shall file a report and remit the amount of tax required to be collected during the preceding month. The report shall be executed by the distributor or his representative and shall be filed with the comptroller on a form provided or approved by the comptroller, containing complete and detailed information not inconsistent with the requirements of this chapter of gasoline transactions. A distributor required to file a report under this article who has not sold or used any gasoline during the reporting period shall nevertheless file with the comptroller the required report setting forth the facts or information. The failure of a distributor to obtain forms from the comptroller is no excuse for the failure to file a report containing all the information required to be reported.

(2) On or before the 25th day of the month following the end of each calendar quarter, an interstate trucker shall file a report and remit the amount of tax due. The report shall be properly executed and filed with the comptroller and shall contain complete and detailed information as the comptroller may require on forms provided for that purpose. An interstate trucker who has not used any gasoline during the reporting period shall nevertheless file with the comptroller the required report setting forth the facts or information. The failure of an interstate trucker to obtain forms from the comptroller is no excuse for the failure to file a report containing all the information required to be reported.

(3) An interstate trucker who maintains all fuel records in Texas and all or substantially all of whose highway use is made with gasoline purchased within this state with the tax paid may be exempted from the quarterly reporting requirements under an annual affidavit to the comptroller attesting to the intrastate, or substantially intrastate, tax-paid purchases of gasoline, but records must be retained for four years as required in Article 9.114(6) of this chapter.

(4) An aviation fuel dealer is not required to file a report with the comptroller, but records must be retained for four years as required in Article 9.114(6) of this chapter.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.116. Refunds

(1) A person who exports, sells to the federal government, loses by fire or other accident, or uses gasoline for the purpose of operating or propelling

any motorboat, tractor used for agricultural purposes, or stationary engine, or for any other purpose except in a vehicle operated or intended to be operated on the public highways of this state, and who has paid the tax imposed on gasoline by this chapter either directly or indirectly is, when the person has fully complied with the invoice and filing provisions of this article and the rules and regulations of the comptroller, entitled to reimbursement of the tax paid by him, less a filing fee and any amount allowed distributors, wholesalers or jobbers, dealers, or others under Article 9.112(3) of this chapter.

(2) A person may file a refund claim for tax paid on the gasoline used in motor vehicles which are operated exclusively off the public highways except for incidental travel on the public highways as determined by the comptroller, but not for that portion used in incidental travel.

(3) A permitted interstate trucker is entitled to a credit equivalent to the tax rate for each gallon paid on all gasoline on which the gasoline tax has been paid and later consumed in vehicles outside the state. When the amount of credit to which the interstate trucker is entitled for any calender quarter exceeds the amount of tax for which the interstate trucker is liable for gasoline consumed in the vehicles during the reporting period, the excess shall be allowed as a credit or refund on a timely filed quarterly report against tax for which the interstate trucker would be otherwise liable for any of the three succeeding quarters. Evidence of the mileage travelled and gallonage consumed and the payment of the gasoline tax on a form as may be required by or is satisfactory to the comptroller shall be furnished by an interstate trucker claiming a credit or tax refund.

(4) If the quantity of gasoline used in Texas by auxiliary power units or power take-off equipment on any motor vehicle can be accurately measured while the motor vehicle is stationary by any metering or other measuring device or method designed to measure the fuel separately from fuel used to propel the motor vehicle, the comptroller may approve and adopt the use of any device as a basis for determining the quantity of gasoline consumed in those operations for tax credit or tax refund.

(5) A person who exports, loses by fire or other accident 100 gallons or more of gasoline on which the tax has been paid, or sells gasoline in any quantity to the United States government for the exclusive use of that government on which the tax has been paid, may file a claim for a refund of the net tax paid to the state in the manner provided by this chapter or as the comptroller may direct. A permitted distributor who establishes proof satisfactory to the comptroller of export, loss by accident, or sale to the United States government, may take a credit for the net amount of the tax paid to the state on any subsequent monthly report and tax payment made to the comptroller within one year from the date of the exportation, loss, or sale.

(6) The right to receive a refund under this article is not assignable, except that a person residing or maintaining a place of business outside the state who purchases 100 gallons or more of gasoline and forthwith exports the entire quantity may assign his right to claim a refund to the permitted distributor from whom the gasoline was purchased or to any permitted distributor who has paid the tax on the gasoline either directly or through another permitted distributor in Texas. When a distributor has secured an assignment and the proof of export required by the comptroller, he may credit the tax paid on any monthly report filed with the comptroller before the expiration of one year from the first day of the month following the date of delivery to the exporter of the gasoline.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.117. Claims for Refunds

(1) A refund claim must be filed on a form provided by the comptroller, be supported by the original invoice issued by the seller, and contain:

(A) a stamped or preprinted name and address of the seller;

(B) the name of the purchaser;

(C) the date of delivery of the gasoline;

(D) the date of the issuance of the invoice (if different from the date of fuel delivery);

(E) the number of gallons of gasoline delivered;

(F) the amount of tax either separately stated from the selling price or a notation that the selling price includes the tax; and

(G) the type of vehicle or equipment, such as a motorboat, railway engine, highway vehicle, off-highway vehicle, or refrigeration unit or stationary engine into which the fuel is delivered.

(2) The invoice shall be made out in duplicate. The original invoice shall be delivered to the purchaser of the gasoline no later than 30 days after the date of delivery of the gasoline. The duplicate invoice shall be retained by the seller at his place of business. If the delivery of gasoline is made through an automated method whereby the purchase is automatically applied to the purchaser's account, one invoice may be issued at the time of billing covering multiple purchases made during a 30-day billing cycle.

(3) A person who files a claim for a tax refund on any gasoline used for any purpose for which a tax refund is not authorized or who files an invoice supporting a refund claim on which the date, figures, or any material information has been falsified or altered forfeits his right to the entire amount of

the refund claim filed. Forfeiture does not apply if a claimant provides proof satisfactory to the comptroller that the incorrect refund claim filed was due to a clerical or mathematical calculation error.
[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.118. Limitations on Refunds

(1) Except as provided by this article, a claim for a refund must be filed with the comptroller before the expiration of one year from the first day of the calendar month following the purchase or use.

(2) An interstate trucker may accumulate credits for four successive calendar quarters, but he must take the credit or claim a refund on a report filed on or before the 25th day following the fourth quarter.

(3) Except for an audit deficiency assessment, a claim for refund shall be filed with the comptroller before the expiration of one year from the first day of the month following delivery, export, or loss by fire or other accident. If an audit of a distributor determines that tax-free sales were made to unauthorized purchasers and the unauthorized purchaser could have filed for a refund if tax had been paid at the time of sale, the unauthorized purchaser may file a refund claim within one year from the date of final assessment.
[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.119. Refund Payments and Filing Fee

(1) After examination of the refund claim, the comptroller before issuing a refund warrant shall deduct from the amount of the refund:

(A) the two percent deducted originally by the distributor on the first sale or distribution of the gasoline; and

(B) $1.50 as a filing fee.

(2) The filing fees shall be set aside for the use and benefit of the comptroller in the administration and enforcement of this article. All filing fees shall be paid into the state treasury and shall be paid out on vouchers and warrants in the manner prescribed by law.
[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.120. Allocation of Revenue

(1) Before any diversion or allocation of the gasoline tax collected under the provisions of this chapter is made, one percent of the gross amount of the tax shall be set aside in the state treasury in a special fund, subject to the use of the comptroller in the administration of this chapter and enforcement of the provisions of this chapter. Any unexpended portion of the special fund shall, at the end of each fiscal year, revert to the highway motor fuel tax fund and to the funds prescribed below, in proportion to the amounts originally derived from the respective sources.

(2) Each month the comptroller, after making the deductions for refund purposes, shall determine as accurately as possible the number of gallons of fuel used in motorboats on which the gasoline tax has been paid to this state, and on which refund of the tax has not been made and against which limitation has run for filing claim for refund of the tax (called "unclaimed refunds"), and from the number of gallons so determined the comptroller shall compute the amount of taxes that would have been refunded under the law had refund claims been filed in accordance with the law, and shall allocate and deposit the unclaimed refunds as follows:

(A) twenty-five percent of the revenues based on unclaimed refunds of taxes paid on motor fuel used in motorboats shall be placed to the credit of the available school fund; and

(B) the remaining 75 percent of the revenue shall be allocated, deposited, and set aside in the state treasury in the special boat fund, which may be appropriated to the Parks and Wildlife Department for the purpose of acquiring land for recreational purposes and for enforcement of the Water Safety Act.

(3) Each month the comptroller, after making all deductions for refund purposes and for the funds derived from unclaimed refunds, shall allocate and deposit the net remainder of the taxes collected under the provisions of this chapter as follows:

(A) one-fourth of the tax shall be placed to the credit of the available school fund;

(B) one-half of the tax shall be placed to the credit of the state highway fund for the construction and maintenance of the state road system under existing laws; and

(C) from the remaining one-fourth of the tax the comptroller shall:

(i) place to the credit of the county and road district highway fund an amount determined by the Board of County and District Road Indebtedness and certified by the board to the comptroller prior to August 31st of each year, for the fiscal year beginning September 1st each year, to be required in addition to any and all funds already on hand, for the payment by the board of the principal, interest, and sinking fund requirements for each year, on all bonds, warrants, or other legal evidences of indebtedness heretofore issued by counties or defined road districts of this state, which mature on or after January 1, 1933, insofar as amounts of same were issued for and proceeds have been actually expended in the construction of roads that constituted and comprised a part of the system of designated state highways on September 17,

1932, or which subsequent to such date and before January 2, 1939, have been designated a part of the system of state highways and declared by the Board of County and District Road Indebtedness before January 2, 1945, to be eligible to participate in the distribution of the money in the county and road district highway fund under the provisions of existing laws;

(ii) for the fiscal year beginning September 1, 1951, and each fiscal year thereafter, place to the credit of the fund known as the county and road district highway fund the sum of $7,300,000, that amount to be provided on the basis of equal monthly payments, which sum shall be allocated by the Board of County and District Road Indebtedness to all of the counties of Texas not later than September 15th of each year, through the lateral road account; and

(iii) place to the credit of the state highway fund the remainder of the one-fourth of the tax, the amount to be provided on the basis of monthly allocations, which sum shall be used by the State Department of Highways and Public Transportation for the construction and improvement of farm-to-market roads; except that one-half of the amount may be used for the maintenance of farm-to-market roads during a fiscal year for which at least $15 million is appropriated for the construction of farm-to-market roads under Subsection (4–b), Section 2, Article XX, Chapter 184, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 7083a, Vernon's Texas Civil Statutes).

(4) All receipts due the available school fund which are in the highway motor fuel tax fund on August 31st of each fiscal year shall be credited to the available school fund on August 31st of each fiscal year.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Subdivision (6a) of former art. 9.13 was also amended by Acts 1979, 66th Leg., p. 548, ch. 260, art. 1, § 5.

SUBCHAPTER C. DIESEL FUEL TAX

Art. 9.201. Tax Imposed

(1) There is imposed on the first sale or use of diesel fuel in this state an excise tax of 6.5 cents for each gross or volumetric gallon or fractional part sold or used in this state except:

(A) diesel fuel delivered by a permitted supplier to a common or contract carrier, oceangoing vessel (including ship, tanker, or boat), or barge for export from this state, if the diesel fuel is moved forthwith outside this state;

(B) diesel fuel sold by a permitted supplier to the federal government for its exclusive use;

(C) diesel fuel sold or delivered by a permitted supplier to another permitted supplier or bonded user, to the bulk storage facility of a diesel tax prepaid user, or to a purchaser who provides a signed statement as provided by Article 9.202 of this chapter, but not including a delivery of tax-free diesel fuel into the fuel supply tanks of a motor vehicle, except for a motor vehicle owned by the federal government;

(D) diesel fuel sold or delivered by a permitted supplier into the storage facility of a permitted aviation fuel dealer, from which diesel fuel will be sold or delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment;

(E) diesel fuel sold or delivered by a permitted supplier into fuel supply tanks of railway engines, motorboats, or refrigeration units or other stationary equipment powered by a separate motor from a separate fuel supply tank;

(F) diesel fuel sold by a permitted supplier to a transit company for exclusive use in its transit carrier vehicles, under an exemption certificate promulgated by the comptroller, in which event the rate of tax shall be six cents for each gallon; and

(G) kerosene when delivered by a permitted supplier into a storage facility at a retail business from which all deliveries are exclusively for heating, cooking, lighting, or similar nonhighway use.

(2) The tax shall be computed and paid to the state on the gross or volumetric gallons of taxable diesel fuel sold to dealers or bulk users, as shown by the authorized measurement certificate issued for the cargo tank making deliveries, or as shown by any other measuring device approved by the comptroller.

(3) For a supplier whose diesel fuel deliveries are made to retail outlets that are operated by him or deliveries by him on consignment, the tax on sales to users and consumers shall be computed on the basis of actual sales.

(4) If the comptroller is not satisfied with a tax return or the amount of tax required to be paid to the state by a supplier who elects to report on the basis of actual sales, the comptroller may compute and determine the amount required to be paid on the basis of the beginning inventory, showing the total gallons of diesel fuel in storage at the location on the first day of the calendar month, plus the total gallons of diesel fuel delivered into the storage facility during the month, and less the total gallons of diesel fuel in the storage facility at the end of the calendar month.

(5) This article does not prohibit volume correction of diesel fuel under accepted practices when sold or distributed to or between permitted suppliers, but reports filed with the comptroller must show

tax-paid purchases and taxable sales and distributions in gross quantities.

(6) The tax imposed by this article is in lieu of any other excise or occupation tax imposed by the state or any state political subdivision on the sale, use, or distribution of diesel fuel.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.202. Signed Statement for Purchasing Diesel Fuel Tax Free

(1) The first sale or use of diesel fuel in this state is taxable, except that the sale of diesel fuel may be made without collecting the tax otherwise imposed when the purchaser has furnished to a permitted supplier a signed statement that stipulates that:

(A) the purchaser does not operate any diesel-powered motor vehicles on the public highway;

(B) all of the diesel fuel will be consumed by the purchaser and in no event may diesel fuel purchased on a signed statement be resold; and

(C) none of the diesel fuel purchased in this state will be delivered or permitted by the purchaser to be delivered into fuel supply tanks of motor vehicles.

(2) The signed statement from the purchaser relieves the permitted supplier from the burden of proof that the sale of diesel fuel was not taxable to the purchaser and remains in effect unless:

(A) the statement is revoked in writing by the purchaser or supplier;

(B) the comptroller notifies the supplier in writing that the purchaser may no longer make tax-free purchases; or

(C) the supplier is put on notice by making taxable sales of diesel fuel to a purchaser who has previously submitted a signed statement to this supplier. Taxable sales create a rebuttable presumption that the supplier had reasonable notice that all subsequent sales should have been taxable.

(3) A taxable use of any part of the diesel fuel purchased under a signed statement shall, in addition to any criminal penalty, forfeit the right of the person to purchase diesel fuel tax free for a period of one year from the date of the offense, and any tax, interest, and penalty found to be due through false or erroneous execution or continuance of a promissory statement by the purchaser, if assessed to the supplier, shall be a debt of the purchaser to the supplier until paid, and shall be recoverable at law in the same manner as the purchase price of the fuel. The person may, however, claim a refund of the tax paid on any diesel fuel used for nonhighway purposes under Article 9.220 of this chapter.

(4) The statement must be signed by the purchaser or his representative.

(5) The comptroller may make regulations that allow separate operating divisions of corporations to give separate signed statements as if they were different legal entities.

(6) The comptroller may promulgate necessary forms and rules to comply with this article.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.203. Computation and Collection of Tax

(1) A supplier who makes a sale or use of diesel fuel in this state for any purpose other than those exceptions listed in Article 9.201(1) of this chapter shall at the time of sale or use be liable to the state for the tax imposed in this subchapter and shall report and pay the tax in the manner provided in the subchapter.

(2) A dealer shall collect the tax at the rate imposed on each gallon of diesel fuel delivered by him into the fuel supply tanks of a motor vehicle and shall report and pay to the state any tax collected that has not been paid to a permitted supplier.

(3) A user, except a diesel tax prepaid user, shall report and pay to the state the tax at the rate imposed on each gallon of diesel fuel delivered by him into the fuel supply tanks of a motor vehicle, unless the tax has been paid to a permitted supplier or a dealer, or, as a diesel tax prepaid user, the tax has been prepaid directly to the comptroller.

(4) An interstate trucker who imports diesel fuel into Texas in the fuel supply tanks of a motor vehicle having an aggregate capacity of 42 gallons or more for each vehicle shall report and pay the tax at the rate imposed herein on diesel fuel that is imported and used on Texas highways. The number of gallons of diesel fuel used on Texas highways shall be computed by dividing the total miles travelled in all states by the total number of gallons of diesel fuel delivered into the fuel supply tanks of motor vehicles in all states. The mileage factor obtained shall be divided into the total Texas miles travelled in order to determine the number of gallons of diesel fuel used in Texas. An interstate trucker shall remit all taxes due by him based on 6.5 cents for each gallon on diesel fuel consumed within the state at the time of the filing of the quarterly report.

(5) Diesel fuel shall be deemed to be used when it is delivered into fuel supply tanks.

(6) The tax on 1-½ percent of the taxable gallons of diesel fuel sold or distributed in this state shall be allocated to the persons selling, distributing, or handling diesel fuel in this state, which allocation or

allowance shall be deducted by the supplier in the payment to the state of the taxes imposed and shall be apportioned as follows:

(A) one percent to the permitted supplier making the first taxable sale or delivery of the diesel fuel to dealers and users and paying the tax imposed to the state for the expense of collecting, accounting for, reporting, and remitting the taxes collected and keeping records; and

(B) one-half of one percent of the taxable gallons to users who purchase in quantities of 2,500 gallons or more for each delivery, dealers, or consignors to cover evaporation and handling losses sustained from the time the diesel fuel is delivered to their storage facilities until it is sold or delivered into fuel supply tanks of motor vehicles.

(7) A bonded user or permitted interstate trucker is entitled to deduct one-half of one percent of the taxable gallons of diesel fuel on payment of the taxes to this state for the expense of record keeping, reporting, and remitting the tax.

(8) A person who performs more than one of the functions or activities for which a deduction is allowed is entitled to the apportionment or allowance for each function or activity, subject to the limitations prescribed for each function or activity, but the aggregate allowance may not exceed 1-½ percent.

(9) The allocation or allowance shall be distributed under rules and regulations prescribed by the comptroller.

(10) The intent and purpose of the allowance or allocation to suppliers, dealers, or users is to reimburse fully persons acting in those capacities for losses sustained by them from evaporation, temperature changes, and ordinary handling of diesel fuel and to facilitate the payment of tax refunds without volume adjustments of diesel fuel purchased tax-paid and thereafter used in other states.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.204. Permits

A bonded supplier, bonded user, interstate trucker, diesel tax prepaid user, or aviation fuel dealer shall file an application with the comptroller for one of the nonassignable permits provided for in this subchapter.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.205. Bonded Supplier's Permit

A bonded supplier's permit authorizes a person to sell tax-free diesel fuel to other bonded suppliers, bonded users, aviation fuel dealers, diesel tax prepaid users only for diesel fuel delivered into his bulk storage facilities, and persons issuing signed statements and to supply tax-paid diesel fuel to dealers and other purchasers. A bonded supplier may not make a tax-free sale or delivery of diesel fuel into the fuel supply tanks of a motor vehicle other than a motor vehicle owned by the federal government.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.206. Bonded User Permit

A bonded user permit authorizes a user whose purchases of diesel fuel are predominantly for nonhighway use to purchase diesel fuel tax free from permitted suppliers and to report and pay taxes to this state on that part of the diesel fuel that is delivered into the fuel supply tanks of motor vehicles owned or operated by him.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.207. Diesel Tax Prepaid User Permit

A diesel tax prepaid user permit authorizes a person whose use of diesel fuel is predominantly for nonhighway use, but who owns or operates one or more passenger cars or light trucks only in the weight class shown in this article to elect to prepay an annual tax on the fuel delivered from his own tax-free storage rather than obtain a bonded user permit. If he elects to obtain a diesel tax prepaid user permit, he must prepay the tax at the rate prescribed for each motor vehicle based on the class of registered gross weight. A person whose purchases of diesel fuel are predominantly for highway use does not qualify for a diesel tax prepaid user permit.

Class A Less than 2,500 lbs.	$20
Class B 2,500 to 3,500 lbs.	36
Class C 3,501 to 4,500 lbs.	45
Class D 4,501 to 7,000 lbs.	54

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.208. Interstate Trucker's Permit

An interstate trucker's permit authorizes a person who imports diesel fuel into the state in the fuel supply tanks of motor vehicles having an aggregate capacity of 42 gallons or more for each vehicle to report and pay the tax due on diesel fuel imported into this state or to claim a credit or a refund of the tax paid on diesel fuel purchased in this state and thereafter used in other states. An interstate trucker may not make tax-free purchases of diesel fuel.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.209. Trip Permits

In lieu of an annual interstate trucker's permit, a person bringing motor vehicles into this state for commercial purposes with fuel supply tanks having an aggregate capacity of 42 gallons or more for each vehicle may obtain a trip permit. The trip permit

must be obtained before entry into the state or at the time of entry. No more than five trip permits may be issued during a calendar year to a person operating interstate. A fee for each trip permit shall be collected from the applicant. The fee is an amount equal to the tax payable on the quantity of diesel fuel that could be imported in the fuel supply tanks of the motor vehicle, but never less than $5.
[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.210. Aviation Fuel Dealer's Permit

An aviation fuel dealer's permit authorizes a person to deliver diesel fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment.
[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.211. Permit Application Forms

(1) The comptroller shall promulgate the application form which must contain the following information:

(A) the name under which the applicant transacts or intends to transact business;

(B) the principal office, residence, or place of business in Texas of the applicant;

(C) if the applicant is not an individual, names of the principal officers of an applicant corporation, names of each partner in an applicant partnership, and the office, street, or post office address of each; and

(D) other information required by the comptroller.

(2) The comptroller shall determine from the information shown in the application or other investigation the kind and class of permit to be issued.
[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.212. Supplier May Perform Other Functions

A supplier may operate under his supplier's permit as a user, dealer, interstate trucker, or aviation fuel dealer without securing a separate permit, but shall be subject to all other conditions, requirements, and liabilities imposed on those permittees.
[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.213. Permits: Periods of Validity

(1) A bonded supplier's and bonded user permit is permanent and valid so long as the permittee has in force and effect the required bond or security and furnishes timely reports as required, or until the permit is surrendered by the holder or cancelled by the comptroller.

(2) An aviation fuel dealer's permit is permanent and is valid until the permit is surrendered by the holder or cancelled by the comptroller.

(3) An interstate trucker's permit is valid from the date of issuance through December 31 of each calendar year or until the permit is surrendered by the holder or cancelled by the comptroller. The comptroller may renew the permit for each ensuing calendar year if the permittee has in force and effect the required bond or security and furnishes timely reports as required. Interstate truckers exempted by provisions of this chapter from bonding and reporting requirements shall file an annual affidavit and on approval, the comptroller shall issue the required permit.

(4) A trip permit is valid for the period prescribed on the permit as determined by the comptroller.

(5) A diesel tax prepaid user permit shall be issued annually and is valid from the date of its issuance through December 31 of the calendar year unless a motor vehicle for which the tax is prepaid is sold or no longer used on the public highway. A diesel tax prepaid user must make application for a new permit each calendar year.
[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.214. Display of Permits

(1) A permit must be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner. A copy of the permit must be kept at each place of business or other place of storage from which diesel fuel is sold, distributed, or used, and in each motor vehicle used by the permit holder to transport diesel fuel purchased by him for resale, distribution, or use.

(2) A person holding an interstate trucker's permit shall reproduce the permit and carry a photocopy with each motor vehicle being operated into or from the state.
[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.215. List of Permittees

(1) The comptroller shall, on or before the 20th day of December of each calendar year, prepare and either mail or distribute to each bonded supplier a printed alphabetical list of permitted suppliers, bonded users, and aviation fuel dealers who are qualified to purchase diesel fuel tax free during the ensuing calendar year. A supplemental list of additions and deletions shall be delivered to each supplier each month thereafter.

(2) The comptroller shall, on or before the 31st day of January of each calendar year, prepare and either mail or distribute to each bonded supplier a printed alphabetical list of diesel tax prepaid user permittees who are qualified to purchase diesel fuel

tax free during the ensuing calendar year. A supplemental list of additions and deletions shall be delivered to each supplier each month thereafter. [Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.216. Bonding Requirements

(1)(A) Except as provided by Subsection (B) of this section, each supplier, bonded user, or interstate trucker shall post a surety bond equal to two times the highest tax that will or may be expected to accrue on taxable sales and use of diesel fuel during a reporting period. The minimum bond for a supplier is $1,000. The minimum bond for a bonded user or interstate trucker is $500.

(B) A permitted interstate trucker who maintains all fuel records in Texas, and all or substantially all of whose highway use is made with diesel fuel purchased within this state with the tax paid may be exempted from the bonding requirements under an annual affidavit to the comptroller attesting to the intrastate or substantially intrastate tax-paid purchase of diesel fuel.

(2) A bond must be a continuing instrument, must constitute a new and separate obligation, in the penal sum named in the bond, for each calendar year or portion of a year while the bond is in force, and must remain in effect until the surety on the bond is released and discharged.

(3) In lieu of filing a surety bond, an applicant for a permit may substitute the following security:

(A) cash in the form of U.S. currency in an amount equal to the required bond to be deposited in the suspense account of the state treasury; or

(B) an assignment to the comptroller of a certificate of deposit in any bank or savings and loan association in the state that is a member of the FDIC or the FSLIC. The amount of the certificate of deposit shall at least equal the bond amount required.

(4) If the amount of an existing bond becomes insufficient, or any surety on a bond becomes unsatisfactory or unacceptable, the comptroller may require the filing of a new or an additional bond.

(5) No surety bond or other form of security may be released until it is determined by examination or audit that no tax, penalty, or interest liability exists. When the permit holder has been cleared of all tax liability by the comptroller, the cash or securities shall be released within 60 days.

(6) The comptroller may use the cash or certificate of deposit to satisfy a final determination of delinquent liability or a judgment secured in an action by this state to recover diesel fuel taxes, costs, penalties, and interest found to be due this state by any person in whose behalf the cash or securities were deposited.

(7) A surety on any bond furnished by a permittee shall be released and discharged from liability to the state accruing on the bond after the expiration of 30 days from the date on which the surety files with the comptroller a written request to be released and discharged. The request does not relieve, release, or discharge the surety from a liability already accrued, or which accrues before the expiration of the 30-day period. The comptroller shall promptly on receipt of the request notify the permittee who furnished the bond, and unless the permittee, before the expiration date of the existing security, files with the comptroller a new bond with a surety company duly authorized to do business under the laws of the state, or other authorized security, in the amount required in this article, the comptroller shall cancel the permit in the manner provided in this chapter.

(8) A permittee may request an examination or audit to obtain release of the security when he relinquishes the permit or when he desires to substitute one form of security for an existing one. [Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.217. Records

(1) A supplier shall keep a complete record in gallons showing:

(A) all diesel fuel inventories on hand at the first of each month;

(B) all diesel fuel refined, compounded, or blended;

(C) all diesel fuel purchased or received, showing the name of the seller, and the date of each purchase or receipt;

(D) all diesel fuel sold, distributed, or used showing the name of the purchaser and the date of sale, distribution, or use; and

(E) all diesel fuel lost by fire or other accident.

(2) A dealer shall keep a complete record in gallons of:

(A) diesel fuel inventories on hand at the first of each month;

(B) all diesel fuel purchased or received, showing the name of the seller, the date of each purchase or receipt, and all diesel fuel sold, distributed, or used; and

(C) all diesel fuel lost by fire or other accident.

(3) A bonded user or other user with nonhighway equipment uses who files a claim for a refund shall keep a complete record in gallons of:

(A) inventories of all diesel fuel on hand at the first of each month;

(B) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase;

(C) all diesel fuel deliveries into the fuel supply tanks of motor vehicles;

(D) diesel fuel used for other purposes, showing the purpose for which used; and

(E) all diesel fuel lost by fire or other accident.

(4) An aviation fuel dealer shall keep a complete record in gallons showing:

(A) all diesel fuel inventories on hand at the first of each month;

(B) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(C) all diesel fuel sold, distributed, or used in aircraft or aircraft servicing equipment, showing the name of purchaser and the date of sale, distribution, or use and the airplane registration or "N" number or aircraft servicing equipment number or description to which diesel fuel is delivered; and

(D) diesel fuel lost by fire or other accident.

(5) A permitted interstate trucker shall keep a record of:

(A) the total miles travelled in all states by all vehicles traveling into or from Texas and the total quantity of diesel fuel consumed in those vehicles; and

(B) the total miles travelled in Texas and the total quantity of diesel fuel delivered into the fuel supply tanks of motor vehicles in Texas.

(6) The comptroller may require selective schedules from a supplier, dealer, aviation fuel dealer, interstate trucker, or common or contract carrier for a purchase, sale, or delivery of diesel fuel when the schedules are not inconsistent with the requirements of this chapter. The records required must be kept for four years and are open to inspection at all times by the comptroller, the attorney general, or their authorized representatives.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.218. Invoices

(1) A delivery of diesel fuel into the fuel supply tanks of a motor vehicle having an aggregate capacity of 42 gallons or more shall be evidenced by an invoice issued in duplicate by a dealer or an invoice or a distribution log issued by a bonded user or other user.

(2) An invoice must be carried in the vehicle until the next purchase or delivery of fuel into that vehicle. A distribution log must be carried with the vehicle until the end of the calendar month.

(3) A dealer shall also issue an invoice for any sale, distribution, or use for any purpose other than propelling a motor vehicle on the public highways of this state.

(4) The required invoice or distribution log must have the name and address of the person making the delivery stamped or preprinted on it and provide spaces for:

(A) the name of the purchaser;

(B) the date of delivery of the fuel;

(C) the number of gallons delivered;

(D) the odometer or hubmeter reading;

(E) the state highway license or unit number;

(F) the type of vehicle or equipment, such as a motorboat, railway engine, highway vehicle, off-highway vehicle, or refrigeration unit or stationary engine into which the fuel is delivered;

(G) the Texas diesel tax stated separately from the selling price of the fuel, or a statement noting that the state diesel tax is included in the selling price of the fuel if the invoice is to be used to support a refund claim by the purchaser. If the invoice is to be used by the seller to support a refund claim, the invoice shall state that no tax was collected by the seller; and

(H) the signature of the recipient.

(5) If the delivery of tax-paid diesel fuel is made through an automated method whereby the purchase is automatically applied to the purchaser's account, one invoice may be issued at the time of billing covering multiple purchases made during a 30-day billing cycle.

(6) If the fuel delivery into the fuel supply tanks of a motor vehicle is through a method where there is no seller or agent present, then the purchaser or recipient must prepare the required invoice at the time of delivery.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.219. Reports

(1) On or before the 25th day of each month, each supplier shall file a report of diesel fuel transactions and remit the amount of tax required to be collected during the preceding month. A report must be filed on a form provided by the comptroller and contain information required by the comptroller, showing complete and detailed information of diesel fuel transactions during the preceding month. A supplier required to file a report under this article who has not sold, used, or distributed any diesel fuel during the reporting period shall nevertheless file with the comptroller the required report setting forth the facts or information. The failure of a supplier to obtain forms from the comptroller is no excuse for the failure to file a report. The report must be executed by the supplier or his representative and is subject to the penalties provided in this chapter.

(2) On or before the 25th day of the month following the end of each calendar quarter, each bonded user and interstate trucker shall file a report and remit the amount of tax due except as provided by Section (4) of this article. A report must be executed and filed with the comptroller and contain complete and detailed information on diesel fuel

transactions during the preceding calendar quarter and other information required by the comptroller on forms provided for that purpose. A bonded user or interstate trucker required to file a report under this article who has not sold, used, or distributed any diesel fuel during the reporting period shall nevertheless file with the comptroller the required report setting forth the facts or information. The failure of a bonded user or interstate trucker to obtain forms from the comptroller is no excuse for the failure to file a report containing all the information required to be reported.

(3) No report is required to be filed by:

(A) an aviation fuel dealer;

(B) a trip permit user;

(C) a diesel tax prepaid user;

(D) a person issuing signed statements; or

(E) a common or contract carrier.

(4) A permitted interstate trucker who maintains all fuel records in Texas, and all, or substantially all, of whose highway use is made with diesel fuel purchased within this state with the tax paid may be exempted from the quarterly reporting requirements under an annual affidavit to the comptroller attesting to the intrastate, or substantially intrastate, purchases of tax-paid diesel fuel.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.220. Refunds

(1) A dealer who has paid tax on diesel fuel that has been used or sold for use by the dealer for any purpose other than propelling a motor vehicle on the public highways of this state or that has been sold to the United States for the exclusive use of the government, and a user who has paid tax on any diesel fuel that has been used by him for any purpose other than propelling a motor vehicle on the public highways may file a claim for a refund of taxes paid, less the deduction allowed vendors and a filing fee.

(2) A person may file a refund claim for tax paid on the diesel fuel used in motor vehicles which are operated exclusively off the public highways except for incidental travel on the public highway as determined by the comptroller, but not for that portion used in the incidental travel.

(3) A permitted interstate trucker is entitled to a credit equivalent to the tax rate for each gallon paid on all diesel fuel on which the diesel fuel tax has been paid and later consumed in motor vehicles outside the state. When the amount of credit to which the interstate trucker is entitled for any calendar quarter exceeds the amount of tax for which the interstate trucker is liable for diesel fuel consumed in the motor vehicles during the reporting period, the excess shall be allowed as a credit or refund on a timely filed quarterly report against the tax for which the interstate trucker would be otherwise liable for any of the three succeeding quarters. Evidence of the mileage travelled and gallonage consumed and the payment of the diesel fuel tax, on a form that may be required by or is satisfactory to the comptroller, shall be furnished by the interstate trucker claiming the credit or tax refund.

(4) If the quantity of diesel fuel used in Texas by auxiliary power units or power take-off equipment on any motor vehicle can be accurately measured while the motor vehicle is stationary by any metering or other measuring device or method designed to measure the fuel separately from fuel used to propel the motor vehicle, the comptroller may approve and adopt the use of any device as a basis for determining the quantity of diesel fuel consumed in those operations for tax credit or tax refund. If no separate metering device or other approved measuring method is provided, the following credit or refund procedures are authorized. A permitted supplier or bonded user who operates diesel-powered motor vehicles equipped with a power take-off or a diesel-powered auxiliary power unit mounted on the motor vehicle and using the fuel supply tank of the motor vehicle may be allowed a five percent deduction from the taxable gallons used in this state in each motor vehicle so equipped. A user who is required to pay the tax on diesel fuel used in motor vehicles so equipped may file a claim for a refund not to exceed five percent of the total taxable fuel used in this state in each motor vehicle so equipped.

(5) A person who exports or loses by fire or other accident 100 or more gallons of diesel fuel on which the tax has been paid, or who sells diesel fuel in any quantity to the United States government for the exclusive use of that government on which the tax has been paid, may file a claim for a refund of the net tax paid to the state as the comptroller may direct.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.221. Refund Procedure

(1) A claim must be filed with the comptroller on forms provided by the comptroller and show the date of filing, the period covered in the claim, the number of gallons of diesel fuel subject to refund, and other information required by the comptroller. A claim must be supported by one or more original invoices issued to or by the claimant, or such other information as the comptroller deems necessary.

(2) If a motor vehicle is sold, transferred, or destroyed, the owner is entitled to a refund of the unused portion of the advance taxes paid for that calendar year. The owner or operator must submit to the comptroller an affidavit identifying the vehicle, the permit number, the circumstances entitling

him to a refund, and all other information required by the comptroller. On receipt of the affidavit and when satisfied as to the circumstances, the comptroller shall refund to the owner or operator that portion of the payment that corresponds to the number of complete months remaining in the calendar year for which the vehicle was no longer utilized. No refund may be made if the use of the vehicle ceased within the last month of the calendar year.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.222. Limitations on Refunds

(1) Except as provided by this article, a claim for a refund must be filed with the comptroller before the expiration of one year from the first day of the calendar month following the purchase or use.

(2) An interstate trucker may accumulate credits for four successive calendar quarters, but he must take the credit or claim a refund on a report filed on or before the 25th day following the fourth quarter.

(3) Except for an audit deficiency assessment, a claim for refund shall be filed with the comptroller before the expiration of one year from the first day of the month following delivery, export, or loss by fire or other accident. If an audit of a supplier determines that tax-free sales were made to unauthorized purchasers and the unauthorized purchaser could have filed for a refund if tax had been paid at the time of sale, the unauthorized purchaser may file a refund claim within one year from the date of final assessment.

(4) A person who files a claim for a tax refund on any diesel fuel used for a purpose for which a tax refund is not authorized, or who files an invoice supporting a refund claim on which the date, figures, or any material information has been falsified or altered, shall forfeit his right to the entire amount of the refund claim filed. This forfeiture provision shall not apply if a claimant provides proof satisfactory to the comptroller that the incorrect refund claim filed was due to a clerical or mathematical calculation error.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.223. Refund Payments and Filing Fee

(1) After examination and approval of the refund claim, the comptroller before issuing a refund warrant shall deduct from the amount of the refund payment:

(A) the 1-½ percent deducted originally by the supplier on the sale or delivery of the diesel fuel; and

(B) $1.50 as a filing fee.

(2) The filing fees shall be set aside for the use and benefit of the comptroller in the administration and enforcement of the provisions of this chapter, and for payment of expenses in furnishing the claim forms and other forms. All filing fees shall be paid into the state treasury and shall be paid out on vouchers and warrants in the manner prescribed by law.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.224. Allocation of Revenue

(1) Before allocation of the funds collected hereunder is made, one percent of the gross amount of the funds shall be set aside in the state treasury in a special fund for the use of the comptroller in the administration and enforcement of the provisions of this subchapter. Any unexpended portion of the fund at the end of each fiscal year reverts to the respective funds in the proper proportions to which the diesel fuel taxes are allocated.

(2) Each month the comptroller, after making deductions for refund purposes and for the administration and enforcement of the provisions of this subchapter, shall allocate and deposit the remainder of the taxes collected under this subchapter, in the proportions as follows:

(A) one-fourth of the taxes shall be placed to the credit of the available school fund; and

(B) three-fourths of the taxes shall be placed to the credit of the state highway fund.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

SUBCHAPTER D. LIQUEFIED GAS TAX

Art. 9.301. Tax Imposed

(1) An excise tax is imposed on the use of liquefied gas for the propulsion of motor vehicles on the public highways of this state at the rate of five cents for each gallon.

(2) A person using a liquefied gas-propelled motor vehicle, including a motor vehicle equipped to use liquefied gas interchangeably with another motor fuel, that is required to be licensed in Texas for use on the public highways of Texas, shall prepay the liquefied gas tax to the comptroller on an annual basis.

(3) An interstate trucker operating a motor vehicle licensed in a base state other than Texas and any other out-of-state user shall pay the excise tax on delivery of the liquefied gas into the fuel supply tanks of a motor vehicle.

(4) The tax imposed by this article is in lieu of any other excise or occupation tax imposed by this state or any state political subdivision on the sale, use, or distribution of liquefied gas.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.302. Permits

A bonded dealer, interstate trucker, or liquefied gas tax decal permittee shall file application to the comptroller for one of the nonassignable permits provided for by this subchapter.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.303. Bonded Dealer's Permit

A bonded dealer's permit authorizes a dealer to collect and remit taxes on liquefied gas delivered into the fuel supply tanks of motor vehicles displaying an out-of-state license plate.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.304. Liquefied Gas Tax Decal Permit

(1) A user of liquefied gas for propulsion of a motor vehicle on the public highways of Texas shall pay in advance annually on each motor vehicle owned, operated, and licensed in Texas by him, a tax based on the registered gross weight in the following schedule:

Class A:	Less than 4,000 pounds	$ 72
Class B:	4,000 to 8,000 pounds	84
Class C:	8,001 to 12,500 pounds	120
Class D:	12,501 to 22,500 pounds	168
Class E:	22,501 and over	300

(2) The following special use liquefied gas tax decal and tax shall be required for the types of vehicles described below:

Class S:	Special purpose motor vehicle used for purposes which do not require travel on the public highways exceeding 5,000 miles annually	$ 48
Class T:	Transit carrier vehicles operated by a transit company	330
Class Y:	Motor vehicles designed for carrying fewer than 10 passengers and used for the transportation of persons for compensation	204

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.305. Interstate Trucker's Permit

An interstate trucker's permit authorizes an interstate trucker operating a motor vehicle with a base license plate issued by a state other than Texas to import liquefied gas into this state in the fuel supply tanks of motor vehicles owned or operated by him for commercial purposes, to report and pay the tax due, and to make sales or distributions in Texas from his cargo tanks, but no delivery may be made in Texas into the fuel supply tanks of motor vehicles not bearing a current liquefied gas tax decal without first obtaining the required dealer's permit to make taxable sales. The interstate trucker's permit for users operating a motor vehicle with a base license plate issued by a state other than Texas shall be in lieu of the liquefied gas decal permit required to operate motor vehicles on the highways of the state.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.306. Application for Permits

(1) A bonded dealer, interstate trucker, or liquefied gas tax decal user shall secure from the comptroller the kind and class of permit required by this subchapter.

(2) An application must be filed with the comptroller for a permit on a form provided by the comptroller showing the kind and class of permit desired, and other information required by the comptroller. A permit shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner. A permit holder shall reproduce the permit and keep a copy on display at each additional place of business from which liquefied gas is sold, delivered, or used in motor vehicles. A person holding an interstate trucker's permit shall reproduce the permit and carry a copy with each motor vehicle being operated into or from Texas. The liquefied gas decal user shall affix the decal in the lower right-hand corner of the front windshield of the passenger side of the vehicle.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.307. Permits: Period of Validity

(1) A bonded dealer's permit is permanent and valid so long as the permittee has in force and effect the required cash bond and furnishes timely reports as required, or until the permit is surrendered by the holder or cancelled by the comptroller.

(2) An interstate trucker's permit is valid from the date of its issuance through December 31 of each calender year, or until the permit is surrendered by the holder or cancelled by the comptroller. The comptroller may renew the permit for each ensuing calendar year if the permittee has in force and effect the required cash bond and furnishes timely reports as required.

(3) A liquefied gas tax decal permit shall be issued annually and is valid from the date of its issuance through December 31 of the calendar year unless a motor vehicle for which the tax is prepaid is sold or no longer used on the public highway. A liquefied gas decal permittee must make application for a new permit each calendar year.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.308. Bonds

(1) A person applying for a permit as a bonded dealer or interstate trucker shall at the time of application post a cash bond of $100.

(2) The cash bond shall be deposited in the suspense account of the state treasury and shall be released within 60 days after cancellation or surrender of any permit held by the person in whose behalf it was deposited when the permit holder has been cleared of all tax liability by the comptroller.

(3) The comptroller may withdraw and use any cash to satisfy any delinquent liability including tax, penalty, and interest or to pay any judgment secured in any action by this state.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.309. Computation and Collection

(1) A permitted dealer who makes a sale or delivery of liquefied gas into the fuel supply tanks of motor vehicles on which the tax is required to be collected is liable to the state for the tax imposed, and shall report and pay the tax in the manner required by this subchapter.

(2) A permitted interstate trucker shall report and pay to this state the tax at the rate imposed on each gallon of liquefied gas delivered by him into the fuel supply tanks of motor vehicles, unless the tax has been paid to a permitted dealer, and shall report and pay the tax on each gallon of liquefied gas imported into this state in the fuel supply tanks of motor vehicles owned or operated by him and consumed in the operation of the motor vehicles on the public highways of this state.

(3) The tax on one percent of the taxable gallons of liquefied gas sold in this state shall be allocated to the permitted dealer making the sale for the expense of collecting, accounting for, reporting, and remitting the taxes collected and keeping the records. The allocation allowance shall be deducted by the permitted dealers in the payment to the state.

(4) The tax of one-half of one percent of the taxable gallons of liquefied gas used in this state by persons permitted as interstate truckers shall be allocated to the interstate trucker making the use of the liquefied gas for the expense of accounting for, reporting, and remitting the taxes due.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.310. Records

(1) A bonded dealer shall keep for four years, open to inspection at all times by the comptroller, the attorney general, or their authorized representatives, a complete record of all liquefied gas sold or delivered for taxable purposes.

(2) An interstate trucker shall keep for four years, open to inspection by the comptroller, the attorney general, or their authorized representatives, a record of:

(A) the total miles travelled in all states by all motor vehicles traveling into or from Texas and the total quantity of liquefied gas used in such motor vehicles; and

(B) the total miles travelled in Texas and the total quantity of liquefied gas purchased in Texas, showing both tax-paid fuel delivered into the fuel supply tanks of motor vehicles and tax-free fuel delivered into storage facilities in Texas.

(3) Each taxable sale or delivery of liquefied gas into the fuel supply tanks of a motor vehicle, including deliveries by interstate truckers from bulk storage, shall be covered by an invoice. The invoice must be printed and contain the following:

(A) the preprinted or stamped name and address of the permitted dealer or interstate trucker;

(B) the date;

(C) the number of gallons delivered;

(D) the mileage recorded on the odometer;

(E) the state and state highway license number;

(F) the signature of the driver of the motor vehicle; and

(G) the amount of tax paid or accounted for separately from the selling price.

(4) The invoice must be carried with the vehicle and will serve as a trip permit.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.311. Reports

(1) A permitted dealer shall on or before the 25th day of the month following the end of each calendar quarter file a report and remit the amount of tax due. A permitted dealer who has not made taxable sales during the reporting period shall nevertheless file with the comptroller the required report setting forth the facts or information.

(2) Every permitted interstate trucker shall on or before the 25th day of the month following the end of each calendar quarter file a report and remit the amount of tax due. A report shall be filed with the comptroller and must contain the miles traveled in this state, the miles traveled outside this state, and other information required by the comptroller on forms provided for that purpose. An interstate trucker who is required to file a report under this article and who has not made interstate trips or used liquefied gas in motor vehicles in Texas during the reporting period shall nevertheless file with the comptroller the required report setting forth the facts or information.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.312. Refunds; Transfer of Decals

(1) If a motor vehicle bearing a liquefied gas tax decal is sold or transferred, the seller and purchaser shall promptly notify the comptroller of the sale or transfer and a new decal shall be issued in the new purchaser's name.

(2) If a motor vehicle bearing a liquefied gas tax decal is destroyed or the liquefied gas carburetor system removed, the owner is entitled to a refund of the unused portion of the advance taxes paid for that calendar year. The owner or operator shall submit to the comptroller an affidavit identifying the vehicle, the permit number, the decal number assigned to the vehicle, the circumstances entitling him to a refund, and all other information required by the comptroller. On receipt of the affidavit and when satisfied as to the circumstances, the comptroller shall refund that portion of the tax payment that corresponds to the number of complete months remaining in the calendar year for which the tax has been paid, beginning with the month following the date on which the vehicle or the liquified gas carburetor was no longer utilized. No refund may be made if the use of the vehicle ceased within the last month of the calendar year.

(3) A permitted interstate trucker is entitled to a refund equal to the tax rate for each gallon paid on liquefied gas on which the Texas liquefied gas tax has been paid and that has thereafter been consumed in motor vehicles outside the State of Texas. On verification by the comptroller that the interstate trucker report was timely filed with all information required, he shall issue a warrant to the interstate trucker for the amount of the refund less the one percent deducted originally by the permitted dealer making the sale and a filing fee of $1.50. Failure to file an interstate trucker report by the 25th of the month following the end of a calendar quarter forfeits the right to a refund.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

Art. 9.313. Allocation of Revenue

(1) Before allocation of the tax collected under this subchapter is made, one percent of the gross amount shall be set aside in the state treasury in a special fund for the use of the comptroller in the administration and enforcement of the provisions of this subchapter. Any unexpended portion of this fund shall at the end of the fiscal year revert to the respective funds in the proper proportions to which the liquefied gas taxes are allocated.

(2) Each month the comptroller, after making deductions for refund purposes, and for the administration and enforcement of the provisions of this subchapter, shall allocate and deposit the remainder of the taxes collected as follows:

(A) one-fourth of the taxes shall be placed to the credit of the available school fund; and

(B) three-fourths of the taxes shall be placed to the credit of the state highway fund.

[Amended by Acts 1979, 66th Leg., p. 626, ch. 291, § 1, eff. Jan. 1, 1980.]

CHAPTER 10. SPECIAL FUELS TAX LAW [REPEALED]

Disposition Table

Showing where provisions of former Chapter 10 are now covered in revised Chapter 9.

Former Article	New Article
10.01	—
10.02	9.001
10.03	9.201 to 9.203
10.04	—
10.05	9.105
10.06	9.105
10.07	9.002, 9.003, 9.004
10.08	9.203
10.09	9.204
10.10	9.216
10.11	9.006, 9.205 to 9.214
10.12	9.003, 9.004, 9.217, 9.218
10.13	9.219
10.14	9.220 to 9.223
10.15	—
10.16	9.011
10.17	—
10.18	9.012 to 9.014
10.19	9.010
10.20	—
10.21	9.021
10.22	9.224
10.23	9.015, 9.017
10.24	9.015 to 9.017, 9.019
10.25	9.015 to 9.017
10.51	—
10.52	9.001
10.53	9.301, 9.309
10.54	9.301
10.55	9.015, 9.017
10.56	9.015, 9.017
10.57	9.002
10.58	9.301

Former Article	New Article
10.59	9.302
10.60	9.308
10.61	9.006, 9.303 to 9.307
10.62	9.003, 9.004, 9.310
10.63	9.311
10.64	9.312
10.65	—
10.66	9.011
10.67	—
10.68	9.012 to 9.014
10.69	9.010
10.70	—
10.71	9.021
10.72	9.313
10.73	9.015, 9.017
10.74	9.015 to 9.019
10.75	9.015 to 9.017

SUBCHAPTER A. DIESEL FUEL TAX LAW

Arts. 10.01 to 10.25. Repealed by Acts 1979, 66th Leg., p. 663, ch. 291, § 3, eff. Jan. 1, 1980

Section 1 of the 1979 Act revised Chapter 9.
Prior to repeal, art. 10.18 was amended by Acts 1979, 66th Leg., p. 83, ch. 51, § 7.

SUBCHAPTER B. LIQUEFIED GAS TAX LAW

Arts. 10.51 to 10.75. Repealed by Acts 1979, 66th Leg., p. 663, ch. 291, § 3, eff. Jan. 1, 1980

Section 1 of the 1979 Act revised Chapter 9.
Prior to repeal, art. 10.68 was amended by Acts 1979, 66th Leg., p. 83, ch. 51, § 8.

CHAPTER 11. MISCELLANEOUS TAXES BASED ON GROSS RECEIPTS

Art. 11.01. Repealed by Acts 1975, 64th Leg., p. 2306, ch. 719, art. IV, § 1, eff. Jan. 1, 1976

Art. 11.05. Repealed by Acts 1975, 64th Leg., p. 2306, ch. 719, art. III, § 1, eff. Jan. 1, 1976

Art. 11.11. Penalty for Failure to Pay Tax

Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax for thirty (30) days from the date when said tax is required by this Chapter to be paid, shall forfeit and pay to the State of Texas a penalty of five per cent (5%) upon the amount of such tax, and after the first thirty (30) days he shall forfeit an additional five per cent (5%) of such tax. Provided, however, that the penalty shall never be less than One Dollar ($1). Delinquent taxes shall draw interest at the rate of seven per cent (7%) per annum beginning sixty (60) days from the date due.
[Amended by Acts 1979, 66th Leg., p. 84, ch. 51, § 9, eff. Jan. 1, 1980.]

Section 18 of the 1979 amendatory act provided:
"This Act takes effect January 1, 1980, and applies to all unpaid taxes that are delinquent on that date and become delinquent after that date."

CHAPTER 12. FRANCHISE TAX

Art. 12.01. Base and Rate of Tax

(1) Except as otherwise provided in this chapter, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas or doing business in Texas shall file such reports as are required by Articles 12.08 and 12.19 and pay to the Comptroller a franchise tax for the period from May 1 of each year to and including April 30 of the following year, based on whichever of the following Subsections (a), (b), or (c) shall yield the greatest tax:

(a) Basic Tax. Four Dollars and Twenty-five Cents ($4.25) per $1,000 or fractional part thereof applied to that portion of the sum of the stated capital, surplus, and undivided profits the sum of which for the purposes of this chapter is hereafter referred to as "taxable capital," allocable to Texas in accordance with Article 12.02. As used in this chapter, the phrase "stated capital" shall have the same meaning as defined in Article 1.02 of the Texas Business Corporation Act;

(b) Four Dollars and Twenty-five Cents ($4.25) per $1,000 or fractional part thereof applied to the assessed value for county ad valorem tax purposes of the real and personal property owned by the corporation in this state; or

(c) Fifty-five Dollars ($55).

(2) Other than those corporations enjoying the use of public highways by virtue of a certificate of public convenience and necessity granted by the Railroad Commission of Texas, the corporations enumerated below shall be required to pay a franchise tax equal to one-fifth of the franchise tax imposed under Subsection (1)(a) or (1)(b) of this article, whichever is the greater, but not less than the entire tax imposed by Subsection (1)(c) of this article:

(a) corporations paying annually a tax on intangible assets as required by the laws of this state;

(b) corporations incorporated only for the purpose of owning or operating street railways or passenger bus systems in any city or town and suburbs thereof;

(c) corporations incorporated and doing business only for the purpose of maintaining or owning or operating electric interurban railways; and

(d) corporations, four-fifths or more of whose assets are invested in, and four-fifths or more of whose gross income is received from, voting common capital stock which comprises four-fifths or more of the total fully voting common capital stock of one or more corporations which are public utility corporations as defined by the laws of Texas whose rates or services are regulated, or subject to a regulation in whole or in part, by law.

[Text of sec. (6) added by Acts 1975, 64th Leg., p. 2318, ch. 719, art. XXI, § 2]

(6) A corporation may deduct from its taxable capital taxable in this state the amortized cost of a solar energy device acquired by the corporation for the production of energy or for heating or cooling and used in this State by the corporation. The cost may be amortized for any period not less than 60 months in equal monthly amounts beginning on the month the device is placed into service in this State and extending only during the period that the device is in use in this State. A corporation making a deduction under this Section shall file with the Comptroller an amortization schedule showing the period during which a deduction is to be made and on the request of the Comptroller shall provide proof of the cost of the device and of its operation in this State. A separate deduction may be taken for each device placed in service in this State by the corporation.

[Amended by Acts 1975, 64th Leg., p. 2310, ch. 719, art. XII, § 1, art. XXI, § 2, eff. Sept. 1, 1975.]

Section 2 of art. XII of the 1975 Act amended article 12.03; § 3 amended article 12.06(3); § 4 repealed article 12.211; and § 5 thereof provided: "This Article is not intended to be nor shall it or any provision of it ever be construed or deemed to be 'an Act of the Legislature passed subsequent to the effective date of Public Law 91–156 [12 U.S.C.A. § 548]' as that term is used in Acts 1971, 62nd Legislature, p. 1206, Chapter 292, Article 7, Section 1, effective July 1, 1971 [see note under article 20.02, Compact Edition, volume 2]."

Art. 12.03. Corporations Exempt

(1) The franchise tax imposed by this chapter shall not apply to:

(a) an insurance company; surety, guaranty, or fidelity company; transportation company; sleeping, palace car, and dining company now required to pay an annual tax measured by their gross receipts;

(b) a corporation organized as a railway terminal corporation and having no annual net income from the business done by it;

(c) a nonprofit corporation organized for the exclusive purpose of promoting the public interest of any county, city, or town, or other area within the state;

(d) a nonprofit corporation organized for the purpose of religious worship;

(e) a nonprofit corporation organized for the purpose of providing places of burial;

(f) a nonprofit corporation organized for the purpose of holding agricultural fairs and encouraging agricultural pursuits;

(g) a nonprofit corporation organized for strictly educational purposes, including a corporation organized for the sole purpose of providing a student loan fund or student scholarships;

(h) a nonprofit corporation organized for purely public charity;

(i) a savings and loan association chartered or authorized to operate as a building or savings and loan association under the provisions of the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes);

(j) an open-end investment company, as defined in and subject to the Federal Investment Company Act of 1940 (15 U.S.Code, secs. 80a–1 et seq.), and which also is registered as such investment company under The Securities Act, as amended (Articles 581–1 et seq., Vernon's Texas Civil Statutes);

(k) a nonprofit corporation organized for the sole purpose of educating the public in the protection and conservation of fish, game, and other wildlife, as well as grasslands and forests;

(*l*) a nonprofit water supply or sewer service corporation organized in behalf of cities or towns pursuant to Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 1434a, Vernon's Texas Civil Statutes);

(m) a nonprofit corporation organized for the purpose of constructing, acquiring, owning, leasing, or operating a natural gas facility in behalf of and for the benefit of a city or residents of a city;

(n) a nonprofit corporation organized for the purpose of providing convalescent homes or other housing for persons 62 years of age or older or for handicapped or disabled persons without regard to whether the corporation is for purely public charity;

(*o*) a nonprofit corporation engaged exclusively in the business of owning residential property for the purpose of providing cooperative housing for any person or persons;

(p) a corporation exempted from the payment of a franchise tax by the provisions of any of the laws of this state other than this chapter;

(q) a nonprofit corporation which has been exempted from the federal income tax under the provisions of Section 501(c)(3), (4), (5), (6), or (7) of the Internal Revenue Code of 1954, as amended, as it existed on January 1, 1975; and

(r) corporations engaged exclusively in the business of manufacturing, selling, or installing solar

energy devices, which term, for the purposes of this chapter, means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power or both by means of collecting and transferring solar-generated energy and includes mechanical or chemical devices having the capacity for storing solar-generated energy for use in heating or cooling or in the production of power.

(2) Each corporation eligible for exemption from the franchise tax under Subdivision (q) of Section 1 of this article shall furnish to the comptroller evidence sufficient to establish that it is exempt from the federal income tax. The federal exemption may be established by furnishing to the comptroller no later than the end of the month nearest the expiration of 15 months from the date of charter or certificate or from September 1, 1975, whichever is later, a copy of the letter of exemption issued to the corporation by the Internal Revenue Service. If a letter of exemption has not been timely issued by the Internal Revenue Service, the corporation may furnish to the comptroller within such 15-month period evidence that the corporation has in good faith filed an application for the federal exemption and, except as indicated in Section (6) of this article, the franchise tax exemption, when finally established under either of the above procedures, will be recognized as of the date of the corporation's charter or certificate.

(3) If a corporation timely furnishes evidence to the comptroller that it has made application in good faith for a federal income tax exemption, and if the application is finally denied by the Internal Revenue Service, no penalty provided in this chapter shall be added to the franchise tax owed by such corporation from the date of its charter or certificate to the date of such final denial.

(4) If a corporation's exemption from the federal income tax is withdrawn by the Internal Revenue Service for failure of the corporation to qualify or to maintain its qualification therefor, the corporation's franchise tax exemption shall terminate on April 30 next following the effective date of withdrawal of the federal exemption, and thereafter such corporation shall be subject to and shall be liable for the franchise tax levied by this chapter.

(5) Any corporation, whether or not eligible for exemption under Section 501(c)(3), (4), (5), (6), or (7) of the Internal Revenue Code of 1954, as amended, as it existed on January 1, 1975, may elect to apply to the comptroller for exemption under an applicable provision of Section (1) of this article, by furnishing in accordance with rules and regulations promulgated by the comptroller evidence sufficient to establish its exemption. If the application is submitted to the comptroller no later than the end of the month after the expiration of 15 months from the date of charter or certificate, or from September 1, 1975, whichever is later, except as indicated in Section (6) of this article, the exemption when finally established will be recognized as of such date of charter or certificate.

(6) The provisions of this article do not require any additional application, report, letter of exemption, or other evidence from a corporation eligible for exemption under Section (1) of this article, which corporation was granted exemption by the comptroller or by the secretary of state prior to September 1, 1975. Provided that nothing in this article or in any other laws of this state shall be construed to authorize a refund or credit for franchise tax paid prior to September 1, 1975, by a corporation eligible for or determined by the comptroller to be exempt under this article from the payment of franchise tax, unless the comptroller determines that the corporation through mistake of law or fact overpaid the franchise tax due by it prior to September 1, 1975. Provided, further, that if a corporation which was granted an exemption prior to September 1, 1975, no longer qualifies for exemption under Section (1) of this article, such previously granted exemption shall terminate on April 30, 1976, and thereafter such corporation shall be subject to and shall be liable for the franchise tax levied by this chapter.

[Amended by Acts 1975, 64th Leg., p. 2311, ch. 719, art. XII, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1439, ch. 584, § 1, eff. Aug. 29, 1977.]

Art. 12.06. Initial Tax to be Paid

(1) Prior to and as a precondition to receiving a charter or certificate of authority from the Secretary of State of Texas, a domestic corporation incorporating under the Texas Business Corporation Act or The Texas Professional Corporation Act or a foreign corporation qualifying under the Texas Business Corporation Act must prepay an initial franchise tax deposit in the amount of One Hundred Dollars ($100) to the Comptroller of Public Accounts. This prepayment may not be refunded in whole or part for any reason after the charter or certificate of authority has been issued by the Secretary of State.

(2) Every domestic or foreign corporation shall file its initial franchise tax report within ninety (90) days after the expiration of one (1) year from the date of filing its charter or granting its certificate of authority, at which time the tax shall be computed according to its first year's business as prescribed by this Chapter and at the same time, the corporation shall also pay its tax in advance, based upon the first year's business, for the period from the end of the first year to and including April 30th following. The tax prepaid under Section (1) of this Article shall be applied as a credit against the tax computed on this first report and subsequent reports.

Where the corporation's first year from the filing of its charter or from the granting of its certificate of authority ends between January first and May first, there shall also be computed and paid an additional year's tax for the year beginning May first following the end of the first year as above defined, which tax shall be computed from the data contained in the first report filed by such corporation.

(3) All foreign corporations applying for a certificate of authority to do business, shall at the time of filing its application deposit with the Comptroller of Public Accounts the sum of Five Hundred Dollars ($500) which sum shall be deposited in a trust fund to be held by the Comptroller of Public Accounts during the time the foreign corporation is engaged in doing business in this State. This deposit shall insure a foreign corporation's payment of all filing fees, filing all franchise tax reports and payment of franchise taxes, penalties and interest due this State according to the provisions of this Chapter. In the event a foreign corporation has ceased doing business in Texas prior to the forfeiture of the corporation's Certificate of Authority, and can demonstrate that all franchise tax reports, franchise taxes and penalties have been filed and paid, such deposit or balance thereof, if any, shall be returned by the Comptroller of Public Accounts to the legal agent of such foreign corporation in this State, designated in conformity with Article 12.11 of this Chapter.

Whenever a corporation's Certificate of Authority to do business in this State be forfeited as provided in this Chapter, the entire amount of said deposit shall likewise be forfeited.

The forfeiture of said deposit shall not bar the State's full recovery of the amount of franchise tax due; however, upon proof by such corporation of the actual amount of such franchise taxes due, and upon the filing of all delinquent tax reports, any amount of said deposit in excess of such franchise tax, including penalty and interest, shall be refunded.

(4) Effective September 1, 1975, each foreign corporation doing business in this State shall have on deposit with the Comptroller of Public Accounts the Five Hundred Dollars ($500) trust amount described in Section (3) above. Upon determination by the comptroller that a foreign corporation has maintained a continuous status in good standing for three (3) consecutive reporting years, or upon determination by the comptroller that a corporation is exempt from payment of the franchise tax under Article 12.03 of this chapter or other laws of this state, such corporation shall be exempt thereafter from the security requirements of this article, and the comptroller shall return the trust deposit to the corporation; provided, however, that such exemption from the security requirement shall continue only until such time that it is determined by the comptroller that the corporation has failed to file all reports or to pay the franchise tax or other payments required by this chapter, or that the corporation no longer qualifies for exemption from the franchise tax, at which time the comptroller shall notify the corporation that a cash trust deposit in the amount of Five Hundred Dollars ($500) must be furnished the comptroller's office as required by this article.

[Amended by Acts 1975, 64th Leg., p. 2313, ch. 719, art. XII, § 3, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 161, ch. 89, § 1, eff. Sept. 1, 1979.]

Art. 12.10. Information Confidential

(a) Except information set forth in liens filed pursuant to this Title, all information secured, derived or obtained from any record, instrument, or copy thereof, required to be furnished under the terms of this Chapter, shall be and shall remain confidential and not open to public inspection. All information secured, derived or obtained during the course of an examination of the taxpayer's books, records, papers, officers or employees, including the business affairs, operations, profits, losses or expenditures of the taxpayer, shall be and shall remain confidential and not open to public inspection.

However, a bona fide stockholder owning one or more shares of outstanding stock of any corporation may examine and receive copies of the reports made under Articles 12.08 and 12.09 of this Chapter upon presentation of evidence of such ownership to the Comptroller. Any interested person may also be furnished the names, titles, and mailing addresses of the officers, directors, and agents for service of process, and the location of the principal office and place of business, and ownership required to be filed by Article 12.12 of this Chapter, of any corporation filing a franchise tax report.

(b) The Comptroller or the Attorney General may use such information, records, reports, instruments and copies thereof, for enforcing the provisions of this Chapter, or may authorize their use in any judicial proceeding in which the State is a party. In addition, the Comptroller or the Attorney General may authorize examination by other State officers and law enforcement officials, or by tax officials of another state and by officials of the federal government if a reciprocal arrangement exists.

[Amended by Acts 1979, 66th Leg., p. 1823, ch. 740, § 3, eff. June 13, 1979.]

Art. 12.12. Authority of Comptroller of Public Accounts, Rules and Regulations

All reports to the Comptroller of Public Accounts required by this Chapter shall contain such information as the Comptroller of Public Accounts may require. He shall have authority to make and publish rules and regulations not inconsistent with the Constitution or laws of this State or of the United

States for the enforcement of this Chapter. The Comptroller of Public Accounts may require any corporation to furnish such additional information from its books and records as may be necessary in determining the amount of taxes that may be due hereunder. The Comptroller of Public Accounts or his authorized representative, or the State Auditor or his authorized representative, shall have full and complete authority to investigate and inquire into and examine the books and records of any such corporation for the purpose of ascertaining the correctness of its franchise tax liability.

In addition to any other requirements established by the Comptroller of Public Accounts, corporations shall provide the following information on the Corporate Franchise Tax Form, but in no event more than once a year, which the Comptroller of Public Accounts shall forward to the Secretary of State to be available for public inspection:

(1) the name, title, and mailing address of each director and officer of the corporation; and

(2) the name of each corporation in which the corporation filing the report owns a 10 percent or greater interest and the percentage owned by the corporation; the name of each corporation which owns a 10 percent or greater interest of the corporation filing the report.

Any foreign corporation doing business in Texas under a Certificate of Authority granted under the laws of this State, or any officer or agent thereof, or any domestic corporation which shall fail or refuse to permit the Comptroller of Public Accounts, or his authorized representative, or the State Auditor or his authorized representative, to examine its books and records, whether the same be situated within this State or any other state within the United States, shall thereby forfeit its right to do business in this State; and its Certificate of Authority or charter shall be cancelled or forfeited.

[Amended by Acts 1977, 65th Leg., p. 1191, ch. 458, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act provided:

"The unexpended balances from the appropriations for the office of the Secretary of State for the year ending August 31, 1977, are appropriated to the Secretary of State for the fiscal year ending August 31, 1978, and the unexpended balance from this 1977–1978 appropriation is appropriated to the Secretary of State for the fiscal year ending August 31, 1979, for the purpose of implementing the provisions of this Act."

Art. 12.14. Failure to Pay Tax and File Reports

(1) Any corporation, either domestic or foreign, which shall fail to pay any franchise tax provided for in this Chapter when the same shall become due and payable under the provisions of this Chapter or shall fail to file any report provided for in this Chapter when the same shall become due, shall thereupon become liable to a penalty of five per cent (5%) of the amount of such franchise tax due by such corporation, and if said report has not been filed or said taxes have not been paid within thirty (30) days from the date said report or taxes shall have become due, an additional five per cent (5%) of such tax shall be forfeited; said penalty shall never be less than One Dollar ($1). Delinquent taxes shall draw interest at the rate of seven per cent (7%) per annum beginning sixty (60) days from the date due.

(2) If the reports required by Articles 12.08, 12.09, and 12.19 be not filed in accordance with the provisions of this Chapter, or if the amount of such tax and penalties be not paid in full on or before September 15 of each year or, when an initial tax report or payment is required, on or before ninety (90) days after the time the initial report and payment is required, such corporation shall for such default forfeit its right to do business in this State; which forfeiture shall be consummated without judicial ascertainment by the Comptroller of Public Accounts. Any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this State, except in a suit to forfeit the charter or certificate of authority of such corporation. In any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation unless its right to do business in this State shall be revived as provided in this Chapter.

(3) Each director and officer of any corporation whose right to do business within this State shall be so forfeited shall, as to any and all debts of such corporation, which shall include all franchise taxes and penalties thereon which shall become due and payable subsequent to the date of such forfeiture, and which may be created or incurred within this State, after the report or payment becomes due and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such directors and officers of such corporation were partners. However, any officer or director may avoid liability if he shows that the debt was created (1) over his objection, or (2) without his knowledge, if the exercise of reasonable diligence to acquaint himself with the affairs of the corporation would not have revealed the intention to create the debt.

[Amended by Acts 1977, 65th Leg., p. 1692, ch. 671, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 84, ch. 51, § 10, eff. Jan. 1, 1980.]

Section 18 of the 1979 amendatory act provided:

"This Act takes effect January 1, 1980 and applies to all unpaid taxes that are delinquent on that date and become delinquent after that date."

Art. 12.15. Notice of Forfeiture

The Comptroller of Public Accounts shall notify each domestic and foreign corporation which may be or become subject to a franchise tax under the laws of this State and which has failed to file such report or pay franchise tax on or before the time specified by this Chapter that unless such overdue report is filed or such overdue tax together with said penal-

ties thereon shall be paid on or before September 15 of that year or, if an initial report or tax payment is required on or before ninety (90) days after the day on which the initial report or payment was required to be made, the right of such corporation to do business in this State will be forfeited without judicial ascertainment. The notice must be mailed during the 45-day period following the day on which the report or payment was required to be made. This notice may be either written or printed and shall be verified by the seal of the office of the Comptroller of Public Accounts, and shall be addressed to such corporation and mailed to the post office named in its articles of incorporation as its principal place of business, or to any other known place of business of the corporation. A record of the date of mailing this notice shall be kept in the office of the Comptroller of Public Accounts, and such notice and record thereof shall constitute legal and sufficient notice thereof for all purposes of this Chapter. Any corporation whose right to do business may have been forfeited, as provided in this Chapter, shall be relieved from such forfeiture by paying to the Comptroller of Public Accounts at any time prior to the forfeiture of the charter or certificate of authority of such a corporation as hereinafter provided, the full amount of the franchise taxes, penalties, and interest due by it. When such taxes, penalties, and interest shall be paid to the Comptroller of Public Accounts, he shall revive the right of the corporation to do business within the State. If any domestic corporation or foreign corporation, whose right to do business within this State shall hereafter be forfeited under the provisions of this Chapter, shall fail to pay the Comptroller of Public Accounts within one hundred and twenty (120) days after such forfeiture, the amount necessary to entitle it to have its right to do business revived under the provisions of this Chapter, such failure shall constitute sufficient ground for the forfeiture of the charter of such domestic corporation, or of the certificate of authority of such foreign corporation. It shall be the duty of the Comptroller of Public Accounts, after such one hundred and twenty (120) days next following such forfeiture, to certify to the Attorney General for bringing suit under Article 12.16 of this Chapter and to the Secretary of State for administrative forfeiture under Article 12.17 of this Chapter the names of all corporations whose right to do business within the State has been forfeited as hereinbefore provided. The Attorney General, upon receiving such certificate, shall forthwith institute suit against such corporations certified to him by the Comptroller of Public Accounts as provided in Article 12.16 of this Chapter.

[Amended by Acts 1977, 65th Leg., p. 1693, ch. 671, § 2, eff. Aug. 29, 1977.]

Art. 12.19. Optional Use of Short Form Return

(1) In lieu of the franchise tax levied by Article 12.01 of this Chapter, any corporation which has previously paid a franchise tax in Texas under the provisions of this Chapter and whose total assets are less than One Million Dollars ($1,000,000), may elect to pay a franchise tax for the period from May 1st of each year to and including April 30th of the following year in accordance with the following schedule:

If Total Assets Are at Least	But Less Than	The Tax Shall be
$ 0.00	$ 15,000.00	$ 35.00
15,000.00	20,000.00	45.00
20,000.00	25,000.00	55.00
25,000.00	30,000.00	70.00
30,000.00	40,000.00	90.00
40,000.00	50,000.00	115.00
50,000.00	70,000.00	150.00
70,000.00	90,000.00	200.00
90,000.00	110,000.00	250.00
110,000.00	130,000.00	300.00
130,000.00	150,000.00	350.00
150,000.00	175,000.00	720.00
175,000.00	200,000.00	825.00
200,000.00	225,000.00	930.00
225,000.00	250,000.00	1,040.00
250,000.00	275,000.00	1,155.00
275,000.00	300,000.00	1,260.00
300,000.00	325,000.00	1,365.00
325,000.00	350,000.00	1,480.00
350,000.00	375,000.00	1,585.00
375,000.00	400,000.00	1,705.00
400,000.00	425,000.00	1,805.00
425,000.00	450,000.00	1,915.00
450,000.00	475,000.00	2,020.00
475,000.00	500,000.00	2,135.00
500,000.00	550,000.00	2,300.00
550,000.00	600,000.00	2,520.00
600,000.00	650,000.00	2,740.00
650,000.00	700,000.00	2,960.00
700,000.00	750,000.00	3,175.00
750,000.00	800,000.00	3,395.00
800,000.00	850,000.00	3,610.00
850,000.00	900,000.00	3,835.00
900,000.00	950,000.00	4,050.00
950,000.00	1,000,000.00	4,270.00

(2) "Total assets" as used in this Article means the total of all items reported or reportable as assets on the corporation's Federal income tax return on the last day of the corporation's reporting period for Federal income tax purposes. Said last day must fall within the twelve-month period preceding Janu-

ary 1st of the year in which the alternative franchise tax payable under this Article is to be paid.

[Amended by Acts 1979, 66th Leg., p. 100, ch. 60, § 1, eff. Jan. 1, 1980.]

Section 2 of the 1979 amendatory act provided:

"This Act takes effect January 1, 1980, for all reports due to be filed after December 31, 1979."

Art. 12.211. Repealed by Acts 1975, 64th Leg., p. 2314, ch. 719, art. XII, § 4, eff. Sept. 1, 1975

CHAPTER 13. TAX ON COIN-OPERATED MACHINES

Art. 13.01. Definitions

The following words, terms and phrases as used in this Chapter are defined as follows:

(1) The term "owner" means any person, individual, firm, company, association or corporation owning any "coin-operated machine" in this State.

(2) The term "operator" means any person, firm, company, association or corporation who exhibits, displays or permits to be exhibited or displayed, in a place of business other than his own, any "coin-operated machine" in this State.

(3) The term "coin-operated machine" means every machine or device of any kind or character which is operated by or with coins, or metal slugs, tokens or checks, "music coin-operated machines" and "skill or pleasure coin-operated machines" as those terms are hereinafter defined, shall be included in such terms.

(4) The term "music coin-operated machine" means every coin-operated machine of any kind or character, which dispenses or vends or which is used or operated for dispensing or vending music and which is operated by or with coins or metal slugs, tokens or checks. The following are expressly included within said term: phonographs, pianos, graphophones, and all other coin-operated machines which dispense or vend music.

(5) The term "skill or pleasure coin-operated machines" means every coin-operated machine of any kind or character whatsoever, when such machine or machines dispense or are used or are capable of being used or operated for amusement or pleasure or when such machines are operated for the purpose of dispensing or affording skill or pleasure, or for any other purpose other than the dispensing or vending of "merchandise or music" or "service" exclusively, as those terms are defined in this Chapter. The following are expressly included within said term: marble machines, marble table machines, marble shooting machines, miniature race track machines, miniature football machines, miniature golf machines, miniature bowling machines, and all other coin-operated machines which dispense or afford skill or pleasure. Provided that every machine or device of any kind or character which dispenses or vends merchandise, commodities or confections or plays music in connection with or in addition to such games or dispensing of skill or pleasure shall be considered as skill or pleasure machines and taxed at the higher rate fixed for such machines.

(6) The term "service coin-operated machines" means every pay toilet, pay telephone and all other machines or devices which dispense service only and not merchandise, music, skill or pleasure.

(7) The term "commission" means the Texas Amusement Machine Commission.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.02. Amount of Tax

(1) Every "owner", save an owner holding an import license and holding coin-operated machines solely for re-sale, who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in this State any "coin-operated machine" shall pay, and there is hereby levied on each "coin-operated machine", as defined herein in Article 13.01, except as are exempt herein, an annual occupation tax of $15.00.

(2) Provided that the first money taken from each coin-operated machine each calendar year shall be paid to the owner to reimburse the payment of that year's annual occupation tax levied above and those levied by any city or county. No owner shall agree or contract or offer to agree to contract to waive this reimbursement either directly or indirectly. No owner shall agree or contract with a bailee or lessee of a coin-operated machine to compensate said bailee or lessee in excess of fifty percent (50%) of the gross receipts of such machine after the above reimbursement has been made. In addition to all other penalties provided by law the commission shall revoke any license held under Article 13.17 by any person who violates this Subsection.

(3) The commission may provide a duplicate permit if a valid permit has been lost, stolen, or destroyed. The fee for a duplicate permit is $2.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.03. Exemptions From Tax

Gas meters, pay telephones, pay toilets, food vending machines, confection vending machines, beverage vending machines, merchandise vending machines, and cigarette vending machines which are now subject to an occupation or gross receipts tax, stamp vending machines, and "service coin-operated machines," as that term is defined, are expressly exempt from the tax levied herein, and the other provisions of this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.04. Public Nuisance

Every coin-operated machine subject to the payment of the tax levied herein, and upon which the said tax has not been paid as provided herein, is hereby declared to be a public nuisance, and may be seized and destroyed by the commission, its agents, or any law enforcing agency of this State as in such cases made and provided by law for the seizure and destruction of common nuisances.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.05. Injunction; Venue; Payment of Tax as Condition Precedent; Records and Reports

(1) Any person who shall invoke the power and remedies of injunction against the commission to restrain or enjoin it from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued, shall file such proceedings in a court of competent jurisdiction in Travis County, Texas, and venue for such injunction is hereby declared to be in Travis County, Texas.

(2) Before any restraining order or injunction shall be granted against the commission to restrain or enjoin the collection of the taxes levied herein the applicant therefor shall pay into the suspense account of the State Treasury all taxes, fees, and assessments then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent, or attorney. Provided that said applicant shall keep for the inspection at all times of the Attorney General and the commission or their authorized representatives, a complete, itemized record maintained in accordance with generally accepted auditing and accounting practices, showing all coin-operated vending machines possessed and in operation during the pendency of such restraining order or injunction. Such record shall show the make and kind of machine, the serial number, the date such machine was put in operation, and the location and serial number of each and every machine possessed or operated within the State. Provided further that said applicant shall make and file with the commission daily, excluding Sundays and legal holidays, a report on a form to be prescribed by the commission, showing the ownership, make and kind, and the serial number of every such machine operated by said applicant within this State. Said report shall also show the county, city, and location within the city and county of each machine and the date such machine was placed in operation. In the event the location or ownership of any machine is changed such information shall be included in said report. Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing if said applicant fails, at any time before the case shall have been finally disposed of by the court of last resort, to keep the records or make and file the reports required herein or to pay daily, excluding Sundays and legal holidays, into the suspense account of the Treasurer all taxes, fees and assessments due and thereafter becoming due, and such taxes shall be paid before such machines are operated, exhibited or displayed for operation within this State. The commission, or its authorized representatives, may file in the court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Chapter or has violated the same. Upon the filing of said affidavit, the clerk of said court shall issue notice to the said applicant to appear before such court upon the date named therein, which shall be within five (5) days from service of such notice or as soon thereafter as the court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the sheriff of the county in which applicant resides or any other peace officer in this State. In the event the injunction is finally dissolved or dismissed, all taxes, fees and assessments paid into the suspense account of the Treasurer under the provisions of this Chapter shall be paid to the funds to which such taxes, fees and assessments are allocated. If the final judgment maintains the right of applicant to a permanent injunction to prevent the collection of such taxes the funds so deposited shall be refunded by the Treasurer to said applicant.

(3) No person, firm, association or corporation required to pay the taxes levied herein to the State may receive or take advantage of any benefit of any restraining order or injunction against the commission, to restrain the collection of the tax levied herein except such person, firm, association or corporation as may have applied for said injunction. All other persons not securing an injunction shall pay to the commission all taxes, fees, and assessments due by him under the provisions of this Chapter and said restraining order or injunction shall in no way interfere with or impair the power of the commission to collect and enforce the payment of the taxes, fees, and assessments involved in any litigation from taxpayers not parties to the restraining order or injunction. Provided further, that no court shall entertain or hear any restraining order or injunction nor shall any restraining order or injunction be granted in behalf of any class or group unless and until each and every member of such class and/or group shall have been made a party to the cause of action, and shall have paid or deposited the taxes as hereinbefore provided.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.06. Attachment of Permit to Machine

Provided further, the permit issued by the commission to evidence the payment of the tax levied

herein shall be securely attached to the machine in a manner that will require continued application of steam and water to remove the same.
[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.07. Rules and Regulations; Revocation of Licenses or Permits

(1) The commission may make and publish rules and regulations, not inconsistent with this Chapter or the other laws or the Constitution of this State or of the United States, for the enforcement of the provisions of this Chapter and the collection of the revenues hereunder.

(2) If any individual, company, corporation or association who owns, operates, exhibits or displays any coin-operated machine in this State, shall violate any provision of this Chapter or any rule and regulation promulgated hereunder, the commission shall investigate the violation, make findings of fact, and may recommend to the Attorney General that a license, permit, or registration certificate be revoked. If the licenses, permits, or registration certificate of any individual, company, corporation, or association owning, operating or displaying coin-operated machines in this State is revoked, such individual, company, corporation, or association shall not operate, display or permit to be operated or displayed such machines until the licenses, permits, or registration certificates are reinstated or until new licenses, permits, or registration certificates are granted.
[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.08. Permits; Collection of Tax; Payment of Expenses

The commission shall collect, and issue permits for the payment of the tax levied herein and to employ all the agencies of the law available to him for the enforcement of the provisions of this Chapter. Provided that Twenty-five Thousand Dollars ($25,000) of the funds derived under the provisions of this Chapter shall be deposited annually to the credit of the General Revenue Fund as payment for the services of the commission and other State agencies in the enforcement of this Chapter.
[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.09. Existing Laws; Violations not Authorized

Nothing herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table, or coin-operated machine, the keeping, exhibition, operation, display or maintenance of which is now illegal or in violation of any Article of the Penal Code of this State or the Constitution of this State.
[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.10. Records

Every "owner" of one or more coin-operated machines in this State shall keep for a period of two (2) years for the inspection at all times by the Attorney General and the commission, or their authorized representatives, a complete, itemized record maintained in accordance with accepted auditing and accounting practices of each and every such machine purchased, received, possessed, handled, exhibited or displayed in this State. Such record shall be kept at a permanent address which address shall be designated on the application for permit and shall include the following information: The kind of each such machine, the date acquired or received in Texas, the date placed in operation, the location or locations of each machine including county, city, street and/or rural route number, the date of each and every change in location, the name and complete address of each and every operator, the full name and address of the owner, or if other than an individual the principal officers or members thereof and their addresses. Such information shall be shown completely and separately for each and every machine.
[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.11. Violations of Act; Penalty; Suit to Recover Penalty

If any "owner" of a coin-operated machine within this State shall (a) permit any coin-operated machine under his control to be operated, exhibited or displayed within this State without said permit being attached thereto, or (b) if any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a permit issued by the commission showing the payment of the tax due thereon for the current year, or (c) if any person required to keep records of coin-operated machines in this State shall falsify such records, or (d) shall fail to keep such records, or (e) shall refuse or fail to present such records for inspection upon the demand of the commission or its authorized representatives, or (f) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or (g) mislead the commission or its authorized representatives in the enforcement of this Chapter, or (h) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or (i) if any person in this State shall fail to comply with the rules and regulations promulgated by the commission, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Five Dollars ($5) nor more than Five Hundred Dollars ($500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General of this State in a court of competent jurisdiction in Travis County, Texas, or any court having jurisdiction.
[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.12. Offenses; Penalty

(a) If any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a valid permit issued by the commission showing the payment of the tax due thereon for the current year, or

(b) if any person required to keep records of coin-operated machines in this State shall falsify such records or

(c) shall fail to keep such records, or

(d) shall refuse or fail to present such records for inspection upon the demand of the commission or its authorized representatives, or

(e) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or

(f) mislead the commission or its authorized representatives in the enforcement of this Chapter, or

(g) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or

(h) if any person in this State shall fail to comply with the rules and regulations promulgated by the commission, or violate the same, he shall be guilty of a Class C misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.13. Sealing Machine to Prevent Operations; Penalty for Breaking Seal

Provided that the commission or its authorized representatives, may seal any such machine upon which the tax has not been paid in a manner that will prevent further operation. Whoever shall break the seal affixed by said commission or its authorized representatives, or whoever shall exhibit or display any such coin-operated machine after said seal has been broken or shall remove any coin-operated machine from location after the same has been sealed by the commission shall be guilty of a misdemeanor and upon conviction shall be punished as set out in Article 13.12 of this Chapter. The commission shall charge a fee of $25.00 for the release of any coin-operated machine sealed for nonpayment of tax.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.14. Apportionment of Tax; Tax Levy by Counties and Cities

Except as herein provided in this Chapter, one-fourth (¼) of the net revenue derived from this Chapter shall be credited to the Available School Fund of the State of Texas and three-fourths (¾) of the net revenue derived from this Chapter shall be credited to the Clearance Fund, established by Article XX of House Bill No. 8, Chapter 184, Acts of the 47th Legislature, Regular Session, 1941. Provided that all counties and cities within this State may levy an occupation tax on coin-operated machines in this State in an amount not to exceed one-half (½) of the State tax levied herein. Further provided that all political subdivisions of this State shall, for zoning purposes, treat the exhibition of a music and skill or pleasure coin-operated machine as indistinguishable from the principal use to which the property where exhibited is devoted. This does not prohibit cities from restricting the exhibition of coin-operated amusement machines within three hundred (300) feet of a church, school, or hospital.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 2025, ch. 795, § 2, eff. Aug. 27, 1979.]

Art. 13.15. Sealing of Machines by City or County

Any city or county levying an occupation tax on coin-operated machines is hereby authorized to seal any such machine on which the tax has not been paid. Any city or county levying an occupation tax on coin-operated machines is hereby authorized to charge a fee not exceeding Five Dollars ($5) for the release of any machine sealed as provided herein for nonpayment of tax. Whoever shall break the seal affixed in the name of any city or county or exhibit, display or remove from location any machine on which the seal has been broken shall be guilty of a Class C misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.16. Taxes, Penalties and Interest Under Re-enacted or Repealed Statutes; Offenses and Penalties Under Prior Laws

All occupation taxes, penalties and interest accruing to the State of Texas by virtue of any of the re-enacted or repealed provisions as set out in this Chapter before the effective date of this Chapter shall be and remain valid and binding obligations to the State of Texas for all taxes, penalties, and interest accruing under the provisions of prior or pre-existing laws, and all such taxes, penalties and interest now or hereafter becoming delinquent to the State of Texas before the effective date of this Chapter are hereby expressly preserved and declared to be legal and valid obligations to the State.

The passage of this Chapter shall not affect offenses committed, or prosecutions begun, under any pre-existing law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.17. Regulation of Music and Skill or Pleasure Coin-Operated Machines

Purpose

Sec. 1. The purpose of this Article is to provide comprehensive regulation of music and skill or pleasure coin-operated machines.

Construction

Sec. 1(a). Notwithstanding any language in this Chapter or any other Chapter to the contrary, the term "music or skill or pleasure coin-operated machine" shall include coin-operated billiard and pool games and shall exclude coin-operated amusement machines designed exclusively for children.

Definitions

Sec. 2. In this Article, unless the context requires a different definition,

(1) "person" includes any natural person, association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them;

(2) "financial interest" includes any legal or equitable interest, and specifically includes the ownership of shares or bonds of a corporation.

Administration

Sec. 3. The commission shall administer this Article. The commission may initiate investigations, hearings, and take other necessary measures to ensure compliance with the provisions of this Article or to determine whether violations may exist. If the commission finds evidence of a violation, it shall notify the Attorney General who may institute a civil action in the name of the commission against a person who violates a provision of this Article. If the commission finds evidence of violation of penal provisions, it shall present it to the District or County Attorney of the county wherein such violation occurred.

Powers of Commission

Sec. 4. In addition to its other authority, the commission may, for the purpose of administering this Article,

(1) prescribe all necessary regulations and rules to ensure that all persons affected by this Article are afforded due process of law;

(2) hold hearings and prescribe rules of procedure and evidence for the conduct of hearings;

(3) issue licenses;

(4) prescribe the procedure for registration of music and skill or pleasure coin-operated machines and the method of securely attaching registration stamps;

(5) disclose confidential information to appropriate officials; and

(6) prescribe the form and content of

(a) license applications;

(b) registration certificates;

(c) tax permits;

(d) reports concerning the location of coin-operated machines; and

(e) reports of the consideration of each party to contracts concerning the placement of coin-operated machines in establishments owned by a person other than the licensee.

Delegation of Authority

Sec. 5. The commission may delegate to an authorized representative any authority given it by this Article, including the conduct of investigations and the holding of hearings.

Agency Cooperation

Sec. 6. All state agencies are directed to cooperate with the commission in its investigatory functions under this Article, and shall provide it access to their relevant records and reports including those declared or designated as confidential by other law.

Confidentiality; Penalty for Disclosure

Sec. 7. (1) All information derived from books, records, reports, and applications required to be made available under this Article to the commission or the Attorney General is confidential unless specifically designated a public record, and may be used only for the purpose of enforcing the provisions of this Article.

(2) Any employee of the commission or Attorney General who discloses confidential information obtained from the administration of this Article to an unauthorized person is guilty of a Class C misdemeanor.

License or Registration Certificate Required; Penalty; Exceptions

Sec. 8. (1) No person shall engage in business to manufacture, own, buy, sell, or rent, lease, trade, lend, or furnish to another, or repair, maintain, service, transport within the state, store, or import, a music coin-operated machine or a skill or pleasure coin-operated machine without a license or registration certificate issued under this Article.

(2) A person who knowingly violates this Section is guilty of a Class B misdemeanor.

(3) No license is required for a corporation or association organized and operated exclusively for religious, charitable, educational, or benevolent purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, to own, or lease or rent from another, a music or skill or pleasure coin-operated machine for the corporation's or association's exclusive use and in furtherance of the purposes for which it is established.

No tax may be assessed against any of these entities if otherwise prohibited by law.

(4) No license or tax is required for an individual to own a music or skill or pleasure coin-operated machine for personal use and amusement in his private residence.

(5) No license is required for any person subject to regulation by the Railroad Commission of Texas to transport or store in the due course of business a music or skill or pleasure coin-operated machine not owned by him.

(6) A person who knowingly secures or attempts to secure a license under this Article by fraud, misrepresentation or subterfuge is guilty of a third-degree felony.

Nature of License

Sec. 9. A license issued under this Article

(1) is an annual license which expires on December 31st of each year, unless it expires as provided in subdivision (5) of this Section or is suspended or cancelled earlier;

(2) is effective for a single business entity;

(3) vests no property or right in the licensee except to conduct the licensed business during the period the license is in effect;

(4) is nontransferable, nonassignable, and not subject to execution; and

(5) expires upon the death of an individual licensee, or upon the dissolution of any other licensee.

Temporary Extension of License

Sec. 10. When a license issued under this Article expires because of the death of an individual licensee, or the dissolution of any other licensee, or upon conditions involving receivership or bankruptcy, the commission, except for good cause shown, shall permit the successor in interest to operate the business under the same license through December 31st of the year. The commission shall give this permission in writing upon certification by the County Judge of the county in which the business is located that the person requesting the extension is the successor in interest. The extended license is subject to suspension or cancellation as is any other license issued under this Article. An original license application is necessary upon expiration of the extension.

Display; Penalty

Sec. 11. (1) A person licensed to do business under this Article shall prominently display his current license certificate at his place of business at all times.

(2) A person who violates this Section is guilty of a Class C misdemeanor.

Application for License

Sec. 12. (1) An application for a license to do business under this Article shall contain a complete statement regarding the ownership of the business to be licensed. This statement of ownership must specify

(a) the nature of the business entity to be licensed;

(b) the name and residence address of every person who has a financial interest in the business, and the nature, type, and extent of that financial interest, except corporate applicants may omit any shareholder holding less than 10% of the corporate shares.

(2) The application shall designate a single individual who is responsible for keeping a record and reporting to the commission the following information regarding each music or skill or pleasure coin-operated machine owned, possessed or controlled by the licensee:

(a) the make, type, and serial number of machine;

(b) the date put in operation;

(c) the dates of the first, and the most recent registration of the machine;

(d) the specific location of each machine;

(e) any change in ownership of a machine.

(3) The application shall be accompanied by a sworn written statement executed by the individual designated to maintain the records and make reports that he is aware of and accepts this responsibility.

(4) The individual designated to maintain the records and to make reports must have the following relationship to the business to be licensed:

(a) the owner of a sole proprietorship;

(b) a partner of the partnership;

(c) an officer of the corporation;

(d) a trustee of the trust;

(e) a receiver of the receivership; or

(f) an officer or principal member of the association, joint venture, organization, or other entity not specified.

(5) The commission may require any other pertinent information to be included in the application.

(6) The application must contain a statement that the information contained in it is true and complete, and this statement shall be made under oath.

(7) The statement of ownership contained in the application becomes a public record upon issuance of a license. Other information in the application is confidential.

(8) The application shall designate an office in this state where the applicant proposes to maintain the records which he is required to maintain by this

Article, otherwise by law, or by rule or regulation of the commission.

Fee with Application

Sec. 13. The application must be accompanied by the annual license fee in the form of a cashier's check or money order payable to the commission.

Records and Reports; Offenses; Penalty

Sec. 14. (1) The licensee shall keep records and make reports to the commission of the information specified in Subsection (2) of Section 12 of this Article at intervals specified by the commission, and upon demand by the commission. He shall immediately notify the commission in writing of any change in ownership of the licensed business.

(2) It is an offense for a person to willfully fail or refuse to make reports required by this Section.

(3) It is an offense for a person to willfully withhold or conceal any information required to be reported by this Section from a person who has the duty to make the report.

(4) A person who violates this Section is guilty of a Class B misdemeanor.

Types of Licenses

Sec. 15. (1) A person who wishes to engage in certain business dealing with music coin-operated machines or skill or pleasure coin-operated machines shall apply for a general business license, or an import license, or a repair license, or any combination of these.

(2) A general business licensee may engage in business to manufacture, own, buy, sell, rent, lease, trade, repair, maintain, service, transport or exhibit within the state, and store music and skill or pleasure coin-operated machines.

(3) An import licensee may engage in business to import, transport, own, buy, repair, sell, and deliver, music and skill or pleasure coin-operated machines, for sale and delivery within this State.

(4) A repair licensee may engage in the business of repairing, maintaining, servicing, transporting, or storing music, skill, or pleasure coin-operated machines.

Fees

Sec. 16. (1) The annual license fee for a general business license shall be as follows:

For an applicant with 50 or fewer machines, $200;

For an applicant with 51–200 machines, $400;

For an applicant with over 200 machines, $500.

(2) The annual license fee for an import license is $500.

(3) The annual license fee for a repair license is $50.

(4) The commission may not refund any part of a license fee after the license is issued. In the event a license is not issued, the commission may retain $25 to cover administrative costs, and may refund the balance.

(5) Cities and counties within this state may charge a license fee in an amount not to exceed one-half of the license fee required herein.

Exemptions

Sec. 16A. (1) A person who owns or exhibits coin-operated machines is exempt from the licensing and record keeping requirements imposed by this Article if:

(a) he operates or exhibits his machines exclusively on premises occupied by him, and in connection with his business; and

(b) he owns no machine subject to the occupation tax imposed by this chapter located on the business premises of another person; and

(c) he has no financial interest, direct or indirect, in the coin-operated music, skill, or pleasure machine industry, except for the interest he owns in his machines used exclusively on premises occupied by him.

(2) Machines which are exhibited by a nonlicensed owner exempt under this section must be registered with the commission. The owner shall obtain a registration certificate each year. The registration certificate shall show the name and address of the location of each machine and shall certify that the machine has a valid tax stamp affixed to it. The owner shall obtain his registration certificate by filing sworn application.

(3) Each time the location of a machine is changed, the owner of the registration certificate shall notify the commission of the change by filing an amendment to the registration certificate within 10 days of the change.

(4) The fee for registration of machines affected by this section is $10 for the business entity in which the owner's machines are exhibited.

Removal of Stamp Prohibited; Penalty

Sec. 17. (1) No person other than the commission may intentionally remove a current registration stamp from a music or skill or pleasure coin-operated machine.

(2) A person who violates this Section is guilty of a Class C misdemeanor.

License as Consent to Entry

Sec. 18. Acceptance of a license issued under this Article constitutes consent by the licensee that the commission or any peace officer may freely enter upon the licensed business premises during normal business hours for the purpose of ensuring compliance with this Article.

Mandatory Grounds for Refusal, Suspension, or Revocation of License

Sec. 19. (1) The commission shall not issue a general business or import license for a business under this Article if it finds that the applicant

(a) has been finally convicted of a felony in a court of competent jurisdiction during the five years preceding the filing of the application; or

(b) has been on probation or parole as a result of a felony conviction during the two years preceding the filing of the application.

(2) The commission may not issue or renew a license for a business under this Article, and shall suspend for any period of time, or cancel a license, if it finds that the applicant or licensee is indebted to the State by judgment for any fees, costs, penalties, or delinquent taxes.

(3) The commission may not issue or renew a license for a business pursuant to the terms of this Article if the applicant does not designate and maintain an office in this state or if the applicant does not permit inspection by the commission of all records which the applicant or licensee is required to maintain.

(4) The commission shall issue an original license to an applicant who complies with the requirements of Subsections (1) and (2) of this Section.

Discretionary Grounds for Refusal, Suspension, or Revocation of License

Sec. 20. (1) A license issued pursuant to the authority of this Article may be revoked, or renewal refused, if:

(a) the licensee has intentionally violated a provision of this Article or a regulation promulgated pursuant to the authority of this Article;

(b) the licensee has intentionally failed to answer a question, or intentionally made a false statement in, or in connection with, his application or renewal;

(c) the licensee extends credit without registering his intent to do so with the consumer credit commission;

(d) the licensee uses coercion to accomplish a purpose or to engage in conduct regulated by the commission;

(e) a contract or agreement between the licensee and a location owner contains a restriction, of any kind and to any degree, on the right of the location owner to purchase, agree to purchase, or use a product, commodity, or service not regulated under the terms of this Article;

(f) issuance of, or failure to suspend or cancel, the license would be contrary to the intent and purpose of this Article.

(2) The commission shall conduct a hearing to ascertain whether a licensee has engaged in conduct which would be grounds for revocation. The commission shall make findings of fact, and, if the commission determines that grounds for revocation exist, the commission shall file those findings with the Attorney General. The Attorney General upon receipt of the record may institute an action to impose the penalties provided by this Act in Article 13.11 or to revoke the license. The action shall be instituted in a district court in the county of the licensee's place of business.

Applicant and Licensee Defined

Sec. 21. In Sections 19 and 20 of this Article, unless the context requires a different definition, the words "applicant" and "licensee" include each partner of a partnership; each trustee of a trust; each receiver of a receivership; each officer and director of a corporation; and each shareholder owning not less than 25 percent of the outstanding shares; any individual applicant or licensee; each officer, director, and member of any association or other entity not specified and, when applicable in context, the business entity itself.

Notice and Hearing

Sec. 22. (1) An applicant or licensee is entitled to at least ten days' notice and a hearing in the following instances:

(a) after his original application for a license has been refused;

(b) before his application for a renewal of a license may be refused;

(c) before the commission may file a recommendation of revocation, denial, or other sanction, with the Attorney General.

(2) Notice of hearing for refusal, cancellation, or suspension may be served personally by the commission or its authorized representative or sent by United States certified mail addressed to the applicant or licensee at his last known address. In the event that notice cannot be effected by either of these methods after due diligence, the commission may prescribe any reasonable method of notice calculated to inform a person of average intelligence and prudence in the conduct of his affairs. The commission shall publish notice of a hearing in a newspaper of general circulation in the area in which the licensee conducts his business activities.

Notice of Commission's Order

Sec. 23. (1) Any order refusing an application or renewal application shall state the reasons for refusal, and a copy of the order shall be delivered immediately to the applicant or licensee.

(2) An order recommending cancellation or suspension of a license shall state the reasons for the cancellation or suspension, and a copy of the order shall be delivered immediately to the licensee.

(3) Delivery of the commission's recommendation of refusal, cancellation, or suspension may be given by

(a) personal service upon an individual applicant or licensee;

(b) personal service upon any officer or director or partner or trustee or receiver, as the case may be;

(c) personal service upon the person in charge of the business premises, temporarily or otherwise, of the applicant or licensee;

(d) sending such notice by United States certified mail addressed to the business premises of the applicant or licensee;

(e) posting notice upon the outside door of the business premises of the applicant or licensee.

(4) Notice is complete upon performance of any of the above.

Review of Commission Action

Sec. 24. (1) Appeal by an affected person from all actions of the commission other than a recommendation to the Attorney General for the revocation of a license as provided in Article 13.07(2) and Article 13.17 Section 20(2) of this Act or from denial of requested action shall be to a District Court of the county of the licensee's place of business. The review shall be conducted by the court and shall be confined to the record. If the record is found to be incomplete, the court may order that additional evidence be taken before the commission. The commission may modify its findings and decision or order by reason of the additional evidence and shall file such evidence and any modifications, new findings, decisions, or orders with the court. In cases of alleged irregularities in procedure before the commission, not shown in the record, proof thereon may be taken in the court.

(2) The court shall not substitute its judgment for that of the commission as to the weight of the evidence on questions of fact committed to commission discretion. The court may affirm the decision of the commission in whole or in part; the court shall reverse or remand the case for further proceeding if substantial rights of the appellant have been prejudiced because the commission's findings, inferences, conclusion, or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the commission;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Appeals

Sec. 25. Appeal from any final judgment of the District Court may be taken by any party, including the commission, in the manner provided for in civil actions generally; provided that the commission may not appeal a decision on motion of the Attorney General to revoke a license.

Prohibited Financial Relationships; Credit Transactions; Penalty

Sec. 26. (1) It shall be unlawful for a person who has a financial interest in a business required to be licensed by this Article or for any agent on behalf of such person to contract either orally or in writing to convey an interest in real property whether by lease, sub-lease or otherwise if such contract contains a provision or provisions in any way limiting the other party's right to secure music or skill or pleasure coin-operated machines from any source.

(2) It shall be unlawful for a person to secure or attempt to secure a contract of lease or bailment of a music or skill or pleasure coin-operated machine by coercion, threats or intimidation, through the commission of, or threat to commit, any act prohibited by the penal laws of this State or the Consumer Credit Code of this State.

(3) A person who violates Subsection (1) of this Section shall be guilty of a third-degree felony.

(4) Any person required to be licensed by this Article may make an extension of credit or lend the licensee's credit to a lessee or a bailee of a music or skill or pleasure coin-operated machine, or on behalf of either for business or commercial purposes when the following terms and conditions have been met and the following duties and obligations satisfactorily assumed and discharged.

(a) Before making the first such extension of credit, the licensee under this Article shall first notify the Consumer Credit Commissioner of the State of Texas of the intent of such licensee to make extensions of credit in the conduct of the licensee's business.

(b) The consideration for such extensions of credit shall not be less than one-half percent or exceed interest or its equivalent at the rate of one and one-half percent (1½%) per month, computed according to the United States Rule. Consideration excludes court costs and attorney's fees as determined by the court, but includes the aggregate interest, fees, bonuses, commissions, brokerage, discounts, expenses, and other forms of costs charged, contracted for, or received by a licensee or any other person in connection with investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting, and enforcing

an extension of credit or forbearance of money, credit, goods, or things in action, or any other service rendered. If in any transaction any consideration in excess of that provided above is charged or received by the licensee directly, or indirectly, except as the result of an accidental and bona fide error corrected upon discovery, the unpaid balance of the indebtedness created by such transaction shall be void, and that portion of any indebtedness so created which has been paid to the licensee, either the principal or its equivalent or interest or its equivalent, or both, shall be repaid by the licensee to the person.

(c) No extension of credit may be made by any person required to be licensed by this Article unless it is evidenced by a written agreement signed by the parties thereto specifying both the amount of credit extended, the consideration for such extension of credit, and the terms according to which such extension of credit is to be repaid.

(d) Each licensee making extensions of credit authorized by this Section shall keep in this State books and records, which shall be consistent with accepted accounting and auditing practices, relating to all such extensions of credit authorized by this Section sufficient to enable any competent person to determine whether or not such licensee is complying with this Section. Such records shall be preserved for four (4) years from the date of the transaction to which they relate, or two (2) years from the date of the final entry made with regard to such transaction, whichever is later.

(e) At such times as the Consumer Credit Commissioner may deem necessary, or at the request of the commission or the Attorney General, the Consumer Credit Commissioner, or his duly authorized representative, may make an examination of the place of business of each licensee hereunder, and may inquire into and examine the transactions, books, accounts, papers, correspondence, or records of such licensee insofar as they pertain to the extensions of credit regulated by this Section. In the course of such examinations, the Consumer Credit Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes and vaults of such licensee, and shall have the right to make copies of such books, accounts, papers, correspondence and records. The Consumer Credit Commissioner or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Section to consider, investigate or secure information. Any licensee who shall fail or refuse to let the Consumer Credit Commissioner or his duly authorized representative examine or make copies of such books or other relative documents shall thereby be deemed in violation of this Section. The information obtained in the course of such examination shall be confidential. Each licensee shall pay to the Consumer Credit Commissioner an amount assessed by the Commissioner to cover the direct and indirect costs of such examination, including a proportionate share of general administrative expenses, which amount shall be retained and held by the Consumer Credit Commissioner, and no part of such fee shall ever be paid into the General Revenue Fund of this State. All expenses incurred by the Consumer Credit Commissioner in conducting such examinations shall be paid only from such fees, and no such expense shall ever be charged against the funds of this State.

(f) The Consumer Credit Commissioner may make regulations necessary for the enforcement of this Section and consistent with all its provisions. Before making a regulation the Consumer Credit Commissioner shall give each licensee at least thirty (30) days' written notice of a public hearing, stating the time and place thereof and the terms or substance of the proposed regulation. At the hearing, any licensee or other person may be heard and may introduce evidence, data, or arguments or place the same on file. The Consumer Credit Commissioner, after consideration of all relevant matters presented, shall adopt and promulgate every regulation in written form, stating the date of adoption and date of promulgation. Each regulation shall be entered in a permanent record book which shall be a public record and be kept in the Consumer Credit Commissioner's office. A copy of every regulation shall be mailed to each licensee, and no regulation shall become effective until the expiration of at least twenty (20) days after such mailing. On the application of any person and payment of the cost thereof, the Consumer Credit Commissioner shall furnish such person a certified copy of any such regulation.

(4) Any person who violates Subsection (3) of this Section is guilty of a Class C misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

CHAPTER FOURTEEN. INHERITANCE TAX AND FEDERAL ESTATE TAX CREDIT

Art. 14.015. Exempt Transfers

The inheritance tax imposed by Article 14.01 shall not apply to the following transfers of property:

(1) Exemption for Non-Residents. Money on deposit in any bank doing business in Texas or to shares or share accounts in any savings and loan association doing business in Texas owned by non-residents of Texas who are citizens of a foreign country and who are not engaged in business in

Texas, or owned by non-resident citizens of the United States who reside in a foreign country and who are not engaged in business in Texas.

(2) Religious, Charitable and Educational Organizations. Property passing to or for the use of charitable, educational, or religious societies or institutions, incorporated, unincorporated, or in the form of a trust, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

For the purposes of this Subsection, a religious, educational, or charitable organization shall include, but not be limited to, a program of physical fitness, character development, and citizenship training or like program.

(3) Public Use. Property transferred to or for the use of this state or any town therein for public purposes.

(4) The value of an annuity or other payment received by any beneficiary (other than a personal representative of the decedent) which qualifies for exemption from the Federal Estate Tax under Subsection (c), (d), or (e) of Section 2039 of the Internal Revenue Code of 1954, as now or hereafter amended, said Subsections (c), (d), and (e) being codified as 26 United States Code Annotated Sections 2039(c), (d), (e).

(5) Members of the Armed Forces Dying in a Combat Zone. Any military pay or other military allowances paid to the beneficiaries of a Texas resident who, while in active service of the armed forces of the United States, was killed in action in a combat zone or was legally declared dead following being classified by the armed forces as missing in action. For purposes of this Subsection, "combat zone" means any area which the President of the United States by executive order designates as an area in which the armed forces are or have engaged in combat and, in those estates in which the state inheritance tax is unpaid and not delinquent, it shall be conclusively presumed for the purposes of this Subsection that members of the armed forces declared dead after having been classified as missing in action died on or after September 1, 1978.

[Amended by Acts 1977, 65th Leg., p. 194, ch. 96, § 1, eff. Aug. 29, 1977; Acts 1978, 65th Leg., 2nd C.S., p. 3, ch. 2, art. 1, § 2, eff. Sept. 1, 1978; Acts 1979, 66th Leg., p. 1143, ch. 549, § 1, eff. June 11, 1979.]

Section 2 of the 1977 amendatory act provided:

"The amendment made by Section 1, (a) to the extent that it adds a reference to Section 2039(d) of the Internal Revenue Code of 1954, as amended, shall apply only with respect to estates of decedents who died on or after the date seven years and nine months prior to the date upon which this bill becomes law and (b) to the extent that it adds a reference to Section 2039(e) of such code, shall apply only with respect to estates of decedents dying after December 31, 1976. No interest shall be allowed or paid on any overpayment of estate tax resulting from the application of the amendment made by Section 1, except as otherwise provided by Chapter 1, Title 122A, Taxation–General, Revised Civil Statutes of Texas, 1925."

Art. 14.02. Class A

(1) For taxable property passing to or for the use of husband or wife, or any direct lineal descendant of husband or wife, or any direct lineal descendant or ascendant of the decedent, or to legally adopted child or children, or any direct lineal descendant of adopted child or children of the decedent, or to the husband of a daughter, or the wife of a son, the tax shall be one (1) per cent on any value not exceeding Fifty Thousand Dollars ($50,000); two (2) per cent on any value in excess of Fifty Thousand Dollars ($50,000), and not exceeding One Hundred Thousand Dollars ($100,000); three (3) per cent on any value in excess of One Hundred Thousand Dollars ($100,000), and not exceeding Two Hundred Thousand Dollars ($200,000); four (4) per cent on any value in excess of Two Hundred Thousand Dollars ($200,000), and not exceeding Five Hundred Thousand Dollars ($500,000); five (5) per cent on any value in excess of Five Hundred Thousand Dollars ($500,000), and not exceeding One Million Dollars ($1,000,000); and six (6) per cent on any value in excess of One Million Dollars ($1,000,000).

(2) An amount, as determined by Section (3) of this Article, of property transferred to a beneficiary or beneficiaries receiving property under this Article is exempt from taxation under this Article. When more than one beneficiary described in this Article receives property, and when the total amount passing under this Article exceeds the amount of the exemption applicable under Section (3) of this Article, the amount of the exemption shall be divided among the beneficiaries in a manner proportional to the amount passed under this Article to each beneficiary.

(3) The amount of the exemption under Section (2) of this Article is Two Hundred Thousand Dollars ($200,000) for the period beginning on September 1, 1978, and extending through August 31, 1982, Two Hundred Fifty Thousand Dollars ($250,000) for the period beginning on September 1, 1982, and extending through August 31, 1985, and Three Hundred Thousand Dollars ($300,000) beginning on September 1, 1985.

(4) In no event shall a Class A beneficiary receive an exemption less than Twenty-five Thousand Dollars ($25,000).

[Amended by Acts 1978, 65th Leg., 2nd C.S., p. 2, ch. 2, art. 1, § 1, eff. Sept. 1, 1978.]

Section 3 of the 1978 amendatory act provided:

"This article takes effect on September 1, 1978, and applies to the estates of persons who died on or after September 1, 1978."

Art. 14.17. Penalty and Interest for Late Payment

If any tax imposed by the Chapter is not paid on or before the due date, a penalty of five percent (5%) of the tax due shall become due and payable, and if any tax is not paid within thirty (30) days of the due date, an additional penalty of five percent (5%) of

the tax shall become due and payable, unless in each instance it is shown that the failure is due to reasonable cause and not due to willful neglect. Interest at the rate of seven percent (7%) per annum on any tax due shall be added to any tax and penalties imposed by this Chapter that are not paid within nine (9) months from the date of death of the decedent, unless the computed interest would be less than Five Dollars ($5).

[Amended by Acts 1979, 66th Leg., p. 84, ch. 51, § 11, eff. Jan. 1, 1980.]

Section 18 of the 1979 amendatory act provided:

"This Act takes effect January 1, 1980, and applies to all unpaid taxes that are delinquent on that date and become delinquent after that date."

CHAPTER 18. CEMENT PRODUCTION TAX

Art. 18.03. Penalties

If any person shall violate any of the provisions hereof, he shall forfeit to the State of Texas as a penalty not less than Twenty-five Dollars ($25), and not more than One Thousand Dollars ($1,000) for each violation, and each day's violation shall constitute a separate offense. If any person shall fail to pay said tax promptly he shall forfeit five per cent (5%) thereof as a penalty, and after the first thirty (30) days he shall forfeit an additional five per cent (5%) of said tax. Provided, however, that the penalty shall never be less than One Dollar ($1). Delinquent taxes shall draw interest at the rate of seven per cent (7%) per annum beginning sixty (60) days from the date due. The State shall have a prior lien for all delinquent taxes, penalties and interest on all of the property used by the distributor in his business of distributing, selling and/or using cement.

[Amended by Acts 1979, 66th Leg., p. 84, ch. 51, § 12, eff. Jan. 1, 1980.]

Section 18 of the 1979 amendatory act provided:

"This Act takes effect January 1, 1980, and applies to all unpaid taxes that are delinquent on that date and become delinquent after that date."

CHAPTER 19. MISCELLANEOUS OCCUPATION TAX

Art. 19.01. Miscellaneous Occupation Taxes

There shall be levied on and collected from every person, firm, company or association of persons, pursuing any of the occupations named in the following numbered subdivisions of this Article, an annual occupation tax, which shall be paid annually in advance except where herein otherwise provided, on every such occupation or separate establishment, as follows:

(1) Repealed by Acts 1975, 64th Leg., p. 827, ch. 320, § 12, eff. Sept. 1, 1975.

[See Compact Edition, Volume 2 for text of (2) to (9)]

(10) Billiard Tables.

[See Compact Edition, Volume 2 for text of (a) and (b)]

(c) Cities and Towns May Levy Tax and License Owners and Operators. All cities and towns, whether incorporated under general or special law, shall have the power and authority to levy and collect a tax, equal to one-half (½) of the amount herein levied, and may ban, prohibit, regulate, supervise, control or license, any person, firm, association of persons, corporations and all other organizations, save and except religious, charitable or educational organizations, authorized under the laws of the State of Texas, operating a billiard table, save and except coin-operated billiard tables regulated and licensed under provisions of Chapter 13 of this title, within the incorporated limits of such city or town; but in the event that a fee is charged for licensing the operation of billiard tables, other than billiard tables regulated and licensed under the provisions of Chapter 13 of this title, said fee shall not exceed Ten Dollars ($10) annually per table; and said cities and towns may fix penalties for the violation thereof.

[Amended by Acts 1975, 64th Leg., p. 830, ch. 320, § 12, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 2025, ch. 795, § 1, eff. Aug. 27, 1979.]

Art. 19.02. Certain Services Connected with Oil Wells

[See Compact Edition, Volume 2 for text of (1) to (4)]

(5) If any person shall violate any provisions of this Article, he shall forfeit to the State of Texas, as a penalty, the sum of not less than Twenty-five Dollars ($25), and not more than Five Hundred Dollars ($500) for each violation, and each day's violation shall constitute a separate offense. If any person shall fail to pay said tax when the same shall become due, he shall forfeit five per cent (5%) thereof as a penalty, and after the first thirty (30) days, he shall forfeit an additional five per cent (5%) of said tax. Provided, however, that the penalty shall never be less than One Dollar ($1). Delinquent taxes shall draw interest at the rate of seven per cent (7%) per annum beginning sixty (60) days from the date due. The State shall be secured for all taxes, penalties, interests and costs due by any person under the provisions of this Article by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property used by said person in his business.

[Amended by Acts 1979, 66th Leg., p. 85, ch. 51, § 13, eff. Jan. 1, 1980.]

Section 18 of the 1979 amendatory act provided:
"This Act takes effect January 1, 1980, and applies to all unpaid taxes that are delinquent on that date and become delinquent after that date."

CHAPTER 20. LIMITED SALES, EXCISE AND USE TAX

Art. 20.01. Title—Definitions

This Chapter is known and may be cited as the "Limited Sales, Excise and Use Tax Act," and the following words shall have the following meanings unless a different meaning clearly appears from the context:

[See Compact Edition, Volume 2 for text of (A) to (K)]

(L) Sales Price.

[See Compact Edition, Volume 2 for text of (1) and (2)]

(3) "Sales Price" does not include any of the following:

(a) Cash discounts allowed on sales.

(b) The amount charged for tangible personal property returned by customers when the entire amount charged therefor is refunded either in cash or credit, or refunds on the sales price of taxable services.

(c) The amount of any tax imposed by the United States upon or with respect to retail sales or wholesale sales of tires and fishing equipment whether imposed upon the retailer, wholesaler, or the consumer, under Subtitles D and E, Title 26 (Internal Revenue Code), United States Code.[1]

(d) The amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of taxable items under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

(e) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of a taxable item of any kind or nature.

(f) Charges for transportation of tangible personal property after sale.

(g) The amount charged for labor or services rendered in installing, applying, remodeling, or repairing the tangible personal property sold.

(h) The face value of United States of America coin or currency in a sale of United States of America coin or currency in which the total consideration given by the purchaser exceeds the face value of the coin or currency.

(i) Voluntary gratuities and reasonable mandatory charges for the service of meals and food products, including soft drinks and candy, for immediate human consumption when the service charge is separated from the sales price of the meal or food product and identified as a gratuity or tip and when the total amount of the service charge is disbursed by the employer to employees who customarily and regularly provide such service.

[See Compact Edition, Volume 2 for text of (M) to (X)]

(Y)(1) Newspaper. "Newspaper" means those publications printed on newsprint whose average sales price per copy over a 30-day period does not exceed 75 cents which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of a general interest. For purposes of this section, advertising is considered to be news of a general character and of a general interest. The term "newspaper" does not include magazines, handbills, circulars, flyers, sales catalogs, or the like, unless such items, when printed, are printed for the purpose of distribution as a part of a publication which itself constitutes a newspaper within the meaning of this section, and are in fact actually distributed as part of a newspaper as herein defined.

(2) Magazines. "Magazine" means those publications usually paperbacked and sometimes illustrated, that appear at regular intervals and contain stories, articles, and essays by various writers, and advertisements.

(AA) The definitions and other provisions of this Chapter relating to the collection, administration, and enforcement of the taxes imposed by this Chapter, including requirements for sales tax permits, apply to sellers and purchasers whose sales and purchases are exempt from the taxes imposed by this Chapter, but who are subject to the taxes imposed by a city under the Local Sales and Use Tax Act.

[Amended by Acts 1975, 64th Leg., p. 262, ch. 108, § 1, eff. April 30, 1975; Acts 1975, 64th Leg., p. 2307, ch. 719, art. VIII, § 1, art. XI, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 146, ch. 71, § 1, eff. April 25, 1977; Acts 1977, 65th Leg., p. 161, ch. 81, § 1, eff. Aug. 29, 1977; Acts 1978, 65th Leg., 2nd C.S., p. 4, ch. 2, art. 2, § 2, eff. Oct. 1, 1978.]

[1] 26 U.S.C.A. (I.R.C.1954), §§ 4041 et seq., 5001 et seq.

Art. 20.021. Method of Collection; Bracket System

[See Compact Edition, Volume 2 for text of (A) to (E)]

(F) Presumption of Taxability: Resale Certificate. For the purpose of the proper administration of this Chapter and to prevent evasion of the limited sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established.

The burden of proving that a sale of tangible personal property is not a sale at retail is upon the

person who makes the sale unless he takes from the purchaser a certificate to the effect that the tangible personal property is purchased for the purpose of reselling, leasing or renting it in the regular course of business or for the purpose of subsequently transferring it as an integral part of a taxable service rendered in the regular course of business.

Provided, however, any purchase of liquor, wine, beer or malt liquor by the holder of a retail license or permit issued under the provisions of the Texas Liquor Control Act from any holder of a manufacturer's license, wholesaler's permit, General Class B Wholesaler's permit, Local Class B Wholesaler's permit, Local Distributor's permit, General, Local, Branch or City Distributor's license issued under the provisions of the Texas Liquor Control Act shall be presumed to be a purchase for resale. The holder of any such manufacturer's license, wholesaler's permit, General Class B Wholesaler's permit, Local Class B Wholesaler's permit, Local Distributor's permit, General, Local, Branch or City Distributor's license shall not be required to secure a resale certificate covering sales to the holders of any such retail licenses or permits.

[See Compact Edition, Volume 2 for text of (G) to (K)]

(L) Bad Debts.

(1) If during the reporting period in which a sale is made a retailer determines that all or part of the payment for the sale will not be made, the retailer is not required to pay the tax on the portion of the payment remaining unpaid if the retailer enters the unpaid portion in his books as a bad debt and if either during the reporting period or during a subsequent reporting period the bad debt is claimed as a deduction for federal tax purposes. If the portion of the payment is paid during a later reporting period, the retailer shall report and pay the tax during the reporting period in which the payment is made.

(2) Credit shall be allowed or reimbursement made to the retailer for taxes paid on sales represented by that portion of an account determined to be worthless and actually charged off for federal income tax purposes or on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

[See Compact Edition, Volume 2 for text of (M) and (N)]

[Amended by Acts 1977, 65th Leg., p. 1159, ch. 439, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1656, ch. 652, § 1, eff. Aug. 29, 1977.]

Art. 20.031. Administrative and Enforcement of Use Tax

[See Compact Edition, Volume 2 for text of (A) to (M)]

(N) Federal Tax Information. The Comptroller shall supply to each retailer engaged in selling taxable items subject to a tax under Subtitles D and E, Title 26 (Internal Revenue Code), United States Code,[1] information concerning the amount of the federal tax collected from the manufacturer, wholesaler, retailer, or consumer and shall provide to the retailer tables for the calculation of the sales price of taxable items as defined by this Chapter. It is a violation of this Chapter for a retailer to collect from any consumer any tax imposed by this Chapter if the retailer includes in the amount of the sales price of the taxable item the amount of any tax imposed under Subtitles D and E, Title 26, United States Code.

[Amended by Acts 1975, 64th Leg., p. 2307, ch. 719, art. VIII, § 2, eff. Sept. 1, 1975.]

[1] 26 U.S.C.A. (I.R.C.1954) § 4001 et seq.

Art. 20.04. Exemptions

[See Compact Edition, Volume 2 for text of (A) to (C)]

(D) Items Taxed Under Existing Statutes.

[See Compact Edition, Volume 2 for text of (D)(1) to (3)]

(4) There are exempted from the taxes imposed by this Chapter the receipts from the sale, preparation, or service of mixed beverages or of ice or nonalcoholic beverages, if the receipts are taxable under Chapter 202, Alcoholic Beverage Code.

[See Compact Edition, Volume 2 for text of (D)(5), (E)]

(F) Certain Meals and Food Products. There are exempted from the taxes imposed by this Chapter the receipts from the sale of, and the storage, use or other consumption in this State of:

(1) Meals and food products (including soft drinks and candy) for human consumption served by public or private schools, school districts, student organizations, or Parent-Teacher Associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school during the regular school day or by a Parent-Teacher Association during a fund-raising sale the proceeds of which do not go to the benefit of an individual.

(2) Meals and food products (including soft drinks and candy) for human consumption when sold by a church or at a function of said church.

(3) Meals and food products (including soft drinks and candy) for human consumption when served to patients and inmates of hospitals and

other institutions licensed by the State for the care of human beings.

[See Compact Edition, Volume 2 for text of (G)]

(H) United States; State; Political Subdivision; Religious, Eleemosynary Organizations. There are exempted from the computation of the amount of the taxes imposed by this Chapter, the receipts from the sale, lease or rental of any taxable items to, or the storage, use or other consumption of taxable items by:

(1) The United States, its unincorporated agencies and instrumentalities.

(2) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

(3) The State of Texas, its unincorporated agencies and instrumentalities.

(4) Any county, city, special district or other political subdivision of this State.

(5) Any organization created for religious, educational, charitable or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

(6) [Expired].

(7) An organization qualifying for exemption from federal income tax under Internal Revenue Code Section 501(c)(3) provided, however, that no item purchased shall be used for the personal benefit of any private stockholder or individual and the items purchased must be related to the purpose of said organization or corporation.

[See Compact Edition, Volume 2 for text of (I) to (L)]

(M) Drugs, Medicines, and Medical Equipment and Devices. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of:

(1) insulin and of drugs and medicines when prescribed or dispensed for humans or animals by a licensed practitioner of the healing arts;

(2) syringes and hypodermic needles used for medical purposes, braces, spectacles, hearing aids, orthopedic and dental prosthetic appliances, ileostomy, colostomy, and ileal bladder appliances and related supplies, and replacement parts designed specifically for such products; and

(3) specialized printing or signalling equipment used by the deaf for the purpose of enabling the deaf to communicate through the use of an ordinary telephone, including all materials, paper, and printing ribbons used in that equipment.

(N) Animal Life; Feed; Seeds; Plants; Fertilizer. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of:

(1) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Horses, mules and work animals.

(2) Feed for farm and ranch animals and for animals which are held for sale in the regular course of business.

(3) Seeds and annual plants the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

(4) Fungicides, insecticides, herbicides, defoliants and desiccants exclusively used or employed on farms or ranches in the production of food for human consumption, feed for any form of animal life, or other agricultural products to be sold in the regular course of business.

(5) Fertilizer.

(6) Machinery or equipment exclusively used or employed on farms or ranches in the production of food for human consumption, production of grass, the building or maintaining of roads and water facilities, feed for any form of animal life, or other agricultural products to be sold in the regular course of business, and machinery, equipment, and gooseneck trailers exclusively used in the processing, packing, or marketing of agricultural products by the original producer at a location operated by the original producer exclusively for processing, packing, or marketing his own products.

[See Compact Edition, Volume 2 for text of (O)]

(P) Vessels.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of materials, equipment and machinery which enter into and become component parts of ships or vessels exclusively and directly used in a commercial enterprise, including commercial fishing vessels, and vessels used commercially as vessels for pleasure fishing by individuals as paying passengers thereon, of eight (8) tons displacement and over, and the receipts from the sale of such ships or vessels exclusively and directly used in a commercial enterprise when sold by the builder thereof, and repair services, renovation, and/or conversion, including labor and materials to such ships or vessels exclusively and directly used in a commercial enterprise.

[See Compact Edition, Volume 2 for text of (P)(2), (3)]

(Q) Certain Aircraft. There are exempted from the taxes imposed by this Chapter the receipts from the sale, use, storage, lease or other consumption of aircraft sold to persons using such aircraft as certifi-

cated or licensed carriers of persons or property, or sold to persons and used for the exclusive purpose of training or instructing pilots in a licensed course of instruction, or sold to any foreign government or sold to persons who are not residents of this State and repair services to aircraft operated by a certificated or licensed carrier of persons or property.

(R) Gas and Electricity.

(1) There are exempted from the taxes imposed by this Chapter, but not from the taxes imposed by a city under the Local Sales and Use Tax Act, the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of gas and electricity except when sold for commercial use.

(2) There are exempted from the taxes imposed by a city under the Local Sales and Use Tax Act the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of gas and electricity except when sold for residential use or commercial use, unless sales for residential use are further exempted by the city as provided in the Local Sales and Use Tax Act.

(3) For the purpose of this subsection, the terms "residential use" and "commercial use" shall have the following meanings:

"Residential use" means use in a family dwelling or in a multi-family apartment or housing complex or building or portion thereof occupied as a home or residence.

"Commercial use" means use by persons engaged in selling, warehousing or distributing a commodity or service, either professional or personal.

The term "commercial use" specifically does not include use by persons engaged in: (1) processing tangible personal property for sale as tangible personal property; (2) exploration for or production and transportation of a material extracted from the earth; (3) agriculture, including dairy or poultry operations and pumping water for farm and ranch irrigation; or, (4) electrical processes such as electroplating, electrolysis and cathodic protection.

[See Compact Edition, Volume 2 for text of (S) to (Y)]

(Z) There are exempted from the taxes imposed by this Chapter the receipts from the leasing or licensing of motion picture films of any kind to or by motion picture theatres and to or by licensed television stations.

(AA) A "volunteer fire department" means any company, department or association organized for the purpose of answering fire alarms and extinguishing fires, or answering fire alarms, extinguishing fires, and providing emergency medical services, the members of which received no compensation or nominal compensation for their services thus rendered. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease, or rental in this State of taxable items to any volunteer fire department for its exclusive use.

(BB) Newspapers.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease, or rental of, and the storage, use, or other consumption in this State of:

(a) tangible personal property which will enter into and become an ingredient or component part of a newspaper, as that term is defined in Article 20.01(Y) of this Chapter, whether or not such newspaper is printed for ultimate sale at retail within or without this State; and

(b) tangible personal property used or consumed in or during any phase of actual printing or processing of such newspaper, provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such printing or processing operations. Chemicals, catalysts, and other materials which are used for the purpose of producing or inducing a chemical or physical change during such printing or processing operations or for removing impurities or otherwise placing a newspaper in its final distributable form are included within the exemption, as are other articles of tangible personal property used in such a manner as to be necessary or essential in the actual printing or processing operations. The exemption provided herein does not include the following:

(i) machinery, equipment, and replacement parts and accessories therefor, having a useful life when new in excess of six (6) months;

(ii) machinery, equipment, materials, and supplies used in a manner that is merely incidental to the printing or processing, such as, for example, intraplant transportation equipment, and maintenance and janitorial equipment and supplies;

(iii) hand tools used in the printing and processing; and

(iv) tangible personal property used by the newspaper printer in any activities other than the actual printing or processing operation, such as, for example, office equipment and supplies, equipment and supplies used in selling or in distributing activities, in gathering information for publication, or in transportation activities.

(2) Wrapping, Packing and Packaging Supplies.

(a) There are exempted from the taxes imposed by this Chapter the receipts from sales of all internal and external wrapping, packing, and packaging supplies and materials to any person for use in wrapping, packing, or packaging any

newspaper for the purpose of expediting or furthering in any way either the sale of that newspaper or the distribution of that newspaper if distributed without charge.

(b) For the purpose of this Section, wrapping, packing, and packaging supplies shall include, but shall not be limited to:

(i) wrapping paper, wrapping twine, bags, cartons, crates, crating materials, tape, rope, rubber bands, labels, staples, glue, and mailing tubes; and

(ii) property used inside a package in order to shape, form, preserve, stabilize, or protect newspapers contained therein.

(3) Notwithstanding any provision in this Chapter to the contrary, there are exempted from the taxes imposed by this Chapter the receipts from the following transactions:

(a) Transactions involving a transfer for a consideration of the title or possession of a newspaper, as defined in Article 20.01(Y) of this Chapter, which has been produced, fabricated, or printed to the special order of the customer, provided such customer was responsible for gathering substantially all the information contained in such newspaper, formulating the layout, design, and format of such newspaper, and further provided that such customer would otherwise have been entitled to the exemption contained in Section (1) of this Article 20.04(BB) except for the fact that such customer did not own and operate or otherwise possess or control a printing facility capable of printing and processing such newspaper; and

(b) Transactions involving a transfer for a consideration of the title or possession of items such as handbills, circulars, flyers, advertising supplements, or the like, which have been printed to the special order of the customer, provided that such items, when printed, are printed for the exclusive purpose of being distributed as a part of a newspaper, as defined in Article 20.01(Y) of this Chapter, are actually distributed as part of such a newspaper, and further provided that such items, after being printed, are not delivered to such customer but are instead delivered to the person responsible for the distribution of the newspaper of which the items were originally intended to be a part.

(4) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease, or rental of and the use, storage, or other consumption in this State of newspapers whether or not the newspaper is sold or distributed by individual copy or subscription.

(CC) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use, or other consumption in this State of solar energy devices. A "solar energy device" is a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power or both by means of collecting and transferring solar-generated energy and includes mechanical or chemical devices having the capacity for storing solar-generated energy for use in heating or cooling or in the production of power.

(DD) There are exempted from the computation of the amount of taxes imposed by this Chapter the receipts from the sale, lease, or rental of any taxable items to, or the storage, use, or other consumption of taxable items by, any nonprofit corporation or association engaged exclusively in providing athletic competition among persons under nineteen (19) years of age, provided that no financial benefit inures to any individual or shareholder. The contracting for the sale of or the sale of concessions at any game or event conducted by a nonprofit corporation or association does not prevent the application of this exemption to the nonprofit corporation or association.

(EE)(1) There are exempted from the taxes imposed by this chapter the receipts from the sale of food products, and candy, carbonated beverages, and diluted juices, whether or not the product is sold for immediate consumption, if the sale:

(i) is made by a person under 18 years of age who is a member of a nonprofit organization devoted to the exclusive purposes of education or physical or religious training, and groups associated with public or private elementary or secondary schools;

(ii) is made as a part of a fund-raising drive sponsored by the organization;

(iii) all net proceeds from the sale go to the organization for its exclusive use.

(2) There are exempted from the taxes imposed by this chapter the storage, consumption, or other use in this state of food products acquired in a sale exempted by the provisions of Subsection (1) of this section. The exemption allowed by this subsection applies only to the purchaser at the exempt sale.

[Text of § (FF) added by Acts 1977, 65th Leg., p. 162, ch. 81, § 3]

(FF) Magazines. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease, or rental of and the use, storage, or other consumption in this State of subscriptions to magazines entered as second class mail and sold for a semiannual or longer period of time. Other sales of magazines are taxable.

[Text of § (FF) added by Acts 1977, 65th Leg., p. 2094, ch. 840, § 1]

(FF) Broadcasting Stations. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease, rental, or use of film, tapes, photographs, transparencies, and graphic art materials to or by a licensed radio or television station subject to regulatory jurisdiction of the Federal Communications Commission if used or consumed in or during any phase of broadcasting operation and program services. The exemption does not include machinery, equipment, and replacement parts and accessories for the machinery or equipment having a useful life when new in excess of six months.

(GG)(1) A religious, educational, charitable, or eleemosynary organization exempted under Subdivision (5) of Section (H) of this article is not required to collect the taxes imposed by this chapter for the sale of taxable items at a tax-free sale or auction held by the organization. The organization may hold only one tax-free sale or auction during each calendar year, and the tax-free sale or auction may continue for one day only. The organization may employ an auctioneer to conduct the auction and pay the auctioneer a reasonable fee. If two or more organizations jointly hold a tax-free sale or auction, neither may hold another tax-free sale or auction during the calendar year.

(2) There are exempted from the taxes imposed by this chapter the receipts from the sale and the use, storage, and other consumption in this state of taxable items sold or acquired at a tax-free sale permitted under Subsection (1) of this section. The exemption provided by this subsection does not apply at any retail sale of the item subsequent to the tax-free sale, or to the use, storage, or other consumption of the item subsequent to a sale or other transfer of the item after the tax-free sale.

[Amended by Acts 1975, 64th Leg., p. 669, ch. 282, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2306, ch. 719, art. VI, § 1, art. XI, § 2, art. XIII, § 1, art. XVI, § 1, art. XVIII, § 1, art. XXI, § 1, art. XXII, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 162, ch. 81, §§ 2, 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 558, ch. 194, § 5, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 607, ch. 218, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 614, ch. 224, § 1, eff. May 24, 1977; Acts 1977, 65th Leg., p. 1035, ch. 380, § 1, eff. June 10, 1977; Acts 1977, 65th Leg., p. 1393, ch. 559, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1718, ch. 685, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2094, ch. 840, § 1, eff. Aug. 29, 1977; Acts 1978, 65th Leg., 2nd C.S., p. 4, ch. 2, art. 2, § 1, eff. Oct. 1, 1978; Acts 1979, 66th Leg., p. 823, ch. 370, art. 2, § 1, eff. Aug. 27, 1979.]

Subdivision (H)(6) of this article, relating to Bicentennial commemorations, expired of its own terms on June 1, 1978.

Art. 20.05. Return and Payments

[See Compact Edition, Volume 2 for text of (A) to (G)]

(H) Penalties for Failure to Pay or Report. If any person shall fail to file a report as required herein or shall fail to pay to the Comptroller the tax as imposed herein when said report or payment is due, he shall forfeit five per cent (5%) of the amount due as a penalty, and after the first thirty (30) days he shall forfeit an additional five per cent (5%). Provided, however, that the penalty shall never be less than One Dollar ($1). Delinquent taxes shall draw interest at the rate of seven per cent (7%) per annum, beginning sixty (60) days from the date due.

[See Compact Edition, Volume 2 for text of (I) to (K)]

[Amended by Acts 1979, 66th Leg., p. 85, ch. 51, § 14, eff. Jan. 1, 1980.]

Section 18 of the 1979 amendatory act provided:

"This Act takes effect January 1, 1980, and applies to all unpaid taxes that are delinquent on that date and become delinquent after that date."

Art. 20.08. Petition for Redetermination

[See Compact Edition, Volume 2 for text of (A) to (F)]

(G) Interest for Failure to Pay Tax; Amount; Rates. Any person who fails to pay any tax to the State or any amount of tax required to be collected and paid to the State within the time required, shall pay, in addition to the tax or amount of tax, interest at the rate of seven per cent (7%) per annum, beginning sixty (60) days from the date on which the tax or the amount of tax required to be collected became due and payable to the State until the date of payment.

[Amended by Acts 1979, 66th Leg., p. 85, ch. 51, § 15, eff. Jan. 1, 1980.]

Section 18 of the 1979 amendatory act provided:

"This Act takes effect January 1, 1980, and applies to all unpaid taxes that are delinquent on that date and become delinquent after that date."

Art. 20.10. Repealed by Acts 1979, 66th Leg., p. 98, ch. 59, § 3, eff. Aug. 27, 1979

Art. 20.11. Administration

[See Compact Edition, Volume 2 for text of (A) to (F)]

(G) Information Confidential

(1) Except information set forth in liens filed pursuant to this Title or in permits issued under Article 20.021(D) of this Chapter, all information secured, derived or obtained from any record, report, instrument or copy thereof, required to be furnished under the terms of this Chapter, shall be and shall remain confidential and not open to public inspection. All information secured, derived or obtained during the course of an examination of the taxpayer's books, records, papers, officers or employees, including the business affairs, operations, profits, losses or expenditures of the taxpayer, shall be and shall remain confidential and not open to public inspection.

However, the Comptroller may authorize examination by other State officers and law enforce-

ment officials, or by tax officials of another state and by officials of the federal government if a reciprocal arrangement exists.

Nothing herein contained shall be construed to prevent: The delivery to a taxpayer, or his duly authorized representative, of a copy of any report or other paper filed by him pursuant to the provisions of this Chapter; the publication of statistics so classified as to prevent the identification of a particular report and the items thereof; the use of such records, reports, or information secured, derived, or obtained by the Attorney General or the Comptroller under the terms of this Chapter in any action against the same taxpayer under any provision of this Chapter.

[Amended by Acts 1979, 66th Leg., p. 1823, ch. 740, § 4, eff. June 13, 1979.]

CHAPTER 21. ADMISSIONS TAX [REPEALED]

Arts. 21.01 to 21.04. Repealed by Acts 1979, 66th Leg., p. 1024, ch. 456, § 1, eff. Sept. 1, 1979

Prior to repeal, art. 21.02 was amended by Acts 1975, 64th Leg., p. 2307, ch. 719, art. IX, § 1, art. XXIV, § 1.

Prior to repeal, art. 21.04 was amended by Acts 1979, 66th Leg., p. 86, ch. 51, § 16.

CHAPTER 23. HOTEL OCCUPANCY TAX

Art. 23.07. Penalties

If any person shall fail to file a report as required herein or shall fail to pay to the Comptroller the tax as imposed herein when said report or payment is due, he shall forfeit five per cent (5%) of the amount due as a penalty, and after the first thirty (30) days he shall forfeit an additional five per cent (5%) of such tax. Provided, however, that the penalty shall never be less than One Dollar ($1). Delinquent taxes shall draw interest at the rate of seven per cent (7%) per annum beginning sixty (60) days from the date due.

[Amended by Acts 1979, 66th Leg., p. 86, ch. 51, § 17, eff. Jan. 1, 1980.]

Section 18 of the 1979 amendatory act provided:

"This Act takes effect January 1, 1980, and applies to all unpaid taxes that are delinquent on that date and become delinquent after that date."

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TITLE 1. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

SUBCHAPTER A. PURPOSE AND POLICY

§ 1.003. Public Policy

It is the public policy of the state to provide for the conservation and development of the state's natural resources, including:

(1) the control, storage, preservation, and distribution of the state's storm and floodwaters and the waters of its rivers and streams for irrigation, power, and other useful purposes;

(2) the reclamation and irrigation of the state's arid, semiarid, and other land needing irrigation;

(3) the reclamation and drainage of the state's overflowed land and other land needing drainage;

(4) the conservation and development of its forest, water, and hydroelectric power;

(5) the navigation of the state's inland and coastal waters; and

(6) the maintenance of a proper ecological environment of the bays and estuaries of Texas and the health of related living marine resources.

[Amended by Acts 1975, 64th Leg., p. 925, ch. 344, § 1, eff. June 19, 1975.]

TITLE 2. STATE WATER ADMINISTRATION

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CHAPTER 5. TEXAS DEPARTMENT OF WATER RESOURCES

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5.093. Officers of the State; Oath.
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5.098. Seal.

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5.356. Appeal by Executive Precluded.
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Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. Sections 8 to 12 of the Act provided:

"Sec. 8. (a) On the effective date of this Act, the governor shall appoint the initial members to the Texas Water Commission.

"(b) The persons initially appointed to the commission shall be designated to serve by the governor as follows: one member of the commission to serve a two-year term, one member of the commission to serve a four-year term, and one member of the commission to serve a six-year term.

"(c) The initial members of the commission shall take office on September 1, 1977.

"Sec. 9. (a) The Texas Department of Water Resources and the Texas Water Commission, as provided in Section 1 of this Act, are created effective September 1, 1977, and the existing Texas Water Rights Commission and Texas Water Quality Board are abolished on September 1, 1977.

"(b) The department is the successor to the Texas Water Quality Board and Texas Water Rights Commission and incorporates the Texas Water Development Board and shall carry out their respective duties, responsibilities, and functions from the effective date of this Act as provided by law, including acts of this legislature.

"(c) The abolishment of the Texas Water Rights Commission shall not affect or impair any act done or obligation, right, license, permit, or penalty accrued or existing under the authority of the prior law, and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning such obligation, right, license, permit, or penalty. No action or proceeding commenced prior to the effective date of this Act shall be affected by its enactment.

"(d) The rights, powers, and duties delegated by law to the Texas Water Rights Commission which are not expressly assigned to the Texas Water Commission are expressly transferred to the Texas Department of Water Resources in accordance and consistent with Title 2, Subtitle A, Chapter 5, Subchapter B of this code.

"(e) The abolishment of the Texas Water Quality Board shall not affect or impair any act done or obligation, right, license, permit, water quality criteria, standard or requirement, or penalty accrued or existing under the authority of the prior law, and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning such obligation, right, license, permit, water quality criteria, standard or requirement, or penalty. No action or proceeding commenced prior to the effective date of this Act shall be affected by its enactment.

"(f) The rights, powers, and duties delegated by law to the Texas Water Quality Board are expressly transferred to the Texas Department of Water Resources as is provided herein or in accordance and consistent with Title 2, Subtitle A, Chapter 5, Subchapter B of this code.

"Sec. 10. The members of the Texas Water Development Board serving as members of the board on the effective date of this Act shall continue in office until the expiration of their respective terms.

"Sec. 11. On September 1, 1977, all personnel, equipment, data, documents, facilities, and other items of the Texas Water Rights Commission, the Texas Water Development Board, and the Texas Water Quality Board shall be transferred to the Texas Department of Water Resources.

"Sec. 12. The officers and employees of the existing Texas Water Rights Commission, the Texas Water Development Board, and the Texas Water Quality Board shall cooperate fully with the reorganization."

DISPOSITION TABLE

Showing where provisions of former Title 2 of the Water Code are now covered in revised Title 2.

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5.005	11.005
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5.023	11.023
5.024	11.024
5.025	11.025
5.026	11.026
5.027	11.027
5.028	11.028
5.029	11.029
5.030	11.030
5.031	11.031
5.032	11.032
5.033	11.033
5.034	11.034
5.035	11.035
5.036	11.036
5.037	11.037
5.038	11.038
5.039	11.039
5.040	11.040
5.041	11.041
5.042	11.042
5.043	11.043
5.044	11.044
5.045	11.045
5.046	11.046
5.047	11.047
5.048	11.048
5.049	11.049
5.050	11.050
5.051	11.051
5.052	11.052
5.081	11.081
5.082	11.082
5.083	11.083
5.084	11.084
5.085	11.085
5.086	11.086
5.087	11.087
5.088	11.088
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5.092	11.092
5.093	11.093
5.094	11.094
5.095	11.095
5.096	11.096
5.121	11.121
5.1211	11.122
5.122	11.123
5.123	11.124
5.124	11.125
5.125	11.126
5.126	11.127
5.127	11.128
5.128	11.129
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5.133	11.134
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5.135	11.136
5.136	11.137
5.137	11.138
5.1371	11.139
5.138	11.140
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5.140	11.142
5.141	11.143
5.142	11.144
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5.144	11.146
5.145	11.147
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5.172	11.172
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5.201	11.201
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5.203	11.203
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5.301	11.301
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5.333	11.333
5.334	11.334
5.335	11.335
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5.405	11.405
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SUBCHAPTER A. GENERAL PROVISIONS

§ 5.001. Definitions

In this chapter:

(1) "Department" means the Texas Department of Water Resources.

(2) "Board" means the Texas Water Development Board.

(3) "Commission" means the Texas Water Commission.

(4) "Executive director" means the executive director of the Texas Department of Water Resources.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.002. Scope of Chapter

The powers and duties enumerated in this chapter are the general powers and duties of the department and those incidental to the conduct of its business. The department has other specific powers and duties as prescribed in other sections of this code and other laws of this state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.003 to 5.010 reserved for expansion]

SUBCHAPTER B. ORGANIZATION OF THE TEXAS DEPARTMENT OF WATER RESOURCES

§ 5.011. Declaration of Policy

The Texas Department of Water Resources is the agency of the state given primary responsibility for implementing the provisions of the constitution and laws of this state relating to water. To assure that fundamental safeguards of the constitution are enjoyed by persons subject to the jurisdiction of the department, this title of the code provides for the formal separation of the legislative, executive, and judicial functions of the department and creates an office of public interest within the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.012. Department as Agency of the State; Division of Department by Functions

(a) The Texas Department of Water Resources is an administrative agency of the state and is responsible for carrying out the legislative, executive, and judicial functions provided in this title and delegated to it by the constitution and other laws of this state.

(b) With respect to the department, the terms "legislative," "executive," and "judicial" mean those functions of the department that most closely resemble the same functions of the three branches of the state government.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.0121. Application of Sunset Act

The Texas Department of Water Resources is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.118, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

§ 5.013. Legislative Functions

The legislative functions of the department are vested in the Texas Water Development Board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.014. Executive Functions

(a) The executive functions of the department are vested in the executive director.

(b) The executive director shall employ a deputy director, subject to the approval of the board. In the absence of the executive director, the deputy director shall assume the executive director's duties and functions.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.015. Judicial Functions

The judicial functions of the department are vested in the Texas Water Commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.016. General Duties and Responsibilities; Interpretation

(a) The board, the executive director, and the commission shall carry out their respective powers and duties as provided by law and in a manner that respects the separation of governmental functions.

(b) The board, commission, or executive director shall act in the name of and for the department, and duly authorized acts of the board, commission, or executive director are to be considered as acts of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.017. Construction of Title

This title shall be liberally construed to allow the board, the executive director, and the commission to carry out their powers and duties in a manner that respects the separation of governmental functions.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.018. Purpose of Act

Consistent with the objectives of the Joint Advisory Committee on Government Operations, the purpose of this Act is to assign the duties, responsibil-

ities, and functions of the Texas Water Quality Board and Texas Water Rights Commission to a new department, and it is not the intention of this Act to make any substantive changes in the laws of the State of Texas.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.019 to 5.050 reserved for expansion]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 5.051. Funds From Other State Agencies

Any state agency that has statutory responsibilities for water pollution or water quality control and that receives a legislative appropriation for these purposes may transfer to the department any amount mutually agreed on by the department and the agency, subject to the approval of the governor.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.052. Copies of Documents, Proceedings, Etc.

(a) Except as otherwise specifically provided in this code and subject to the specific limitations provided in this code, on application of any persons, the department shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the board or commission. A certified copy with the seal of the department or commission as appropriate and the signature of the chairman of the board or commission or the executive director or chief clerk of the commission is admissible as evidence in any court or administrative proceeding.

(b) The board shall provide in its rules the fees that will be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Other statutes concerning fees for copies of records do not apply to the department, except that the fees set by the board for copies prepared by the board shall not exceed those prescribed in Article 3913, Revised Civil Statutes of Texas, 1925, as amended.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.053. Documents, Etc., State Property; Open for Inspection

Text of section effective until delegation of NPDES permit authority

All information, documents, and data collected by the department in the performance of its duties are the property of the state. Subject to the limitations of Section 26.134 of this code, all records are open to inspection by any person during regular office hours.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective upon delegation of NPDES permit authority, see § 5.053, post

§ 5.053. Documents, Etc., State Property; Open for Inspection

Text of section effective upon delegation of NPDES permit authority

All information, documents, and data collected by the department in the performance of its duties are the property of the state. Records, reports, data, or other information obtained relative to or from sources or potential sources of discharges of water pollutants shall be available to the public during regular office hours; except that, if a showing satisfactory to the executive director is made by any person that such records, reports, data, or other information (other than effluent data) would divulge methods or processes entitled to protection as trade secrets, then the department shall consider such records, reports, data, or other information as confidential. Nothing in this chapter shall be construed to make confidential any effluent data, including effluent data in records, reports, or other information, and including effluent data in permits, draft permits, and permit applications. Any records, data, or other information considered confidential may be disclosed or transmitted to officers, employees, or authorized representatives of the State of Texas or of the United States with responsibilities in water pollution control; provided such disclosure or transmittal is made only after adequate written assurance is given to the executive director that the confidentiality of the disclosed or transmitted records, data, or other information will be afforded all reasonable protection allowed by law by the receiving officer, employee or authorized representative on behalf of, and under the authority of, the receiving agency or political entity. The executive director shall not disclose or transmit records, data, or other information considered confidential if he has reason to believe the recipient will not protect their confidentiality to the most reasonable extent provided by law.

[Amended by Acts 1977, 65th Leg., p. 1640, ch. 644, § 1; Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective until delegation of NPDES permit authority, see § 5.053, ante

For effective date of Acts 1977, 65th Leg., ch. 644, see note under § 26.001.

§ 5.054. Seal

The department shall have a seal bearing the words "Texas Department of Water Resources" encircling the oak and olive branches common to other official seals.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.055. Reports to Governor

The department shall make biennial reports in writing to the governor and the members of the legislature. Each report shall include a statement of the activities of the board, commission, and executive director and their respective or joint recommendations for necessary and desirable legislation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.056 to 5.090 reserved for expansion]

SUBCHAPTER D. TEXAS WATER DEVELOPMENT BOARD

§ 5.091. State Agency

The Texas Water Development Board is an agency of the state and shall exercise the legislative functions of the department as defined herein.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.0911. Application of Sunset Act

The Texas Water Development Board is subject to the Texas Sunset Act,[1] but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1985 and of every 12th year after 1985 are reviewed.

[Added by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.117, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

§ 5.092. Members of the Board; Appointment

(a) The board is composed of six members who are appointed by the governor with the advice and consent of the senate.

(b) The governor shall make the appointments in such a manner that each member is from a different section of the state and has no conflict of interest prohibited by state or federal law.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.093. Officers of State; Oath

Each member of the board is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.094. Terms of Office

(a) The members of the board hold office for staggered terms of six years, with the terms of two members expiring every two years. Each member holds office until his successor is appointed and has qualified.

(b) No person appointed to the board may serve for more than two six-year terms.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.095. Board Officers

(a) The governor shall designate one member as chairman of the board to serve at the will of the governor.

(b) The members of the board shall elect a vice-chairman every two years. The board shall fill a vacancy in the office of vice-chairman for the remainder of the unexpired term.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.096. Board Meetings

(a) The board shall meet at least once each month on a day and at a place within the state selected by it, subject to recesses at the discretion of the board. The chairman or two board members may call a special meeting at any time by giving notice to the other members.

(b) The chairman or in his absence the vice-chairman shall preside at all meetings of the board.

(c) A majority of the members constitute a quorum to transact business.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.097. Compensation; Expenses

A member is entitled to receive an amount as provided in the General Appropriations Act for each day he serves in the performance of his duties, together with travel and other necessary expenses.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.098. Seal

The board shall have a seal bearing the words "Texas Water Development Board" encircling the oak and olive branches common to other official seals.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.099 to 5.130 reserved for expansion]

SUBCHAPTER E. GENERAL POWERS AND DUTIES OF THE BOARD

§ 5.131. Rules

(a) The board shall make any rules necessary to carry out the powers and duties under the provisions of this code and other laws of this state.

(b) The executive director and the commission may recommend to the board for its consideration any rules that they consider necessary.

(c) Rules shall be adopted in the manner provided in the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes).

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.132. General Policy

The board, in the rules, shall establish and approve all general policy of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.133. Budget Approval

The board shall examine and approve all budget recommendations for the department that are to be transmitted to the legislature. The commission may provide as a supplement to those recommendations statements of particular concern to the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.134. Advisory Councils

The board may create and consult with advisory councils, including councils for the environment, councils for public information, or any other councils which the board may consider appropriate.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.135. Appointment

(a) The board shall appoint an executive director of the department to serve at the will of the board.

(b) The board shall exercise the powers of appointment which the Texas Water Rights Commission had the authority to exercise on August 30, 1977, except for those powers of appointment expressly provided to the Texas Water Rights Commission in Chapters 50 through 63 inclusive, of the Water Code, which are delegated to the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 2184, ch. 834, § 1, eff. Aug. 27, 1979.]

[Sections 5.136 to 5.170 reserved for expansion]

SUBCHAPTER F. EXECUTIVE DIRECTOR

§ 5.171. General Responsibilities of the Executive Director

The executive director shall manage the administrative affairs of the department and shall exercise the executive functions of the department, including the execution of the rules, orders, and decisions of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.172. Administrative Organization of Department

The executive director may organize and reorganize the administrative sections and divisions of the department in a manner and in a form that will achieve the greatest efficiency and effectiveness.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.173. Appearances at Hearings

The position of and information developed by the department shall be presented by the executive director or his designated representative at hearings of the board and the commission and at hearings held by federal, state, and local agencies on matters affecting the public's interest in the state's water resources, including matters that have been determined to be policies of the state. The executive director shall be named a party in hearings before the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.174. Contracts

(a) The executive director, on behalf of the department, may negotiate with and with the consent of the board enter into contracts with the United States or any of its agencies for the purpose of carrying out the powers, duties, and responsibilities of the department.

(b) The executive director, on behalf of the department, may negotiate with and with the consent of the board enter into contracts or other agreements with states and political subdivisions of this state or any other entity for the purpose of carrying out the powers, duties, and responsibilities of the department.

(c) The executive director, on behalf of the department, shall obtain the approval of the attorney general as to the legality of a resolution of the board authorizing state ownership in a project.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.175. Enforcement

The executive director may enforce the terms and conditions of any permit, certified filing, certificate of adjudication, order, standard, or rule by injunction or other appropriate remedy in a court of competent jurisdiction.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.176. Travel Expenses

The executive director shall be entitled to receive actual and necessary travel expenses. Other employees of the department are entitled to receive travel expenses as provided in the General Appropriations Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.177. Employee Moving Expenses

If provided by the legislative appropriation, the department may pay the costs of transporting and delivering the household goods and effects of employees transferred by the executive director from one permanent station to another when, in the judgment of the executive director, the transfer will serve in the best interest of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.178. Gifts and Grants

The executive director may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out the powers and duties under this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.179. Applications and Other Documents

(a) An application, petition, or other document requiring action of the department shall be presented to the executive director and handled as provided in this code and in the rules of the department.

(b) After an application, petition, or other document is processed requiring action by the commission, it shall be presented to the commission for consideration of filing. If accepted for filing by the commission, if required by law, the commission shall set a hearing date and issue appropriate notice.

(c) After an application is processed requiring action by the board, it shall be presented to the board for action as required by law and the rules.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.180. Development Fund Manager

The executive director, with the approval of the board, shall appoint the development fund manager who shall perform all duties required of that position by this code and the executive director.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.181. Public Interest Office

(a) There is created an office of public interest to insure that the department promotes the public's interest and is responsive to citizens. Public interest includes but is not limited to environmental quality and consumer protection.

(b) The office shall be headed by a public interest advocate appointed by the commission and the board. The executive director may submit the names and qualifications of candidates for public interest advocate to the board and commission. The board and commission shall meet jointly for the purpose of appointing or dismissing the public interest advocate by a majority vote of each body.

(c) The advocate shall represent the public interest and be a party to all proceedings before the department.

(d) The office shall be adequately staffed to carry out its function under this code.

(e) No ruling, decision, or other act of the board or the commission may be appealed by the advocate.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.182 to 5.220 reserved for expansion]

SUBCHAPTER G. TEXAS WATER COMMISSION

§ 5.221. Creation of Commission

The Texas Water Commission is created as an agency of the state and shall exercise the judicial functions of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.2211. Application of Sunset Act

The Texas Water Commission is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.119, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

§ 5.222. Members of Commission; Appointment

(a) The commission is composed of three members who are appointed by the governor with the advice and consent of the senate.

(b) The governor shall make the appointments in such a manner that each member is from a different section of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.223. Officers of State; Oath

Each member of the commission is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.224. Terms of Office

(a) The members of the commission hold office for staggered terms of six years, with the terms of one member expiring every two years. Each member holds office until his successor is appointed and has qualified.

(b) No person appointed to the commission may serve for more than two six-year terms.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.225. Full-Time Service

Each member of the commission shall serve on a full-time basis.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.226. Officers; Meetings

(a) The governor shall designate the chairman of the commission. He shall serve as chairman until the governor designates a different chairman.

(b) The chairman may designate another commissioner to act for him in his absence.

(c) The chairman shall preside at the meetings and hearings of the commission.

(d) The commission shall hold regular meetings and all hearings at times specified by a commission order and entered in its minutes. The commission may hold special meetings at the times and places in the state that the commission decides are appropriate for the performance of its duties. The chairman or acting chairman shall give the other members reasonable notice before holding a special meeting.

(e) A majority of the commission is a quorum.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.227. Chief Clerk

(a) The commission shall employ a chief clerk who shall assist the commission in carrying out its duties under this code.

(b) The chief clerk shall issue notice of public hearings held under the authority of the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.228 to 5.260 reserved for expansion]

SUBCHAPTER H. GENERAL POWERS AND DUTIES OF THE COMMISSION

§ 5.261. Scope of Subchapter

The powers and duties enumerated in this subchapter are the general powers and duties of the commission and those incidental to the conduct of its business. The commission has other specific powers and duties as prescribed in other sections of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.262. Rules

(a) The commission shall adopt reasonable procedural rules to be followed in a commission hearing.

(b) Rules shall be adopted in the manner provided in the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes).

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.263. Applications and Other Documents

Applications and other documents to be filed with the commission for final action under this code shall be filed with the executive director and handled in the manner provided in this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.264. Hearings; Recess, Etc.

The commission may recess any hearing or examination from time to time and from place to place.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.265. Power to Administer Oaths

Each member of the commission, the chief clerk, or a hearing examiner may administer oaths in any hearing or examination on any matter submitted to the commission for action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.266. Seal

The commission shall adopt an official seal.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.267. Commission to be Knowledgeable

The commission shall be knowledgeable of the water courses of the state and of the needs of the state concerning the use, storage, and conservation of water and of the need to maintain the quality of water in the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.268. Conservation and Quality of Water

The commission shall administer the law so as to promote the judicious use and the maximum conservation and protection of quality of water.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.269 to 5.310 reserved for expansion]

SUBCHAPTER I. OFFICE OF HEARING EXAMINERS

§ 5.311. Creation of Office

Within the commission there is created an office of hearing examiners to assist the commission in carrying out its powers and duties under this code. The office of hearing examiners is independent of the board, the executive director, and the divisions of the board and is under the exclusive control of the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.312. Organization of Office of Hearing Examiners

(a) The office of hearing examiners shall be under the direction of the chief hearing examiner.

(b) The chief hearing examiner and all assistant hearing examiners employed in the office of hearing examiners shall be attorneys licensed to practice law in this state and shall be employed by the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.313. Delegation of Responsibility

(a) The commission may delegate to a hearing examiner the responsibility to hear any matter before the commission.

(b) A hearing examiner shall prepare for and hold any hearing as directed by the commission and shall report to the commission on the hearing in the manner provided by law.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.314 to 5.350 reserved for expansion]

SUBCHAPTER J. JUDICIAL REVIEW

§ 5.351. Judicial Review of Department Acts

(a) A person affected by a ruling, order, decision, or other act of the department may file a petition to review, set aside, modify, or suspend the act of the department.

(b) A person affected by a ruling, order, or decision of the department must file his petition within 30 days after the effective date of the ruling, order, or decision. A person affected by an act other than a ruling, order, or decision must file his petition within 30 days after the date the department performed the act.

(c) Orders, decisions, or other actions of the board pursuant to Subchapters E and F of Chapter 16 [1] and Chapter 17 of this code are not subject to appeal.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] Sections 16.131 et seq., 16.181 et seq.

§ 5.352. Remedy for Executive Director, Commission, or Board Inaction

A person affected by the failure of the executive director, commission, or board to act in a reasonable time on an application to appropriate water or to perform any other duty with reasonable promptness may file a petition to compel the executive director, commission, or board to show cause why it should not be directed by the court to take immediate action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.353. Diligent Prosecution of Suit

The plaintiff shall prosecute with reasonable diligence any suit brought under Section 5.351 or 5.352 of this code. If the plaintiff does not secure proper service of process or does not prosecute his suit within one year after it is filed, the court shall presume that the suit has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff after receiving due notice can show good and sufficient cause for the delay.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.354. Venue

A suit instituted under Section 5.351 or 5.352 of this code must be brought in the district court of Travis County.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.355. Appeal of District Court Judgment

A judgment or order of a district court in a suit brought for or against the department is appealable as are other civil cases in which the district court has original jurisdiction.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.356. Appeal by Executive Precluded

No ruling, order, decision, or other act of the board or the commission may be appealed by the executive director.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.357. Law Suits; Citation

Law suits filed by and against the board, commission, or executive director shall be in the name of the department. In suits against the department, board, commission, or executive director, citation may be served on the executive director or deputy director.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Chapters 6 to 10 reserved for expansion]

SUBTITLE B. WATER RIGHTS

CHAPTER 11. WATER RIGHTS

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Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. For disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

SUBCHAPTER A. GENERAL PROVISIONS

§ 11.001. Vested Rights Not Affected

(a) Nothing in this code affects vested private rights to the use of water, except to the extent that provisions of Subchapter G of this chapter might affect these rights.

(b) This code does not recognize any riparian right in the owner of any land the title to which passed out of the State of Texas after July 1, 1895.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.002. Definitions

In this chapter and in Chapter 12 of this code:

(1) "Commission" means the Texas Water Commission.

(2) "Board" means the Texas Water Development Board.

(3) "Executive director" means the executive director of the Texas Department of Water Resources.

(4) "Department" means the Texas Department of Water Resources.

(5) "Beneficial use" means use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.

(6) "Water right" means a right acquired under the laws of this state to impound, divert, or use state water.

(7) "Appropriator" means a person who has made beneficial use of any water in a lawful manner under the provisions of any act of the legislature before the enactment of Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended, and who has filed with the State Board of Water Engineers a record of his appropriation as required by the 1913 Act, as amended, or a person who makes or has made beneficial use of any water within the limitations of a permit lawfully issued by the commission or one of its predecessors.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.003. Streams That Form Boundaries Included

This chapter applies to all streams or other sources of water supply lying upon or forming a part of the boundaries of this state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.004. Department to Receive Certified Copies of Judgments, Etc.

When any court of record renders a judgment, decree, or order affecting the title to any water right, claim, appropriation, or irrigation facility or affecting any matter over which the department is given supervision by law, the clerk of the court shall immediately transmit to the department a certified copy of the judgment, decree, or order.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.005. Applicability to Works Under Federal Reclamation Act

This chapter applies to the construction, maintenance, and operation of irrigation works constructed in this state under the federal reclamation act, as amended (43 U.S.C. Sec. 371 et seq.), to the extent that this chapter is not inconsistent with the federal act or the regulations made under that act by the secretary of the interior.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 11.006 to 11.020 reserved for expansion]

SUBCHAPTER B. RIGHTS IN STATE WATER

§ 11.021. State Water

(a) The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of

every river, natural stream, canyon, ravine, depression, and watershed in the state is the property of the state.

(b) Water imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state is the property of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.022. Acquisition of Right to Use State Water

The right to the use of state water may be acquired by appropriation in the manner and for the purposes provided in this chapter. When the right to use state water is lawfully acquired, it may be taken or diverted from its natural channel.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.023. Purposes for Which Water May be Appropriated

(a) State water may be appropriated, stored, or diverted for:

(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;

(2) industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

(3) irrigation;

(4) mining and recovery of minerals;

(5) hydroelectric power;

(6) navigation;

(7) recreation and pleasure;

(8) stock raising;

(9) public parks; and

(10) game preserves.

(b) State water also may be appropriated, stored, or diverted for any other beneficial use.

(c) Unappropriated storm water and floodwater may be appropriated to recharge underground freshwater bearing sands and aquifers in the portion of the Edwards underground reservoir located within Kinney, Uvalde, Medina, Bexar, Comal, and Hays counties if it can be established by expert testimony that an unreasonable loss of state water will not occur and that the water can be withdrawn at a later time for application to a beneficial use. The normal or ordinary flow of a stream or watercourse may never be appropriated, diverted, or used by a permittee for this recharge purpose.

(d) When it is put or allowed to sink into the ground, water appropriated under Subsection (c) of this section loses its character and classification as storm water or floodwater and is considered percolating groundwater.

(e) The amount of water appropriated for each purpose mentioned in this section shall be specifically appropriated for that purpose, subject to the preferences prescribed in Section 11.024 of this code.

(f) The water of any arm, inlet, or bay of the Gulf of Mexico may be changed from salt water to sweet or fresh water and held or stored by dams, dikes, or other structures and may be taken or diverted for any purpose authorized by this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 5.023 by Acts 1977, 65th Leg., p. 249, ch. 116, § 1.

§ 11.024. Appropriation: Preferences

In order to conserve and properly utilize state water, the public welfare requires not only recognition of beneficial uses but also a constructive public policy regarding the preferences between these uses, and it is therefore declared to be the public policy of this state that in appropriating state water preference shall be given to the following uses in the order named:

(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;

(2) industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

(3) irrigation;

(4) mining and recovery of minerals;

(5) hydroelectric power;

(6) navigation;

(7) recreation and pleasure; and

(8) other beneficial uses.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.025. Scope of Appropriative Right

A right to use state water under a permit or a certified filing is limited not only to the amount specifically appropriated but also to the amount which is being or can be beneficially used for the purposes specified in the appropriation, and all water not so used is considered not appropriated.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.026. Perfection of an Appropriation

No right to appropriate water is perfected unless the water has been beneficially used for a purpose stated in the original declaration of intention to appropriate water or stated in a permit issued by the commission or one of its predecessors.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.027. Rights Between Appropriators

As between appropriators, the first in time is the first in right.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.028. Exception

Any appropriation made after May 17, 1931, for any purpose other than domestic or municipal use is subject to the right of any city or town to make further appropriations of the water for domestic or municipal use without paying for the water. However, this section does not apply to any stream which constitutes or defines the international boundary between the United States of America and the Republic of Mexico.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.029. Title to Appropriation by Limitation

When an appropriator from a source of water supply has used water under the terms of a certified filing or a permit for a period of three years, he acquires title to his appropriation by limitation against any other claimant of water from the same source of water supply and against any riparian owner on the same source of water supply.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.030. Forfeiture of Appropriation

If any lawful appropriation or use of state water is wilfully abandoned during any three successive years, the right to use the water is forfeited and the water is again subject to appropriation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.031. Annual Report

(a) Not later than March 1 of every year, every person who takes water during the preceding calendar year from a stream or reservoir shall submit a written report to the department on a form prescribed by the department. The report shall contain all information required by the department to aid in administering the water law and in making inventory of the state's water resources. However, with the exception of public utilities and political subdivisions which furnish water for municipal uses, no report is required of persons who take water solely for domestic or livestock purposes.

(b) A person who fails to file an annual report with the department as required by this section is liable to a penalty of $25, plus $1 per day for each day he fails to file the statement after March 1. However, the maximum penalty under this section is $150. The state may sue to recover the penalty.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.032. Records

(a) A person who owns and operates a system of waterworks used for a purpose authorized by this code shall keep a detailed record of daily operations so that the quantity of water taken or diverted each calendar year can be determined.

(b) If the water is used for irrigation, the record must show the number of acres irrigated, the character of the crops grown, and the yield per acre. No survey is required to determine the exact number of acres irrigated.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.033. Eminent Domain

The right to take water necessary for domestic and municipal supply purposes is primary and fundamental, and the right to recover from other uses water which is essential to domestic and municipal supply purposes is paramount and unquestioned in the policy of the state. All political subdivisions of the state and constitutional governmental agencies exercising delegated legislative powers have the power of eminent domain to be exercised as provided by law for domestic, municipal, and manufacturing uses and for other purposes authorized by this code, including the irrigation of land for all requirements of agricultural employment.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.034. Reservoir Site: Land and Rights-of-Way

An appropriator who is authorized to construct a dam or reservoir is granted the right-of-way, not to exceed 100 feet wide, and the necessary area for the site, over any public school land, university land, or asylum land of this state and the use of the rock, gravel, and timber on the site and right-of-way for construction purposes, after paying compensation as determined by the commission. An appropriator may acquire the reservoir site and rights-of-way over private land by contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.035. Condemnation of Private Property

(a) An appropriator may obtain rights-of-way over private land and may obtain the land necessary for pumping plants, intakes, headgates, and storage reservoirs by condemnation.

(b) The party obtaining private property by condemnation shall cause damages to be assessed and paid for as provided by the statutes of this state relating to eminent domain.

(c) If the party exercising the power granted by this section is not a corporation, district, city, or town, he shall apply to the department for the condemnation.

(d) The executive director shall have the proposed condemnation investigated. After the investigation, the commission may give notice to the party owning the land proposed to be condemned and hold a hearing on the proposed condemnation.

(e) If after a hearing the commission determines that the condemnation is necessary, the executive director may institute condemnation proceedings in the name of the State of Texas for the use and benefit of the party who applied for the condemnation and all others similarly situated.

(f) The parties at whose instance a condemnation suit is instituted shall pay the costs of the suit and condemnation in proportion to the benefits received by each party as fixed by the commission. Before using any of the condemned rights or property, a party receiving the rights or property shall pay the amount of costs fixed by the commission.

(g) If, after the costs of the condemnation proceedings have been paid, a party seeks to take the benefits of the condemnation proceedings, he shall apply to the department for the benefits. The commission may grant the application and fix the fees and charges to be paid by the applicant.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.036. Conserved or Stored Water: Supply Contract

(a) A person, association of persons, corporation, or water improvement or irrigation district having in possession and control any storm water, floodwater, or rainwater that is conserved or stored as authorized by this chapter may contract to supply the water to any person, association of persons, corporation, or water improvement or irrigation district having the right to acquire use of the water.

(b) The price and terms of the contract shall be just and reasonable and without discrimination, and the contract is subject to the same revision and control as provided in this code for other water rates and charges. If any person uses the stored or conserved water without first entering into a contract with the party that conserved or stored it, the user shall pay for the use at a rate determined by the commission to be just and reasonable, subject to court review as in other cases.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.037. Water Suppliers: Rules and Regulations

Every person, association of persons, corporation, or irrigation district conserving or supplying water for any of the purposes authorized by this chapter shall make and publish reasonable rules and regulations relating to:

(1) the method of supply;

(2) the use and distribution of the water; and

(3) the procedure for applying for the water and paying for it.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.038. Rights of Owners of Land Adjoining Canal, Etc.

(a) A person who owns or holds a possessory interest in land adjoining or contiguous to a canal, ditch, flume, lateral, dam, reservoir, or lake constructed and maintained under the provisions of this chapter and who has secured a right to the use of water in the canal, ditch, flume, lateral, dam, reservoir, or lake is entitled to be supplied from the canal, ditch, flume, lateral, dam, reservoir, or lake with water for irrigation of the land and for mining, milling, manufacturing, development of power, and stock raising, in accordance with the terms of his contract.

(b) If the person, association of persons, or corporation owning or controlling the water and the person who owns or holds a possessory interest in the adjoining land cannot agree on a price for a permanent water right or for the use of enough water for irrigation of the person's land or for mining, milling, manufacturing, development of power, or stock raising, then the party owning or controlling the water, if he has any water not contracted to others, shall furnish the water necessary for these purposes at reasonable and nondiscriminatory prices.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.039. Distribution of Water During Shortage

(a) If a shortage of water in a water supply results from drouth, accident, or other cause, the water to be distributed shall be divided among all customers pro rata, according to the amount each may be entitled to, so that preference is given to no one and everyone suffers alike.

(b) Nothing in Subsection (a) of this section precludes the person, association of persons, or corporation owning or controlling the water from supplying water to a person who has a prior vested right to the water under the laws of this state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.040. Permanent Water Right

(a) A permanent water right is an easement and passes with the title to land.

(b) A written instrument conveying a permanent water right may be recorded in the same manner as any other instrument relating to a conveyance of land.

(c) The owner of a permanent water right is entitled to use water according to the terms of his contract. If there is no contract, the owner is entitled to use water at a just, reasonable, and nondiscriminatory price.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.041. Denial of Water: Complaint

(a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the department a written petition showing:

(1) that he is entitled to receive or use the water;

(2) that he is willing and able to pay a just and reasonable price for the water;

(3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.

(b) If the petition is accompanied by a deposit of $25, the executive director shall have a preliminary investigation of the complaint made and determine whether or not there are probable grounds for the complaint.

(c) If, after preliminary investigation, the executive director determines that probable grounds exist for the complaint, the commission shall enter an order setting a time and place for a hearing on the petition.

(d) The commission may require the complainant to make an additional deposit or execute a bond satisfactory to the commission in an amount fixed by the commission conditioned on the payment of all costs of the proceeding.

(e) At least 20 days before the date set for the hearing, the commission shall transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

(f) The commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. On completion of the hearing, the commission shall render a written decision.

(g) If, after the preliminary investigation, the executive director determines that no probable grounds exist for the complaint, the executive director shall dismiss the complaint. The department may either return the deposit or pay it into the State Treasury.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.042. Delivering Water Down Banks and Beds

Under rules prescribed by the board, a person, association of persons, corporation, or water improvement or irrigation district supplying stored or conserved water under contract as provided in this chapter may use the bank and bed of any flowing natural stream in the state to convey the water from the place of storage to the place of use or to the diversion plant of the appropriator. The board shall prescribe rules for this purpose.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.043. Recordation of Conveyance of Irrigation Work

(a) A conveyance of a ditch, canal, or reservoir or other irrigation work or an interest in such an irrigation work must be executed and acknowledged in the same manner as a conveyance of real estate. Such a conveyance must be recorded in the deed records of the county in which the ditch, canal, or reservoir is located.

(b) If a conveyance of property covered by Subsection (a) of this section is not made in the prescribed manner, it is null and void against subsequent purchasers in good faith and for valuable consideration.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.044. Roads and Highways

(a) An appropriator has the right to construct ditches, canals, or other conveyances along or across all roads and highways necessary for the construction of waterworks. Bridges, culverts, or siphons shall be constructed at all road and highway crossings as necessary to prevent any impairment of the uses of the road or highway.

(b) If any public road, highway, or public bridge is located on the ground necessary for a damsite, reservoir, or lake, the commissioners court shall change the road and remove the bridge so that it does not interfere with the construction of the proposed dam, reservoir, or lake. The party desiring to construct the dam, reservoir, or lake shall pay the expense of moving the bridge or roadway.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.045. Ditches and Canals

An appropriator is entitled to construct ditches and canals along or across any stream of water.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.046. Return Unused Water

A person who takes or diverts water from a running stream for the purposes authorized by this code shall conduct surplus water back to the stream from which it was taken if the water can be returned by gravity flow and it is reasonably practicable to do so.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.047. Failure to Fence

If a person, association of persons, corporation, or water improvement or irrigation district that owns or controls a ditch, canal, reservoir, dam, or lake does not keep it securely fenced, there is no cause of action against the owner of livestock that trespass.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.048. Cost of Maintaining Irrigation Ditch

(a) If an irrigation ditch is owned or used by two or more persons, mutual or cooperative companies, or corporations, each party who has an interest in the ditch shall pay his proportionate share of the cost of operating and maintaining the ditch.

(b) If a person who owns a joint interest in a ditch refuses to do or to pay for his proportionate share of the work that is reasonably necessary for the proper maintenance and operation of the ditch, the other owners may, after giving him 10 days written notice, proceed themselves to do his share of the necessary work and recover from him the reasonable expense or value of the work or labor performed. The action for the cost of the work may be brought in any court having jurisdiction over the amount in controversy.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.049. Examination and Survey

A person may make any necessary examination and survey in order to select the most advantageous sites for a reservoir and rights-of-way to be used for any of the purposes authorized by this chapter, and for this purpose a person may enter the land or water of any other person.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.050. Tidewater Gates, Etc.

(a) An appropriator authorized to take water for irrigation, subject to the laws of the United States and the regulations made under its authority, may construct gates or breakwaters, dams, or dikes with gates, in waters wholly in this state, as necessary to prevent pollution of the fresh water of any river, bayou, or stream due to the ebb and flow of the tides of the Gulf of Mexico.

(b) The work shall be done in such a manner that navigation of vessels on the stream is not obstructed, and where any gate is used, the appropriator shall at all times keep a competent person at the gate to allow free navigation.

(c) A dam, dike, or breakwater constructed under this section may not be placed at any point except where Gulf tides ebb and flow and may not be constructed so as to obstruct the flow of fresh water to any appropriator or riparian owner downstream.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.051. Irrigation: Lien on Crops

(a) A person who constructs a ditch, canal, dam, lake, or reservoir for the purpose of irrigation and who leases, rents, furnishes, or supplies water to any person for irrigation, with or without a contract, has a preference lien superior to every other lien on the irrigated crops. However, when any irrigation district or conservation and reclamation district obtains a water supply under contract with the United States, the board of directors of the district, by resolution entered in its minutes, with the consent of the secretary of the interior, may waive the preference lien in whole or in part.

(b) To enforce the lien, the lienholder has all the rights and remedies prescribed by Articles 5222 through 5239, Revised Civil Statutes of Texas, 1925.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.052. Activities Under the Federal Reclamation Act

The Secretary of the Interior of the United States is authorized to conduct any activities in this state necessary to perform his duties under the federal reclamation act, as amended (43 U.S.C. Section 371 et seq.).
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 11.053 to 11.080 reserved for expansion]

SUBCHAPTER C. UNLAWFUL USE, DIVERSION, WASTE, ETC.

§ 11.081. Unlawful Use of State Water

(a) No person may wilfully take, divert, or appropriate any state water for any purpose without first complying with all applicable requirements of this chapter.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon convic-

tion is punishable by a fine of not more than $100 or by confinement in the county jail for not more than six months or by both.

(c) A person commits a separate offense each day he continues to take, divert, or appropriate water in violation of this section.

(d) Possession of state water when the right to its use has not been acquired according to the provisions of this chapter is prima facie evidence of a violation of this section.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.082. Unlawful Use: Civil Penalty

(a) A person who wilfully takes, diverts, or appropriates state water without complying with the applicable requirements of this chapter is also liable to a penalty of not to exceed $100 per day for each day he continues the taking, diversion, or appropriation.

(b) The state may recover the penalties prescribed in Subsection (a) of this section by suit brought for that purpose in a court of competent jurisdiction.

(c) An action to collect the penalty provided in this section must be brought within one year from the date of the alleged violation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.083. Other Unlawful Taking

(a) No person may wilfully open, close, change, or interfere with any headgate or water box without lawful authority.

(b) No person may wilfully use water or conduct water through his ditch or upon his land unless he is entitled to do so.

(c) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $10 nor more than $1,000 or by confinement in the county jail for not more than six months.

(d) The possession or use of water on his land by a person not entitled to the water by the provisions of this code is prima facie evidence of a violation of this section.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.084. Sale of Permanent Water Right Without a Permit

(a) No person may sell or offer to sell a permanent water right unless he has perfected a right to appropriate state water by a certified filing, or unless he has obtained a permit from the commission, authorizing the use of the water for the purposes for which the permanent water right is conveyed.

(b) A person who violates Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 nor more than $1,000 or by confinement in the county jail for not more than one year or by both.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.085. Interwatershed Transfers

(a) No person may take or divert any of the water of the ordinary flow, underflow, or storm flow of any stream, watercourse, or watershed in this state into any other natural stream, watercourse, or watershed to the prejudice of any person or property situated within the watershed from which the water is proposed to be taken or diverted.

(b) No person may transfer water from one watershed to another without first applying for and receiving a permit from the commission to do so. Before issuing such a permit, the commission shall hold a hearing to determine the rights that might be affected by the transfer. The commission shall give notice and hold the hearing in the manner prescribed by its procedural rules.

(c) A person who takes or diverts water in violation of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 nor more than $500 or by confinement in the county jail for not more than six months.

(d) A person commits a separate offense each day he continues to take or divert water in violation of this section.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.086. Overflow Caused by Diversion of Water

(a) No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded.

(b) A person whose property is injured by an overflow of water caused by an unlawful diversion or impounding has remedies at law and in equity and may recover damages occasioned by the overflow.

(c) The prohibition of Subsection (a) of this section does not in any way affect the construction and maintenance of levees and other improvements to control floods, overflows, and freshets in rivers, creeks, and streams or the construction of canals for conveying water for irrigation or other purposes authorized by this code. However, this subsection does not authorize any person to construct a canal, lateral canal, or ditch that obstructs a river, creek, bayou, gully, slough, ditch, or other well-defined natural drainage.

(d) Where gullies or sloughs have cut away or intersected the banks of a river or creek to allow

floodwaters from the river or creek to overflow the land nearby, the owner of the flooded land may fill the mouth of the gullies or sloughs up to the height of the adjoining banks of the river or creek without liability to other property owners.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.087. Diversion of Water on International Stream

(a) When storm water or floodwater is released from a dam or reservoir on an international stream and the water is designated for use or storage downstream by a specified user who is legally entitled to receive it, no other person may store, divert, appropriate, or use the water or interfere with its passage downstream.

(b) The board may make and enforce rules and orders to implement the provisions of this section, including rules and orders designed to:

(1) establish an orderly system for water releases and diversions in order to protect vested rights and to avoid the loss of released water;

(2) prescribe the time that releases of water may begin and end;

(3) determine the proportionate quantities of the released water in transit and the water that would have been flowing in the stream without the addition of the released water;

(4) require each owner or operator of a dam or reservoir on the stream between the point of release and the point of destination to allow free passage of the released water in transit; and

(5) establish other requirements the board considers necessary to effectuate the purposes of this section.

(c) Orders made by the commission to effectuate the board's regulations under this section need not be published, but the commission shall transmit a copy of every such order by certified mail to each diverter of water and to each reservoir owner on the stream between the point of release and the point of destination of the released water as shown by the records of the department.

(d) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $100 or by confinement in the county jail for not more than six months or by both. A person commits a separate offense each day he continues to violate this section.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.088. Destruction of Waterworks

(a) No person may wilfully cut, dig, break down, destroy, or injure or open a gate, bank, embankment, or side of any ditch, canal, reservoir, flume, tunnel or feeder, pump or machinery, building, structure, or other work which is the property of another, or in which another owns an interest, or which is lawfully possessed or being used by another, and which is used for irrigation, milling, mining, manufacturing, the development of power, domestic purposes, or stock raising, with intent to:

(1) maliciously injure a person, association, corporation, water improvement or irrigation district;

(2) gain advantage for himself; or

(3) take or steal water or cause water to run out or waste out of the ditch, canal, or reservoir, feeder, or flume for his own advantage or to the injury of a person lawfully entitled to the use of the water or the use or management of the ditch, canal, tunnel, reservoir, feeder, flume, machine, structure, or other irrigation work.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $10 nor more than $1,000 or by confinement in the county jail for not more than two years or by both.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.089. Johnson Grass or Russian Thistle

(a) No person who owns, leases, or operates a ditch, canal, or reservoir or who cultivates land abutting a reservoir, ditch, flume, canal, wasteway, or lateral may permit Johnson grass or Russian thistle to go to seed on the waterway within 10 feet of the high-water line if the waterway crosses or lies on the land owned or controlled by him.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $25 nor more than $500 or by confinement in the county jail for not less than 30 days nor more than six months or by both.

(c) The provisions of this section are not applicable in Tom Green, Sterling, Irion, Schleicher, McCullough, Brewster, Menard, Maverick, Kinney, Val Verde, and San Saba counties.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.090. Polluting and Littering

(a) No person may deposit in any canal, lateral, reservoir, or lake, used for a purpose named in this chapter, the carcass of any dead animal, tin cans, discarded buckets or pails, garbage, ashes, bailing or barbed wire, earth, offal, or refuse of any character or any other article which might pollute the water or obstruct the flow of a canal or similar structure.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon convic-

tion is punishable by a fine of not less than $10 nor more than $100 or by confinement in the county jail for not more than six months or by both.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.091. Interference With Delivery of Water Under Contract

(a) No person may wilfully take, divert, appropriate, or interfere with the delivery of conserved or stored water under Section 11.042 of this code.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $100 or by confinement in the county jail for not more than six months or by both.

(c) A person commits a separate offense each day he continues to violate this section.

(d) On the petition of any interested party, the district court of any county through which the water may pass shall enjoin any actual or threatened act prohibited by this section.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.092. Wasteful Use of Water

A person who owns or has a possessory right to land contiguous to a canal or irrigation system and who acquires the right by contract to use the water from it commits waste if he:

(1) permits the excessive or wasteful use of water by any of his agents or employees; or

(2) permits the water to be applied to anything but a beneficial use.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.093. Abatement of Waste as Public Nuisance

(a) A person who permits an unreasonable loss of water through faulty design or negligent operation of any waterworks using water for a purpose named in this chapter commits waste, and the commission may declare the works causing the waste to be a public nuisance. The commission may take the necessary action to abate the nuisance. Also, any person who may be injured by the waste may sue in the district court having jurisdiction over the works causing the waste to have the operation of the works abated as a public nuisance.

(b) In case of a wasteful use of water defined by Section 11.092 of this code, the commission shall declare the use to be a public nuisance and shall act to abate the nuisance by directing the person supplying the water to close the water gates of the person wasting the water and to keep them closed until the commission determines that the unlawful use of water is corrected.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.094. Penalty for Use of Works Declared Public Nuisance

(a) No person may operate or attempt to operate any waterworks or irrigation system or use any water under contract with any waterworks or irrigation system that has been previously declared to be a public nuisance.

(b) A person who violates any provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $1,000 or by confinement in the county jail for not more than one year or by both.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.095. Penalty for Waste

A person who wilfully or knowingly commits waste as provided in Section 11.092 or 11.093(a) of this code is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500 or by confinement in the county jail for not more than 90 days or by both.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.096. Obstruction of Navigable Streams

(a) No person may obstruct the navigation of any stream which can be navigated by steamboats, keelboats, or flatboats by cutting and felling trees or by building on or across the stream any dike, milldam, bridge, or other obstruction.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $50 nor more than $500.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 11.097 to 11.120 reserved for expansion]

SUBCHAPTER D. PERMITS TO USE STATE WATER

§ 11.121. Permit Required

Except as provided in Section 11.142 of this code, no person may appropriate any state water or begin construction of any work designed for the storage, taking, or diversion of water without first obtaining a permit from the commission to make the appropriation.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.122. Amendments to Water Rights Required

(a) All holders of permits, certified filings, and certificates of adjudication issued under Section 11.323 of this code shall obtain from the commission authority to change the place of use, purpose of use,

point of diversion, rate of diversion, acreage to be irrigated, or otherwise alter a water right.

(b) The board shall adopt rules to effectuate the provisions of this section.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.123. Permit Preferences

The commission shall give preference to applications in the order declared in Section 11.024 of this code and to applications which will effectuate the maximum utilization of water and are calculated to prevent the escape of water without contribution to a beneficial public service.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.124. Application for Permit

(a) An application to appropriate unappropriated state water must:

(1) be in writing and sworn to;

(2) contain the name and post-office address of the applicant;

(3) identify the source of water supply;

(4) state the nature and purposes of the proposed use and the amount of water to be used for each purpose;

(5) state the location and describe the proposed facilities;

(6) state the time within which the proposed construction is to begin; and

(7) state the time required for the application of water to the proposed use.

(b) If the proposed use is irrigation, the application must also contain:

(1) a description of the land proposed to be irrigated; and

(2) an estimate of the total acreage to be irrigated.

(c) If the application is for a seasonal permit, under the provisions of Section 11.137 of this code, the application must also state the months or seasons of the year the water is to be used.

(d) If the application is for a temporary permit under the provisions of Section 11.138 of this code, the application must also state the period of the proposed temporary use.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.125. Map or Plat

(a) The application must be accompanied by a map or plat drawn on tracing linen on a scale not less than one inch equals 2,000 feet.

(b) The map or plat must show substantially:

(1) the location and extent of the proposed facilities;

(2) the location of the headgate, intake, pumping plant, or point of diversion by course and distance from permanent natural objects or landmarks;

(3) the location of the main ditch or canal and the locations of the laterals or branches of the main ditch or canal;

(4) the course of the water supply;

(5) the position, waterline, and area of all lakes, reservoirs, or basins intended to be used or created;

(6) the point of intersection of the proposed facilities with any other ditch, canal, lateral, lake, or reservoir; and

(7) the location of any ditch, canal, lateral, reservoir, lake, dam, or other similar facility already existing in the area, drawn in a different colored ink than that used to represent the proposed facilities, and the name of the owner of the existing facility.

(c) The map or plat must also contain:

(1) the name of the proposed facility or enterprise;

(2) the name of the applicant; and

(3) a certificate of the surveyor, giving the date of his survey, his name and post-office address, and the date of the application which the certificate accompanies.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.126. Department Requirements

(a) If the proposed taking or diversion of water for irrigation exceeds nine cubic feet per second, the executive director may require additional information as prescribed by this section.

(b) The executive director may require a continuous longitudinal profile, cross sections of the proposed channel, and the detail plans of any proposed structure, on any scales and with any definition the executive director considers necessary or expedient.

(c) If the application proposes construction of a dam greater than six feet in height either for diversion or storage, the executive director may also require filing a copy of all plans and specifications and a copy of the engineer's field notes of any survey of the lake or reservoir. No work on the project shall proceed until approval of the plans is obtained from the commission.

(d) If the applicant is a corporation, the commission may require filing a certified copy of its articles of incorporation, a statement of the names and addresses of its directors and officers, and a statement of the amount of its authorized capital stock and its paid-up capital stock.

(e) If the applicant is not a corporation, the commission may require filing a sworn statement showing the name and address of each person interested in the appropriation, the extent of his interest, and his financial condition.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.127. Additional Requirements: Drainage Plans

If the commission believes that the efficient operation of any existing or proposed irrigation system may be adversely affected by lack of adequate drainage facilities incident to the work proposed to be done by an applicant, the commission may require the applicant to submit plans for drainage adequate to guard against any injury which the proposed work may entail.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.128. Payment of Fee

If the applicant is not exempted from payment of the filing fee under Section 12.112 of this code, he shall pay the filing fee prescribed by Section 12.111(b) of this code at the time he files the application. The commission shall not record, file, or consider the application until the executive director certifies to the commission that the fee is paid.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.129. Review of Application; Amendment

The commission shall determine whether the application, maps, and other materials comply with the requirements of this chapter and the rules of the board. The commission may require amendment of the application, maps, or other materials to achieve necessary compliance.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.130. Recording Applications

(a) The executive director shall have all applications for appropriations recorded in a well-bound book kept for that purpose in the department's office.

(b) The executive director shall have the applications indexed alphabetically in the name of:

(1) the applicant;

(2) the stream or source from which the appropriation is sought to be made; and

(3) the county in which the appropriation is sought to be made.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.131. Examination and Denial of Application Without Hearing

(a) The commission shall make a preliminary examination of the application, and if it appears that there is no unappropriated water in the source of supply or that the proposed appropriation should not be allowed for other reasons, the commission may deny the application.

(b) If the commission denies the application under this section and the applicant elects not to proceed further, the commission may order any part of the fee submitted with the application returned to the applicant.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.132. Notice of Hearing

(a) The commission shall give notice of the hearing on the application as prescribed by this section.

(b) In the notice, the commission shall:

(1) state the name and address of the applicant;

(2) state the date the application was filed;

(3) state the purpose and extent of the proposed appropriation of water;

(4) identify the source of supply and the place where the water is to be stored or taken or diverted from the source of supply;

(5) specify the time and place of the hearing; and

(6) give any additional information the commission considers necessary.

(c) If the proposed use is for irrigation, the commission shall include in the notice a general description of the location and area of the land to be irrigated.

(d) The notice shall be published once a week for two consecutive weeks before the date stated in the notice for the hearing in some newspaper having a general circulation in the section of the state where the source of water is located.

(e) The commission shall also mail a copy of the notice by first-class mail, postage prepaid, to each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed in the office of the commission. The notice shall also be mailed by first-class mail, postage prepaid, to all navigation districts within the watershed concerned. The inadvertent failure of the commission to mail a notice to a navigation district which is not a claimant or appropriator of water does not prevent the hearing on the application.

(f) The notice shall be mailed and first published not less than 20 days before the date set for the hearing.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.133. Hearing

At the time and place stated in the notice, the commission shall hold a hearing on the application. Any person may appear at the hearing in person or by attorney or may enter his appearance in writing. Any person who appears may present objection to the issuance of the permit. The commission may receive evidence, orally or by affidavit, in support of or in opposition to the issuance of the permit, and it may hear arguments.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.134. Action on Application

(a) After the hearing, the commission shall make a written decision granting or denying the application. The application may be granted or denied in whole or in part.

(b) The commission shall grant the application only if:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fee;

(2) unappropriated water is available in the source of supply; and

(3) the proposed appropriation:

(A) contemplates the application of water to any beneficial use;

(B) does not impair existing water rights or vested riparian rights; and

(C) is not detrimental to the public welfare.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.135. Issuance of Permit

(a) On approval of an application, the commission shall issue a permit to the applicant. The applicant's right to take and use water is limited to the extent and purposes stated in the permit.

(b) The permit shall be in writing and attested by the seal of the commission, and it shall contain substantially the following information:

(1) the name of the person to whom the permit is issued;

(2) the date the permit is issued;

(3) the date the original application was filed;

(4) the use or purpose for which the appropriation is to be made;

(5) the amount or volume of water authorized to be appropriated for each purpose;

(6) a general description of the source of supply from which the appropriation is proposed to be made;

(7) the time within which construction or work must begin and the time within which it must be completed; and

(8) any other information the board prescribes.

(c) If the appropriation is for irrigation, the commission shall also place in the permit a description and statement of the approximate area of the land to be irrigated.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.136. Recording of Permit

(a) The commission shall transmit the permit by registered mail to the county clerk of the county in which the appropriation is to be made.

(b) When the county clerk receives the permit and is paid the recording fee (as prescribed by Article 3930, Revised Civil Statutes of Texas, 1925, as amended), he shall file and record the permit in a well-bound book kept for that purpose. He shall index the permit alphabetically in the name of the applicant and of the stream or source of water supply. After he has recorded the permit, the county clerk shall deliver the permit, on demand, to the applicant.

(c) When the permit is filed in the office of the county clerk, it is constructive notice of:

(1) the filing of the application;

(2) the issuance of the permit; and

(3) all the rights arising under the filing of the application and the issuance of the permit.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.137. Seasonal Permits

(a) The commission may issue seasonal permits in the same manner that it issues regular permits. The provisions of this chapter governing issuance of regular permits apply to issuance of seasonal permits.

(b) The right to take, use, or divert water under seasonal permit is limited to the portion or portions of the calendar year stated in the permit.

(c) In a seasonal permit, the commission shall specify the conditions necessary to fully protect prior appropriations or vested rights on the stream.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.138. Temporary permits

(a) The commission may issue temporary permits for beneficial purposes to the extent that they do not interfere with or adversely affect prior appropriations or vested rights on the stream from which water is to be diverted under such temporary permit. The commission may, by appropriate order, authorize any member of the commission or its executive director to approve and issue temporary permits without notice and hearing if it appears to such issuing party that sufficient water is available at the

proposed point of diversion to satisfy the requirements of the temporary permit as well as all existing rights. No temporary permit issued without notice and hearing shall authorize more than 10 acre-feet of water, nor may it be for a term in excess of one year.

(b) The commission may prescribe rules governing notice and procedure for the issuance of temporary permits.

(c) As between temporary permits, the one applied for first has priority.

(d) The commission may not issue a temporary permit for a period exceeding three calendar years.

(e) A temporary permit does not vest in its holder a permanent right to the use of water.

(f) A temporary permit expires and shall be cancelled by the commission in accordance with the terms of the permit.

(g) The board may prescribe by rule the fees to be paid for issuance of temporary permits, but no fee for issuance or extension of a temporary permit shall exceed $500.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 5.137 by Acts 1977, 65th Leg., p. 319, ch. 152, § 1.

§ 11.139. Emergency Permits

(a) The commission may grant an emergency permit for the diversion and use of water for a period of not more than 30 days if it finds that emergency conditions exist which threaten the public health, safety, and welfare and which override the necessity to comply with established statutory procedures.

(b) An emergency permit may be granted for a period of not more than 30 days, and no extension or additional emergency permit may be granted at the expiration of the original permit.

(c) An emergency permit may be granted under this section without the necessity to comply with statutory and other procedures required for granting other permits issued by the commission.

(d) The board may prescribe rules and adopt fees which are necessary to carry out the provisions of this section.

(e) An emergency permit does not vest in the permittee any right to the diversion and use of water and shall expire and be cancelled in accordance with its terms.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.140. Permits for Storage for Project Development

The commission may issue permits for storage solely for the purpose of optimum development of projects. The commission may convert these permits to permits for beneficial use if application to have them converted is made to the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.141. Date of Priority

When the commission issues a permit, the priority of the appropriation of water and the claimant's right to use the water date from the date of filing of the application.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.142. Domestic and Livestock Reservoir–Permit Exemption

Without obtaining a permit, a person may construct on his own property a dam or reservoir to impound or contain not more than 200 acre-feet of water for domestic and livestock purposes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.143. Domestic and Livestock Reservoir–Use for Other Purposes

(a) The owner of a dam or reservoir exempted under Section 11.142 of this code who desires to use water from the dam or reservoir for purposes other than domestic or livestock use shall obtain a permit to do so. He may obtain a regular permit, a seasonal permit, or a permit for a term of years. He may elect to obtain the permit by proceeding under this section or under the other provisions of this chapter governing issuance of permits.

(b) If the applicant elects to proceed under this section, he shall submit to the department a sworn application, on a form furnished by the department, containing the following information:

(1) the name and post-office address of the applicant;

(2) the nature and purpose of the use and the amount of water to be used annually for each purpose;

(3) the major watershed and the tributary (named or unnamed) on which the dam or reservoir is located;

(4) the county in which the dam or reservoir is located;

(5) the approximate distance and direction from the county seat of the county to the location of the dam or reservoir;

(6) the survey or the portion of the survey on which the dam or reservoir is located and, to the best of the applicant's knowledge and belief, the distance and direction of the midpoint of the dam or reservoir from a corner of the survey, which information the executive director may require to be marked on an aerial photograph or map furnished by the department;

(7) the approximate surface area, to the nearest acre, of the reservoir when it is full and the average depth in feet when it is full; and

(8) the approximate number of square miles in the drainage area above the dam or reservoir.

(c) If the permit is sought for irrigation, the application must also specify:

(1) the total number of irrigable acres in the area;

(2) the number of acres to be irrigated within the area in any one year; and

(3) the approximate distance and direction of the land to be irrigated from the midpoint of the dam or reservoir.

(d) Before the commission may approve the application and issue the permit, it shall give notice and hold a hearing as prescribed by this section.

(e) In the notice, the commission shall:

(1) state the name and post-office address of the applicant;

(2) state the date the application was filed;

(3) state the purpose and extent of the proposed appropriation of water;

(4) identify the source of supply and the place where the water is stored; and

(5) specify the time and place of the hearing.

(f) The notice shall be published only once, at least 20 days before the date stated in the notice for the hearing on the application, in a newspaper having general circulation in the county where the dam or reservoir is located. At least 15 days before the date set for the hearing, the commission shall transmit a copy of the notice by first-class mail to each person whose claim or appropriation has been filed with the department and whose diversion point is downstream from that described in the application.

(g) The applicant shall pay the filing fee prescribed by Section 12.111(b) of this code at the time he files the application.

(h) The commission shall approve the application and issue the permit as applied for in whole or part if it determines that:

(1) there is unappropriated water in the source of supply;

(2) the applicant has met the requirements of this section;

(3) the water is to be used for a beneficial purpose;

(4) the proposed use is not detrimental to the public welfare or to the welfare of the locality; and

(5) the proposed use will not impair existing water rights.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.144. Approval for Alterations

All holders of permits and certified filings shall obtain the approval of the commission before making any alterations, enlargements, extensions, or other changes to any reservoir, dam, main canal, or diversion work on which a permit has been granted or a certified filing recorded. A detailed statement and plans for alterations or changes shall be filed with the department and approved by the commission before the alterations or changes are made. This section does not apply to the ordinary maintenance or emergency repair of the facility.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.145. When Construction Must Begin

(a) If a person's permit is for appropriation by direct diversion, he shall begin construction of the proposed facilities within 90 days after the date his permit is issued. He shall work diligently and continuously to the completion of the construction. The commission may, by entering an order of record, extend the time for beginning construction for a period not to exceed 12 months after the date the permit was issued.

(b) If the permit contemplates construction of a storage reservoir, construction shall begin within the time fixed by the commission, not to exceed two years after the date the permit is issued. The commission, by entering an order of record, may extend the time for beginning construction. The board may fix fees, not to exceed $1,000, for extending the time to begin construction of reservoirs.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.146. Forfeitures and Cancellation of Permit for Inaction

(a) If a permittee fails to begin construction within the time specified in Section 11.145 of this code, he forfeits all rights to the permit, subject to notice and hearing as prescribed by this section.

(b) After beginning construction if the appropriator fails to work diligently and continuously to the completion of the work, the appropriation is subject to cancellation in whole or part, subject to notice and hearing as prescribed by this section.

(c) If the commission believes that an appropriation or permit should be declared forfeited under this section or any other sections of this code, it should give the appropriator or permittee 30 days notice and provide him with an opportunity to be heard.

(d) After the hearing, the commission by entering an order of record may cancel the appropriation in whole or part. The commission shall immediately transmit a certified copy of the cancellation order by certified mail to the county clerk of the county in

which the permit is recorded. The county clerk shall record the cancellation order.

(e) If a permit has been issued for the use of water, the water is not subject to a new appropriation until the permit has been cancelled in whole or part as provided by this section.

(f) Except as provided by Subchapter E of this chapter, none of the provisions of this code may be construed as intended to impair, cause, or authorize or may impair, cause, or authorize the forfeiture of any rights acquired by any declaration of appropriation or by any permit if the appropriator has begun or begins the work and development contemplated by his declaration of appropriation or permit within the time provided by the law under which the declaration of appropriation was made or the permit was granted and has prosecuted or continues to prosecute it with all reasonable diligence toward completion.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.147. Effects of Permit on Bays and Estuaries

In its consideration of an application for a permit to store, take, or divert water, the commission shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 11.148 to 11.170 reserved for expansion]

SUBCHAPTER E. CANCELLATION OF PERMITS, CERTIFIED FILINGS, AND CERTIFICATES OF ADJUDICATION FOR NONUSE

§ 11.171. Definitions

As used in this subchapter:

(1) "Other interested person" means any person other than a record holder who is interested in the permit or certified filing or any person whose direct interest would be served by the cancellation of the permit or certified filing in whole or part.

(2) "Certified filing" means a declaration of appropriation or affidavit that was filed with the State Board of Water Engineers under the provisions of Section 14, Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended.

(3) "Certificate of adjudication" means a certificate issued by the commission under Section 11.323 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.172. General Principle

A permit, certified filing, or certificate of adjudication is subject to cancellation in whole or part for 10 years nonuse as provided by this subchapter.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.173. Cancellation in Whole

If no part of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has been put to beneficial use at any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the appropriation is presumed to have been wilfully abandoned, and the permit, certified filing, or certificate of adjudication is subject to cancellation in whole as provided by this subchapter.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.174. Department to Initiate Proceedings

When the department finds that its records do not show that any water has been beneficially used under a permit, certified filing, or certificate of adjudication during the past 10 years, the executive director shall initiate proceedings, terminated by public hearing, to cancel the permit, certified filing, or certificate of adjudication.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.175. Notice

(a) At least 30 days before the date of the hearing, the commission shall send notice of the hearing to the holder of the permit, certified filing, or certificate of adjudication being considered for cancellation. Notice shall be sent by certified mail, return receipt requested, to the last address shown by the records of the commission. The commission shall also send notice by regular mail to all other holders of permits, certified filings, certificates of adjudication, and claims of water rights pursuant to Section 11.303 of this code in the same watershed.

(b) The commission shall also have the notice of the hearing published once a week for two consecutive weeks, at least 30 days before the date of the hearing, in a newspaper published in each county in which diversion of water from the source of supply was authorized or proposed to be made and in each county in which the water was authorized or proposed to be used, as shown by the records of the commission. If in any such county no newspaper is published, then the notice may be published in a newspaper having general circulation in the county.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.176. Hearing

The commission shall hold a hearing and shall give the holder of the permit, certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence that water has, or has not, been beneficially used for the purposes authorized by the permit, certified filing, or certificate of adjudication during the 10-year period.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.177. Commission Finding; Action

At the conclusion of the hearing if the commission finds that no water has been beneficially used for authorized purposes during the 10-year period, the appropriation is deemed to have been wilfully abandoned, of no further force and effect, and the commission shall cancel the permit, certified filing, or certificate of adjudication.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.178. Cancellation in Part

If some part of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has not been put to beneficial use at any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the permit, certified filing, or certificate of adjudication is subject to partial cancellation, as provided by this subchapter, to the extent of the 10 years nonuse.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.179. Department May Initiate Proceedings

When the department finds that its records do not show proof that some portion of the water has been used during the past 10 years, the executive director may initiate proceedings, terminated by public hearing, to cancel the permit, certified filing, or certificate of adjudication in part.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.180. Notice

The commission shall give notice of the hearing as provided by Section 11.175 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.181. Hearing

The commission shall hold a hearing and shall give the holder of the permit, certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence on any matter pertinent to the questions at issue.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.182. Commission Finding; Action

(a) At the conclusion of the hearing, the commission shall cancel the permit, certified filing, or certificate of adjudication to the extent that it finds that:

(1) any portion of the water appropriated under the permit, certified filing, or certificate of adjudication has not been put to an authorized beneficial use during the 10-year period;

(2) the holder has not used reasonable diligence in applying the unused portion of the water to an authorized beneficial use; and

(3) the holder has not been justified in the nonuse or does not then have a bona fide intention of putting the unused water to an authorized beneficial use within a reasonable time after the hearing.

(b) In determining what constitutes a reasonable time as used in Subsection (a)(3) of this section, the commission shall give consideration to:

(1) the expenditures made or obligations incurred by the holder in connection with the permit, certified filing, or certificate of adjudication;

(2) the purpose to which the water is to be applied;

(3) the priority of the purpose; and

(4) the amount of time usually necessary to put water to a beneficial use for the same purpose when diligently developed.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.183. Reservoir

If the holder of a permit, certified filing, or certificate of adjudication has facilities for the storage of water in a reservoir, the commission may allow him to retain the impoundment to the extent of the conservation storage capacity of the reservoir for domestic, livestock, or recreation purposes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.184. Municipal Certified Filing

Regardless of other provisions of this subchapter, no portion of a certified filing held by a city, town, village, or municipal water district, authorizing the use of water for municipal purposes, shall be cancelled if water has been put to use under the certified filing for municipal purposes at any time during the 10-year period immediately preceding the institution of cancellation proceedings.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.185. Effect of Inaction

Failure to initiate cancellation proceedings under this subchapter does not validate or improve the status of any permit, certified filing, or certificate of adjudication in whole or in part.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.186. Subsequent Proceedings on Same Water Right

Once cancellation proceedings have been initiated against a particular permit, certified filing, or certificate of adjudication and a hearing has been held, further cancellation proceedings shall not be initiated against the same permit, certified filing, or certificate of adjudication within the five-year period immediately following the date of the hearing.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 11.187 to 11.200 reserved for expansion]

SUBCHAPTER F. ARTESIAN WELLS

§ 11.201. Artesian Well Defined

An artesian well is an artificial water well in which the water, when properly cased, will rise by natural pressure above the first impervious stratum below the surface of the ground.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.202. Right to Drill Artesian Well

A person is entitled to drill an artesian well on his own land for domestic purposes or for stock raising without complying with the general provisions of this code regulating the use of water. However, he shall have the well properly and securely cased, and when water is reached containing mineral or other substances injurious to vegetation or agriculture, he shall have the well securely capped or its flow controlled so as not to injure another person's land or shall fill the well so as to prevent the water from rising above the first impervious stratum below the surface of the ground.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.203. Artesian Well: Drilling Record

(a) A person who drills an artesian well or has one drilled shall keep a complete and accurate record of the depth, thickness, and character of the different strata penetrated and when the well is completed shall transmit a copy of the record to the department by registered mail.

(b) A person who violates any provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $100.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.204. Report of New Artesian Well

Within one year after an artesian well is drilled, the owner or operator shall transmit to the department a sworn report stating the result of the drilling operation, the use to which the water will be applied, and the contemplated extent of the use.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.205. Wasting Water From Artesian Well

(a) Unless the water from an artesian well is used for a purpose and in a manner in which it may be lawfully used on the owner's land, it is waste to wilfully cause or knowingly permit the water to run off the owner's land or to percolate through the stratum above which the water is found.

(b) It is not waste to use water from an artesian well, if suitable, for proper irrigation of trees on a street, road, or highway or for ornamental ponds or fountains or for the propagation of fish.

(c) A person who commits waste as defined in this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $500 or by confinement in the county jail for not more than 90 days or by both.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.206. Improperly Cased Well: Nuisance

An artesian well that is not tightly cased, capped, and furnished with mechanical appliances that readily and effectively prevent water from flowing out of the well and running over the surface of the ground about the well or wasting through the strata through which it passes is a public nuisance and subject to abatement by the commission.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.207. Annual Report

(a) Not later than March 1 of each year, a person who during any part of the preceding calendar year owned or operated an artesian well for any purpose other than domestic use shall file a report to the department on a form supplied by the department.

(b) The report shall state:

(1) the quantity of water which was obtained from the well;

(2) the nature of the uses to which the water was applied;

(3) the change in the level of the well's water table; and

(4) other information required by the department.

(c) If water from the well was used for irrigation, the report shall also state the acreage and yield of each crop irrigated.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 11.208 to 11.300 reserved for expansion]

SUBCHAPTER G. WATER RIGHTS ADJUDICATION ACT

§ 11.301. Short Title

This subchapter may be cited as the Water Rights Adjudication Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.302. Declaration of Policy

The conservation and best utilization of the water resources of this state are a public necessity, and it is in the interest of the people of the state to require recordation with the commission of claims of water rights which are presently unrecorded, to limit the exercise of these claims to actual use, and to provide for the adjudication and administration of water rights to the end that the surface-water resources of the state may be put to their greatest beneficial use. Therefore, this subchapter is in furtherance of the public rights, duties, and functions mentioned in this section and in response to the mandate expressed in Article XVI, Section 59 of the Texas Constitution and is in the exercise of the police powers of the state in the interest of the public welfare.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.303. Recordation and Limitation of Certain Water Rights Claims

(a) This section applies to:

(1) claims of riparian water rights;

(2) claims under Section 11.143 of this code to impound, divert, or use state water for other than domestic or livestock purposes, for which no permit has been issued;

(3) claims of water rights under the Irrigation Acts of 1889 and 1895 [1] which were not filed with the State Board of Water Engineers in accordance with the Irrigation Act of 1913,[2] as amended; and

(4) other claims of water rights except claims under permits or certified filings.

(b) Any claim to which this section applies shall be recognized only if valid under existing law and only to the extent of the maximum actual application of water to beneficial use without waste during any calendar year from 1963 to 1967, inclusive. However, in any case where a claimant of a riparian right has prior to August 28, 1967, commenced or completed the construction of works designed to apply a greater quantity of water to beneficial use, the right shall be recognized to the extent of the maximum amount of water actually applied to beneficial use without waste during any calendar year from 1963 to 1970, inclusive.

(c) On or before September 1, 1969, every person claiming a water right to which this section applies shall file with the commission a statement setting forth:

(1) the name and address of the claimant;

(2) the location and the nature of the right claimed;

(3) the stream or watercourse and the river basin in which the right is claimed;

(4) the date of commencement of works;

(5) the dates and volumes of use of water; and

(6) other information the commission may require to show the nature and extent of the claim.

(d) A person who files a statement as provided in this section shall certify under oath that the statements made in support of his claim are true and correct to the best of his knowledge and belief.

(e) A claimant who desires recognition of a right based on use from 1968 to 1970, inclusive, as provided in Subsection (b) of this section shall file an additional sworn statement on or before July 1, 1971.

(f) The commission shall prescribe forms for the sworn statements required by this section, but use of the commission forms is not mandatory.

(g) On or before January 1, 1968, and June 1, 1969, the commission shall cause notice of the requirements of this section to be published once each week for two consecutive weeks in newspapers having general circulation in each county of the state and by first-class mail to each user of surface water who has filed a report of water use with the commission.

(h) On sworn petition, notice, and hearing as prescribed for applications for permits and upon finding of extenuating circumstances and good cause shown for failure to timely file, the commission may authorize the filing of the sworn statement or statements required by this section until entry of a preliminary determination of claims of water rights in accordance with Section 11.309 of this code which includes the area described in the petition or, if a preliminary determination has not been entered, until September 1, 1974.

(i) Since the filing of all claims to use public water is necessary for the conservation and best utilization of the water resources of the state, failure to file a sworn statement in substantial compliance with this section extinguishes and bars any claim of water rights to which this section applies.

(j) A sworn statement submitted under this section is binding on the person submitting it and his successors in interest, but is not binding on the commission or any other person in interest.

(k) Nothing in this section shall be construed to recognize any water right which did not exist before August 28, 1967.

(*l*) This section does not apply to use of water for domestic or livestock purposes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] Acts 1889, 21st Leg., p. 100, ch. 88; Acts 1895, 24th Leg., p. 21, ch. 21.
[2] Acts 1913, 33rd Leg., p. 358, ch. 1.71.

§ 11.304. Adjudication of Water Rights

The water rights in any stream or segment of a stream may be adjudicated as provided in this subchapter:

(1) on the commission's own motion;

(2) on petition to the commission signed by 10 or more claimants of water rights from the source of supply; or

(3) on petition of the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.305. Investigation

(a) Promptly after a petition is filed under Section 11.304 of this code, the commission shall investigate the facts and conditions necessary to determine whether the adjudication would be in the public interest. If the commission finds that an adjudication would be in the public interest, it shall enter an order to that effect, designating the stream or segment to be adjudicated. The executive director shall have an investigation made of the area involved in order to gather relevant data and information essential to the proper understanding of the claims of water rights involved. The results of the investigation shall be reduced to writing and made a matter of record in the commission's office.

(b) In connection with the investigation, the executive director shall have a map or plat made showing with substantial accuracy the course of the stream or segment and the location of reservoirs, diversion works, and places of use, including lands which are being irrigated or have facilities for irrigation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.306. Notice of Adjudication

(a) The commission shall prepare a notice of adjudication which describes the stream or segment to be adjudicated and the date by which all claims of water rights in the stream or segment shall be filed with the commission. The date shall not be less than 90 days after the date the notice is issued.

(b) The notice shall be published once a week for two consecutive weeks in one or more newspapers having general circulation in the counties in which the stream or segment is located.

(c) The notice shall also be sent by first-class mail to each claimant of water rights whose diversion is within the stream or segment to be adjudicated, to the extent that the claimants can reasonably be ascertained from the records of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.307. Filing of Sworn Claims

(a) Every person claiming a water right of any nature, except for domestic or livestock purposes, from the stream or segment under adjudication shall file a sworn claim with the commission within the time prescribed in the notice of adjudication, including any extensions of the prescribed time, setting forth:

(1) the name and post-office address of the claimant;

(2) the location and nature of the right claimed, including a description of any permit or certified filing under which the claim is made;

(3) the purpose of the use;

(4) a description of works and irrigated land; and

(5) all other information necessary to show the nature and extent of the claim.

(b) The commission shall prescribe forms for claims, but use of the commission forms is not mandatory.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.308. Hearings on Claims; Notice

The commission shall set a time and a place for hearing all claims. Not less than 30 days before commencement of the hearings, the commission shall give notice of the hearings by certified mail to all persons who have filed claims in accordance with Section 11.307 of this code, or this notice may be included in the notice of adjudication provided in Section 11.306 of this code. The hearings shall be conducted as provided in Section 11.337 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.309. Preliminary Determination of Claims

(a) On completion of the hearings, the commission shall make a preliminary determination of the claims to water rights under adjudication.

(b) One copy of the preliminary determination shall be furnished without charge to each person who filed a claim in accordance with Section 11.307 of this code. Additional copies of the preliminary determination shall be made available for public inspection at convenient locations throughout the river basin, as designated by the commission. Copies shall also be made available to other interested persons at a reasonable price, based on the cost of reproduction.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.310. Evidence Open to Inspection

All evidence presented to or considered by the commission shall be open to public inspection for a

period of not less than 60 days, as fixed by the commission, after the notice prescribed in Section 11.312 of this code is issued.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.311. Date for Filing Contests

The commission shall set a date for filing contests on the preliminary determination, which date shall not be less than 30 days after the period for public inspection of the evidence has closed.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.312. Notice of Preliminary Determination; Copies

(a) Promptly after the preliminary determination is made as provided in Section 11.309 of this code, the commission shall publish notice of the determination once a week for two consecutive weeks in one or more newspapers having general circulation in the river basin in which the stream or segment that is the subject of the adjudication is located.

(b) The commission shall also send notice by first-class mail to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the department.

(c) Each notice shall state:

(1) the place and the period of time that the preliminary determination and evidence presented to or considered by the commission will be open for public inspection;

(2) the locations throughout the river basin where copies of the preliminary determination will be available for public inspection;

(3) the method of ordering copies of the preliminary determination and the charge for copies;

(4) the date by which contests on the preliminary determination must be filed.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.313. Filing Contests

(a) Any water right claimant affected by the preliminary determination, including any claimant to water rights within the river basin but outside the stream or segment under adjudication, who disputes the preliminary determination may within the time for filing contests prescribed by the commission in the notice, including any extension of the time, file a written contest with the commission, stating with reasonable certainty the grounds of his contest.

(b) The statement filed to contest a preliminary determination must be verified by an affidavit of the contestant, his agent, or his attorney.

(c) If the contest is directed against the preliminary determination of the water rights of other claimants, a copy shall be served on each of these claimants or his attorney by certified mail, and proof of service shall be filed with the commission.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.314. Hearing on Contest; Notice

After the time for filing contests has expired, the commission shall prepare a notice setting forth the part of the preliminary determination to which each contest is directed and the time and place of a hearing on the contest. The notice shall be sent to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the commission. The hearing shall be conducted as provided in Section 11.337 of this code.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.315. Final Determination

On completion of the hearings on all contests, the commission shall make a final determination of the claims to water rights under adjudication. The commission shall send a copy of the final determination and any modification of the final determination to each claimant whose rights are adjudicated and to each contesting party.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.316. Application for Rehearing

Within 30 days from the date of the final determination, any affected party may apply to the commission for a rehearing. Applications for rehearing which in the opinion of the commission are without merit may be denied without notice to other parties, but no application for rehearing shall be granted without notice to each claimant whose rights are adjudicated and to each contesting party.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.317. Filing Final Determination With District Court

(a) As soon as practicable after the disposition of all applications for rehearing, the commission shall file a certified copy of the final determination, together with all evidence presented to or considered by the commission, in a district court of any county in which the stream or segment under adjudication is located. However, if the stream or segment under adjudication includes all or parts of three or more counties and if 10 or more affected persons who appeared in the proceedings petition the commission to do so, the commission shall file the action in a

convenient district court of a judicial district which is not within the river basin of the stream or segment under adjudication.

(b) The commission shall obtain an order from the court fixing a time not less than 30 days from the date of the order for the filing of exceptions to the final determination and also fixing a time not less than 60 days from the date of the order for the commencement of hearings on exceptions.

(c) The commission shall immediately give written notice of the court order by certified mail to all parties who appeared in the proceedings before the commission. The commission shall file proof of the service with the court.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.318. Exceptions to Final Determination

(a) Any affected person who appeared in the proceeding before the commission may file exceptions to the final determination. An exception must state with a reasonable degree of certainty the grounds for the exception and must specify the particular paragraphs and pages of the determination to which the exception is taken.

(b) Three copies of the exceptions shall be filed in court, and a copy shall be served on the commission. The commission shall make copies of all exceptions available at a reasonable price, based on the cost of reproduction.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.319. Hearings on Exceptions

(a) The court shall hear any exceptions that have been filed. The commission and all affected persons who appeared in the proceedings before the commission are entitled to appear and be heard on the exceptions. The court may permit other parties in interest to appear and be heard for good cause shown.

(b) The court may conduct nonjury hearings and proceedings at any convenient location within the state. Actual expenses incurred by the court outside its judicial district shall be taxed as costs.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.320. Scope of Judicial Review

(a) In passing on exceptions, the court shall determine all issues of law and fact independently of the commission's determination. The substantial evidence rule shall not be used. The court shall not consider any exception which was not brought to the commission's attention by application for rehearing. The court shall not consider any issue of fact raised by an exception unless the record of evidence before the commission reveals that the question was genuinely in issue before the commission.

(b) A party in interest may demand a jury trial of any issue of fact, but the court may in its discretion have a separate trial with a separate jury of any such issue.

(c) The legislature declares that the provisions of this section are not severable from the remainder of this subchapter and that this subchapter would not have been passed without the inclusion of this section. If this section is for any reason held invalid, unconstitutional, or inoperative in any way, the holding applies to the entire subchapter so that the entire subchapter is null and void.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.321. Evidence

Any exception heard by the court without a jury may be resolved on the record of evidence before the commission, or the court may take additional evidence or direct that additional evidence be heard by the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.322. Final Decree

(a) After the final hearing, the court shall enter a decree affirming or modifying the order of the commission.

(b) The court may assess the costs as it deems just.

(c) An appeal may be taken from the decree of the court in the same manner and with the same effect as in other civil cases.

(d) The final decree in every water right adjudication is final and conclusive as to all existing and prior rights and claims to the water rights in the adjudicated stream or segment of a stream. The decree is binding on all claimants to water rights outside the adjudicated stream or segment of a stream.

(e) Except for domestic and livestock purposes or rights subsequently acquired by permit, a water right is not recognized in the adjudicated stream or segment of a stream unless the right is included in the final decree of the court.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.323. Certificate of Adjudication

(a) When a final determination of the rights to the waters of a stream has been made in accordance with the procedure provided in this subchapter and the time for a rehearing has expired, the commission shall issue to each person adjudicated a water right a certificate of adjudication, signed by the chairman and bearing the seal of the commission.

(b) In the certificate, the commission shall include:

(1) a reference to the final decree;

(2) the name and post-office address of the holder of the adjudicated right;

(3) the priority, extent, and purpose of the adjudicated right and, if the right is for irrigation, a description of the irrigated land; and

(4) all other information in the decree relating to the adjudicated right.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.324. Recordation of Certificate

(a) The commission shall transmit the certificate of adjudication or a true copy to the county clerk of each county in which the appropriation is made.

(b) On receipt of the recording fee from the holder of the certificate, the county clerk shall file and record the certificate in a well-bound book provided and kept for that purpose only. The clerk shall index the certificate alphabetically under the name of the holder of the certificate of adjudication and under the name of the stream or source of water supply.

(c) When a certificate of adjudication is filed and recorded as provided in this section, the county clerk shall deliver the certificate on demand to the holder.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.325. Water Divisions

The board shall divide the state into water divisions for the purpose of administering adjudicated water rights. Water divisions may be created from time to time as the necessity arises. The divisions shall be constituted to secure the best protection to the holders of water rights and the most economical supervision on the part of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.326. Appointment of Watermaster

(a) The executive director may appoint one watermaster for each water division.

(b) A watermaster holds office until a successor is appointed. The executive director may remove a watermaster at any time.

(c) The executive director may employ assistant watermasters and other employees necessary to aid a watermaster in the discharge of his duties.

(d) In a water division in which the office of watermaster is vacant, the executive director has the powers of a watermaster.

(e) The executive director shall supervise and generally direct the watermaster in the performance of his duties. A watermaster is responsible to the executive director for the proper performance of his duties.

(f) A person dissatisfied with any action of a watermaster may apply to the executive director for relief.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.327. Duties of Watermaster

(a) A watermaster shall divide the water of the streams or other sources of supply of his division in accordance with the adjudicated water rights.

(b) A watermaster shall regulate or cause to be regulated the controlling works of reservoirs and diversion works in time of water shortage, as is necessary because of the rights existing in the streams of his division, or as is necessary to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are lawfully entitled.

(c) A watermaster may regulate the distribution of water from any system of works that serves users whose rights have been separately determined.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.328. Watermaster's Notice Posted

If, in the performance of his duties, a watermaster regulates diversion works or the controlling works of reservoirs, he shall attach to the works a written notice, properly dated and signed, stating that the works have been properly regulated and are wholly under his control. The notice is legal notice to all parties interested in the diversion and distribution of the water served by the diversion works or reservoir.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.329. Compensation and Expenses of Watermaster

(a) The department shall pay the compensation and necessary expenses of a watermaster, assistant watermasters, and other necessary employees, but the holders of water rights that have been determined or adjudicated and are to be administered by the watermaster shall reimburse the department for the compensation and expenses.

(b) After the adjudication decree becomes final, the executive director shall notify each holder of water rights under the decree of the amount of compensation and expenses that will be required annually for the administration of the water rights so determined.

(c) The commission shall hold a public hearing to determine the apportionment of the costs of administration of adjudicated water rights among the holders of the rights. After a public hearing, the commission shall issue an order assessing the annual

cost against the holders of water rights to whom the water will be distributed under the final decree. The commission shall equitably apportion the costs. The executive director may provide for payments in installments and shall specify the dates by which payments shall be made to the department.

(d) The executive director shall transmit all collections under this section to the State Treasurer.

(e) No water shall be diverted, taken, or stored by, or delivered to, any person while he is delinquent in the payment of his assessed costs.

(f) An order of the commission assessing costs remains in effect until the commission issues a further order. The commission may modify, revoke, or supersede an order assessing costs with a subsequent order. The commission may issue supplementary orders from time to time to apply to new diversions.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.330. Outlet for Free Passage of Water

The owner of any works for the diversion or storage of water shall maintain to the satisfaction of the commission a substantial headgate at the point of diversion, or a gate on each discharge pipe of a pumping plant, constructed so that it can be locked at the proper place by the watermaster, or a suitable outlet in a dam to allow the free passage of water that the owner of the dam is not entitled to divert or impound, the suitability of the outlet to be determined by the commission.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.331. Measuring Devices

The commission may require the owner of any works for the diversion, taking, storage, or distribution of water to construct and maintain suitable measuring devices at points that will enable the watermaster to determine the quantities of water to be diverted, taken, stored, released, or distributed in order to satisfy the rights of the respective users.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.332. Installation of Flumes

The commission may order flumes to be installed along the line of any ditch if necessary for the protection of water rights or other property.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.333. Failure to Comply With Commission Directions

If the owner of waterworks using state water refuses or neglects to comply with the directions of the commission given pursuant to Section 11.330, 11.331, or 11.332 of this code, the commission, after 10 days notice or after a period of additional time that is reasonable under the circumstances, may order the watermaster to make adjustments of the control works to prevent the owner of the works from diverting, taking, storing, or distributing any water until he has fully complied with the order of the commission.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.334. Suit Against Department for Injury

Any person who is injured by an act of the department under this subchapter may bring suit against the commission to review the action or to obtain an injunction. If the water right involved has been adjudicated as provided in this subchapter, the court shall issue an injunction only if it is shown that the department has failed to carry into effect the decree adjudicating the water right.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.335. Administration of Water Rights Not Adjudicated

(a) If any area in which water rights of record in the office of the department have not been adjudicated, the claimants of the rights and the commission may enter into a written agreement for their administration.

(b) An agreement made under authority of this section shall provide:

(1) the basis and manner of distribution of the water to which the agreement relates;

(2) the services of a special watermaster, and assistants if necessary, to carry out the agreement; and

(3) the allocation, collection, and payment of the annual costs of administration.

(c) An agreement to administer unadjudicated water rights shall be recorded in the offices of the department and of the county clerk of each county in which any of the works or lands affected by the agreement are located.

(d) The administration of water rights by agreement is governed by the provisions of this subchapter except as regards allocation and payment of the expenses of the administration.

(e) No agreement authorized by this section impairs any vested right to the use of water or creates any additional rights to the use of water.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.336. Administration of Permits Issued After Adjudication

Permits, other than temporary permits, that are issued by the commission to appropriate water from

an adjudicated stream or segment are subject to administration in the same manner as is provided in this subchapter for adjudicated water rights.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.337. Hearings: Notice and Procedure

(a) The commission shall give notice of a hearing or other proceeding it orders under this subchapter in the manner prescribed in the procedural rules of the commission, unless this subchapter specifically provides otherwise.

(b) In any proceeding in any part of the state, the commission may:

(1) take evidence, including the testimony of witnesses;

(2) administer oaths;

(3) issue subpoenas and compel the attendance of witnesses in the same manner as subpoenas are issued out of the courts of the state;

(4) compel witnesses to testify and give evidence; and

(5) order the taking of depositions and issue commissions for the taking of depositions in the same manner as depositions are obtained in civil actions.

(c) Evidence may be taken by a duly appointed reporter before the commission or before an authorized representative who has the power to administer oaths.

(d) If a person neglects or refuses to comply with an order or subpoena issued by the commission or refuses to testify on any matter about which he may be lawfully interrogated, the commission may apply to a district court of the county in which the proceeding is held to punish him in the manner provided by law for such disobedience in civil actions.

(e) The commission may adjourn its proceedings from time to time and from place to place.

(f) When a proceeding before the commission is concluded, the commission shall render a decision as to the matters concerning which the proceeding was held.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.338. Cancellation of Water Rights

Nothing in this subchapter recognizes any abandoned or cancelled water right or impairs in any way the power of the commission under general law to forfeit, cancel, or find abandoned any water right, including adjudicated water rights.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.339. Underground Water Not Affected

This subchapter does not apply to underground water as defined in Chapter 52 of this code.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.340. Abatement of Certain Civil Suits

(a) Nothing in this subchapter prevents or precludes a person who claims the right to divert water from a stream from filing and prosecuting to a conclusion a suit against other claimants of the right to divert or use water from the same stream. However, if the commission has ordered a determination of water rights as provided in this subchapter or if the commission orders such a determination within 90 days after notice of the filing of a suit, the suit shall be abated on the motion of the commission or any party in interest as to any issues involved in the water rights determination.

(b) If a suit is abated as provided in Subsection (a) of this section, the court may grant or continue any temporary relief necessary to preserve the status quo pending a final determination of the water rights involved.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.341. Limitation on Actions

This subchapter does not affect any action or proceeding instituted before August 28, 1967, or any right accrued before that date except those specifically provided for in this subchapter.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 11.342 to 11.400 reserved for expansion]

SUBCHAPTER H. COURT-APPOINTED WATERMASTER

§ 11.401. Scope of Subchapter

The provisions of this subchapter apply to a suit if:

(1) the state is a party;

(2) the purpose of the suit is to determine the right of the parties to divert or use water of a surface stream; and

(3) rights are asserted to use water in, or divert water to, not more than four counties.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.402. Appointment and Authority of Watermaster

(a) A court having jurisdiction over a suit described in Section 11.401 of this code may appoint a watermaster with power to allocate and distribute, under the supervision of the court, the water taken into judicial custody.

(b) The court may not appoint a watermaster with authority to act both upstream and downstream from an existing reservoir on any surface stream of the state. However, once a watermaster is appointed, the construction of a new reservoir does not

invalidate his appointment or restrict his authority over that portion of the stream contemplated by the original order of appointment.

(c) Under terms and conditions prescribed by the court, the watermaster may incur necessary expenses, appoint necessary deputies and assistants, and perform duties and assume responsibilities delegated to him by the court.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.403. Compensation of Watermaster

The court shall fix the compensation of the watermaster and his staff.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.404. Expenses and Assessment of Costs of Watermaster

(a) The trial court shall assess the costs and expenses of the watermaster and his staff against all persons receiving an allocation of the water in judicial custody. The court shall assess the costs and expenses monthly or at other time intervals ordered by the court.

(b) The court shall assess the costs and expenses on the basis of:

(1) acreage;

(2) acre-feet of allocated water;

(3) per capita; or

(4) any other formula the court, after notice and hearing, determines to be the most equitable.

(c) During the pendency of an appeal, the trial court, in its discretion, may assess costs against some parties on one basis and against other parties on another basis.

(d) The costs and expenses are not to be taxed as ordinary court costs, but are to be considered costs necessary to protect the rights and privileges of the parties receiving allocations of water during the litigation and are to be paid by those parties.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.405. Failure to Pay Assessed Costs

If the costs and expenses assessed are not paid within the time prescribed by the court, the court after notice and hearing may withdraw or limit allocations of water to any party failing or refusing to pay his share until all costs and expenses assessed against him are paid in full.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.406. Judicial Custody of Water During Appeal

If a party appeals the judgment of the trial court, that court may retain custody of the water which it has previously taken into judicial custody and over which it has appointed a watermaster. Until final judgment is entered in the case, the trial court has exclusive jurisdiction to administer, allocate, and distribute the water retained in its custody, as provided in Section 11.407 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.407. Allocation and Distribution of Water During Appeal

During the pendency of an appeal, the trial court shall limit the allocation and distribution of the water in its custody to the parties adjudicated to have a valid right to use the water. However, if any party prosecutes an appeal and files a supersedeas bond, the trial court shall make any necessary adjustments in the water allocations and allocate to that party the same amount of water that he received during the proceedings in the trial court.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.408. Retention of Watermaster During Appeal

During the pendency of an appeal, the trial court may retain the watermaster in office with the same authority he had during the trial proceedings.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.409. Violations of Court Orders

If a party violates any order of the trial court either during trial proceedings or during an appeal, the trial court may limit or withdraw his allocation of water until he corrects the violation to the satisfaction of the court.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

CHAPTER 12. PROVISIONS GENERALLY APPLICABLE TO WATER RIGHTS

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Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. For disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

Former Chapter 12, Texas Offshore Terminal Commission, as added by Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, and amended by Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.074, was deleted from Title 2 of the Water Code as revised by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1.

SUBCHAPTER A. GENERAL PROVISIONS

§ 12.001. Definitions

The definitions contained in Subchapter A, Chapter 11 of this code apply to this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 12.002 to 12.010 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES RELATING TO WATER RIGHTS

§ 12.011. Permit Applications

The department shall receive, administer, and act on all applications for permits and permit amendments:

(1) to appropriate public water for beneficial use or storage; or

(2) to construct works for the impoundment, storage, diversion, or transportation of public water.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.0111. Application of Sunset Act

The Texas Offshore Terminal Commission is subject to the Texas Sunset Act; and unless continued in existence as provided by that Act the commission is abolished, and this chapter expires effective September 1, 1983.

[Added by Act 1977, 65th Leg., p. 1842, ch. 735, § 2.074, eff. Aug. 29, 1977.]

§ 12.012. Evaluation of Outstanding Permits

The department shall actively and continually evaluate outstanding permits and certified filings and shall carry out measures to cancel wholly or partially the certified filings and permits that are subject to cancellation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.013. Rate-Fixing Power

(a) The commission shall fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12 of this code.

(b) The term "political subdivision" when used in this section means incorporated cities, towns or villages, counties, river authorities, water districts, and other special purpose districts.

(c) The commission in reviewing and fixing reasonable rates for furnishing water under this section may use any reasonable basis for fixing rates as may be determined by the commission to be appropriate under the circumstances of the case being reviewed; provided, however, the commission may not fix a rate which a political subdivision may charge for furnishing water which is less than the amount required to meet the debt service and bond coverage requirements of that political subdivision's outstanding debt.

(d) The commission's jurisdiction under this section relating to incorporated cities, towns, or villages shall be limited to water furnished by such city, town, or village to another political subdivision on a wholesale basis.

(e) The commission may establish interim rates and compel continuing service during the pendency of any rate proceeding.

(f) The commission may order a refund or assess additional charges from the date a petition for rate review is received by the commission of the difference between the rate actually charged and the rate fixed by the commission, plus interest at the statutory rate.

(g) No action or proceeding commenced prior to January 1, 1977, before the Texas Water Rights Commission shall be affected by the enactment of this section.

(h) Nothing herein contained shall affect the jurisdiction of the Public Utility Commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 6.056 by Acts 1977, 65th Leg., p. 1650, ch. 647, § 1.

§ 12.014. Use of Department Surveys; Policy

The commission shall make use of surveys, studies, and investigations conducted by the staff of the department in order to ascertain the character of the principal requirements of the district regional division of the watershed areas of the state for beneficial uses of water, to the end that distribution of the right to take and use state water may be more equitably administered in the public interest, that privileges granted for recognized uses may be economically coordinated so as to achieve the maximum of public value from the state's water resources, and that the distinct regional necessities for water control and conservation and for control of harmful floods may be recognized.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.015. Power to Condemn Works

(a) The commission may condemn existing works if their existence or operation may, in the judgment of the commission, become a public menace or dangerous to life and property.

(b) In all cases of proposed condemnation, the commission shall notify the interested party of the contemplated action and shall specify a time for him to appear and be heard.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.016. Power to Inspect

The executive director or his authorized agent may inspect any impoundment, diversion, or distribution works during construction to determine whether or not they are being constructed in a safe manner and whether or not they are being constructed according to the order of the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.017. Power to Enter Land

Any member or employee of the department may enter any person's land, natural waterway, or artificial waterway for the purpose of making an investigation that would, in the judgment of the executive director, assist the department in the discharge of its duties.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 12.018 to 12.050 reserved for expansion]

SUBCHAPTER C. PROJECTS

§ 12.051. Federal Projects

(a) In this section:

(1) "Federal project" means an engineering undertaking or work to construct, enlarge, or extend a dam, lake, reservoir, or other water-storage or flood-control work or a drainage, reclamation, or canalization undertaking or any combination of these financed in whole or in part with funds of the United States.

(2) "Engineering report" means the plans, data, profiles, maps, estimates, and drawings prepared in connection with a federal project.

(3) "Federal agency" means the Corps of Engineers of the United States Army, the Bureau of Reclamation of the Department of Interior, the Soil Conservation Service of the Department of Agriculture, the United States Section of the International Boundary and Water Commission, or any other agency of the United States, the function of which includes the conservation, development, retardation by impounding, control, or study of the water resources of Texas or the United States.

(b) When the governor receives an engineering report submitted by a federal agency seeking the governor's approval of a federal project, he shall immediately forward the report to the department for its study concerning the feasibility of the federal project.

(c) The board shall hold a public hearing to receive the views of persons and groups who might be affected by the proposed federal project. The board shall publish notice of the time, date, place, nature, and purpose of the public hearing once each week for two consecutive weeks before the date stated in the notice in a newspaper having general circulation in the section of the state where the federal project is to be located or the work done.

(d) After hearing all the evidence both for and against approval of the federal project, the board shall enter its order approving or disapproving the feasibility of the federal project, and the order shall include the board's reasons for approval or disapproval.

(e) In determining feasibility, the board shall consider, among other relevant factors:

(1) the effect of the federal project on water users on the stream as certified by the commission;

(2) the public interest to be served;

(3) the development of damsites to the optimum potential for water conservation;

(4) the integration of the federal project with other water conservation activities;

(5) the protection of the state's interests in its water resources; and

(6) the engineering practicality of the federal project, including cost of construction, operation, and maintenance.

(f) The board shall forward to the governor a certified copy of its order. The board's finding that the federal project is either feasible or not feasible is final, and the governor shall notify the federal agency that the federal project has been either approved or disapproved.

(g) The provisions of this section do not apply to the state soil conservation board as long as that board is designated by the governor as the authorized state agency having supervisory responsibility to approve or disapprove of projects designed to effectuate watershed-protection and flood-prevention programs initiated in cooperation with the United States Department of Agriculture.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.052. Dam Safety

(a) The department shall make and enforce rules and orders and shall perform all other acts necessary to provide for the safe construction, maintenance, repair, and removal of dams located in this state.

(b) Rules and orders made by the board shall be made after proper notice and hearing as provided in the rules of the board.

(c) If the owner of a dam that is required to be constructed, reconstructed, repaired, or removed in order to comply with the rules and orders promulgated under Subsection (a) of this section wilfully fails or refuses to comply within the 30-day period following the date of the commission's order to do so or if a person wilfully fails to comply with any rule or other order issued by the commission under this section within the 30-day period following the effective date of the order, he is liable to a penalty of not more than $1,000 a day for each day he continues to violate this section. The state may recover the penalty by suit brought for that purpose in the district court of Travis County.

(d) Nothing in this section or in rules or orders made by the department shall be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities incident to ownership or operation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 12.053 to 12.080 reserved for expansion]

SUBCHAPTER D. WATER DISTRICTS

§ 12.081. Continuing Right of Supervision of Districts Created Under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution

(a) The powers and duties of all districts and authorities created under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution are subject to the continuing right of supervision of the State of Texas by and through the department or its successor, and this supervision may include but is not limited to the authority to:

(1) inquire into the competence, fitness, and reputation of the officers and directors of any district;

(2) require, on its own motion or on complaint by any person, audits or other financial information, inspections, evaluations, and engineering reports;

(3) issue subpoenas for witnesses to carry out its authority under this subsection;

(4) institute investigations and hearings using examiners appointed by the commission; and

(5) issue rules necessary to supervise the districts.

(b) The provisions of this section shall not apply to any river authority encompassing 10 or more counties which was not subject to the continuing right of supervision of the State of Texas by and through the commission or its predecessors on June 10, 1969.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.082. Duty to Investigate Fresh Water Supply District Projects

(a) In this section:

(1) "District" means fresh water supply district.

(2) "Designated agent" means any licensed engineer selected by the executive director to perform the functions specified in this section.

(b) The department shall investigate and report on the organization and feasibility of all districts created under Chapter 53 of this code which issue bonds under the provisions of that chapter.

(c) A district that wants to issue bonds for any purpose shall submit to the department a written application for investigation, together with a copy of the engineer's report and a copy of the data, profiles, maps, plans, and specifications made in connection with the engineer's report.

(d) The executive director or his designated agent shall examine the application and other information and shall visit the project and carefully inspect it. The executive director or his designated agent may ask for and shall be supplied with additional data and information requisite to a reasonable and careful investigation of the project and proposed improvements.

(e) The executive director or his designated agent shall file with the commission written suggestions for changes and improvements and shall furnish a copy of the suggestions to the board of the district. If the commission finally approves or refuses to approve the project or the issuance of bonds for the

improvements it shall make a full written report, file it in its office, and furnish a copy of the report to the board of the district.

(f) During the course of construction of the project and improvements, no substantial alterations shall be made in the plans and specifications without the approval of the executive director. The executive director or his designated agent has full authority to inspect the improvements at any time during construction to determine if the project is being constructed in accordance with approved plans and specifications.

(g) If the executive director finds that the project is not being constructed in accordance with the approved plans and specifications, the executive director immediately shall notify in writing by certified mail each member of the board of the district and its manager. If, within 10 days after the notice is mailed, the board of the district does not take steps to insure that the project is being constructed in accordance with the approved plans and specifications, the executive director shall give written notice of that fact to the attorney general.

(h) After the attorney general receives the notice, he may bring an action for injunctive relief, or he may bring quo warranto proceedings against the directors. Venue for either of these actions is exclusively in the district of Travis County.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.083. Districts; Creation, Investigations and Bonds

(a) The commission succeeds to the duties and responsibilities of the Texas Water Rights Commission with regard to the creation of districts as defined by Section 50.001(1) of this code and to approve or disapprove the issuance of the bonds of all such districts.

(b) The executive director shall investigate and report on the organization and feasibility of all districts as defined by Section 50.001(1) of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 12.084 to 12.110 reserved for expansion]

SUBCHAPTER E. FEES

§ 12.111. Fees

(a) The department shall charge and collect the fees prescribed by this section. The executive director shall make a record of fees prescribed when due and shall render an account to the person charged with the fees. Each fee is a separate charge and is in addition to other fees unless provided otherwise.

(b) The fee for filing an application or petition is $25 plus the cost of required notice.

(c) The fee for recording an instrument in the office of the commission is $1 per page.

(d) The fee for the use of water for irrigation is 50 cents per acre to be irrigated.

(e) The fee for the use of water for a steam or gas power plant or for cooling, condensing, or steam purposes is $1 for each indicated horsepower.

(f) The fee for impounding water, except under Section 11.142 of this code, is 50 cents per acre-foot of storage, based on the total holding capacity of the reservoir at normal operating level, provided that no additional fee shall be charged for recreational use for any impoundments of water now or hereafter permitted by the state or exempted from permit by statute.

(g) The fee for other uses of water not specifically named in this section is $1 per acre-foot.

(h) A fee charged under this section for one use of water under a permit from the commission may not exceed $5,000. The fee for each additional use of water under a permit for which the maximum fee is paid may not exceed $1,000.

(i) The fees prescribed by Subsections (d) through (g) of this section are one-time fees, payable when the application for an appropriation is made. However, if the total fee for a permit exceeds $1,000, the applicant shall pay one-tenth of the fee when the application is filed, one-tenth within 30 days after notice is mailed to him that the permit is granted, and the balance before he begins to use water under the permit. If the applicant does not pay all of the amount owed before he begins to use water under the permit, his permit is annulled.

(j) When a permit is annulled, the matter shall revert to the status of a pending, filed application and, upon the payment of use fees as provided by this subsection together with sufficient postage fees for mailing notice of hearing, the commission shall set the application for hearing and proceed as provided by this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text for this section incorporates the amendment to former § 6.068 by Acts 1977, 65th Leg., p. 835, ch. 312, § 1.

Sections 2, 3, and 4 (in part) of Acts 1977, 65th Leg., p. 836, ch. 312, provided:

"Sec. 2. (a) All permits issued prior to the effective date of this Act by the Texas Water Rights Commission or its predecessors are validated, ratified, approved, and confirmed insofar as, but only insofar as, the validity and priority of any such permits may be affected by any failure to pay or any failure to pay timely the fees prescribed by applicable statute.

"(b) If the Texas Water Rights Commission determines that any fees prescribed by applicable statute have not been paid in connection with any permit issued prior to the effective date of this Act by the commission or its predecessors, the commission shall submit a written statement of charges to the permittee. If such charges are not paid in full within 30 days of receipt of the statement by the permittee, then this section is not applicable for the validation, ratification, approval, or confirmation of the permit.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 4. Due to the fact that the Texas Water Rights Commission and its predecessor agencies were charged with the responsibility to collect fees for the use and benefit of the state, and failing to do so violated the principles of the Constitution of Texas relating to the alienation and use of property of the public,

and placed numerous public agencies, state and federal, in the position of having made substantial investments in major dams and reservoirs without the benefit of a permit, the same having been annulled by operation of law, * * * create an emergency * * *."

§ 12.112. Fees: Exemptions

The board and the Parks and Wildlife Commission are exempted from payment of any filing, recording, or use fees required by this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.113. Disposition of Fees, Etc.

(a) The department shall immediately deposit in the State Treasury the fees and charges it collects.

(b) The department shall deposit all costs collected under Subchapter F, Chapter 11 of this code [1] in the State Treasury to the credit of the water rights administration fund, from which the department shall pay all expenses necessary to efficiently administer and perform the duties described in Sections 11.325 through 11.335 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] Section 11.201 et seq.

§ 12.114. Disposition of Fees Pending Determination

The department shall hold all fees, except filing fees, which are paid with an application until the commission finally determines whether the application should be granted. If the application is not granted, the department shall return the fees to the applicant.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 12.115 to 12.140 reserved for expansion]

SUBCHAPTER F. PENALTIES

§ 12.141. Violations of Rules, Orders, Certified Filings, and Permits

(a) Any person, association of persons, corporation, water improvement district, or irrigation district, or any agent, officer, employee, or representative of any of these named entities who wilfully violates any of the rules or orders promulgated by the board or any of the terms and conditions contained in declarations of appropriations (certified filings) and permits to appropriate water is liable to a civil penalty of not more than $100 a day for each day that the violation continues to take place.

(b) An action to collect the penalty provided in this section must be brought within two years from the date of the alleged violation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Chapters 13 to 15 reserved for expansion]

SUBTITLE C. WATER DEVELOPMENT

CHAPTER 16. PROVISIONS GENERALLY APPLICABLE TO WATER DEVELOPMENT

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Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. For disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

SUBCHAPTER A. GENERAL PROVISIONS

§ 16.001. Definitions

In this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Water Commission.

(3) "Chairman" means the chairman of the Texas Water Development Board.

(4) "Executive director" means the executive director of the Texas Department of Water Resources.

(5) "Department" means the Texas Department of Water Resources.

(6) "Political subdivision" means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party.

(7) "Project" means any engineering undertaking or work to conserve and develop surface or subsurface water resources of the state, including the control, storage, and preservation of its storm water and floodwater and the water of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including underground storage projects, filtration and water treatment plants including any system necessary to transport water from storage to points of distribution, or from storage to filtration and treatment plants, including facilities for transporting water therefrom to wholesale purchasers, by the acquisition, by purchase of rights in underground water, by the drilling of wells, or for any one or more of these purposes or methods.

(8) "Bonds" means all Texas Water Development Bonds now or hereafter authorized by the Texas Constitution.

(9) "Waste" has the same meaning as provided in Section 26.001 of this code.

(10) "Water development bonds" means the Texas Water Development Bonds authorized by Section 49–c, as amended, and Section 49–d, as amended, of Article III of the Texas Constitution.

(11) "Lending rate" means an amount of interest calculated when one-half of one percent is added to the weighted average net effective interest rate on the three most recent issues of bonds issued under this chapter.

(12) "Net effective interest rate" means the rate of interest computed by dividing the total value of all interest coupons attached to the bonds included in an issue issued under this chapter, after deducting all premiums and adding all discounts involved, by the total number of years from the date of issuance to the date of maturity of each bond included in the issue.

(13) "State facility" means a project in which the board has acquired an ownership interest.

(14) "Acquisition of a state facility" means the act or series of actions by the board in making payment for a state facility.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 11.001 by Acts 1977, 65th Leg., p. 671, ch. 254, § 1.

[Sections 16.002 to 16.010 reserved for expansion]

SUBCHAPTER B. DUTIES OF THE EXECUTIVE DIRECTOR

§ 16.011. General Responsibilities of the Executive Director

The executive director shall determine the responsibilities of each administrative division of the de-

partment and its staff in carrying out the authority, duties, and functions provided in this code.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.012. Studies, Investigations, Surveys

(a) The executive director shall make studies, investigations, and surveys of the occurrence, quantity, quality, and availability of the surface water and groundwater of this state. For these purposes the staff shall collect, receive, analyze, and process basic data concerning the water resources of the state.

(b) The executive director shall:

(1) determine suitable locations for future water facilities, including reservoir sites;

(2) locate land best suited for irrigation;

(3) make estimates of the cost of proposed irrigation works and the improvement of reservoir sites;

(4) examine and survey reservoir sites; and

(5) investigate the effects of fresh water inflows upon the bays and estuaries of Texas.

(c) The executive director shall keep full and proper records of his work, observations, data, and calculations, all of which are the property of the state.

(d) In performing his duties under this section, the executive director shall assist the commission in carrying out the purposes and policies stated in Section 12.014 of this code.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.013. Engineering, Hydrologic, and Geologic Functions

The executive director shall advise and assist the board and the commission with regard to engineering, hydrologic, and geologic matters concerning the water resources of the state. The executive director shall evaluate, prepare, and publish engineering, hydrologic, and geologic data, information, and reports relating to the water resources of the state.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.014. Silt Load of Streams, Etc.

The executive director shall determine the silt load of streams, make investigations and studies of the duty of water, and make surveys to determine the water needs of the distinct regional divisions of the watershed areas of the state.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.015. Studies of Underground Water Supply

The executive director may make studies and investigations of the physical characteristics of water-bearing formations and of the sources, occurrence, quantity, and quality of the underground water supply of the state and may study and investigate feasible methods to conserve, preserve, improve, and supplement this supply. The work shall first be undertaken in areas where, in the judgment of the board, the greatest need exists, and in determining the need, the board shall consider all beneficial uses essential to the general welfare of the state. Water-bearing formations may be explored by coring or other mechanical or electrical means when the area to be investigated has more than a local influence on water resources.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.016. Pollution of Red River Tributaries

Within the limits of available money and facilities, the executive director shall study salt springs, gypsum beds, and other sources of natural pollution of the tributaries of the Red River and shall study means of eliminating this natural pollution and preventing it from reaching the Red River.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.017. Topographic and Geologic Mapping

The executive director shall carry out the program for topographic and geologic mapping of the state.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.018. Soil Resource Planning

The executive director may contract with the State Soil Conservation Board for joint investigation and research in the field of soil resource planning. The State Soil Conservation Board may appoint a representative to advise and work with the executive director.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.019. Cooperative Agreements

With the approval of the board, the executive director may negotiate and execute contracts with persons or with federal, state, or local agencies for joint or cooperative studies and investigations of the occurrence, quantity, and quality of the surface water and groundwater of the state; the topographical mapping of the state; and the collection, processing, and analysis of other basic data relating to the development of the water resources of the state and for the administration and performance of these contracts.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.020. Master Plans of Districts, Etc.

The executive director shall review and analyze master plans and other reports of conservation districts, river authorities, and state agencies and shall make its recommendations to the board or the commission in all cases where approval of the board or commission is required by law or is requested by a district, authority, or agency.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.021. Centralized Data Bank

The executive director shall create a centralized data bank incorporating all hydrological data collected by state agencies.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 16.022 to 16.050 reserved for expansion]

SUBCHAPTER C. PLANNING

§ 16.051. State Water Plan

(a) The executive director shall prepare, develop, and formulate a comprehensive state water plan.

(b) The plan shall define and designate river basins and watersheds as separate units for the purpose of water development and interwatershed transfers.

(c) The executive director shall be governed in his preparation of the plan by a regard for the public interest of the entire state. The executive director shall direct his efforts toward the orderly development and management of water resources in order that sufficient water will be available at a reasonable cost to further the economic development of the entire state.

(d) The executive director shall also give consideration in the plan to the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and to the effect of the plan on navigation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.052. Interbasin Water Transfer

The executive director shall not prepare or formulate a plan which contemplates or results in the removal of surface water from the river basin of origin if the water supply involved will be required for reasonably foreseeable water supply requirements within the river basin of origin during the next ensuing 50-year period, except on a temporary, interim basis.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.053. Hearing on Preliminary Plan

(a) After the executive director completes his preliminary planning of the water resources development within a river basin, he shall hold a public hearing, after notice, at some central location within the river basin. If the proposed plan involves the transfer of water from one basin to another, the hearing shall be held at some location convenient to the areas affected.

(b) The executive director shall present the proposed plan of development and hear evidence for and against the plan.

(c) After the hearing, the executive director shall consider the effect the plan will have on the present and future development, economy, general welfare, and water requirements of the river basin or the areas affected.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.054. Hearing on Completed State Water Plan

When the executive director has prepared and examined the completed preliminary plan, the board shall hold a public hearing on the plan to determine whether or not it gives adequate consideration to the protection of existing water rights in this state and whether or not it takes into account modes and procedures for the equitable adjustment of water rights affected by the plan. After the hearing, the board may formally adopt the state water plan. A majority vote is necessary for adoption.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.055. Effect of Plan

(a) The state water plan, as formally adopted by the board, shall be a flexible guide to state policy for the development of water resources in this state.

(b) The commission shall take the plan into consideration in matters coming before it but is not bound by the plan.

(c) Nothing in the state water plan or any amendment or modification of the plan affects any vested right existing before August 30, 1965.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.056. Amendment of Plan

(a) The board shall amend or modify the plan as experience and changed conditions require after holding a public hearing on any amendment or modification in the manner and for the purposes provided by Section 16.054 of this code.

(b) Any amendment or modification adopted by the board becomes a part of the plan.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.057. Federal Assistance in Financing Plan

The executive director may take all necessary action to qualify for federal assistance in financing the development and improvement of the plan.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.058. Studies of Bays and Estuaries

The executive director shall carry out comprehensive studies of the effects of fresh water inflows upon the bays and estuaries of Texas. The studies shall include the development of methods of providing and maintaining the ecological environment thereof suitable to their living marine resources. The studies shall be completed and the results published by December 31, 1979. The General Land Office, the Parks and Wildlife Department, and the Texas Coastal and Marine Council are authorized and directed to assist and cooperate in all possible ways with the department in this undertaking.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 16.059 to 16.090 reserved for expansion]

SUBCHAPTER D. COOPERATION WITH FEDERAL GOVERNMENT

§ 16.091. Designation of Department

The department is designated as the state agency to cooperate with the Corps of Engineers of the United States Army and the Bureau of Reclamation of the United States Department of the Interior in the planning of water resource development projects in this state.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.092. Local Sponsors for Projects

(a) When a project is proposed for planning or development by the department, the Corps of Engineers of the United States Army, or the Bureau of Reclamation of the United States Department of the Interior, any political subdivision may apply to the executive director for designation as the cooperating local sponsor of the project.

(b) In the application the applicant shall:

(1) describe the purposes of the project;

(2) state the reasons for the application, the contemplated use of water the applicant might derive from the project if a permit for the use is subsequently granted by the commission; and

(3) cite the contributions the applicant is prepared to make to the planning or development of the project.

(c) No application for designation as a local sponsor shall cover more than one proposed project.

(d) The commission shall prescribe the form to be used in applications for designation as cooperating local sponsor. Before accepting the application, the commission may require that the applicant complete the prescribed form.

(e) Before making any designation of local sponsorship, the commission shall set the application for hearing and give public notice of the hearing. Any interested party may appear and be heard for or against the designation of the applicant as project sponsor.

(f) More than one cooperating local sponsor may be designated for each project, but each applicant must comply with the provisions of this section.

(g) After a public hearing, the commission, by written order, shall grant or reject the application and shall state its reasons. The commission may set a reasonable time period for any sponsorship designation.

(h) In granting any future permit for use of water stored in a project for which it has designated a local sponsor, the commission shall fully recognize that sponsor's contributions to the planning and development of the project.

(i) To the extent that no local cooperator is prepared to undertake local sponsorship of a federal project in whole or part or to the extent that the board has an interest in the project, the board may be designated as sponsor of the project or as an additional cooperating sponsor.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 16.093 to 16.130 reserved for expansion]

SUBCHAPTER E. ACQUISITION AND DEVELOPMENT OF FACILITIES

§ 16.131. Authorized Projects

The board may use the development fund for projects including the design, acquisition, lease, construction, reconstruction, development, or enlargement in whole or part of any existing or proposed project.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.132. Joint Ventures

The board may act singly or in a joint venture in partnership with any person or entity, including any agency or political subdivision of this state, or with another state or its political subdivisions, or with the United States, or with a foreign nation, to the extent permitted by law.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.133. Permits Required

The board shall obtain permits from the commission for the storage, transportation, and application to beneficial use of water in reservoirs and associated works constructed by the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.134. Storing Water

The board may use any reservoir acquired, leased, constructed, reconstructed, developed, or enlarged by it under this chapter to store unappropriated state water and other water acquired by the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.135. Board Findings

Before the board may acquire storage facilities in any reservoir, the board shall find affirmatively that:

(1) it is reasonable to expect that the state will recover its investment in the facilities;

(2) the cost of the facilities exceeds the current financing capabilities of the area involved, and the facilities cannot be reasonably financed by local interests without state participation;

(3) the public interest will be served by acquisition of the facilities; and

(4) the facilities to be constructed or reconstructed contemplate the optimum development of the site which is reasonably reserved under all existing circumstances of the site.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.136. Facilities Wanted by Political Subdivision

The board shall not acquire any facility to the extent that the board finds that the political subdivision:

(1) is willing and reasonably able to finance the acquisition of the facility;

(2) has qualified by obtaining the necessary permit; and

(3) has proposals that are consistent with the objectives of the state water plan.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.137. Contracts: General Authority

(a) The board may execute contracts to the full extent that contracts are constitutionally authorized and not limited for the design, management, acquisition, lease, construction, reconstruction, development, enlargement, operation, or maintenance, singularly or in any combination, of any existing or proposed project.

(b) The board shall obtain the approval of the attorney general as to the legality of all contracts authorized under this subchapter to which the board is a party.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.138. Specific Contracts Authorized

Contracts authorized by Section 16.137 of this code shall include but are not limited to the following:

(1) contracts secured by the general credit of the state which shall constitute general obligations of the state in the same manner and with the same effect as water development bonds, and principal and interest on these contracts shall be paid in the manner provided for payment of principal and interest on state bonds by the constitution;

(2) federal grants or grants from other sources;

(3) contracts which may be fully or partially secured by water purchase or repayment contracts executed by political subdivisions of the state for purchase of water and facilities necessary to supply present and future regional and local water requirements;

(4) contracts with any person, including but not limited to the United States, local public agencies, power cooperatives, and investor-owned utilities, for financing, constructing, and operating facilities to operate and deliver pumping energy required for projects; and

(5) contracts for goods and services necessary for the design, management, acquisition, lease, construction, reconstruction, development, enlargement, implementation, operation, or maintenance of any existing or proposed project or portion of the project.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.139. Contracts: Facilities Acquired for a Term of Years

If facilities are acquired for a term of years, the board may include in the contract provisions for renewal that will protect the state's investment.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.140. Maintenance Contracts

The board may execute contracts for the operation and maintenance of the state's interest in any project and may agree to pay reasonable operation and maintenance charges allocable to the state interest.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.141. Recreational Facilities

The board may execute contracts with the United States and with state agencies and political subdivisions and with others to the extent authorized for the development and operation of recreational facilities at any project in which the state has acquired an interest. Income received by the board under these contracts may be used for the same purposes as income from the sale of water. The legislature may appropriate money for the development and operation of recreational facilities at projects in which the state has acquired an interest.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 16.142 to 16.180 reserved for expansion]

SUBCHAPTER F. SALE OR LEASE OF FACILITIES

§ 16.181. Board May Sell or Lease Projects

(a) The board may sell, transfer, or lease, to the extent of its ownership, a project acquired, constructed, reconstructed, developed, or enlarged with money from the water development account.

(b) The board shall obtain the approval of the attorney general as to the legality of all contracts authorized under this subchapter to which the board is a party.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.182. Permit Required

Before the board grants the application to buy, receive, or lease the facilities, the applicant shall first secure a permit for water use from the commission. If the facilities are to be leased, the permit may be for a term of years.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.183. Permit: Paramount Consideration of Commission

In passing on an application for a permit under this subchapter whether it proposes a use of water inside or outside the watershed of the impoundment, the commission shall give paramount consideration to recouping the state's investment in order to protect the public interest and promote the general welfare.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.184. Contract Must be Negotiated

The commission shall not issue the permit until the applicant has executed a contract with the board for acquisition of the facilities.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.185. Reservoir Land

The board may lease acquired reservoir land until construction of the dam is completed without the necessity of a permit issued by the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.186. Price of Sale

(a) The price of the sale or transfer of a state facility acquired prior to September 1, 1977, other than a facility acquired under a contract with the United States, shall be the sum of the direct cost of acquisition, plus an amount of interest calculated when one-half of one percent is added to the weighted average effective interest rate in effect at the date of sale or transfer of the state facility times the amount of board money disbursed for the acquisition times the number of years and fraction of a year from the date or dates of purchase or acquisition to the date or dates of sale or transfer, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it.

(b) The price of the sale or transfer of a state facility acquired on or subsequent to September 1, 1977, other than a facility acquired under a contract with the United States, shall be the sum of the direct cost of acquisition, plus an amount of interest calculated by multiplying the lending rate in effect at the date of acquisition by the amount of board money disbursed for the acquisition times the number of years and fraction of a year from the date or dates of the purchase or acquisition to the date or dates of the sale or transfer of the state facility, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it.

(c) The purchaser of the board's interest in a state facility shall also assume, to the extent disclosed by the board at or prior to the sale, any and all direct, conditional, or contingent liabilities of the board attributed to the project in direct relation to the percentage of the project acquired by the purchaser.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 11.356 by Acts 1977, 65th Leg., p. 671, ch. 254, § 2.

§ 16.187. Price of Sale: Facilities Acquired under Contracts with the United States

(a) The price of the sale or transfer of a facility acquired prior to September 1, 1977, under a contract with the United States shall be the sum of the direct cost of acquisition, plus an amount of interest calculated by adding one-half of one percent to the weighted average effective interest rate in effect at

the date of the sale or transfer of the state facility times the amount of board money disbursed for the acquisition times the number of years and fraction of a year for which the board paid interest to the other party to the contract, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of the sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it.

(b) The price of the sale or transfer of a state facility acquired on or subsequent to September 1, 1977, under a contract with the United States shall be the sum of the direct cost of acquisition, plus an amount of interest calculated by multiplying the lending rate in effect at the time of acquisition by the amount of board money disbursed for the acquisition of the facility times the number of years and fraction of a year from the date or dates of purchase or acquisition to the date or dates of sale or transfer, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of the sale or transfer of the facility, less any payments received by the board from the lease of the facility or the sale of water from it.

(c) If, in transferring any contract, the board remains in any way directly, conditionally, or contingently liable for the performance of any part of the contract, then the transferee, in addition to the payments prescribed by Subsection (a) or (b) of this section, as applicable, shall pay to the board annually one-half of one percent of the remaining amount owed to the other party to the contract, and shall continue these payments until the board is fully released from the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 11.357 by Acts 1977, 65th Leg., p. 671, ch. 254, § 2.

[§ 16.1871.][1] Acquisition Date

(a) If the board has made an initial payment prior to September 1, 1977, to acquire a state facility, other than a facility acquired under a contract with the United States, the state facility shall be deemed to have been acquired prior to September 1, 1977, for purposes of Section 11.356 of this code.[2] If the board makes its initial payment on or after September 1, 1977, to acquire a state facility, other than a facility acquired under a contract with the United States, the state facility shall be deemed to have been acquired on or after September 1, 1977, for purposes of Section 11.356 of this code.

(b) If the board has executed a contract with the United States prior to September 1, 1977, to purchase a state facility, the state facility shall be deemed to have been acquired prior to September 1, 1977, for purposes of Section 11.357[3] of this code. If the board executes a contract with the United States on or after September 1, 1977, to purchase a state facility, the state facility shall be deemed to have been acquired on or after September 1, 1977, for purposes of Section 11.357 of this code.

[Added by Acts 1977, 65th Leg., p. 673, ch. 254, § 3, eff. May 25, 1977.]

[1] Enacted as § 11.3571 by Acts 1977, 65th Leg., p. 673, ch. 254, § 3 and editorially reclassified.
[2] See, now, § 16.186.
[3] See, now, § 16.187.

§ 16.188. Costs Defined

With reference to the sale of a state facility, "direct cost of acquisition" means the principal amount the board has paid or agreed to pay for a facility up to the date of sale, but does not include the board's cost of operating and maintaining the facility from the date of acquisition to the date of the sale or transfer of the facility.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 11.358 by Acts 1977, 65th Leg., p. 671, ch. 254, § 2.

§ 16.189. Lease Payments

In leasing a state facility for a term of years, the board shall require annual payments not less than the total of:

(1) the annual principal and interest requirements applicable to the debt incurred by the state in acquiring the facility; and

(2) the state's annual cost for operation, maintenance, and rehabilitation of the facility.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.190. Sale or Lease: Condition Precedent

(a) No sale, transfer, or lease of a state facility is valid unless the board first makes the following affirmative findings:

(1) that the applicant has a permit granted by the commission;

(2) that the sale, transfer, or lease will contribute to the conservation and development of the water resources of the state; and

(3) that the consideration for the sale, transfer, or lease is fair, just, and reasonable and in full compliance with the law.

(b) The consideration for any such sale or transfer may be either money or revenue bonds, which revenue bonds for the purposes hereof shall be deemed the same as money.

(c) The amount of money shall be equal to the price for purchasing the facilities as prescribed by the provisions of Section 16.187 of this code, or if revenue bonds constitute the consideration, the principal amount of revenue bonds shall be equal to the price for purchasing the facilities as prescribed by the provisions of Section 16.187 of this code, and such revenue bonds shall bear interest at the rate

prescribed in Section 17.128 of this code with regard to bonds purchased with the proceeds of the Texas Water Development Fund.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.191. Disposition of Proceeds

(a) The money received from any sale, transfer, or lease of facilities as cash, or in the case of a sale or transfer involving revenue bonds, the money received as matured interest or principal on the bonds shall be used to pay the principal of and interest on water development bonds or to meet contractual obligations incurred by the board. The money shall be collected and credited to the proper special fund as is money received in payment of principal and interest on loans to political subdivisions under this code, taking into consideration the manner in which the facilities were acquired.

(b) When enough money has been collected to pay all outstanding indebtedness, including the principal of all state bonds and contractual obligations and the full amount of interest to accrue on these debts, the board may use any further amounts received from the sale, transfer, or lease of facilities to acquire additional facilities or to provide assistance to political subdivisions for water supply projects.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.192. Sale of Stored Water

The board may sell any unappropriated public water of the state and other water acquired by the state that is stored by or for it. The price will be determined by the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.193. Permit

(a) The board may not sell the water stored in a facility to any person who has not obtained a permit from the commission. The rights of the applicant in the water are governed by the terms and conditions of the permit. The permit may be for a term of years.

(b) Whether the application for a permit involves a proposed use of water inside or outside the watershed of the impoundment, the commission shall give paramount consideration to recouping the state's investment in order to protect the public interest and promote the general welfare.

(c) The permit shall be conditioned on continued payment of the obligations assumed under the contract with the board and may provide for cancellation at any time on breach of the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.194. Sale Contract: Provisions, Limitations

(a) The board may determine the consideration and other provisions to be included in water sale contracts, but the consideration and other provisions shall be fair, reasonable, and nondiscriminatory. The board may include charges for standby service, which means holding water and conservation storage space for use and for actual delivery of water.

(b) The board shall make the same determinations with respect to the sale of water as are required in Section 16.190 of this code with respect to the sale or lease of facilities.

(c) The board shall not compete with any political subdivision in the sale of water when this competition jeopardizes the ability of the political subdivision to meet obligations incurred to finance its own water supply projects.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.195. Emergency Releases of Water

Unappropriated water and other water of the state stored in any facility acquired by and under the control of the board may be released without charge to relieve any emergency condition arising from drought, severe water shortage, or public calamity, if the commission first determines the existence of the emergency and requests the board to release water.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.196. Preferences

The board shall give political subdivisions a preferential right, but not an exclusive right, to purchase, acquire, or lease facilities and to purchase water from facilities. Preferences shall be given in these respects in accord with the provisions of Section 11.123 of this code relating to preferences in the appropriation and use of state water. The board and the commission shall coordinate their efforts to meet these objectives and to assure that the public water of this state, which is held in trust for the use and benefit of the public, will be conserved, developed, and utilized in the greatest practicable measure for the public welfare.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.197. Lease of Land Prior to Project Construction

The board may lease tracts of land acquired for project purposes for a term of years for any purpose not inconsistent with ultimate project construction. The lease shall be scheduled to expire before initiation of project construction.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.198. Lease Contributions Equivalent to Taxes

The lease may provide for contribution by the lessee to units of local government of amounts equivalent to ad valorem taxes or special assessments.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 16.199 to 16.230 reserved for expansion]

SUBCHAPTER G. IMPROVEMENTS

§ 16.231. Purpose of Subchapter

The chief purpose of this subchapter is to provide for planning and marking out upon the ground all improvements necessary to reclaim for agricultural use all overflowed land, swampland, and other land in this state that is not suitable for agricultural use because of temporary or permanent excessive accumulation of water on or contiguous to the land.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.232. Surveys; Planning

The executive director shall have the staff perform all preliminary work required in the process of planning or marking out upon the ground the most practical, permanent, economical, and equitable improvements or systems of improvements, including levees, dikes, dams, canals, drains, waterways, reservoirs, and other improvements incidental to them. This work includes investigations, estimates, surveys, maps, reports, and publications, and any other work which is incidental to this.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.233. Design of Improvements or System of Improvements

Insofar as possible, the improvements shall be designed with primary consideration to the topographic and hydrographic conditions and in such a manner that each division of a project shall be a complete, united project forming a coordinate part of an ultimately finished series of projects so constituted that the successful operation of each united project shall coordinate with the successful operation of other projects within the same hydraulic influence.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.234. Location of Projects; Reports

The executive director may determine the location of the improvements or systems of improvements and the time and manner of making the results public. The department shall make records or publish reports describing the improvements or systems of improvements and shall file in its office all final results that are of value to the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.235. Cooperation With Other Agencies

In performing his functions, the executive director may confer with federal and state agencies and with political subdivisions and, with the approval of the board, may execute cooperative agreements with them. The executive director may cancel any such agreement on 10 days notice to the other party.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.236. Advice to Districts

The executive director shall confer with districts requesting technical advice on the adequate execution of proposed levee and drainage improvements.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.237. Districts to File Information With Department

Immediately before having its bonds approved by the attorney general, each drainage district and levee improvement district shall file with the department, on forms furnished by the department, a complete record showing each step in the organization of the district, the amount of bonds to be issued, and a description of the area and boundaries of the district, accompanied by plans, maps, and profiles of improvements and the district engineer's estimates and reports on them.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.238. Construction of Levee Without Approval of Plans

(a) No person may construct, attempt to construct, cause to be constructed, maintain, or cause to be maintained any levee or other such improvement on, along, or near any stream of this state that is subject to floods, freshets, or overflows so as to control, regulate, or otherwise change the floodwater of the stream without first obtaining approval of the plans by the commission.

(b) Any person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $100. A separate offense is committed each day a structure constructed in violation of this section is maintained.

(c) At the request of the executive director, the attorney general shall file suit in a district court of Travis County to enjoin any violation or threatened violation of this section. In the suit, the attorney general may seek to have the illegal levee or other

improvement removed and the preexisting conditions restored and may also collect civil penalties of up to $100 a day for each day a violation occurs.

(d) This section does not apply to:

(1) dams permitted by the commission or recognized as valid by final decree in any proceeding begun under Subchapter G, Chapter 11, of this code; [1]

(2) dams authorized by Section 11.142 of this code;

(3) a levee or other improvement within the corporate limits of a city or town provided: (a) plans for the construction or maintenance or both must be approved by the city or town as a condition precedent to starting the project and (b) the city or town requires that such plans be in substantial compliance with rules and standards adopted by the board; or

(4) a levee or other improvement within the boundaries of any political subdivision which has qualified for the National Flood Insurance Program as authorized by the National Flood Insurance Act of 1968 (Title 42, U.S.C., Sections 4001–4127) provided: (a) plans for the construction or maintenance or both must be approved by the political subdivision which is participating in the national flood insurance program as a condition precedent to starting the project and (b) the political subdivision requires that such plans be in substantial compliance with rules and standards adopted by the board;

(5) projects implementing soil and water conservation practices set forth in a conservation plan with a landowner or operator and approved by the governing board of a soil and water conservation district organized under the State Soil Conservation Law, as amended (Article 165a–4, Vernon's Texas Civil Statutes), provided that the governing board finds the practices do not significantly affect stream flooding conditions on, along, or near a state stream.

(e) On projects located within the corporate limits of a city or town or within the boundaries of any political subdivision which are exempt from the provisions of this section by Subdivision (3) or (4) of Subsection (d) above, any person whose property is located outside of the corporate limits of such city or town or of the boundaries of such a political subdivision and whose property is affected or potentially affected by the effect of the project on the floodwaters of the stream may appeal the decision of such political subdivision. The appeal shall be in writing and shall specify the grounds therefor and a copy shall be sent by certified mail to the project applicant and to the city or town or such political subdivision. The timely filing of such an appeal with the executive director suspends the decision of the city or town or political subdivision until a final decision is rendered by the department. The executive director shall review the complaint and investigate the facts surrounding the nature of the complaint. If the executive director finds that the complaint is frivolous or nonmeritorious or made solely for purposes of harassment or delay, then he shall dismiss the appeal. Otherwise, the executive director shall refer the appeal to the commission which shall after due notice hold a hearing to determine whether the project should be approved using the standards established by the department and shall hear such appeal de novo under the procedural rules established by the commission for other reclamation projects.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1375, ch. 615, § 1, eff. Aug. 27, 1979.]

[1] Section 11.301 et seq.

Section 2 of the 1979 amendatory act provided:

"However, this section does not apply to any stream which constitutes or defines the international boundary between the United State of America and the Republic of Mexico."

[Sections 16.239 to 16.270 reserved for expansion]

SUBCHAPTER H. NAVIGATION FACILITIES

§ 16.271. Improvement of Streams and Canals and Construction of Facilities Within Cypress Creek Drainage Basin

The board may improve streams and canals and construct all waterways and other facilities necessary to provide for navigation within the Cypress Creek drainage basin which is located in the northeast portion of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.272. Long-Term Contracts With the United States

The board may execute long-term contracts with the United States or any of its agencies for the acquisition and development of improvements and facilities under Section 16.271 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.273. Temporary Authority to Act for District

The board may act in behalf of a local district or districts until they can take over the project or projects in accordance with the board's agreement with the district or districts in acting as the sponsor.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 16.274 to 16.310 reserved for expansion]

SUBCHAPTER I. FLOOD INSURANCE

§ 16.311. Short Title

This subchapter may be cited as the Flood Control and Insurance Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.312. Purpose

The State of Texas recognizes the personal hardships and economic distress caused by flood disasters since it has become uneconomic for the private insurance industry alone to make flood insurance available to those in need of such protection on reasonable terms and conditions. Recognizing the burden of the nation's resources, congress enacted the National Flood Insurance Act of 1968, as amended (42 U.S.C. Sections 4001 through 4127), whereby flood insurance can be made available through coordinated efforts of the federal government and the private insurance industry, by pooling risks, and the positive cooperation of state and local government. The purpose of this subchapter is to evidence a positive interest in securing flood insurance coverage under this federal program and to so procure for those citizens of Texas desiring to participate and in promoting the public interest by providing appropriate protection against the perils of flood losses and in encouraging sound land use by minimizing exposure of property to flood losses.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.313. Definitions

In this subchapter:

(1) "Political subdivision" means any political subdivision or body politic and corporate of the State of Texas and includes any county, river authority, conservation and reclamation district, water control and improvement district, water improvement district, water control and preservation district, fresh water supply district, irrigation district, and any type of district heretofore or hereafter created or organized or authorized to be created or organized pursuant to the provisions of Article XVI, Section 59 or Article III, Section 52 of the Constitution of the State of Texas; "political subdivision" also means any interstate compact commission to which the State of Texas is a party, municipal corporation, or city whether operating under the Home Rule Amendment of the Constitution or under the General Law.

(2) "National Flood Insurance Act" means the National Flood Insurance Act of 1968, as amended (42 U.S.C. Sections 4001 through 4127), and the implementation and administration of the Act by the Secretary of the United States Department of Housing and Urban Development.

(3) "Secretary" means the Secretary of the United States Department of Housing and Urban Development.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.314. Cooperation of Texas Department of Water Resources

In recognition of the necessity for a coordinated effort at all levels of government, the department shall cooperate with the Federal Insurance Administrator of the United States Department of Housing and Urban Development in the planning and carrying out of state participation in the National Flood Insurance Program; however, the responsibility for qualifying for the National Flood Insurance Program shall belong to any interested political subdivision, whether presently in existence or created in the future.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.315. Political Subdivisions; Compliance With Federal Requirements

All political subdivisions are hereby authorized to take all necessary and reasonable actions to comply with the requirements and criteria of the National Flood Insurance Program, including but not limited to:

(1) making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses;

(2) guiding the development of proposed future construction, where practicable, away from location which is threatened by flood hazards;

(3) assisting in minimizing damage caused by floods;

(4) authorizing and engaging in continuing studies of flood hazards in order to facilitate a constant reappraisal of the flood insurance program and its effect on land use requirements;

(5) engaging in floodplain management and adopting enforcing permanent land use and control measures consistent with the criteria established under the National Flood Insurance Act;

(6) declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notifying the secretary, or whomever he designates, of such property;

(7) consulting with, giving information to, and entering into agreements with the Department of Housing and Urban Development for the purpose of:

(A) identifying and publishing information with respect to all flood areas, including coastal areas; and

(B) establishing flood-risk zones in all such areas and making estimates with respect to the rates of probable flood-caused loss for the

various flood-risk zones for each of these areas;

(8) cooperating with the secretary's studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(9) taking steps to improve the long-range management and use of flood-prone areas;

(10) purchasing, leasing, and receiving property from the secretary when such property is owned by the federal government and lies within the boundaries of the political subdivision pursuant to agreements with the Department of Housing and Urban Development or other appropriate legal representative of the United States Government;

(11) requesting aid pursuant to the entire authorization from the board;

(12) satisfying criteria adopted and promulgated by the department pursuant to the National Flood Insurance Program; and

(13) adopting permanent land use and control measures with enforcement provisions which are consistent with the criteria for land management and use adopted by the secretary.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.316. Coordination of Local, State, and Federal Programs by Department

(a) The department shall aid, advise, and coordinate the efforts of present and future political subdivisions endeavoring to qualify for participation in the National Flood Insurance Program.

(b) Pursuant to the National Flood Insurance Program and state and local efforts complementing the program, the department shall aid, advise, and cooperate with political subdivisions, the State Board of Insurance, and the United States Department of Housing and Urban Development when aid, advice, and cooperation are requested or deemed advisable by the board.

(c) The aforementioned aid may include but is not necessarily limited to:

(1) coordinating local, state, and federal programs relating to floods, flood losses, and floodplain management;

(2) evaluating the present structure of all federal, state, and political subdivision flood control programs within or adjacent to the state, including an assessment of the extent to which public and private floodplain management activities have been instituted;

(3) carrying out studies with respect to the adequacy of present public and private measures, laws, regulations, and ordinances in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(4) evaluating all available engineering, hydrologic, and geologic data relevant to flood-prone areas and flood control in those areas; and

(5) carrying out floodplain studies and mapping programs of floodplains, flood-prone areas, and flood-risk zones.

(d) On the basis of such studies and evaluations, the department, to the extent of its capabilities, shall periodically identify and publish information and maps with respect to all floodplain areas, including the state's coastal area, which have flood hazards, and where possible aid the federal government in identifying and establishing flood-risk zones in all such areas.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.317. Cooperation of State Board of Insurance

Pursuant to the National Flood Insurance Program, the State Board of Insurance shall aid, advise, and cooperate with political subdivisions, the department, and the United States Department of Housing and Urban Development when such aid, advice, and cooperation are requested or deemed advisable by the State Board of Insurance.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.318. Rules

Political subdivisions which qualify for the National Flood Insurance Program, the State Board of Insurance, and the board may adopt and promulgate reasonable rules which are necessary for the orderly effectuation of the respective authorizations herein.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.319. Qualification

Political subdivisions wishing to qualify under the National Flood Insurance Program shall have the authority to do so by complying with the directions of the Department of Housing and Urban Development and by:

(1) evidencing to the secretary a positive interest in securing flood insurance coverage under the National Flood Insurance Program; and

(2) giving to the secretary satisfactory assurance that measures will have been adopted for the political subdivision which measures will be consistent with the comprehensive criteria for land management and use developed by the Department of Housing and Urban Development, and that the application and enforcement

of such measures will commence as soon as technical information on floodways and on controlling elevations is available.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., 1st C.S., p. 58, ch. 4, § 3, eff. Sept. 1, 1977.]

Section 2 of Acts 1977, 65th Leg., 1st C.S., p. 58, ch. 4, provided: "All proceedings and actions of any political subdivision as defined in the Flood Control and Insurance Act with respect to participation in and compliance with the National Flood Insurance Program under the Flood Control and Insurance Act are in all things and all respects ratified, confirmed, approved, and validated even though these proceedings and actions may not have occurred within the time limit provided in the Flood Control and Insurance Act; provided, however, that any proceeding or action taken under the Flood Control and Insurance Act by a political subdivision which took action to qualify under Section 9 of that Act after June 30, 1970, and before the effective date of this Act shall expire on the 60th day after the effective date of this Act unless the proceeding or action is reenacted by the governing body of the political subdivision after the effective date of this Act and before the 60th day after the effective date of this Act."

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Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. For disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

SUBCHAPTER A. GENERAL PROVISIONS

§ 17.001. Definitions

In this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Water Commission.

(3) "Executive director" means the executive director of the Texas Department of Water Resources.

(4) "Department" means Texas Department of Water Resources.

(5) "Political subdivision" means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party.

(6) "Project" means any engineering undertaking or work to conserve and develop surface or subsurface water resources of the state, including the control, storage, and preservation of its storm water and floodwater and the water of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including underground storage projects, filtration and water treatment plants, including any system necessary to transport water from storage to points of distribution or from storage to filtration and treatment plants, including facilities for transporting water therefrom to wholesale purchasers by the acquisition, by purchase of rights in underground water, by the drilling of wells, or for any one or more of these purposes or methods.

(7) "Weighted average effective interest rate" means the rate of interest computed by dividing the total value of all coupons attached to the pertinent bonds issued under this chapter, after deducting all premiums and adding all discounts involved, by the total number of years from the date of issuance to the date of maturity of each bond previously issued.

(8) "Bonds" means all Texas Water Development Bonds now or hereafter authorized by the Texas Constitution.

(9) "Waste" has the same meaning as provided in Section 26.001 of this code.

(10) "Water development bonds" means the Texas Water Development Bonds authorized by Section 49–c, as amended, and Section 49–d, as amended, of Article III of the Texas Constitution.

(11) "Water quality enhancement bonds" means the Texas Water Development Bonds authorized by Section 49–d–1, as amended, of Article III of the Texas Constitution.

(12) "Lending rate" means an amount of interest calculated when one-half of one percent is added to the weighted average net effective interest rate on the three most recent issues of bonds issued under this chapter.

(13) "Net effective interest rate" means the rate of interest computed by dividing the total value of all interest coupons attached to the bonds included in an issue issued under this chapter, after deducting all premiums and adding all discounts involved, by the total number of years from the date of issuance to the date of maturity of each bond included in the issue.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 11.001 by Acts 1977, 65th Leg., p. 671, ch. 254, § 1.

[Sections 17.002 to 17.010 reserved for expansion]

SUBCHAPTER B. WATER DEVELOPMENT BONDS

§ 17.011. Issuance of Water Development Bonds

The board, by resolution, from time to time may provide for the issuance of negotiable bonds in an aggregate amount not to exceed $400 million pursuant to the provisions of Article III, Section 49–c and Section 49–d, as amended, of the Texas Constitution, and the issuance of additional negotiable bonds in an aggregate amount not to exceed $200 million pursuant to the provisions of Article III, Section 49–d–1, as amended, of the Texas Constitution.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 11.141 by Acts 1977, 65th Leg., p. 941, ch. 352, § 1.

§ 17.012. Description of Bonds

The bonds shall be on a parity and shall be called Texas Water Development Bonds. The board may issue them in one or several installments and shall date the bonds of each issue.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.013. Sale Price of Bonds

The board may not sell an installment or series of bonds for an amount less than the face value of all

of the bonds comprising the installment or series with accrued interest from their date of issuance.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.014. Interest on Bonds

The bonds of each issue shall bear interest payable annually or semi-annually at the option of the board.

§ 17.015. Form, Denomination, Place of Payment

The board shall:

(1) determine the form of the bonds, including the form of any interest coupons to be attached;

(2) fix the denomination of the bonds; and

(3) fix the places of payment of the principal and interest.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.016. Maturity of Bonds

The bonds of each issue shall mature, serially or otherwise, not more than 50 years from their date of issuance.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.017. Redemption Before Maturity

In the resolution providing for the issuance of bonds, the board may fix the price, terms, and conditions for redemption of bonds before maturity.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.018. Registered and Bearer Bonds

The resolution may provide for registration of the bonds as to ownership, successive conversion and reconversion from registered to bearer bonds, and successive conversion and reconversion from bearer to registered bonds.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.019. Notice of Bond Sale

After the board decides to call for bids for the sale of bonds, the board shall publish an appropriate notice of the sale at least one time in one or more recognized financial publications of general circulation published within the state and one or more recognized financial publications published outside the state.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.020. Competitive Bids

The board shall sell the bonds only after competitive bidding to the highest and best bidder. The board may reject any or all bids.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.021. Security for Bids

The board shall require every bidder, except administrators of state funds, to include with the bid an exchange or cashier's check for a sum the board considers adequate as a forfeit guaranteeing acceptance of and payment for all bonds covered by the bids and accepted by the board.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.022. Approval of Bonds; Registration

Before bonds are delivered to the purchasers, the bonds and the record pertaining to their issuance shall be submitted to the attorney general for his approval. When the attorney general's approval is obtained, the bonds shall be registered in the office of the state comptroller.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.023. Execution of Bonds

The bonds shall be executed on behalf of the board as general obligations of the state in the following manner: the chairman of the board and the development fund manager shall sign the bonds; the board shall impress its seal on the bonds; the governor shall sign the bonds; and the Secretary of State shall attest the bonds and impress on them the state seal.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.024. Facsimile Signatures and Seals

The resolution authorizing the issuance of an installment or series of bonds may prescribe the extent to which the board in executing the bonds and appurtenant coupons may use facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals. Interest coupons may be signed by the facsimile signatures of the chairman of the board and the development fund manager.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.025. Signature of Former Officer

If an officer whose manual or facsimile signature appears on a bond or whose facsimile signature appears on any coupon ceases to be an officer before the bond is delivered, the signature is valid and sufficient for all purposes as if he had remained in office until the delivery had been made.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.026. Bonds Incontestable

After approval by the attorney general, registration by the comptroller, and delivery to the purchasers, the bonds are incontestable and constitute general obligations of the state.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.027. Payment by Treasurer

The State Treasurer shall pay the principal of the bonds as they mature and the interest as it becomes payable.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.028. Payment Enforceable by Mandamus

Payment of the bonds and performance of official duties prescribed by Article III, Section 49–c, Section 49–d, as amended, and Section 49–d–1, as amended, of the Texas Constitution and by the provisions of this subchapter may be enforced in any court of competent jurisdiction by mandamus or other appropriate proceeding.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.029. Refunding Bonds

The board may provide by resolution for the issuance of refunding bonds to refund outstanding bonds issued under this chapter and their accrued interest. The board may sell these bonds and use the proceeds to retire the outstanding bonds issued under this chapter, or the board may exchange the refunding bonds for the outstanding bonds. The issuance of the refunding bonds, their maturity, the rights of the bondholders, and the duties of the board with respect to refunding bonds are governed by the provisions of this chapter relating to original bonds to the extent that they may be made applicable.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.030. Bonds Negotiable Instruments

The bonds issued under the provisions of this chapter are negotiable instruments under the laws of this state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.031. Bonds Not Taxable

Bonds issued under this chapter, the income from the bonds, and the profit made on their sale are free from taxation within the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.032. Authorized Investments

Bonds issued under this chapter are legal and authorized investments for:

(1) banks;

(2) savings banks;

(3) trust companies;

(4) building and loan associations;

(5) insurance companies;

(6) fiduciaries;

(7) trustees;

(8) guardians; and

(9) sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.033. Security for Deposit of Funds

Bonds issued under this chapter when accompanied by all appurtenant unmatured coupons are lawful and sufficient security for all deposits of funds of the state or of a city, town, village, county, school district, or any other agency or political subdivision of the state at the par value of the bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.034. Mutilated, Lost, Destroyed Bonds

The board may provide for the replacement of any mutilated, lost, or destroyed bond.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 17.035 to 17.070 reserved for expansion]

SUBCHAPTER C. FUNDING PROVISIONS

§ 17.071. Disposition of Money Received

All money received by the board shall be deposited in the State Treasury and credited to the proper special fund as provided in this subchapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.072. Development Fund

(a) The Texas Water Development Fund, referred to as the "development fund," is a special revolving fund in the State Treasury.

(b) All proceeds from the sale of water development bonds (except accrued interest) shall be deposited in a special account in the development fund designated "water development account," and other money for deposit therein as provided in this chapter shall be credited to the water development account.

(c) The water development account may be used for any project and in any manner consistent with the provisions of the constitution, but the development fund may not be used for retail distribution or for transportation of water solely to retail purchasers.

(d) All proceeds from the sale of water quality enhancement bonds (except accrued interest) shall be deposited in a special account in the development fund designated "water quality enhancement account," and other money for deposit therein as provided in this chapter shall be credited to the water quality enhancement account.

(e) The water quality enhancement account may be used for construction of treatment works in any manner consistent with the provisions of the constitution and this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.073. Water Development Clearance Fund

The Texas Water Development Clearance Fund, referred to as the "clearance fund," is a special fund in the State Treasury. Transfers shall be made from this fund as provided by this subchapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.074. Interest and Sinking Fund

The Texas Water Development Bonds Interest and Sinking Fund, referred to as the "interest and sinking fund," is a special fund in the State Treasury into which there shall be paid, from sources specified in this chapter, amounts sufficient to:

(1) pay the interest coming due on all outstanding bonds during the ensuing fiscal year;

(2) pay the principal on all bonds that mature during the ensuing fiscal year, plus collection charges and exchanges on the bonds; and

(3) establish a reserve equal to the average annual principal and interest requirements on all outstanding bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.075. Administrative Fund

The Texas Water Development Board Administrative Fund, referred to as the "administrative fund," is a special fund in the State Treasury. From sources specified in this chapter, money shall be credited to this fund in amounts sufficient to pay the administrative expenses of the board as authorized by legislative appropriation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.076. Combined Facilities Operation and Maintenance Fund

(a) The Combined Facilities Operation and Maintenance Fund is a special fund in the State Treasury.

(b) Money received from the sale of water, standby service, and the lease of land needed for operation and maintenance of facilities shall be credited to this fund. Any of the money which is not needed for operation and maintenance of facilities may be credited to the interest and sinking fund or used to meet contractual obligations incurred by the board in acquiring facilities.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.077. Credits to Clearance Fund

Except for proceeds from the sale of bonds and proceeds from the sale of bonds of political subdivisions as provided by Sections 17.134 and 17.180 of this code, all money received by the board in any fiscal year, including all amounts received as repayment of loans to political subdivisions and interest on those loans, shall be credited to the clearance fund. Money in the clearance fund may be transferred at any time to the interest and sinking fund until the reserve in that fund is equal to the average annual principal and interest requirements on all outstanding bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.078. Transfers at End of Fiscal Year

Not later than 15 days after the end of each fiscal year, any money credited to the clearance fund at the end of the fiscal year shall be transferred to the other special funds as prescribed by Sections 17.079 through 17.082 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.079. Transfers to Interest and Sinking Fund

(a) The board shall determine:

(1) the amount of interest coming due on all bonds outstanding;

(2) the amount of principal of bonds maturing and becoming payable during the fiscal year; and

(3) the average annual principal and interest requirements on all outstanding bonds.

(b) The comptroller shall transfer to the interest and sinking fund, after taking into account any money and securities on deposit in the interest and sinking fund, an amount necessary to pay:

(1) all principal and interest maturing on the bonds during the fiscal year;

(2) all collection charges and exchanges on the bonds; and

(3) the money sufficient to establish and maintain an additional reserve equal to the average annual principal and interest requirements on all outstanding bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.080. Additional Funds for Payment of Bonds

If the amount transferred from the clearance fund plus the money and securities in the interest and sinking fund are insufficient to pay the interest coming due and the principal maturing on the bonds during the fiscal year, then after the transfer to the interest and sinking fund of as much money as is available in the clearance fund, the State Treasurer

shall transfer out of the first money coming into the treasury, not otherwise appropriated by the constitution, the amount required to pay principal and interest on the bonds during the fiscal year.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.081. Transfers to Administrative Fund

If money remains in the clearance fund after making the transfers provided in section 17.079 of this code, then to the extent possible the comptroller shall transfer to the administrative fund an amount sufficient to cover the legislative appropriation for administrative expenses of the board for the fiscal year.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.082. Transfers to Development Fund

If money remains in the clearance fund after making the transfers provided in Sections 17.079 and 17.081 of this code, the comptroller shall transfer the balance to the appropriate account in the development fund at the end of each fiscal year to be used for any purpose for which proceeds of bonds in such account may be used.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.083. Investment of Reserve Money

The board may invest any money credited to the reserve portion of the interest and sinking fund in:

(1) direct obligations of the United States;

(2) other obligations unconditionally guaranteed by the United States;

(3) bonds of the State of Texas; and

(4) bonds of counties, cities, and other political subdivisions of the state, except bonds issued by a political subdivision to finance a project or treatment works described in this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.084. Limitation on Board Investment

The board is bound to the extent that the resolution authorizing the issuance of the bonds further restricts the investment of money in bonds of the United States.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.085. Interest and Sinking Fund Investments

The board may invest the money in the interest and sinking fund, except the money in the reserve portion of the fund, only in direct obligations of the United States or obligations unconditionally guaranteed by the United States that are scheduled to mature prior to the date the board must have money available for its intended purpose.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.086. Development Fund Investments

Surplus money in the development fund that is not needed for at least 90 days shall be invested in direct obligations of the United States or in other obligations unconditionally guaranteed by the United States maturing on or before the contemplated date on which the money will be needed.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.087. Sale of Securities

All of the bonds and obligations owned in the interest and sinking fund or in the development fund are defined as securities. The board may sell securities owned in the interest and sinking fund or in any account in the development fund at the governing market price.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.088. Transfers to be Made by Comptroller

The comptroller shall make the transfers required by this subchapter.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 17.089 to 17.120 reserved for expansion]

SUBCHAPTER D. ASSISTANCE TO POLITICAL SUBDIVISIONS FOR PROJECTS

§ 17.121. Financial Assistance

The water development account may be used by the board to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of projects, but to the extent that financial assistance is given by the board to an applicant for construction, acquisition, or improvement of any waste water treatment plant, the financial assistance shall be considered as state matching funds for obtaining maximum federal grants for construction of treatment works.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.122. Application for Assistance

(a) In an application to the board for financial assistance, the applicant shall include:

(1) the name of the political subdivision and its principal officers;

(2) a citation of the law under which the political subdivision operates and was created;

(3) the total cost of the project;

(4) the amount of state financial assistance requested;

(5) the plan for repaying the total cost of the project; and

(6) any other information the board requires in order to perform its duties and to protect the public interest.

(b) The board may not accept an application for financial assistance unless it is submitted in affidavit form by the officials of the political subdivision. The board shall prescribe the affidavit form in its rules. The rules do not restrict or prohibit the board from requiring additional factual material from an applicant.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.123. Certificate of Commission or Approval by Commission

(a) Except as provided in Subsection (b) of this section, the board shall not deliver funds pursuant to an application for financial assistance until the political subdivision has furnished the board a resolution adopted by the commission certifying:

(1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water which the project will provide; or

(2) that an applicant proposing underground water development has the right to use water that the project will provide.

(b) If an application includes a proposal for a waste water treatment plant, the part of the application relating to the waste water treatment plant does not need to be certified by the commission, but the board may not deliver funds for the waste water treatment plant until the political subdivision has obtained written evidence of approval of the plans for the waste water treatment plant from the executive director.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.124. Considerations in Passing on Application

In passing on an application from a political subdivision for financial assistance, the board shall consider:

(1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;

(2) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the project, including interest;

(3) whether the political subdivision can reasonably finance the project without assistance from the state;

(4) the relationship of the project to the overall, statewide water needs; and

(5) the relationship of the project to the state water plan.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.125. Approval of Application

The board by resolution may approve an application if, after considering the factors listed in Section 17.124 of this code and any other relevant factors, the board finds:

(1) that the public interest requires state participation in the project;

(2) that the political subdivision cannot reasonably finance the project without state assistance in the amount finally approved by the board; and

(3) that in its opinion the revenue or taxes pledged by the political subdivision will be sufficient to meet all the obligations assumed by the political subdivision during the succeeding period of not more than 50 years.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.126. Method of Financial Assistance

The board may provide financial assistance by using money in the water development account to purchase bonds or other securities issued by the political subdivision to finance the project. The board may purchase bonds or securities that are secondary or subordinate to other bonds or securities issued by the political subdivision to finance the same project. The board may purchase outstanding prior lien bonds previously issued by the political subdivision when this will avoid or reduce the necessity for issuing junior lien bonds for subsequent sale to the board. However, the security for both prior lien and junior lien bonds shall be pledged from substantially the same sources of revenue.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.127. Bond Maturity

The board may not purchase bonds or other securities which have a maturity date more than 50 years from the date of issuance.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.128. Interest Rate

(a) Except as provided in Subsection (b) of this section, bonds and securities purchased by the board on or after September 1, 1977, with money derived from the sale of bonds issued under this chapter shall bear interest at the lending rate. The bonds shall bear coupons evidencing interest at a rate or combination of rates that will approximate the lending rate as nearly as the board deems practicable.

The lending rate shall be affected by the payment of premiums or the deduction of discounts as necessary.

(b) Bonds and securities purchased by the board pursuant to applications for financial assistance approved by the board prior to September 1, 1977, shall bear interest at the rate prescribed by Subsection (a) of this section prior to this amendment. Outstanding prior lien bonds purchased by the board under Section 17.126 of this code need not bear the interest rate provided in Subsection (a) of this section, but the board may pay such price or prices for outstanding prior lien bonds which in its discretion will accomplish the objective of Section 17.126 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 11.409 by Acts 1977, 65th Leg., p. 671, ch. 254 § 2.

§ 17.129. Approval and Registration

The board shall not purchase any bonds or securities that have not been approved by the attorney general and registered by the comptroller.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.130. Bonds Incontestable

The bonds or other securities issued by a political subdivision are valid, binding, and incontestable after:

(1) approval by the attorney general;

(2) registration by the comptroller; and

(3) purchase by and delivery to the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.131. Security for Bonds

(a) Bonds purchased by the board shall be supported by:

(1) all or part of the net revenue from the operation of the project;

(2) taxes levied by the political subdivision for the purpose; or

(3) a combination of taxes and net revenue, and revenue from other available sources.

(b) The board may require that the bonds be supported both by taxes and by net revenue from the operation of the project in any ratio the board considers necessary to fully secure the investment. The board shall establish other conditions and requirements it considers to be consistent with sound investment practices and in the public interest.

(c) As used in this section, "net revenue" means gross revenue less the amount necessary to provide for principal, interest, and reserve requirements of bonds superior to those purchased by the board and the amount necessary to pay the cost of maintaining and operating the project.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.132. Default

(a) In the event of a default in payment of the principal of or interest on bonds purchased by the board or any other default as defined in the proceedings or indentures authorizing the issuance of the bonds, the attorney general shall institute appropriate proceedings by mandamus or other legal remedies to compel the political subdivision or its officers, agents, and employees to cure the default by performing those duties which they are legally obligated to perform. These proceedings shall be brought and venue shall be in a district court of Travis County.

(b) The provisions of this section are cumulative of any other rights or remedies to which the bondholders may be entitled.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.133. Sale of Bonds by Board

(a) The board may sell or dispose of bonds purchased with money in the water development account. The board may not sell the bonds for less than amortized value and accrued interest.

(b) The board shall first offer the bonds at their amortized value plus accrued interest to the issuing political subdivision at least 30 days before the date of requesting competitive bids.

(c) If the political subdivision fails to give notice to the board of its desire to acquire the bonds at amortized value and accrued interest within the 30-day period, then the board shall give notice of the sale of the bonds, receive competitive bids, and conduct the sale, all in the manner provided for the sale of bonds, except the board may waive any requirement for good faith checks.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.134. Proceeds From Sale

The proceeds from the sale of political subdivision bonds held by the board shall be credited to the water development account, except that accrued interest shall be credited to the interest and sinking fund.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.135. Construction Contract Requirements

The governing body of each political subdivision receiving financial assistance from the board shall require in all contracts for the construction of a project:

(1) that payment be made in partial payments as the work progresses;

(2) that each partial payment shall not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project; and

(3) that payment of the 10 percent remaining due upon completion of the contract shall be made only after:

(A) approval by the engineer for the political subdivision as required under the bond proceedings; and

(B) certification by the board that the work to be done under the contract has been completed and performed in a satisfactory manner and in accordance with sound engineering principles and practices.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.136. Filing Construction Contract

The political subdivision shall file with the department a certified copy of each construction contract it enters into for the construction of all or part of a project. Each contract shall contain or have attached to it the specifications, plans, and details of all work included in the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.137. Inspection of Projects

(a) The department may inspect the construction of a project at any time to assure that:

(1) the contractor is substantially complying with the engineering plans of the project as submitted when approval of the feasibility of the project was sought; and

(2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the department does not subject the state to any civil liability.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.138. Alteration of Plans

After board approval of engineering plans, a political subdivision may not make any substantial or material alteration in the plans unless the board authorizes the alteration.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.139. Certificate of Approval

The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the project according to the plans as the board approved them or altered with the board's approval;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any term of the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 17.140 to 17.170 reserved for expansion]

SUBCHAPTER E. BOND PURCHASES FOR WATER QUALITY ENHANCEMENT PURPOSES

§ 17.171. Financial Assistance

The board shall use funds in the water quality enhancement account to provide financial assistance through the purchase of bonds or other obligations of political subdivisions pursuant to an application for financial assistance approved by it.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.172. Other Financial Assistance

The board may purchase bonds or other obligations that are secondary or subordinate to other bonds or obligations issued by the political subdivision, including outstanding prior lien bonds previously issued by the political subdivision when this will avoid or reduce the necessity for issuing junior lien bonds for subsequent sale to the board. However, the security for both prior lien and junior lien bonds shall be pledged from substantially the same sources of revenue.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.173. Bond Maturity

The board may not purchase bonds or other obligations which have a maturity date more than 50 years from the date of issuance.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.174. Interest Rate

(a) Except as provided in Subsection (b) of this section, bonds and other obligations purchased by the board on or after September 1, 1977, with money in the water quality enhancement account pursuant to Subchapters F and G of this chapter [1], shall bear interest at the lending rate. The bonds shall bear coupons evidencing interest at a rate or combination of rates that will approximate the lending rate as nearly as the board deems practicable. The lending rate shall be affected by the payment of premiums or the deduction of discounts as necessary.

(b) Outstanding prior lien bonds purchased by the board under Section 17.172 of this code may but need not bear the interest rate provided in Subsection (a) of this section, but may be purchased for such price or prices as will accomplish the objectives of Section 17.172 of this code.

[Amended by Acts 1977, 65th Leg., p. 2278, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] Sections 17.221 et seq., 17.271 et seq.

The text of this section incorporates the amendment to former § 11.604 by Acts 1977, 65th Leg., p. 671, ch. 254, § 2.

§ 17.175. Approval and Registration

The board shall not purchase any bonds or other obligations that have not been approved by the attorney general and registered by the comptroller.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.176. Bonds Incontestable

The bonds or other obligations issued by a political subdivision are valid, binding, and incontestable after:

(1) approval by the attorney general;

(2) registration by the comptroller; and

(3) purchase by and delivery to the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.177. Security for Bonds

(a) Bonds or other obligations purchased by the board under this subchapter shall be supported by:

(1) all or part of the net revenue from the operation of the treatment works;

(2) taxes levied by the political subdivision for the purpose; or

(3) a combination of taxes and net revenue, and revenue from other available sources.

(b) As used in this section, "net revenue" means gross revenue less the amount necessary to provide for principal, interest, and reserve requirements of bonds, if any, superior to those purchased by the board and the amount necessary to pay the cost of maintaining and operating the treatment works.

(c) The board has the exclusive responsibility to specify terms and conditions of the financial assistance, including all maturity schedules which are necessary in the opinion of the board to achieve the best security for the state which the applicant is reasonably capable of providing. No term or condition shall be specified by the board which would prevent financial assistance from being available to an applicant for construction of treatment works approved by the board.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.178. Default

(a) In the event of a default in payment of the principal of or interest on bonds or other obligations purchased by the board or of a default in payment of amounts due under a loan agreement executed under the provisions of Subchapters F and G of this chapter [1] or of a failure to perform any term or condition agreed to or of any other default as defined in the proceedings or indentures authorizing the issuance of the bonds or in any other obligation or loan agreement, the attorney general shall institute appropriate proceedings by mandamus or other legal remedies to compel the political subdivision or its officers, agents, and employees to cure the default by performing those duties which they are legally obligated to perform. These proceedings shall be brought and venue shall be in a district court of Travis County.

(b) The provisions of this section are cumulative of any other rights or remedies to which the bondholders may be entitled.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] Sections 17.221 et seq., 17.271 et seq.

§ 17.179. Sale of Bonds by Board

(a) The board may sell or dispose of bonds or other obligations purchased with money in the water quality enhancement account at not less than amortized value and accrued interest.

(b) The board shall first offer the bonds or other obligations at their amortized value plus accrued interest to the issuing political subdivision at least 30 days before the date of requesting competitive bids.

(c) If the political subdivision fails to give notice to the board of its desire to acquire the bonds or other obligations at amortized value and accrued interest within the 30-day period, then the board shall give notice of the sale of the bonds, receive competitive bids, and conduct the sale of such bonds or other obligations so purchased, all in the manner provided for the sale of bonds, except the board may waive any requirement for good faith checks.

§ 17.180. Proceeds From Sale

The proceeds from the sale of such political subdivision bonds or other obligations held by the board shall be credited to the water quality enhancement account, except that accrued interest shall be credited to the interest and sinking fund.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 17.181 to 17.220 reserved for expansion]

SUBCHAPTER F. PROGRAM FOR FINANCIAL ASSISTANCE FOR WASTE TREATMENT CONSTRUCTION

§ 17.221. Purpose

The purpose of this subchapter is to provide for making loans of water quality enhancement funds authorized by Article III, Section 49-d-1, as amended, of the Texas Constitution to political subdivisions of the state for use as state matching funds for obtaining maximum federal grants for the construction of treatment works.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.222. Definitions

In this subchapter:

(1) "Water quality enhancement" means the construction of treatment works by political subdivisions with loans provided under this subchapter.

(2) "Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement this chapter or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be a part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste or facilities to provide for the collection, control, and disposal of waste heat.

(3) "Construction" means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, title, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, the expense of any condemnation or other legal proceeding, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(4) "Water quality enhancement funds" means the proceeds from the sale of Texas Water Development Bonds issued under the authority of Article III, Section 49–d–1, as amended, of the Texas Constitution.

(5) "Political subdivision" means the state, a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party.

(6) "Loan" means purchase by the state of the bonds or other obligations of a political subdivision with water quality enhancement funds or entry by the state into a loan agreement with any political subdivision for a direct loan of water quality enhancement funds.

(7) "Financial assistance" means any loan of water quality enhancement funds made to a political subdivision for the construction of treatment works through the purchase of bonds or other obligations of the political subdivision or pursuant to a loan agreement.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.223. Financial Assistance

The board may use water quality enhancement funds to provide financial assistance to political subdivisions for purposes of water quality enhancement.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.224. Authority of Political Subdivision

(a) A political subdivision may apply to the board for financial assistance and may use water quality enhancement funds to pay for construction of treatment works in the manner provided in this subchapter.

(b) A political subdivision may exercise any power necessary to apply for, receive, use, and repay water quality enhancement funds, including the power to enter into loan contracts and agreements and to use any of its income and revenues to repay the loan.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.225. Application for Assistance

In an application to the board for financial assistance, the applicant shall include:

(1) the name of the political subdivision and its principal officers;

(2) a citation of the law under which the political subdivision operates and was created;

(3) the total cost of the treatment works;

(4) the amount of state financial assistance requested;

(5) the method for obtaining the financial assistance, whether by purchase of bonds or other obligations of the political subdivision, by direct loan, or by a combination of these two methods;

(6) the plan for repaying the financial assistance; and

(7) any other information the board requires to have an adequate understanding of proposals made in the application.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.226. Action on Application

(a) After an application is received for financial assistance, the executive director shall submit the application to the board together with the comments and recommendations of the development fund man-

ager relating to the best method for making the financial assistance available.

(b) The board may grant the application in whole or part or may deny the application.

(c) The board has the sole responsibility and authority for selecting the political subdivisions to whom financial assistance may be provided and, in consultation with and pursuant to agreement with the political subdivision, shall determine the location, time, design, scope, and all other aspects of the construction to be performed.

(d) The board shall review and approve plans and specifications for all treatment works for which financial assistance is requested. The provisions of Section 12, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945, as amended (Article 4477–1, Vernon's Texas Civil Statutes), do not apply to treatment works approved under this subchapter.

(e) Except as specifically provided in this subchapter, the deliberations, proposals, decisions, and other actions of the board under this subchapter do not require the concurrence or approval of any other governmental agency, board, commission, council, political subdivision, or other governmental entity.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.227. Considerations in Passing on Application

In passing on an application from a political subdivision for financial assistance, the board shall consider:

(1) the public benefit to be derived from the project and the propriety of state participation; and

(2) the availability of revenue to the political subdivision from all sources for the ultimate repayment of the cost of the project, including interest.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.228. Conditions for Obtaining Financial Assistance

Before financial assistance is provided to a political subdivision, the following conditions must be met:

(1) the project must be approved by the board and the appropriate federal agency if applicable;

(2) the political subdivision must adopt any necessary ordinance, rule, order, or resolution which in the judgment of the board is necessary to comply with the contract and requirements of the federal government.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.229. Providing Financial Assistance

If the board grants an application in whole or part, financial assistance shall be funded in accordance with Subchapter E of this chapter.[1]

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] Section 17.171 et seq.

§ 17.230. Direct Loans

(a) If a political subdivision in the judgment of the board is unable to issue bonds or other obligations for a project in the state for which a federal grant is to be made under the Federal Water Pollution Control Act, as amended,[1] then the board may provide financial assistance to the political subdivision by agreeing to pay from water quality enhancement funds the amount required by federal law of the estimated reasonable cost of the project.

(b) Before the delivery of any water quality enhancement funds to the political subdivision, the board with the advice of the development fund manager and the political subdivision shall execute a loan agreement which shall provide that the political subdivision shall pay into the appropriate account not less than the amount necessary to repay the principal of and interest on the loan over the period of time and under the terms and conditions which are mutually agreeable to the board and the political subdivision. The contract may also include any other terms and conditions which the board may require.

(c) Each political subdivision may charge and collect necessary fees, rentals, rates, and charges for the use, occupancy, and availability of its treatment works and any of its other properties, buildings, structures, operations, utilities, systems, activities, and facilities so that it may make all payments required by its loan agreement. The political subdivision shall pledge such amounts to make those payments.

(d) The political subdivision may pledge its ad valorem taxes, if any, and levy and collect the taxes for the purpose of making all or any part of the payments required by its loan agreement. The taxes shall be in addition to all other ad valorem taxes permitted by law but may not exceed, together with other ad valorem taxes, any maximum imposed by the Texas Constitution.

(e) Each loan agreement executed pursuant to this subchapter and the appropriate proceedings authorizing its execution shall be submitted to the attorney general for examination before the delivery of the money to the political subdivision. If he finds that the loan agreement has been authorized and executed in accordance with law, that the provisions are valid, and that the political subdivision has demonstrated to his reasonable satisfaction that the pay-

ments required by the agreement can be made from the sources pledged, he may approve the agreement.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]
[1] 33 U.S.C.A. § 1251 et seq.

§ 17.231. Use of Funds; Federal Requirement Satisfied

When bonds or other obligations are purchased or a loan agreement is approved by the attorney general, water quality enhancement funds shall be delivered to the political subdivisions entitled to receive them and shall be used only to pay for construction costs of treatment works approved as provided in this subchapter. The purchase of bonds and other obligations as provided in this code and the making of direct loans as provided in Section 17.230 of this code together constitute payment by the state of the amount required by federal law of the estimated reasonable construction costs of all projects in the state for which federal grants are to be made under the Federal Water Pollution Control Act, as amended,[1] or any similar law.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]
[1] 33 U.S.C.A. § 1251 et seq.

§ 17.232. Construction Contract Requirements

(a) In contracts for the construction of treatment works, the governing body of each political subdivision receiving financial assistance shall require:

(1) payment to be made in partial payments as the work progresses;

(2) each bidder to furnish a bid guarantee equivalent to five percent of the bid price; and

(3) each contractor awarded either a design/construct contract or construction contract to furnish performance and payment bonds, each of which must include without limitation guarantees that work done under the contract will be completed and performed:

(A) according to approved plans and specifications; and

(B) in accordance with sound construction principles and practices.

(b) Each bond must:

(1) be in an amount of not less than 100 percent of the contract price; and

(2) remain in effect for one year beyond the date of approval by the engineer of the political subdivision.

(c) No valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications.

(d) With the approval of its governing body, a political subdivision in addition to the other requirements of this section may require in a contract for construction of treatment works that:

(1) partial payment not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project; and

(2) payment of the 10 percent remaining due upon completion of the contract shall be made only after approval by:

(A) the engineer for the political subdivision as required under the bond proceedings; and

(B) the governing body of the political subdivision by a resolution or other formal action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.233. Filing Construction Contract

The political subdivision shall file with the development fund manager a certified copy of each construction contract it enters into for the construction of all or part of the treatment works. Each contract shall contain or have attached to it the specifications, plans, and details of all work included in the contract.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.234. Department Inspection

(a) The department may inspect the construction of treatment works at any time to assure that:

(1) the contractor is substantially complying with the engineering plans of the treatment works as submitted when approval of the feasibility of the treatment works was sought; and

(2) the contractor is constructing the treatment works in accordance with sound construction principles.

(b) Inspection of treatment works by the department does not subject the state to any civil liability.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.235. Alteration of Plans

After board approval of engineering plans, a political subdivision may not make any substantial or material alteration in the plans unless the board authorizes the alteration.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.236. Certificate of Approval

The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the treatment works according to the plans as the board approved them or altered with the board's approval;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any term of the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 17.237 to 17.270 reserved for expansion]

SUBCHAPTER G. ALTERNATIVE PROGRAM FOR FINANCIAL ASSISTANCE FOR CONSTRUCTION OF TREATMENT WORKS

§ 17.271. Purpose

The purpose of this subchapter is to provide for making loans of water quality enhancement funds authorized by Article III, Section 49–d–1, as amended, of the Texas Constitution to political subdivisions of the state for the construction of treatment works.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.272. Definitions

In this subchapter:

(1) "Water quality enhancement" means the construction of treatment works by political subdivisions with loans provided with water quality enhancement funds.

(2) "Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement this chapter or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including sites therefor and acquisition of the land that will be a part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste; or facilities to provide for the collection, control, and disposal of waste heat.

(3) "Construction" means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, title, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, the expense of any condemnation or other legal proceeding, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(4) "Water quality enhancement funds" means the proceeds from the sale of Texas Water Development Bonds issued under the authority of Article III, Section 49–d–1, as amended, of the Texas Constitution.

(5) "Political subdivision" means the state, a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party.

(6) "Loans" means purchase by the state of the bonds or other obligations of a political subdivision with water quality enhancement funds.

(7) "Financial assistance" means any loan of water quality enhancement funds made to a political subdivision for the construction of treatment works through the purchase of bonds or other obligations of the political subdivision.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.273. Financial Assistance

The board may use water quality enhancement funds to provide financial assistance to political subdivisions for purposes of water quality enhancement.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.274. Authority of Political Subdivision

A political subdivision may apply to the board for financial assistance and may use water quality enhancement funds for construction of treatment works in the manner provided in this subchapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.275. Application for Assistance

In an application to the board for financial assistance, the applicant shall include:

(1) the name of the political subdivision and its principal officers;

(2) a citation of the law under which the political subdivision operates and was created;

(3) the estimated total cost of construction of the treatment works;

(4) the amount of state financial assistance requested;

(5) the method for obtaining the financial assistance, whether by purchase of bonds or pur-

chase of other obligations of the political subdivision;

(6) the plan for repaying the financial assistance; and

(7) any other information the board requires.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.276. Considerations in Passing on Application

In passing on an application from a political subdivision for financial assistance, the board shall consider:

(1) the water quality needs of the waters into which effluent from the treatment works will be discharged and the benefit of the treatment works to such water quality needs in relation to the needs of other waters requiring state assistance in any manner and the benefits of those treatment works to the other waters;

(2) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the treatment works, including interest;

(3) whether the political subdivision can reasonably finance the treatment works without assistance from the state;

(4) the relationship of the treatment works to the overall, statewide water quality needs;

(5) the relationship of the treatment works to water quality planning for the state; and

(6) whether the political subdivision has been designated, pursuant to Section 26.082 of this code, to provide a regional system to serve all or part of the waste disposal needs of a defined area, the development of such systems being the declared policy of the legislature.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 21.706 by Acts 1977, 65th Leg., p. 1651, ch. 648, § 1.

§ 17.277. Action on Application

(a) After an application is received for financial assistance, the executive director shall submit the application to the board together with comments and recommendations of the development fund manager concerning the best method of making financial assistance available.

(b) The board may grant the application in whole or part or may deny the application.

(c) The board has the sole responsibility and authority for selecting the political subdivisions to whom financial assistance may be provided, the amount of any such assistance, and in consultation with and pursuant to agreement with the political subdivision, the board shall determine the location, time, design, scope, and all other aspects of the construction of treatment works to be performed.

(d) The board shall review and approve plans and specifications for all treatment works for which financial assistance is provided in any amount from water quality enhancement funds or funds granted under the Federal Water Pollution Control Act, as amended.[1] The Texas Department of Health Resources[2] shall review and approve plans in those cases where such assistance has not been requested except when notice of intention to apply for the financial assistance has been given to the board in which case the board shall perform review and approval functions. Duplicate review and approval will not be performed and actions on review and approval shall be fully interchangeable between the board and the Texas Department of Health Resources.

(e) The deliberations, proposals, decisions, and other actions of the board under this subchapter do not require the concurrence or approval of any other governmental agency, board, commission, council, political subdivision, or other governmental entity.

(f) If the board grants an application in whole or part, financial assistance shall be funded by the board in accordance with Subchapter E of this chapter.[3]

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] 33 U.S.C.A. § 1251 et seq.
[2] Name changed to Department of Health; see Civil Statutes, art. 4418g.
[3] Section 17.171 et seq.

§ 17.278. Approval of Application

The board by resolution may approve an application if, after considering the factors listed in Section 17.276 of this code and any other relevant factors, the board finds:

(1) that the public interest will benefit from state participation in the financing of the treatment works; and

(2) that the political subdivision cannot reasonably finance the treatment works without state assistance in the amount finally approved by the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.279. Construction Contract Requirements

(a) In contracts for the construction of treatment works, the governing body of each political subdivision receiving financial assistance shall require:

(1) payment to be made in partial payments as the work progresses;

(2) each bidder to furnish a bid guarantee equivalent to five percent of the bid price;

(3) each contractor awarded either a design/construct contract or construction contract to furnish performance and payment bonds, each of which must include without limitation guarantees that work done under the contract will be completed and performed:

(A) according to approved plans and specifications; and

(B) in accordance with sound construction principles and practices.

(b) Each bond must:

(1) be in an amount of not less than 100 percent of the contract price; and

(2) remain in effect for one year beyond the date of approval by the engineer of the political subdivision.

(c) No valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications.

(d) With the approval of its governing body, a political subdivision in addition to the other requirements of this section may require in a contract for construction of treatment works that:

(1) partial payment not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project; and

(2) payment of the 10 percent remaining due upon completion of the contract shall be made only after approval by:

(A) the engineer for the political subdivision as required under the bond proceedings; and

(B) the governing body of the political subdivision by a resolution or other formal action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.280. Filing Construction Contract

The political subdivision shall file with the department a certified copy of each construction contract it enters into for the construction of all or part of the treatment works. Each contract shall contain or have attached to it the specifications, plans, and details of all work included in the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.281. Department Inspection

(a) The department may inspect the construction of treatment works at any time to assure that:

(1) the contractor is substantially complying with the engineering plans of the treatment works as submitted when approval of the feasibility of the treatment works was sought; and

(2) the treatment works are being constructed in accordance with sound construction principles.

(b) Inspection of treatment works by the department does not subject the state to any civil liability.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.282. Alteration of Plans

After board approval of engineering plans, a political subdivision may not make any substantial or material alteration in the plans unless the board authorizes the alteration.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.283. Certificate of Approval

The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the treatment works according to the plans as the board approved them or altered with the board's approval;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any term of the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.284. Obtaining Financial Assistance

(a) In order to obtain financial assistance under this subchapter, a political subdivision may authorize and issue revenue bonds for the purpose of constructing treatment works and sell such bonds to the board in such amounts as may be determined by the governing body of the political subdivision and approved by the board.

(b) Notwithstanding the provisions of Article 1112, Revised Civil Statutes of Texas, 1925, as amended, or any other general or special law or charter provisions to the contrary, a political subdivision may authorize, issue, and sell such revenue bonds as provided herein and create any encumbrance in connection therewith by a majority vote of the governing body of the political subdivision without the necessity of any election.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

CHAPTER 18. WEATHER MODIFICATION

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Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977, for disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

SUBCHAPTER A. GENERAL PROVISIONS

§ 18.001. Short Title

This chapter may be cited as the Weather Modification Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.002. Definitions

As used in this chapter:

(1) "Commission" means the Texas Water Commission.

(2) "Board" means the Texas Water Development Board.

(3) "Executive director" means the executive director of the Texas Department of Water Resources.

(4) "Department" means the Texas Department of Water Resources.

(5) "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods the natural development of atmospheric cloud forms or precipitation forms which occur in the troposphere.

(6) "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval not exceeding four years.

(7) "Research and development" means theoretical analysis, exploration, experimentation, and the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 18.003 to 18.010 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

§ 18.011. Rules—In General

The board may make rules necessary to exercise the powers and to perform their duties under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.012. Rules—Licenses and Permits

In order to effectuate the purposes of this chapter, the commission may make rules establishing procedures and conditions for the issuance of licenses and permits.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.013. Rules—Safety

The board may make rules establishing standards and instructions to govern the carrying out of research or projects in weather modification and control that the board considers necessary or desirable to minimize danger to health or property.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.014. Studies; Investigations; Hearings

The department may make any studies or investigations, obtain any information, and hold any hearings necessary or proper to administer or enforce this chapter or any rules or orders issued under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.015. Advisory Committees

The board may establish advisory committees to advise the department and to make recommendations to the department concerning legislation, policies, administration, research, and other matters.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 2068, ch. 808, § 4, eff. June 13, 1979.]

§ 18.016. Personnel

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

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.017. Materials and Equipment

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

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.018. Interstate Compacts

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

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.019. Contracts, Cooperative Agreements, Etc.

(a) The department may cooperate with public or private agencies to promote the purposes of this chapter.

(b) The department may enter into cooperative agreements with the United States or any of its agencies, or with counties and cities of this state, or with any private or public agencies for conducting weather modification or cloud-seeding operations.

(c) The department may represent the state, counties, cities, and public and private agencies in contracting with private concerns for the performance of weather modification or cloud-seeding operations.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.020. Promotion of Research and Development

(a) In order to assist in expanding the theoretical and practical knowledge of weather modification and control, the department shall promote continuous research and development in:

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

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

(3) the protection of life and property during research and operational activities.

(b) The executive director with approval of the board may conduct and may contract for research and development activities relating to the purposes of this section.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.021. Grants, Gifts, Etc.

Subject to any limitations imposed by law, the department may accept federal grants, private gifts, and donations from any other source. Unless the use of the money is restricted or subject to any limitations provided by law, the department may spend it for the administration of this chapter or may by grant, contract, or cooperative arrangement use the money to encourage research and development by a public or private agency.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.022. Disposition of License and Permit Fees

The department shall deposit all license and permit fees in the State Treasury.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 18.023 to 18.050 reserved for expansion]

SUBCHAPTER C. LICENSES AND PERMITS

§ 18.051. License and Permit Required

Except as provided by rule of the board under Section 18.052 of this code, no person may engage in activities for weather modification and control:

(1) without a weather modification license and a weather modification permit issued by the commission; or

(2) in violation of any term or condition of the license or the permit.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.052. Exemptions

The board, to the extent it considers exemptions practical, shall provide by rule for exempting the following activities from the license and permit requirements of this chapter:

(1) research, development, and experiments conducted by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations;

(2) laboratory research and experiments;

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

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

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.053. Issuance of License

(a) The commission, in accordance with the rules, shall issue a weather modification license to each applicant who:

(1) pays the license fee; and

(2) demonstrates, to the satisfaction of the commission, competence in the field of meteorology which is reasonably necessary to engage in weather modification and control activities.

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

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.054. License Fee

The fee for an original or renewal license is $50.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.055. Expiration Date

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

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.056. Renewal License

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

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 18.057 to 18.080 reserved for expansion]

§ 18.081. Issuance of Permit

(a) The commission, in accordance with the rules and on a finding that the weather modification and control operation as proposed in the permit application will not significantly dissipate the clouds and prevent their natural course of developing rain in the area where the operation is to be conducted to the material detriment of persons or property in that area, and after approved at an election if covered by Section 18.0841 of this code, may issue a weather modification permit to each applicant who:

(1) holds a valid weather modification license;

(2) pays the permit fee;

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

(4) furnishes proof of financial responsibility.

(b) The commission shall, if requested by at least 25 persons, hold at least one public hearing in the area where the operation is to be conducted prior to the issuance of a permit.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 2068, ch. 808, § 5, eff. June 13, 1979.]

The text of this section incorporate the amendment to former § 14.061 by Acts 1977, 65th Leg., p. 952, ch. 360, § 1.

§ 18.082. Permit Fee

The fee for each permit is $25.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.083. Scope of Permit

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

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.084. Application and Notice of Intention

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

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.0841. Election for Approval of a Permit That Includes Authorization for Hail Suppression

(a) In this section:

(1) "Target area" means that area described by metes and bounds or other specific bounded description set out in the application for a permit.

(2) "Operational area" means that area that joins the target area which is reasonably necessary to use in order to effectuate the purposes over the target area without affecting the land or land owners in the operational area, but in no event to exceed eight miles from the limits of the target area. The operational area shall be described by metes and bounds or other specific bounded description and shall be set out in the application for a permit. If the application for a permit does not describe the operational area, the commission may designate an area located inside and up to eight miles from the outer limits of the target area described in the application as the operational area of the permit for the purposes of this chapter.

(b) No permit may be issued by the commission before the end of the 30-day period immediately following the first publication of notice and then only in those counties or parts of counties in the target area or operational area in which the majority of the qualified voters voting have approved or have not disapproved the issuance of a permit if an election has been held, or in any county or part of a county in the target area or operational area if no petition for an election has been filed.

(c) Persons eligible to vote in elections held under this section shall include qualified voters in counties or parts of counties included in the target area or operational area. Where the target area or operational area includes only part of a county, an election held under this section may be held only in the election precincts which are included entirely within or are partially included in said areas. All qualified voters in such precincts shall be entitled to vote in these elections.

(d) On written request of at least 25 qualified voters residing in the target area or operational area mentioned in the notice requesting an election accompanied by unsigned petitions, the county clerk of each county within the target area or operational area shall certify and mark for identification petitions for circulation. An application for a petition seeking an election to disapprove the issuance of a permit shall be headed: "Application for Election to Disapprove a Weather Modification Permit." The application shall contain a statement just ahead of the signatures of the applicants stating the following: "It is the hope, purpose, and intent of the applicants whose signatures appear on this application to see disapproved the issuance of a permit for weather modification including hail suppression." An application for a petition seeking an election to approve the issuance of a permit shall be headed: "Application for Election to Approve a Weather Modification Permit." The application shall contain a statement just ahead of the signatures of the applicants as follows: "It is the hope, purpose, and intent of the applicants whose signatures appear on this petition to see approved the issuance of a permit for weather modification including hail suppression." Upon the return to the county clerks of such petitions signed by at least 10 percent of the qualified voters residing in each county within the target area or operational area in the notice requesting an election the commissioners court of each county shall call and hold an election. Notice under Chapter 549, Acts of the 60th Legislature, Regular Session, 1967 (Article 29e, Vernon's Texas Civil Statutes), of the commissioners court meeting to call and hold the election is not required. The date of the election shall be determined by the commissioners court in accordance with this section notwithstanding Section 9b, Texas Election Code, as amended (Article 2.01b, Vernon's Texas Election Code). The petition must be filed with the clerk of each county within 30 days immediately following the first publication of notice. The election shall be held within 45 days after the petition is received to determine whether or not the qualified voters in the target area or operational area approve the issuance of the permit. Immediately on calling the election, the clerk of each county within the target area or operational area shall notify the executive director of the date of the election. Except as otherwise provided in this chapter, elections shall be held in accordance with the Texas Election Code.

(e) The petition for the election shall read substantially as follows: "The following qualified voters of _____ County request the Commissioners Court of _____ County to call an election at which the qualified voters shall be asked to vote on the proposition of whether or not they approve of the issuance of a weather modification permit that includes authorization for hail suppression (description of area)." Each qualified voter signing the petition shall give his full name and address and voter registration number. Within five days after receiving a petition under this section, the commissioners court shall have the county clerk of the county check the names on the petition against the voter registration lists of the county and certify to the commissioners court the number of qualified voters signing the petition as reflected by checking the county's voter registration lists. If only a part of a county is included in the target area or operational area, the county clerk shall also certify that those signing the petition reside in an election precinct in the county totally or partially included in the target area or operational area. On certification by the county clerk, the petition shall be filed with the official records of the county and shall be available for public inspection.

(f) A person filing a petition with the county clerk shall deposit with the county clerk an amount of money estimated by the county clerk to be sufficient to cover the costs of the election, to be held by the

county clerk until the result of the election to approve or disapprove the issuance of the permit is officially announced. If the result of the election favors the party petitioning for the election, the county clerk shall return the deposit to the person filing the petition or his agent or attorney, but if the result of the election does not favor the party petitioning for the election, the county clerk shall pay the cost and expenses of the election from the deposit and return the balance of the deposit to the person filing the petition or his agent or attorney.

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

(h) The order calling the election shall provide for the time and place or places for holding the election, the form of the ballots, and the presiding judge for each voting place.

(i) The commissioners court shall publish a copy of the election order in a newspaper of general circulation in the county or in the part of the county within the target area or operational area at least 30 days preceding the day of the election.

(j) The presiding judge of each voting place shall supervise the counting of all votes cast and shall certify the results to the commissioners court within five days after the election. A copy of the results are to be filed with the county clerk and become a public record.

(k) Within five days after the results are filed, the commissioners court shall declare the results.

(*l*) The commissioners court of each county holding an election shall send certified copies of the results of the election to the executive director within 24 hours after the results are declared under Subsection (j) of this section.

(m) If a majority of the qualified voters voting in the election precincts any part of which are located in the target area vote against issuance of the permit, no permit may be issued. If a majority of the qualified voters voting in the election precincts any part of which are located within the target area vote in favor of issuance of the permit, the commission may issue the permit as provided in this subchapter, provided, however, if a majority of the qualified voters voting in either of the following areas vote against issuance of the permit, those areas shall be excluded from the coverage of the permit:

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

(2) any election precinct located wholly within the target area and contiguous with its outer boundary. If, however, the commission finds that a weather modification and control operation is still feasible, a permit may be issued covering areas in which no election is requested or areas in which the voters give their approval as provided in this section.

(n) If a permit is denied under Subsection (m) of this section, no application for a permit covering all or part of the same target area or operational area so denied may be considered, and no permit under that application may be issued by the commission, for a period of two years following the date of the election nor may an election be held pursuant to this chapter.

(*o*) If a permit including authorization for hail suppression is to cover only a part of a county, only those qualified voters residing in an election precinct or precincts of the county included in the target area or operational area are eligible to sign a petition and to vote at an election under this section, and in computing the vote, only a majority of those qualified voters residing in such areas and voting in the election shall be necessary to carry the proposition in that county.

(p) No permit shall be issued which provides for or allows the seeding of clouds for hail suppression outside the target area or within those counties or parts of counties located in the operational or target areas which were excluded from the coverage of the permit by virtue of an election under Subsection (m) of this section. However, seeding may be done in those counties or parts of counties located in the operational or target area which were not excluded from the coverage of the permit by virtue of an election under Subsection (m) of this section, provided it is reasonably calculated to take effect only within the target area. This shall not prohibit the observation of cloud and cloud formations.

(q) The department may monitor any program under such conditions as the department deems advisable.

(r) The provisions of this section do not apply to any permits in effect at the time this section becomes law.

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

(t) If any county or part of a county has disapproved the issuance of a permit at the previous election held under the provisions of this section, that county or part of a county shall not be included

in any permit issued by the commission until the voters of that county or part of a county have participated in a subsequent election at which a permit is approved. The applicant for a permit which includes that county or part of a county shall have the burden of petitioning for an election and depositing costs in the manner provided by this section for the original election to approve or disapprove a permit.

(u) The board by rule shall define the term hail suppression as used in this section, using the most current scientifically accepted technological concepts.

[Added by Acts 1977, 65th Leg., p. 952, ch. 370, § 2, eff. June 10, 1977. Amended by Acts 1979, 66th Leg., p. 2064, ch. 808, §§ 1, 3, eff. June 13, 1979.]

§ 18.085. Content of Notice

In the notice of intention, the applicant shall include:

(1) the name and address of the licensee;

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

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

(4) the area which is intended to be affected by the operation; and

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

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.086. Publication of Notice

The notice of intention shall be published at least once a week for three consecutive weeks in a newspaper of general circulation published in each county in which the operation is to be conducted and in each county which includes any part of the affected area. If in any such county no newspaper of general circulation is published, then publication shall be made in a newspaper having general circulation in the county.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.087. Proof of Publication; Affidavit

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

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.088. Proof of Financial Responsibility

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

§ 18.089. Modification of Permit

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

(1) the licensee is first given notice and a reasonable opportunity for a hearing on the need for a modification; and

(2) it appears to the commission that a modification is necessary to protect the health or property of any person.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.090. Scope of Activity

(a) Once a permit is issued, the licensee shall confine his activities substantially within the limits of time and area specified in the notice of intention, except to the extent that the limits are modified by the commission. He shall also comply with any terms and conditions of the permit as originally issued or as subsequently modified by the commission.

(b) Failure of a licensee to comply with the provisions of Subsection (a) of this section constitutes a violation of this chapter and subjects the licensee to the sanctions provided in Sections 18.121 and 18.122 of this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 2067, ch. 808, § 2, eff. June 13, 1979.]

§ 18.091. Records and Reports

(a) A licensee shall keep a record of each operation conducted under permit, showing:

(1) the method employed;

(2) the type of equipment used;

(3) the kind and amount of each material used;

(4) the times and places the equipment is operated;

(5) the name and post-office address of each individual, other than the licensee, who participates or assists in the operation; and

(6) other information required by the department.

(b) The department shall require written reports covering each operation, whether it is exempt or conducted under a permit.

(c) At the time and in the manner required by the department, a licensee shall submit a written report containing the information described in Subsection (a) of this section.

(d) All information on an operation shall be submitted to the department before it is released to the public.

(e) The reports and records in the custody of the department shall be kept open for public inspection.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 2068, ch. 808, § 4, eff. June 13, 1979.]

[Sections 18.092 to 18.120 reserved for expansion]

SUBCHAPTER D. SANCTIONS

§ 18.121. Suspension; Revocation; Refusal to Renew

(a) The commission may suspend or revoke a license or permit if it appears that the licensee:

(1) no longer has the qualifications necessary for the issuance of an original license or permit; or

(2) has violated any provision of this chapter.

(b) The commission may refuse to renew the license of, or to issue another permit to, any applicant who has failed to comply with any provision of this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.1211. Permit Violation

(a) In this section, "permit area" means the area affected and the area of operations covered by a permit.

(b) After notice and hearing, the commission may issue a warning or, if a warning has already been issued, may suspend a permit up to a period of two years if the board finds that a permittee, through carelessness, performed all or any part of a weather modification and control operation outside the boundaries of the permit area. The commission may suspend the permit up to a period of two years without prior issuance of a warning if the permittee, through gross carelessness, performed all or any part of a weather modification and control operation outside the boundaries of a permit area.

(c) A person who violates a provision of a permit is guilty of a Class A misdemeanor.

[Added by Acts 1977, 65th Leg., p. 955, ch. 360, § 3, eff. June 10, 1977. Amended by Acts 1979, 66th Leg., p. 2068, ch. 808, § 4, eff. June 13, 1979.]

§ 18.122. Hearing Required

The commission may not suspend or revoke a license or permit without first giving the licensee notice and a reasonable opportunity to be heard with respect to the grounds for the commission's proposed action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.123. Record of Hearing

The commission shall have a record made of all proceedings at each hearing held under Section 18.122 of this code and shall have the record filed with its findings and conclusions.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 18.124 to 18.150 reserved for expansion]

§ 18.151. Immunity of State

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

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.152. Private Legal Relationships

(a) This chapter does not affect private legal relationships, except that an operation conducted under the license and permit requirements of this chapter is not an ultrahazardous activity which makes the participants subject to liability without fault.

(b) The fact that a person holds a license or permit under this chapter or that he has complied with this chapter or the regulations issued under this chapter is not admissible as evidence in any legal proceeding brought against him.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 18.153 to 18.170 reserved for expansion]

§ 18.171. Penalty

(a) A person who violates any provision of this chapter or any valid regulation or order issued under this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 nor more than $1,000, or by confinement in the county jail for not more than 10 days, or by both.

(b) A separate offense is committed each day a violation continues.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.172. Enforcement

(a) Whenever it appears that a person has violated or is violating or is threatening to violate any provision of this chapter or any rule, license, permit, or order of the commission or board, then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of a civil penalty of not less than $50 nor more than $1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, license, permit, or order of the commission or board, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the executive director, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty as authorized in Subsection (a) of this section.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

CHAPTER 19. TEXAS DEEPWATER PORT AUTHORITY

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SUBCHAPTER A. GENERAL PROVISIONS

§ 19.001. Policy

It is the policy, intent, and determination of the legislature that:

(1) Texas urgently needs an offshore deepwater port capable of accommodating supertankers for the importation of crude oil and other fluid commodities that may be carried in ships of that size;

(2) it is most desirable for private enterprise to own, construct, and operate such an offshore port;

(3) in the absence of any active and viable plan to develop a deepwater, offshore port by private enterprise, the State of Texas should construct such a facility, which should be self-supporting and whose design, construction, and operation should be carried out by private companies under contract;

(4) protecting the environment is essential to the proper operation of such a port;

(5) the credit of the State of Texas shall not be pledged to finance such a port; and

(6) the Texas Deepwater Port Authority be created to implement this policy.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.002. Definitions

In this chapter:

(1) "General manager" means the General Manager of the Texas Deepwater Port Authority.

(2) "Authority" means the Texas Deepwater Port Authority.

(3) "Board" means the Board of Commissioners of the Texas Deepwater Port Authority.

(4) "Commissioner" means a member of the Board of Commissioners of the Texas Deepwater Port Authority.

(5) "Deepwater port" means the facilities defined in Section 3(10) of the Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., and also includes the onshore storage tank facilities and the pipelines located within the State of Texas that connect the onshore storage facilities with the offshore facilities of a deepwater port.

(6) "Petroleum" means petroleum, crude oil, natural gas, and any substance refined from crude oil or natural gas.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.003. Authorization for Deepwater Port

In order to insure that the policy stated in this chapter is not circumvented, the Texas Deepwater Port Authority created by this chapter shall not commence operations unless and until the governor determines, and so states by executive order, that no active and viable plan to develop a deepwater, offshore port by private enterprise exists in Texas and that the Texas Deepwater Port Authority should carry out its responsibilities under this chapter.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.004. Expiration

If the governor has not made the finding and issued the executive order provided in Section 19.003 of this code, all provisions of this chapter, including the existence of the Texas Deepwater Port Authority, shall expire on January 1, 1979.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.005. Tidelands

None of the provisions of this chapter shall be interpreted or construed to affect Texas's claim to its tidelands or the location of Texas's coastline as interpreted by the State of Texas.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

[Sections 19.006 to 19.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 19.011. Texas Deepwater Port Authority

The Texas Deepwater Port Authority is created as an agency of the state and pursuant to Article XVI, Section 59, Subsection (a) of the Texas Constitution.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.012. Commissioners; Appointment

The authority shall be governed by a board of commissioners with nine members, who shall be appointed by the governor with the advice and consent of the senate.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.013. Terms of Office; Vacancies

(a) Of the initial appointees to the board, the governor shall designate three persons to serve until January 31, 1979, three persons to serve until January 31, 1981, and three persons to serve until January 31, 1983.

(b) Except for the initial appointees, each commissioner shall hold office for a staggered term of six years and until his successor is appointed and has qualified.

(c) Any vacancy that occurs on the board shall be filled for the unexpired term in the manner provided in Section 19.012 of this code for making the original appointment.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.014. Officers

(a) Before June 1 of each even-numbered year, the board of commissioners shall elect a chairman, except for the initial election of chairman which shall be made as soon as possible after the effective date of this chapter.

(b) The board may elect other officers at the times and by the means as it may provide by rule.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.015. Board Meetings

(a) The board shall meet at least once every three months and may hold other meetings at the call of the chair or of five of the commissioners.

(b) The board shall provide by rule for the conduct of meetings.

(c) A majority of the commissioners shall constitute a quorum for the transaction of business.

(d) All meetings of the board shall be open to the public to the same extent as may be provided by general law for meetings of state boards and agencies.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.016. Compensation and Expenses

Each commissioner is entitled to receive reimbursement for travel and other necessary expenses resulting from the performance of his duties under this chapter and is entitled to receive as compensation $75 a day for each day actually engaged in the work of the authority.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.017. Powers and Duties of the Board; Delegation

(a) The board shall formulate general policy to govern the authority and its activities.

(b) The board shall exercise the powers and duties of the authority and may delegate to the agents and employees of the authority such powers and duties as the board may provide.
[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.018. General Manager

(a) The board shall employ a general manager to serve at the pleasure of the board.

(b) The general manager shall be the chief administrative officer of the authority and shall manage the executive and administrative functions of the authority under policies adopted by the board.

(c) The general manager shall have kept full and accurate minutes of all transactions and proceedings of the authority.

(d) The general manager shall have any other duties the board may direct.
[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.019. Employees; Compensation; Etc.

(a) The general manager shall employ necessary attorneys, accountants, engineers, technical personnel, and other employees as the board may consider necessary.

(b) In employing persons under Subsection (a) of this section, the general manager shall comply with all federal laws and rules relating to equal employment opportunity and shall employ for each position the best qualified person for that position.

(c) The employees of the authority shall receive the compensation provided by the board.

(d) Employees of the authority shall not be considered employees of the State of Texas.
[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.020. Rules

The board shall, after proper notice and hearings, adopt rules governing the conduct of authority operations and the manner of carrying out its powers, duties, and responsibilities.
[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.021. Documents, Etc.; Open for Inspection

(a) All information, documents, and data collected by the authority in the performance of its duties are open to inspection by any person to the same extent as if that information or the documents or data were the property of the state.

(b) The general manager shall be the custodian of all the files and records of the authority.
[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

[Sections 19.022 to 19.035 reserved for expansion]

SUBCHAPTER C. INITIAL ACTIVITIES AND STUDIES

§ 19.036. Securing of License

(a) Prior to the acquisition of any facilities, the sale of any bonds or notes, or the borrowing of any money, the authority shall secure all necessary licenses and permits for the acquisition, construction, and operation of a deepwater port facility.

(b) No license or permit may be requested or accepted by the authority nor may the state be a party to a license or permit which would impose on the State of Texas or the authority any liability or financial obligation by virtue of contract, tort, or otherwise unless that liability or financial obligation is fully indemnified without expense of state funds.

(c) With the exception of the initial appropriations from the General Revenue Fund to the Texas Deepwater Port Authority and revenues of the authority, the state may not pledge its faith and credit or contribute any state funds to a project of the Texas Deepwater Port Authority or for expenses of carrying out the powers and duties of the authority. Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the state or a pledge of the faith and credit of the state. The authority is not authorized to incur any liability or financial obligations which cannot be serviced from the revenues of the authority or from the initial appropriations.
[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 29, ch. 19, § 1, eff. March 3, 1979.]

§ 19.037. Engineering and Environmental Studies

Concurrent with any applications for licenses and permits for the construction and operation of a deepwater port facility, the authority shall conduct or cause to be conducted engineering and environmental impact studies to determine engineering feasibility of the proposed facility and to determine that adverse effects on the environment will be minimized. The authority may receive information concerning engineering and environmental impact data from any person, firm, or corporation possessing that information and, if construction of such deepwater port facility is commenced, may compensate that person, firm, or corporation a reasonable amount for the information, as determined by the authority.
[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.038. Financial Feasibility

After securing all necessary licenses and permits to enable the acquisition, construction, and operation of a deepwater port facility, the authority shall conduct a study to determine the financial feasibility of constructing and operating a deepwater port fa-

cility. In addition to any financial details or other matters it deems relevant, the authority shall specifically investigate financing alternatives and determine which alternative is feasible and most attractive to the state. In no event does the authority have the ability to pledge the general credit of the state.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.039. Final Report of Commission; Submission of Report to Governor

After consideration of the studies required by Sections 19.036 through 19.038 of this code, the authority shall determine whether or not the facility is feasible and in the public interest and shall submit a detailed report of its findings to the governor and the legislature.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.040. Submission to Natural Resources Council

On receiving the report containing the findings of the authority, the governor shall transmit a copy of the report to the Natural Resources Council. The Natural Resources Council shall review the report of the authority and submit a recommendation to the governor on the report. If the council has objections to any part of the report, it shall state those objections in detail in its recommendation to the governor. If the council fails to act within 60 days after the report of the authority is received from the governor, the report is deemed approved by the council.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.041 Action by the Governor

The governor shall, within 120 days after the report of the authority is received, either approve or disapprove the findings of the authority. If the report is disapproved, the governor shall state in detail his reasons for disapproval of the report. If the governor disapproves the report of the authority, the authority may revise its report or undertake additional studies and submit a new report to meet the objections of the governor. If the governor has taken no action on the report within 120 days after submission, it is deemed approved.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.042. Approval Necessary for Construction and Issuance of Bonds

Prior to the acquisition of any property or construction of any facilities to be used as a part of a deepwater port facility, the sale of any bonds or notes, or the borrowing of any money, both the authority and the governor must find that the construction and operation of a deepwater port facility is feasible and in the public interest.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

[Sections 19.043 to 19.050 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES

§ 19.051. General Powers and Duties

(a) The authority has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities.

(b) The authority shall have, in general, all the powers that are permitted to a corporation by the general laws of this state.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.052. Specific Powers and Duties

(a) In addition to its powers and duties under Section 19.051 of this code, the authority shall have the following specific powers and duties as to each individual deepwater port facility:

(1) to acquire by purchase, lease, gift, or in any other manner other than by condemnation and to maintain, use, and operate property of any kind, real, personal, or mixed, or any interest in that property, within or without the boundaries of the State of Texas necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred on it by this chapter;

(2) to acquire by condemnation property of any kind, real, personal, or mixed, other than minerals or interests in minerals, or any interest in that property, within or without the boundaries of the State of Texas necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred on it by this chapter, in the manner provided by Title 52 of the Revised Civil Statutes of Texas, 1925, as amended; [1]

(3) subject to the provisions of this chapter, from time to time to sell or otherwise dispose of any property of any kind, real, personal, or mixed, or any interest in that property that shall not be necessary to carry on the business of the authority;

(4) subject to the limitations of Subsection (a) of Section 19.054 of this chapter, to construct, extend, improve, maintain, and reconstruct, to cause to be constructed, extended, improved, maintained, and reconstructed, and to use and operate, any and all facilities of any kind necessary or convenient to the exercise of such powers, rights, privileges, and functions;

(5) to sue and be sued in its corporate name;

(6) to adopt, use, and alter a corporate seal;

(7) to make bylaws for the management and regulation of its affairs;

(8) to make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred on it by this chapter;

(9) to borrow money for its corporate purposes and without limitation of the generality of the foregoing, to borrow money and accept grants from the United States or from any corporation or agency created or designated by the United States, and in connection with any such loan or grant, to enter into agreements as the United States or the corporation or agency may require, and to make and issue its bonds and notes for money borrowed, in the manner and to the extent provided in Subchapter F of this chapter;

(10) to apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out its duties; and

(11) to do any and all other acts or things necessary or convenient to the exercise of the powers, rights, privileges, or functions conferred on it by this chapter or any other law.

(b) If the authority requires the relocation, raising, lowering, rerouting, or change in grade or alteration in the construction of any railroad, electric transmission, telegraph or telephone lines, conduits, poles, or facilities, or pipelines in the exercise of the power of eminent domain, all of the relocation, raising, lowering, rerouting, or changes in grade or alteration of construction due to the exercise of the power of eminent domain shall be the sole expense of the authority. The term "sole expense" means the actual cost of relocation, raising, lowering, rerouting, or change in grade or alteration of construction to provide comparable replacement without enhancement of facilities, after deducting the net salvage value derived from the old facility.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 3264 et seq.

§ 19.053. State-owned Water Bottoms; Lease; Etc.

(a) The School Land Board shall lease to the authority state-owned water bottoms that are necessary for the construction, operation, and maintenance of a deepwater port.

(b) The School Land Board shall not lease to any third party any water bottoms that may be necessary for construction, operation, or maintenance of a deepwater port unless the authority certifies to the School Land Board that those water bottoms are not required for use by the authority.

(c) Necessary water bottoms shall be leased to the authority on the terms and for the compensation to which the School Land Board and the authority shall mutually agree.

(d) Mineral rights and interests in the leased areas are reserved to the state; however, the School Land Board may not lease for mineral development any areas leased to the authority without the consent of the authority unless the mineral lease will not adversely affect the deepwater port.

(e) The School Land Board, the authority, and the lessee may enter into agreements to coordinate the use of sites needed by the authority if the sites have existing mineral leases.

(f) Nothing in this section shall authorize the authority to explore for, develop, or produce any minerals of whatever kind.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.054. Development of a Deepwater Port

(a) The authority shall, as soon as possible after the effective date of this chapter:

(1) have designed, licensed, developed, built, operated, maintained, or modified any deepwater port or ports as it shall determine to be necessary from time to time;

(2) provide that the engineering, design, construction, operation, and maintenance of those deepwater ports shall be carried out by suitable private enterprise under the regulation and supervision of the authority;

(3) finance those deepwater ports through self-supporting revenue bonds backed by tariffs charged the users of the facilities and by any other means that may be necessary or convenient and consistent with the provisions of this chapter;

(4) enter into contracts with public or private entities necessary to carry out the provisions of this chapter, provided, however, that no contract for purposes of operation of a deepwater port may be entered into by the authority unless the contract stipulates that the public or private entities contracting with the authority shall assume any liability of the authority for any causes of action arising from environmental damage;

(5) apply for any necessary licenses, permits, or other permissions necessary to carry out the provisions of this chapter;

(6) set and collect those charges the authority may determine are appropriate for any service or other action performed by or requested of the authority;

(7) take any actions the authority may determine are necessary or cause to be done any of

the things required of the authority under this chapter;

(8) enter into agreements with port and navigation districts and other political subdivisions or agencies of the state regarding matters of mutual concern;

(9) make payments in lieu of taxes to the state and political subdivisions of the state to the same extent as if the property of the authority were privately owned, provided, however, that any payments in lieu of taxes shall be based on full value less the value of the interests of any public or private entities contracted with to operate the facility; and

(10) take any other actions determined by the board to be necessary for the authority to carry out its duties and responsibilities in implementing the provisions of this chapter.

(b) In addition to the foregoing, the authority may:

(1) own, construct, maintain, lease as lessor or lessee, and sell by installment sale or otherwise, deepwater mooring facilities, wharves, sheds, pipelines, pumping stations, tanks, tank farms and facilities, heliports, warehouses, vessels, and other property, structures, equipment, and other facilities functionally related to a deepwater port;

(2) dredge and maintain shipways, channels, anchorage, roadsteads, and fairways;

(3) establish, operate, and maintain navigable waterway systems in the immediate area of the facilities constructed hereunder, in cooperation with the United States, this state, and political subdivisions of this state;

(4) enter into a contract with any public or private entity to provide public utility service to the authority and its facilities, or provide its own utility services;

(5) negotiate with and enter into contracts, compacts, and other agreements with the United States and other states of the United States concerning development programs including jurisdictional aspects of the location of deepwater ports and adoption and enforcement of rules governing authority operations;

(6) adopt tolls, fees, rates, tariffs, and charges for use of the terminal or terminals or any of its facilities;

(7) provide for use of existing port facilities and provide for rates, wharfage fees, and other matters of mutual interest, by agreements with existing port authorities and navigation districts; and

(8) enter into contracts or agreements with any person, corporation, trust, or partnership for the financing, construction, operation, maintenance, and sale by installment or otherwise of a deepwater port or any facilities relative to a deepwater port.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.055. Authority Contracts

(a) The authority may let any contracts for the purchase of materials, machinery, and equipment to constitute the plant, works, facilities, and improvements of a deepwater port, for construction, or for other purposes.

(b) All these contracts shall be let to the lowest responsible bidder after sealed bids are solicited by public notice.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

[Sections 19.056 to 19.100 reserved for expansion]

SUBCHAPTER E. ENVIRONMENTAL PROTECTION

§ 19.101. Protection of the Environment

(a) The authority shall take all reasonable steps to protect the coastal environment and the high seas from any short-term or long-term damage or harm that might occur from any action the authority may take.

(b) The general manager, under the direction of the board, shall formulate an environmental protection plan as soon as possible, which shall be adopted by the authority after proper notice and hearing.

(c) In preparing and adopting the environmental protection plan, the authority shall consult and coordinate with any federal, state, and local agencies that have responsibility for environmental protection within the state and shall comply with applicable rules.

(d) The environmental protection plan may be amended at any time by the authority after proper notice and hearing.

(e) Environmental protection shall be a primary responsibility of the authority, and costs incurred to develop the plan to protect the environment shall be considered a necessary cost to the authority and shall be considered a cost to the same extent that economic, engineering, or promotional programs are considered costs.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

[Sections 19.102 to 19.130 reserved for expansion]

SUBCHAPTER F. FINANCIAL PROVISIONS

§ 19.131. General Provisions

The authority may:

(1) borrow money from time to time for any corporate purpose or in aid of any corporate purpose;

(2) issue and sell notes and provide the terms and conditions for repayment with interest and the rights of the holders of the notes;

(3) issue and sell bonds and provide the terms and conditions for repayment with interest and the rights of the bondholders;

(4) pledge, hypothecate, or otherwise encumber all or any designated part of the revenues and receipts of the authority as security for any of its notes or bonds;

(5) invest money held in any sinking fund, reserve fund, or other fund or money not required for immediate use or disbursement in such securities as it shall determine;

(6) apply for, accept, and administer grants, loans, and other assistance from the United States or any agency or instrumentality of the United States and any agency or instrumentality of this state to carry out the purpose of this chapter, and enter into any agreement in relation to those grants, loans, or other assistance as may be provided by the authority subject to the provisions of Section 19.036, which is not in conflict with the constitution of this state; and

(7) fix, charge and alter, and collect reasonable rentals, rates, fees, and other charges for the use of any works and facilities or for any services rendered by the authority and provide for the imposition of reasonable penalties for any of those rates, fees, and charges that are delinquent.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.132. Form and Terms of Bonds and Notes

(a) Bonds and notes issued under the provisions of this chapter together with any interest coupons shall be authorized by resolution of the board and shall have the form and characteristics and bear the designation as are therein provided.

(b) Bonds and notes shall:

(1) be authorized by resolution or resolutions of the board;

(2) bear the date or dates, mature at the time or times, serially, terms, or otherwise in not more than 50 years from their dates; and

(3) be callable prior to stated maturity on the terms and at the prices, bear interest at such rate or rates, be payable annually, semiannually, or otherwise, be in the denominations, be in the form, either coupon or registered, carry the registration privileges as to principal only or as to both principal and interest and as to successive exchange of coupon for registered bonds or notes or vice versa and successive exchange of bonds or notes of one denomination for bonds or notes of other denominations, be executed in the manner, and be payable at the place or places within or without the state as the resolution or resolutions may provide.

(c) Bonds or notes may be issued in one or more installments and from time to time as required and sold at a price or prices and under terms determined by the board to be the most advantageous reasonably obtainable.

(d) The proceeds of the sale of bonds or notes shall be deposited in the bank or banks or trust company or trust companies and shall be paid out pursuant to the terms and conditions that may be agreed on between the authority and the purchasers.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.133. Execution of Bonds, Notes, and Coupons

(a) Bonds or notes issued under the provisions of this chapter shall be signed by the chairman or vice-chairman of the board, be attested by its general manager, and bear the seal of the authority.

(b) Any interest coupons appurtenant to the bonds or notes shall be signed by the chairman or the vice-chairman of the board and be attested by its general manager.

(c) The resolution or resolutions authorizing the issuance of an installment or any series of bonds or notes may prescribe the extent to which the authority, in executing the bonds, notes, or appurtenant coupons, may use facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals.

(d) If an officer whose manual or facsimile signature appears on a bond or note or whose facsimile signature appears on any coupons ceases to be an officer before the bond or note is delivered, the signature is valid and sufficient for all purposes as if he had remained in office until the delivery had been made.

(e) Neither the members of the board nor officers of the authority nor anyone executing the bonds or notes for and on behalf of the authority shall be liable personally on the bonds or notes of the authority by reason of participation in any way in the issuance of the bonds or notes.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.134. Security Provisions, Etc.

(a) The bonds or notes may be secured by a pledge of all or any part of the revenues or receipts of the

authority or by the revenues of any one or more leases or other contracts theretofore or thereafter made or other revenues or income specified by the resolution of the board or in the trust indenture or other instrument securing the bonds or notes. A pledge may reserve the right, under conditions specified in it, to issue additional bonds or notes that will be on a parity with or subordinate to the bonds or notes then being issued.

(b) A pledge or security instrument made by the authority is valid and binding from the time when it is made. The revenues or money pledged and entrusted and thereafter received by the authority shall immediately be subject to the lien of the pledge or security instrument without any physical delivery of it or further act. The lien of the pledge or security instrument is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice thereof. Neither the resolution nor any security instrument or other instrument by which a pledge or security interest is created need be recorded or filed, and compliance with any provision of any other law is not required in order to perfect the pledge or other security interest.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.135. Provisions of Resolution

A resolution authorizing bonds or notes or a trust indenture under which bonds or notes may be issued may contain provisions, which shall be a part of the agreement with the holders of bonds or notes, as to:

(1) pledging all or any part of the rentals, rates, fees, and other charges made or received by the authority and other money received or to be received from the planning, financing, ownership, operation, or sale of or otherwise in connection with any project to secure the payment of the bonds or notes or of any issue of the bonds or notes;

(2) pledging all or any part of the assets of the authority, including any obligation acquired by the authority, to secure the payment of the bonds or notes or any issue of the bonds or notes;

(3) the use and disposition of rentals, rates, fees, and other charges made or received by the authority;

(4) pledging to establish, alter, and collect rates and other charges with respect to each property or facility sufficient to produce revenues adequate to pay all expenses necessary to the operation and maintenance of such to be made in respect of any of those bonds or notes payable out of those revenues as the bonds or notes become due and payable, and to fulfill the terms of any agreement made with the holders of the bonds or notes and with any person in their behalf;

(5) the setting aside of reserves or sinking funds and the regulation and disposition of those reserves and sinking funds;

(6) limitations on the purpose to which the proceeds from the sale of the bonds may be applied and pledging the proceeds to secure the payment of the bonds, notes, or any issue of the notes or bonds;

(7) limitations on the issuance of additional bonds and on the refunding of outstanding or other bonds or notes;

(8) the acquisition, construction, improvement, operation, extension, enlargement, maintenance, and repair of any project and the duties of the authority with reference thereto;

(9) the procedure, if any, by which the terms of any agreement with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which are required to give consent thereto, and the manner in which the consent may be given;

(10) limitations on the amount of money to be spent by the authority for administrative or other expenses;

(11) vesting in a trustee or other fiduciary, property, rights, powers, and duties in trust the authority determines, which may include any of the rights, powers, and duties of the trustee appointed by the bondholders or noteholders pursuant to this chapter, and abrogating the right of the bondholders or noteholders to appoint a trustee under this chapter or limiting the rights, powers, and duties of the trustee;

(12) placing the management, operation, and control of specified works and facilities of the authority in the hands of a board of trustees to be named in the resolution or trust indenture and specifying the terms of office of the trustees, their powers and duties, the manner of exercising the same, the appointment of successors, and all matters pertaining to their organization and duties; and

(13) any other matters, of like or different character, which in any way affect the security or protection of the bonds or notes or the bondholders or noteholders.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.136. Default Provisions

The resolution authorizing the issuance of the bonds or notes or the trust indenture or other instrument securing them may provide that in the event of a default or, under the conditions therein stated, a

threatened default in the payment of principal or of interest on bonds or notes, any court of competent jurisdiction may, on petition of the holders of outstanding bonds or notes, appoint a receiver with authority to collect and receive pledged income, and those instruments may limit or qualify the rights of less than all of the holders of the outstanding bonds or notes payable from the same source to institute or prosecute any litigation affecting the authority's properties or revenues.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.137. Additional Security

(a) Any bonds or notes, including refunding bonds, authorized by this chapter may be additionally secured by a trust indenture under which the trustee may be a bank having trust powers situated either within or without the state.

(b) The bonds or notes, within the discretion of the board, may be additionally secured by a mortgage or a deed of trust lien or security interest on works and facilities of the authority and all real property, franchises, easements, leases, and contracts and all rights appurtenant to those properties, vesting in the trustee power to sell those works and facilities for the payment of the indebtedness and to operate those works and facilities, and all other powers and authority for the further security of the bonds or notes.

(c) The trust indenture, regardless of the mortgage or the deed of trust lien or security interest in the properties, may contain any provisions prescribed by the authority for the security of the bonds or notes and the preservation of the trust estate, may make provision for amendment or modification thereof, may condition the right to spend the authority's money or sell the authority's works and facilities on approval of a registered professional engineer selected as provided in the trust indenture, and may make any other provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as may be reasonable and proper and not in violation of the law. The trust indenture may also contain provisions governing the issuance of bonds and notes to replace lost, stolen, or mutilated bonds or notes.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.138. Bond Proceeds

(a) The board may direct the investment of money in the funds created by the resolutions, trust indentures, or other instruments securing the bonds or notes.

(b) From the proceeds from the sale of the bonds or notes, the board may set aside amounts for payments into the interest and sinking fund until completion of construction and until adequate revenue is available from operations to pay principal and interest and amounts for payments into reserve funds, and provisions for such may be made in the resolution authorizing the bonds, notes, or the trust indenture or other instrument securing the bonds or notes.

(c) Proceeds from the sale of the bonds or notes shall be used for the payment of all expenses of issuing and selling the bonds or notes.

(d) The proceeds from the sale of the bonds or notes and money in any funds created in connection with the bonds or notes may be invested in:

(1) direct or indirect obligations of or obligations unconditionally guaranteed by the United States government or one of its agencies maturing in the manner that may be specified by the resolution authorizing the bonds or notes or the trust indenture or other instrument securing the bonds or notes; or

(2) certificates of deposit of any bank or trust company whose deposits are secured by the obligations described in Subdivision (1) of this subsection.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.139. Depository

Any bank or trust company located in this state and incorporated under the laws of the United States or any state in the United States may be designated by resolution to act as depository for the proceeds of bonds, notes, or contract or lease revenues or other revenues of the authority. The bank or trust company shall furnish indemnifying bonds or pledge securities to secure those deposits to the same extent as may be required by general law to secure the deposit of state funds.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.140. Refunding

(a) The board may provide by resolution for the issuance of refunding bonds or notes to refund outstanding bonds or notes issued under this chapter and their accrued interest.

(b) The authority may sell these bonds or notes and use the proceeds to retire the outstanding bonds or notes issued under this chapter or the authority may exchange the refunding bonds or notes for the outstanding bonds or notes.

(c) The issuance of the refunding bonds or notes, their maturity, the rights of the bondholders and the duties of the authority with respect to refunding bonds or notes are governed by the provisions of this chapter relating to original bonds or notes, to the extent that they may be made applicable.

(d) The authority may also refund any bonds or notes under the provisions of general law.

(Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.141. Approval and Registration of Bonds and Notes

(a) After bonds and notes, including refunding bonds and notes, are authorized by the board, those bonds and notes and the record relating to their issuance shall be submitted to the attorney general for his examination as to their validity.

(b) If the bonds and notes recite that they are secured by a pledge of the proceeds of any lease or other contract previously made between the authority and any person, those leases and contracts may also be submitted to the attorney general.

(c) If those bonds or notes have been validly authorized and if those leases or contracts have been made in accordance with the constitution and laws of the state, the attorney general shall approve the bonds or notes, and the leases or contracts and the bonds or notes shall be registered by the state comptroller.

(d) The attorney general in approving bonds or notes issued in anticipation of being refunded by other bonds and notes shall not require as a condition of his approval that those bonds or notes being examined have pledged to them sufficient revenues to retire the bonds and notes before the time they will be refunded in accordance with such anticipation.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.142. Incontestability

After the bonds or notes, and the leases or other contracts, if any, have been approved by the attorney general, and the bonds and notes have been registered by the state comptroller and delivered to the purchasers, those bonds and notes and any underlying leases and contracts are incontestable for any cause.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.143. Duties Enforceable by Mandamus

Payment of any bonds and notes according to the term and tenor, performance of agreements with the holders of bonds or notes or any person in their behalf, and performance of official duties prescribed by the provisions of this chapter in connection with any bonds or notes may be enforced in any court of competent jurisdiction by mandamus or other appropriate proceeding.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.144. Bonds Negotiable

Bonds issued under the provisions of this chapter and coupons, if any, representing interest on those bonds, shall, when delivered, be deemed and construed to be a "security" within the meaning of Chapter 8 of the Uniform Commercial Code, as amended.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.145. Bonds and Notes not Taxable

Bonds and notes issued under the provisions of this chapter, the interest on the bonds and notes, and the profit from the sale of the bonds and notes shall be exempt from taxation, except inheritance taxes, by the state or by any municipal corporation, county, or other political subdivision or taxing district of the state.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.146. Authorized Investments

Bonds and notes issued under this chapter are legal and authorized investments for:

(1) banks;
(2) savings banks;
(3) trust companies;
(4) building and loan associations;
(5) insurance companies;
(6) fiduciaries;
(7) trustees; and
(8) sinking funds of the state and of cities, towns, villages, counties, school districts, and all political corporations, subdivisions, and public agencies of the state.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.147. Security for Deposit of Funds

Bonds and notes issued under the provisions of this chapter, when accompanied by all appurtenant unmatured coupons if any, are lawful and sufficient security for all deposits of funds of the state or of a city, town, village, county, school district, or any other agency or political corporation or subdivision of the state, at the par value of the bonds.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.148. Source of Repayment

Bonds and notes issued under the provisions of this chapter together with the interest on the bonds and notes shall be secured by and payable solely from the revenues and receipts of the authority and other money available therefor, including, without limitation, rentals, rates, fees, and other charges made and received by the authority and other money received and to be received from grants and assistance, and other money received and to be received from the planning, financing, ownership, or operation of any works and facilities of the authority, and other money available therefor from proceeds of bonds or notes.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.149. State Credit not Pledged

(a) The provisions of this chapter shall not be construed to authorize the giving or lending of the credit of the state or to be a pledge of the credit of the state for the payment of any bonds or notes issued under the provisions of this chapter, and the purchasers and successive holders of any bonds or notes shall never have the right to demand payment from any money or revenues of the authority except those pledged to the payment of bonds or notes.

(b) This chapter shall not be construed as obligating this state to the holders of any of those bonds or notes nor to constitute a contract on the part of this state to make money available for any of the authority's needs.

(c) This state, however, pledges and agrees to the holders of any bonds or notes issued under this chapter that it will not limit or alter the rights vested in the authority to fulfill the terms of any agreements made with the holders thereof consistent herewith, or in any way impair the rights and remedies of the holders until the bonds and notes, together with interest on them, with interest on any unpaid installments of interest, and all costs and expenses for which the authority is liable in connection with any action or proceedings by or on behalf of the holders, are fully met and discharged. The authority shall include this pledge and agreement of the state in any agreements it makes with the holders of the bonds or notes.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

[Chapter 20 to 25 reserved for expansion]

SUBTITLE D. WATER QUALITY CONTROL

CHAPTER 26. WATER QUALITY CONTROL

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Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977, for disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

§ 26.001. Definitions

Text of section effective until delegation of NPDES permit authority

As used in this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Water Commission.

(3) "Executive director" means the executive director of the Texas Department of Water Resources.

(4) "Department" means the Texas Department of Water Resources.

(5) "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(6) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.

(7) "Sewage" means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

(8) "Municipal waste" means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.

(9) "Recreational waste" means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.

(10) "Agricultural waste" means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term "agricultural waste" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.

(11) "Industrial waste" means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.

(12) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste, that may cause impairment of the quality of water in the state. "Other waste" also includes tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farmland that may cause impairment of the quality of the water in the state.

(13) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(14) "Sewer system" means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

(15) "Treatment facility" means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.

(16) "Disposal system" means any system for disposing of waste, including sewer systems and treatment facilities.

(17) "Local government" means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution.

(18) "Permit" means an order issued by the commission in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made.

(19) "To discharge" includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective upon delegation of NPDES permit authority, see § 26.001, post

§ 26.001. Definitions

Text of section effective upon delegation of NPDES permit authority

As used in this chapter:

(1) "Board" means the Texas Water Development Board.

(2) "Commission" means the Texas Water Commission.

(3) "Executive director" means the executive director of the Texas Department of Water Resources.

(4) "Department" means the Texas Department of Water Resources.

(5) "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(6) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.

(7) "Sewage" means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

(8) "Municipal waste" means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.

(9) "Recreational waste" means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.

(10) "Agricultural waste" means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term "agricultural waste" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farmland.

(11) "Industrial waste" means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.

(12) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste.

(13) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

(14) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) "Sewer system" means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

(16) "Treatment facility" means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.

(17) "Disposal system" means any system for disposing of waste, including sewer systems and treatment facilities.

(18) "Local government" means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution.

(19) "Permit" means an order issued by the commission in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made.

(20) "To discharge" includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(21) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

(22) "Identified state supplement to an NPDES permit" means any part of a permit on which the board has entered a written designation to indicate that the board has adopted that part solely in order to carry out the board's duties under state statutes and not in pursuance of administration undertaken to carry out a permit program under approval by the Administrator of the United States Environmental Protection Agency.

(23) "NPDES" means the National Pollutant Discharge Elimination System under which the Administrator of the United States Environmental Protection Agency can delegate permitting authority to the State of Texas in accordance with Section 402(b) of the Federal Water Pollution Control Act.[1]

[Amended by Acts 1977, 65th Leg., p. 1640, ch. 644, § 1; Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] 33 U.S.C.A. § 1342(b).

For text of section effective until delegation of NPDES permit authority, see § 26.001, ante

Section 12 of Acts 1977, 65th Leg., p. 1647, ch. 644, provided:

"This Act shall take effect upon full or partial delegation of NPDES permit authority to the board by the Administrator of the United States Environmental Protection Agency pursuant to Section 402(b) of the Federal Water Pollution Control Act but shall not be construed to affect persons discharging, proposing to discharge or threatening to discharge wastes or pollutants over which the board does not have such delegated NPDES permit authority. In no event, however, shall this Act become effective prior to October 1, 1977. The provisions of this Act shall be effective only during such periods that the board maintains such NPDES permit authority."

§ 26.002. Ownership of Underground Water

Nothing in this chapter affects ownership rights in underground water.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.003. Policy of This Subchapter

It is the policy of this state and the purpose of this subchapter to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state; to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 26.004 to 26.010 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES

§ 26.011. In General

Except as otherwise specifically provided, the department shall administer the provisions of this chapter and shall establish the level of quality to be maintained in, and shall control the quality of, the water in this state as provided by this chapter. Waste discharges or impending waste discharges covered by the provisions of this chapter are subject to reasonable rules or orders adopted or issued by the department in the public interest. The department has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.012. State Water Quality Plan

The executive director shall prepare and develop a general, comprehensive plan for the control of water quality in the state which shall be used as a flexible guide by the department when approved by the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.013. Research, Investigations

The executive director shall conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.014. Power to Enter Property

Text of section effective until delegation of NPDES permit authority

The members of the commission and employees and agents of the department are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state. Members, employees, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, or agent is refused the right to enter in or on public or private property under this authority, the executive director may invoke the remedies authorized in Section 26.123 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective upon delegation of NPDES permit authority, see § 26.014, post

§ 26.014. Power to Enter Property

Text of section effective upon delegation of NPDES permit authority

The members of the commission and employees and agents of the department are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit or other order of the department. Members, employees, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, or agent is refused the right to enter in or on public or private property under this authority, the executive director may invoke the remedies authorized in Section 26.123 of this code.

[Amended by Acts 1977, 65th Leg., p. 1640, ch. 644, § 1; Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective until delegation of NPDES permit authority, see § 26.014, ante

For effective date of Acts 1977, 65th Leg., ch. 644, see note under § 26.001.

§ 26.015. Power to Examine Records

Text of section effective until delegation of NPDES permit authority

The members of the commission and employees and agents of the department may examine during regular business hours any records or memoranda pertaining to the operation of any sewer system, disposal system, or treatment facility or pertaining to any discharge of waste.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective upon delegation of NPDES permit authority, see § 26.015, post

§ 26.015. Power to Examine Records

Text of section effective upon delegation of NPDES permit authority

The members of the commission and employees and agents of the department may examine and copy during regular business hours any records or memoranda pertaining to the operation of any sewer system, disposal system, or treatment facility or pertaining to any discharge of waste or pollutants into any water in the state, or any other records required to be maintained.

[Amended by Acts 1977, 65th Leg., p. 1640, ch. 644, § 1; Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective until delegation of NPDES permit authority, see § 26.015, ante

For effective date of Acts 1977, 65th Leg., ch. 644, see note under § 26.001.

§ 26.016. Enforcement Proceedings

The executive director may institute court proceedings to compel compliance with the provisions of this chapter or the rules, orders, permits, or other decisions of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.017. Cooperation

The department shall:

(1) encourage voluntary cooperation by the people, cities, industries, associations, agricultural interests, and representatives of other interests in preserving the greatest possible utility of water in the state;

(2) encourage the formation and organization of cooperative groups, associations, cities, industries, and other water users for the purpose of providing a medium to discuss and formulate plans for attainment of water quality control;

(3) establish policies and procedures for securing close cooperation among state agencies that have water quality control functions; and

(4) cooperate with the governments of the United States and other states and with official

or unofficial agencies and organizations with respect to water quality control matters and with respect to formulation of interstate water quality control compacts or agreements, and when representation of state interests on a basin planning agency for water quality purposes is required under Section 3(c) of the Federal Water Pollution Control Act, as amended,[1] or other federal legislation having a similar purpose, the representation shall include an officer or employee of the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] See 33 U.S.C.A. § 1252(c).

§ 26.018. Contracts, Instruments

With the approval of the board, the executive director may make contracts and execute instruments that are necessary or convenient to the exercise of the department's powers or the performance of its duties.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.019. Orders

(a) The commission is authorized to issue orders and make determinations necessary to effectuate the purposes of this chapter.

(b) The commission shall set forth the findings on which it bases any order granting or denying special relief requested of the commission or involving a determination following a hearing on an alleged violation of Section 26.121 of this code or directing a person to perform or refrain from performing a certain act or activity.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.0191. Temporary Orders Prior to Notice and Hearing

(a) The commission may issue temporary orders relating to the discharge of waste without notice and hearing, or with such notice and hearing as the commission considers practicable under the circumstances, when this is necessary to enable action to be taken more expeditiously than is otherwise provided by this chapter to effectuate the policy and purposes of this chapter.

(b) If the commission issues a temporary order under this authority without a hearing, the order shall fix a time and place for a hearing to be held before the commission, which shall be held as soon after the temporary order is issued as is practicable.

(c) At the hearing, the commission shall affirm, modify, or set aside the temporary order. If the nature of the commission's action requires, further proceedings shall be conducted as appropriate under provisions of the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes).

(d) The requirements of Section 26.022 of this code relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to such a hearing, but such general notice of the hearing shall be given as the commission considers practicable under the circumstances.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.020. Hearing Powers

The commission may call and hold hearings, administer oaths, receive evidence at the hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering the provisions of this chapter or the rules, orders, or other actions of the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.021. Delegation of Hearing Powers

(a) Except for those hearings required to be held before the commission under Section 26.019(b)[1] of this code, the commission may authorize the chief hearing examiner to call and hold hearings on any subject on which the commission may hold a hearing.

(b) The commission may also authorize the chief hearing examiner to delegate to one or more hearing examiners the authority to hold any hearing called by him.

(c) At any hearing called by the chief hearing examiner, he or the person delegated the authority by him to hold the hearing is empowered to administer oaths and receive evidence.

(d) The individual or individuals holding a hearing under the authority of this section shall report the hearing in the manner prescribed by the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] So in enrolled bill; probably should read "26.0191(b)".

§ 26.022. Notice of Hearings; Continuance

(a) Except as otherwise provided in Sections 26.0191 and 26.176 of this code, the provisions of this section apply to all hearings conducted in compliance with this chapter.

(b) Notice of the hearing shall be published at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, the commission has reason to believe persons reside who may be affected by the action that may be taken as a result of the hearing. The date of the publication shall be not less than 20 days before the date set for the hearing.

(c) If notice of the hearing is required by this chapter to be given to a person, the notice shall be served personally or mailed not less than 20 days before the date set for the hearing to the person at his last address known to the commission. If the party is not an individual, the notice may be given to any officer, agent, or legal representative of the party.

(d) The individual or individuals holding the hearing, called the hearing body, shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing a new notice.

(e) If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the person conducting the hearing at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed in Subsection (c) of this section at a reasonable time before the new setting, but it is not necessary to publish a newspaper notice of the new setting.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.023. Water Quality Standards

The board by rule shall set water quality standards for the water in the state and may amend the standards from time to time. The board has the sole and exclusive authority to set water quality standards for all water in the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.024. Hearings on Standards; Consultation

Before setting or amending water quality standards, the board shall:

(1) hold public hearings at which any person may appear and present evidence under oath, pertinent for consideration by the board; and

(2) consult with the executive director to insure that the proposed standards are not inconsistent with the objectives of the state water plan.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.025. Hearings on Standards: Notice to Whom

Notice of a hearing under Section 26.024 of this code shall be given to each of the following that the board believes may be affected:

(1) each local government whose boundary is contiguous to the water in question or whose boundaries contain all or part of the water, or through whose boundaries the water flows;

(2) the holders of rights to appropriate water from the water in question as shown by the records of the department; and

(3) the holders of permits from the commission to discharge waste into or adjacent to the water in question.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.026. Standards to be Published

The department shall publish its water quality standards and amendments and shall make copies available to the public on written request.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.027. Commission May Issue Permits

Text of section effective until delegation of NPDES permit authority

(a) The commission may issue permits and amendments to permits for the discharge of waste into or adjacent to water in the state.

(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the department containing all information reasonably required by the department.

(c) A person may not commence construction of a treatment facility until the commission has issued a permit to authorize the discharge of waste from the facility, except with the approval of the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective upon delegation of NPDES permit authority, see § 26.027, post

§ 26.027. Commission May Issue Permits

Text of section effective upon delegation of NPDES permit authority

(a) The commission may issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. No permit shall be issued authorizing the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste. The commission may refuse to issue a permit when the commission finds that issuance of the permit would violate the provisions of any state or federal law or rule or regulation promulgated thereunder, or when the commission finds that issuance of the permit would interfere with the purpose of this chapter.

(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the department containing all information reasonably required by the department.

(c) A person may not commence construction of a treatment facility until the commission has issued a permit to authorize the discharge of waste from the facility, except with the approval of the commission.

(d) The commission may not require under this chapter any permit for the placing of dredged or fill materials into or adjacent to water in the state for the purpose of constructing, modifying, or maintaining facilities or structures, but this does not change or limit any authority the commission may have with respect to the control of water quality. The commission may adopt rules and regulations to govern and control the discharge of dredged or fill materials consistent with the purpose of this chapter.

[Amended by Acts 1977, 65th Leg., p. 1645, ch. 644, § 7; Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective until delegation of NPDES permit authority, see § 26.027, ante

For effective date of Acts 1977, 65th Leg., ch. 644, see note under § 26.001.

§ 26.028. Action on Application

(a) Except as provided in Subsections (b) and (c) of this section, notice shall be given to the persons who in the judgment of the commission may be affected by an application for a permit, permit amendment, or renewal of a permit. The commission, on the motion of a commissioner, or on the request of the executive director or any affected person, shall hold a public hearing on the application for a permit, permit amendment, or renewal of a permit.

(b) An application to amend a permit to improve the quality of waste authorized to be discharged may be set for consideration and may be acted on by the commission at a regular meeting without the necessity of holding a public hearing if the applicant does not seek to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge. Notice of the application shall be mailed to the mayor and health authorities for the city or town, and the county judge and health authorities for the county, in which the waste is or will be discharged, at least 10 days before the commission meeting, and they may present information to the commission on the application.

(c) An application to renew a permit for a confined animal feeding operation which was issued between July 1, 1974, and December 31, 1977, may be set for consideration and may be acted on by the commission at a regular meeting without the necessity of holding a public hearing if the applicant does not seek to discharge into or adjacent to water in the state and does not seek to change materially the pattern or place of disposal.

(d) For the purposes of Subsection (a), the commission may act on the application without holding a public hearing if all of the following conditions are met:

(1) not less than 45 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge;

(2) not less than 45 days before the date of action on the application by the commission, the applicant has served or mailed the commission's notice of the application to persons who in the judgment of the commission may be affected. As part of his application the applicant shall submit an affidavit which lists the names and addresses of the persons who may be affected by the application and includes the source of the list;

(3) within 45 days after the date of the newspaper publication of the commission's notice, neither a commissioner, the executive director, nor an affected person who objects to the application has requested a public hearing.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1984, ch. 781, § 1, eff. Aug. 27, 1979.]

§ 26.029. Conditions of Permit; Amendment; Revocation and Suspension

Text of section effective until delegation of NPDES permit authority

(a) In each permit, the commission shall prescribe the conditions on which it is issued, including:

(1) the duration of the permit;

(2) the location of the point of discharge of the waste;

(3) the maximum quantity of waste that may be discharged under the permit at any time and from time to time;

(4) the character and quality of waste that may be discharged under the permit; and

(5) any monitoring and reporting requirements prescribed by the commission for the permittee.

(b) After a public hearing, notice of which shall be given to the permittee, the commission may require the permittee, from time to time, for good cause, to conform to new or additional conditions. The commission shall allow the permittee a reasonable time to conform to the new or additional conditions, and on application of the permittee, the commission may grant additional time.

(c) A permit does not become a vested right in the permittee. After a public hearing, notice of which shall be given to the permittee, the commission may revoke or suspend a permit for good cause on any of the following grounds:

(1) the permittee has failed or is failing to comply with the conditions of the permit;

(2) the permit is subject to cancellation or suspension under Section 26.084 of this code;

(3) the permit or operations under the permit have been abandoned; or

(4) the permit is no longer needed by the permittee.

(d) The notice required by Subsections (b) and (c) of this section shall be sent to the permittee at his last known address as shown by the records of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective upon delegation of NPDES authority, see § 26.029, post

§ 26.029. Conditions of Permit; Amendment; Revocation and Suspension

Text of section effective upon delegation of NPDES permit authority

(a) In each permit, the commission shall prescribe the conditions on which it is issued, including:

(1) the duration of the permit;

(2) the location of the point of discharge of the waste;

(3) the maximum quantity of waste that may be discharged under the permit at any time and from time to time;

(4) the character and quality of waste that may be discharged under the permit; and

(5) any monitoring and reporting requirements prescribed by the commission for the permittee.

(b) After a public hearing, notice of which shall be given to the permittee, the commission may require the permittee, from time to time, for good cause, in conformance with applicable laws, to conform to new or additional conditions.

(c) A permit does not become a vested right in the permittee. After a public hearing in conformance with applicable laws, notice of which shall be given to the permittee, the commission may revoke or suspend a permit for good cause on any of the following grounds:

(1) the permittee has failed or is failing to comply with the conditions of the permit;

(2) the permit is subject to cancellation or suspension under Section 26.084 of this code;

(3) the permit or operations under the permit have been abandoned;

(4) the permit is no longer needed by the permittee;

(5) the commission finds that a change in conditions requires elimination of the discharge;

(6) revocation or suspension is necessary in order to maintain the quality of water in the state consistent with the objectives of this chapter; or

(7) the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

(d) The notice required by Subsections (b) and (c) of this section shall be sent to the permittee at his last known address as shown by the records of the department.

[Amended by Acts 1977, 65th Leg., p. 1646, ch. 644, § 8; Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective until delegation of NPDES permit authority, see § 26.029, ante

For effective date of Acts 1977, 65th Leg., ch. 644, see note under § 26.001.

§ 26.030. Permit: Effect on Recreational Water

In considering the issuance of a permit to discharge effluent into any body of water having an established recreational standard, the commission shall consider any unpleasant odor quality of the effluent and the possible adverse effect that it might have on the receiving body of water, and the commission may consider the odor as one of the elements of the water quality of the effluent.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.031. Private Sewage Facilities

(a) As used in this section and Section 26.032 of this code, "private sewage facilities" means septic tanks, pit privies, cesspools, sewage holding tanks, injection wells used to dispose of sewage, chemical toilets, treatment tanks, and all other facilities, systems, and methods used for the disposal of sewage other than disposal systems operated under a permit issued by the commission.

(b) Whenever it appears that the use of private sewage facilities in an area is causing or may cause pollution or is injuring or may injure the public health, the commission may hold a public hearing in or near the area to determine whether an order should be entered controlling or prohibiting the installation or use of private sewage facilities in the area.

(c) Before the commission enters its order, the executive director shall consult with the Director of Health Resources for recommendations concerning the impact of the use of private sewage facilities in the area on public health and present the recommendations at the hearing.

(d) If the commission finds after the hearing that the use of private sewage facilities in an area is causing or may cause pollution or is injuring or may injure the public health, the commission may enter an order as it may consider appropriate to abate or prevent pollution or injury to public health.

(e) The order may, without limitation, do one or more of the following:

(1) limit the number and kind of private sewage facilities which may be used in the area;

(2) prohibit the installation and use of additional private sewage facilities or kinds of private sewage facilities in the area;

(3) require modifications or improvements to existing private sewage facilities or impose limitations on their use; and

(4) provide for a gradual and systematic reduction of the number or kinds of private sewage facilities in the area.

(f) The commission may provide in the order for a system of licensing of private sewage facilities in the area, including procedures for cancellation of a license for violation of this section, the license, or the orders or rules of the department. The commission may also provide in the system of licensing for periodic renewal of the licenses, but this may not be required more frequently than once a year.

(g) The commission may delegate the licensing function and the administration of the licensing system to the executive director or to any local government whose boundaries include the area or which has been designated by the commission under Sections 26.081 through 26.086 of this code as the agency to develop a regional waste disposal system which includes the area or to any district or authority created and existing under Article XVI, Section 59 or Article III, Section 52 of the Texas Constitution, which owns or operates a dam or reservoir project within the area regulated.

(h) The board also may prescribe and require the payment of reasonable license fees by an applicant for a license, including fees for periodic renewal of a license. The board may change the amount of the license fees from time to time. The amount of the fees shall be based on the reasonable cost of performing the licensing function and administering the licensing system, including, where applicable, costs of soil percolation and other tests to determine the suitability of using a particular type or types of private sewage facilities in the area or at any location within the area, field inspections, travel, and other costs directly attributable to performing the licensing function and administering the licensing system.

(i) If the commission or the executive director has the responsibility for performing the licensing function, the license fees shall be paid to the department. Those fees shall not be deposited in the General Revenue Fund of the state but shall be deposited in a special fund for use by the department in performing the licensing function and administering the licensing system, and the fees so deposited are hereby appropriated to the department to use for those purposes only.

(j) If a local government has the responsibility for performing the licensing function, the fees shall be paid to the local government.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.032. Control by Counties

(a) Whenever it appears to the commissioners court of any county that the use of private sewage facilities in an area within the county is causing or may cause pollution or is injuring or may injure the public health, the county may proceed in the same manner and in accordance with the same procedures as the commission to hold a public hearing and enter an order, resolution, or other rule as it may consider appropriate to abate or prevent pollution or injury to public health.

(b) The order, resolution, or other rule may provide the same restrictions and requirements as are authorized for an order of the commission entered under this section.

(c) Before the order, resolution, or other rule becomes effective, the county shall submit it to the commission and obtain the commission's written approval.

(d) In the event of any conflict within an area between an order adopted by the commission and an order, resolution, or other rule adopted by a county under this section, the order of the commission shall take precedence.

(e) Where a system of licensing has been ordered by the commission or the commissioners court of a county, no person may install or use private sewage facilities required to be licensed without obtaining a license.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.033. Rating of Waste Disposal Systems

(a) After consultation with the Texas Department of Health Resources, the board shall provide by rule for a system of approved ratings for municipal waste disposal systems and other waste disposal systems which the board may designate.

(b) The owner or operator of a municipal waste disposal system which attains an approved rating has the privilege of erecting signs of a design approved by the board on highways approaching or inside the boundaries of the municipality, subject to reasonable restrictions and requirements which may be established by the State Department of Highways and Public Transportation.

(c) In addition, the owner or operator of any waste disposal system, including a municipal system, which attains an approved rating has the privilege of erecting signs of a design approved by the board at locations which may be approved or established by the board, subject to such reasonable restrictions and requirements which may be imposed by any governmental entity having jurisdiction.

(d) If the waste disposal system fails to continue to achieve an approved rating, the commission may revoke the privilege. On due notice from the com-

mission, the owner or operator of the system shall remove the signs.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.034. Approval of Disposal System Plans

(a) This section applies to all sewer systems, treatment facilities, and disposal systems, except those public sewage disposal systems for which plans are subject to review and approval by the Texas Department of Health Resources.

(b) Before beginning construction, every person who proposes to construct or materially alter the efficiency of any sewer system, treatment facility, or disposal system to which this section applies shall submit completed plans and specifications to and obtain the approval of the plans by the board.

(c) The board shall approve the plans and specifications if they conform to the waste discharge requirements and water quality standards established by the commission and the board respectively.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.035. Federal Grants

The executive director with the approval of the board may execute agreements with the United States Environmental Protection Agency or any other federal agency that administers programs providing federal cooperation, assistance, grants, or loans for research, development, investigation, training, planning, studies, programming, and construction related to methods, procedures, and facilities for the collection, treatment, and disposal of waste or other water quality control activities. The department may accept federal funds for these purposes and for other purposes consistent with the objectives of this chapter and may use the funds as prescribed by law or as provided by agreement.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.036. Water Quality Management Plans

(a) The executive director shall develop and prepare, and from time to time revise, comprehensive water quality management plans for the different areas of the state, as designated by the board.

(b) The executive director may contract with local governments, regional planning commissions, planning agencies, other state agencies, colleges and universities in the state, and any other qualified and competent person to assist the department in developing and preparing, and from time to time revising, water quality management plans for areas designated by the board.

(c) With funds provided for the purpose by legislative appropriation, the board may make grants or interest-free loans to, or contract with, local governments, regional planning commissions, and planning agencies to pay administrative and other expenses of such entities for developing and preparing, and from time to time revising, water quality management plans for areas designated by the board. The period of time for which funding under this provision may be provided for developing and preparing or for revising a plan may not exceed three consecutive years in each instance. Any loan made pursuant to this subsection shall be repaid when the construction of any project included in the plan is begun.

(d) Any person developing or revising a plan shall, during the course of the work, consult with the department and with local governments and other federal, state, and local governmental agencies which in the judgment of the executive director may be affected by or have a legitimate interest in the plan.

(e) Insofar as may be practical, the water quality management plans shall be reasonably compatible with the other governmental plans for the area, such as area or regional transportation, public utility, zoning, public education, recreation, housing, and other related development plans.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.037. Approval of Plans

(a) After a water quality management plan has been prepared or significantly revised as authorized in Section 26.036 of this code, it shall be submitted to the board and to such local governments and other federal, state, and local governmental agencies as in the judgment of the executive director may be affected by or have a legitimate interest in the plan.

(b) After a reasonable period of time as determined by the board for the persons to whom the plan was submitted to review and consult on the plan, a public hearing shall be held on whether the plan should be approved or whether the plan should be modified in any way. Notice of the hearing shall be given to the person or persons who prepared or revised the plan and to the persons to whom the plan was submitted for review.

(c) After the public hearing if the board finds that the plan complies with the policy and purpose of this chapter and the rules and policies of the board, it shall approve the plan. If the board does not so find, it may disapprove the plan, modify the plan as necessary so that it will comply, or return it for further development and later resubmission to the board, in accordance with the procedure in Section 26.036 of this code.

(d) When a water quality management plan has been approved as provided in this section, the plan may be furnished to the Federal Environmental Protection Agency, the Federal Water Quality Administration, or any other federal official or agency

in fulfillment of any federal water quality management planning requirement specified for any purpose by the federal government.

(e) The board and the commission may use an approved water quality management plan or a plan in progress but not completed or approved in reviewing and making determinations on applications for permits and on applications for financial assistance for construction of treatment works.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.038. Fiscal Control on Water Quality Management Planning

In administering the program for making grants and loans to and contracting with local governments, regional planning commissions, and planning agencies as authorized in Subsection (c) of Section 26.036 of this code, the board shall adopt rules and procedures for the necessary engineering review and supervision, fiscal control, and fund accounting. The fiscal control and fund accounting procedures are supplemental to other procedures prescribed by law.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.039. Accidental Discharges and Spills

(a) As used in this section:

(1) "Accidental discharge" means an act or omission through which waste or other substances are inadvertently discharged into water in the state.

(2) "Spill" means an act or omission through which waste or other substances are deposited where, unless controlled or removed, they will drain, seep, run, or otherwise enter water in the state.

(3) "Other substances" means substances which may be useful or valuable and therefore are not ordinarily considered to be waste, but which will cause pollution if discharged into water in the state.

(b) Whenever an accidental discharge or spill occurs at or from any activity or facility which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity or facility shall notify the department as soon as possible and not later than 24 hours after the occurrence.

(c) Activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the board may adopt or issue. The safety and preventive measures which may be required shall be commensurate with the potential harm which could result from the escape of the waste or other substances.

(d) The provisions of this section are cumulative of the other provisions in this chapter relating to waste discharges, and nothing in this section exempts any person from complying with or being subject to any other provision of this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.040. Control of Certain Waste Discharges by Rule

Whenever the board determines that the quality of water in an area is adversely affected or threatened by the combined effects of several relatively small-quantity discharges of wastes being made for which it is not practical to issue individual permits or that the general nature of a particular type of activity which produces a waste discharge is such that requiring individual permits is unnecessarily burdensome both to the waste discharger and the department, the board may by rule regulate and set the requirements and conditions for the discharges of waste.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.041. Health Hazards

The department may use any means provided by this chapter to prevent a discharge of waste that is injurious to public health.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.042. Monitoring and Reporting

Text of section effective until delegation of NPDES permit authority

The board may prescribe reasonable requirements for a person making waste discharges to monitor and report on his waste collection, treatment, and disposal activities. When in the judgment of the commission significant water quality management benefits will result or water quality management needs justify, the commission may also prescribe reasonable requirements for any person or persons making waste discharges to monitor and report on the quality of any water in the state which the commission has reason to believe may be materially affected by the waste discharges.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective upon delegation of NPDES authority, see § 26.042, post

§ 26.042. Monitoring and Reporting

Text of section effective upon delegation of NPDES authority

(a) The board may prescribe reasonable requirements for a person making discharges of any waste

or of any pollutant to monitor and report on his activities concerning collection, treatment, and disposal of the waste or pollutant.

(b) The board may, by regulation, order, permit, or otherwise require the owner or operator of any source of a discharge of pollutants into any water in the state or of any source which is an industrial user of a publicly owned treatment works to:

(1) establish and maintain such records;

(2) make such reports;

(3) sample any discharges in accordance with such methods, at such locations, at such intervals, and in such manner as the board shall prescribe; and

(4) provide such other information relating to discharges of pollutants into any water in the state or to introductions of pollutants into publicly owned treatment works as the board may reasonably require.

(c) When in the judgment of the commission significant water quality management benefits will result or water quality management needs justify, the commission may also prescribe reasonable requirements for any person or persons making discharges of any waste or of any pollutant to monitor and report on the quality of any water in the state which the commission has reason to believe may be materially affected by the discharges.

[Amended by Acts 1977, 65th Leg., p. 1640, ch. 644, § 1; Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective until delegation of NPDES permit authority, see § 26.042, ante

For effective date of Acts 1977, 65th Leg., ch. 644, see note under § 26.001.

§ 26.043. The State of Texas Water Pollution Control Compact

(a) The legislature recognizes that various river authorities and municipal water districts and authorities of the state have signed, and that others are authorized to sign and may sign, a document entitled "The State of Texas Water Pollution Control Compact" (hereinafter called the "compact"), which was approved by Order of the Texas Water Quality Board on March 26, 1971, and which is now on file in the official records of the department, wherein each of the signatories is by law an official agency of the state, created pursuant to Article XVI, Section 59 of the Texas Constitution and operating on a multiple county or regional basis, and that collectively those signatories constitute an agency of the state authorized to agree to pay, and to pay, for and on behalf of the state not less than 25 percent of the estimated costs of all water pollution control projects in the state, wherever located, for which federal grants are to be made pursuant to Clause (7), Subsection (b), Section 1158,[1] Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1158), or any similar law, in accordance with and subject to the terms and conditions of the compact. The compact provides a method for taking advantage of increased federal grants for water pollution control projects by virtue of the state payment which will be made from the proceeds from the sale of bonds by the signatories to the compact. The compact is hereby ratified and approved, and it is hereby provided that Section 30.026 of this code shall not constitute a limitation or restriction on any signatory with respect to any contract entered into pursuant to the compact or with respect to any water pollution control project in the state, wherever located, for which the aforesaid federal grants are to be made, and such signatory shall not be required to obtain the consent of any other river authority or conservation and reclamation district which is not a signatory with respect to any such contract or project. Each signatory to the compact is empowered and authorized to do any and all things and to take any and all action and to execute any and all contracts and documents which are necessary or convenient in carrying out the purposes and objectives of the compact and issuing bonds pursuant thereto, with reference to any water pollution control project in the state, wherever located, for which the aforesaid federal grants are to be made.

(b) It is further found, determined, and enacted that all bonds issued pursuant to said compact and all bonds issued to refund or refinance same are and will be for water quality enhancement purposes, within the meaning of Article III, Section 49–d–1, as amended, of the Texas Constitution and any and all bonds issued by a signatory to said compact to pay for all or any part of a project pursuant to the compact and any bonds issued to refund or refinance any such bonds may be purchased by the Texas Water Development Board with money received from the sale of Texas Water Development Board bonds pursuant to said Article III, Section 49–d–1, as amended, of the Texas Constitution. The bonds or refunding bonds shall be purchased directly from any such signatory at such price as is necessary to provide the state payment and any other part of the cost of the project or necessary to accomplish the refunding, and all purchases shall constitute loans for water quality enhancement. The bonds or refunding bonds shall have the characteristics and be issued on such terms and conditions as are acceptable to the board. The proceeds received by any such signatory from the sale of any such bonds shall be used to provide the state payment pursuant to the compact and any other part of the cost of the project, and the proceeds from the sale of any such refunding bonds to refund any outstanding bonds issued pursuant to the compact shall be used to pay off and retire the bonds being refunded thereby.

(c) This subsection is not intended to interfere in any way with the operation of Article III, Section

49–d–1, as amended, of the Texas Constitution or the enabling legislation enacted pursuant thereto, and the aforesaid compact shall constitute merely a complementary or supplemental method for providing the state payment solely in instances that it is deemed necessary or advisable by the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] See, now, 33 U.S.C.A. § 1281 et seq.

§ 26.044. Disposal of Boat Sewage

(a) As used in this section, "boat" means any vessel or other watercraft, whether moved by oars, paddles, sails, or other power mechanism, inboard or outboard, or any other vessel or structure floating on water in this state, whether or not capable of self-locomotion, including but not limited to cabin cruisers, houseboats, barges, marinas, and similar floating objects.

(b) The board shall issue rules concerning the disposal of sewage from boats located or operated on inland fresh waters in this state. The rules of the board shall include but not be limited to provisions for the establishment of standards for sewage disposal devices, the certification of sewage disposal devices, including on-shore pump-out facilities, and the visible and conspicuous display of evidence of certification of sewage disposal devices on each boat equipped with such device and on each on-shore pump-out device.

(c) The board may delegate the administration and performance of the certification function to the executive director or to any other governmental entity. The board may prescribe and require the payment, by applicants for certification, of reasonable fees based on the costs of administering and performing the certification function. All certification fees shall be paid to the entity performing the certification function. All fees collected by any state agency shall be deposited in a special fund for use by that agency in administering and performing the certification function and shall not be deposited in the General Revenue Fund of the state.

(d) Before issuing any rules under Subsection (b) of this section, the board or any person authorized by it under Section 26.021 of this code shall hold hearings thereon in Austin and in five other locations in the state in order to provide the best opportunity for all citizens of the state to appear and present evidence to the board.

(e) Notice of the hearing in Austin shall be published at least once in one or more newspapers having general circulation in the state. Notice of each of the other hearings shall be published at least once in one or more newspapers having general circulation in the region in which each hearing is to be held.

(f) Copies of each rule issued by the board under this section shall be filed in the offices of the department in Austin, Texas, in the office of the Secretary of State in Austin, and the office of the county clerk in each county in the state. The board shall provide for publication of notice of each rule issued under this section in at least one newspaper of general circulation in each county of the state and shall furnish the county judge of each county of the state a copy of the rules.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.045. Pump-Out Facilities for Boat Sewage

(a) In this section:

(1) "Boat" means the same as defined in Section 26.044(a), Water Code.

(2) "Boat pump-out station" means any private or public shoreside installation either independent of or in addition to an organized waste collection, treatment, and disposal system used to receive boat sewage.

(3) "Shoreside installation" means marinas and other installations servicing boats on fresh water of Texas.

(4) "Fresh water" means as geographically applied all of the surface lakes, streams, and reservoirs of the state, exclusive of the extent of ordinary tidal action on this water.

(b) After a public hearing and after making every reasonable effort to bring about the establishment of an adequate number of boat pump-out stations on fresh water, the commission may enter an order requiring the establishment of boat pump-out stations by a local government that has any jurisdiction over at least a portion of the fresh water or over land immediately adjacent to the fresh water.

(c) If a local government is authorized to issue authorization for the operation of shoreside installations, the local government may require the installation and operation of boat pump-out stations where necessary. The local government shall require the installation and operation of boat pump-out stations if required by the commission.

(d) A local government responsible for establishing boat pump-out stations may issue bonds or may use general revenue funds from normal operations to finance the construction and operation of the pump-out facilities. Pump-out stations established as a result of this section will be self-sustaining with respect to costs and revenues collected from users of said facilities, and local governments are authorized to levy reasonable, appropriate charges or fees to recover cost of installation and operation of the pump-out stations. Nothing in this section is to be construed to require any local government to rebate to the State of Texas funds collected pursuant to this program.

(e) The hearings required by this section and other acts of the commission in carrying out the provisions of this section shall be handled as provided in the rules of the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.046. Hearings on Protection of Edwards Aquifer From Pollution

(a) As used in this section, "Edwards Aquifer" means that portion of an arcuate belt of porous, waterbearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Kendall, Comal, and Hays counties, respectively, and as defined in the most recent order of the commission for the protection of the quality of the potable underground water in those counties.

(b) Annually, the commission shall hold a public hearing in Kinney, Uvalde, Medina, Bexar, Kendall, Comal, or Hays County, and a hearing in any other of those counties whose commissioners court requests that a hearing be held in its county, to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution.

(1) Notice of the public hearing shall be given and the hearing shall be conducted in accordance with the rules of the commission.

(2) The hearings examiner, appointed by the commission, shall convene the public hearing at an hour convenient for the public to attend, but not later than 10 a. m. of the day set for the public hearing and shall close the public hearing no later than 6 p. m. of the same day.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[§ 26.047.][1] Permit Conditions and Pretreatment Standards Concerning Publicly Owned Treatment Works

Text of section added effective upon delegation of NPDES permit authority

(a) The board shall impose as conditions in permits for the discharge of pollutants from publicly owned treatment works requirements for information to be provided by the permittee concerning new introductions of pollutants or substantial changes in the volume or character of pollutants being introduced into such treatment works.

(b) The board is authorized to impose as conditions in permits for the discharge of pollutants from publicly owned treatment works appropriate measures to establish and insure compliance by industrial users with any system of user charges required under state or federal law or any regulations or guidelines promulgated thereunder.

(c) The board is authorized to apply, and to enforce pursuant to Subchapter E of this code,[2] against industrial users of publicly owned treatment works, toxic effluent standards and pretreatment standards for the introduction into such treatment works of pollutants which interfere with, pass through, or otherwise are incompatible with such treatment works.

[Added by Acts 1977, 65th Leg., p. 1646, ch. 644, § 9.]

[1] Enacted as § 21.099 by Acts 1977, 65th Leg., p. 1646, ch. 644, § 9, and editorially reclassified.

[2] See, now, Subchapter D of this chapter, § 26.121 et seq.

For effective date of Acts 1977, 65th Leg., ch. 644, see note under § 26.001.

[§ 26.048.][1] Federal Grants for the Construction of Treatment Works; Processing Fees

(a) The board may execute agreements with the United States Environmental Protection Agency or its successor agency and any other federal agency that administers programs providing federal grants to local governments for the construction of treatment works, as defined in Section 21.602[2] of this code. The board may exercise all duties and responsibilities required for the administration by the board of the federal construction grant program.

(b) Each applicant for a federal construction grant, under a grant program administered by the board, shall pay to the board a reasonable grant processing fee as prescribed by the board. The grant processing fee charged by the board shall be cost-eligible under the grant program and shall not exceed one-half of one percent of the total eligible project cost, including the planning, design, and construction phases, for any one project. The board shall promulgate regulations establishing schedules for timely payment of grant processing fees. For grants awarded in steps under a federal program, the time schedule for payment of grant processing fees shall provide for payment reasonably apportioned among each step grant awarded. The grant processing fee for each step grant or for any other grant not awarded in steps shall be due and payable immediately following the award of such grant. No grant processing fee shall be levied for any grant awarded prior to the effective date of this Act; but the grant processing fee established in this Subsection (b) shall be levied on grants awarded on or after the effective date of this Act where the board has processed the grant pursuant to an agreement with the United States Environmental Protection Agency, or its successor agency, or any other federal agency that administers programs providing federal grants to local governments for the construction of treatment works.

(c) All grant processing fees collected by the board shall be deposited in a special fund of the state treasury for use by the board in processing and administering the grant programs, and shall not be deposited in the general revenue fund of the state.

[Added by Acts 1977, 65th Leg., p. 253, ch. 120, § 1, eff. Aug. 29, 1977.]

[1] Enacted as § 21.101 by Acts 1977, 65th Leg., p. 253, ch. 120, § 1, and editorially reclassified.
[2] See, now, § 17.222.

[Sections 26.049 to 26.080 reserved for expansion]

SUBCHAPTER C. REGIONAL AND AREA-WIDE SYSTEMS

§ 26.081. Regional or Area-Wide Systems; General Policy

(a) The legislature finds and declares that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.

(b) Within any standard metropolitan statistical area in the state, the department is authorized to implement this policy in the manner and in accordance with the procedure provided in Sections 26.081 through 26.086 of this code.

(c) In those portions of the state which are not within a standard metropolitan statistical area, the department shall observe this state policy by encouraging interested and affected persons to cooperate in developing and using regional and area-wide systems. The department may not use the procedure specified in Sections 26.081 through 26.086 of this code in these areas to implement this policy. However, this does not affect or diminish any authority which the department may otherwise have and exercise under other provisions of this chapter.

(d) The term "standard metropolitan statistical area," as used in this section, means an area consisting of a county or one or more contiguous counties which is officially designated as such by the United States Office of Management and Budget or its successor in this function.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.082. Hearing to Define Area of Regional or Area-Wide Systems

(a) Whenever it appears to the board that because of the existing or reasonably foreseeable residential, commercial, industrial, recreational, or other economic development in an area a regional or area-wide waste collection, treatment, or disposal system or systems are necessary to prevent pollution or maintain and enhance the quality of the water in the state, the board may hold a public hearing in or near the area to determine whether the policy stated in Section 26.081 of this code should be implemented in that area.

(b) Notice of the hearing shall be given to the local governments which in the judgment of the board may be affected.

(c) If after the hearing the board finds that a regional or area-wide system or systems are necessary or desirable to prevent pollution or maintain and enhance the quality of the water in the state, the board may enter an order defining the area in which such a system or systems are necessary or desirable.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.083. Hearing to Designate Systems to Serve the Area Defined; Order; Election; Etc.

(a) At the hearing held under Section 26.082 of this code or at a subsequent hearing held in or near an area defined under Section 26.082 of this code, the board may consider whether to designate the person to provide a regional or area-wide system or systems to serve all or part of the waste collection, treatment, or disposal needs of the area defined.

(b) Notice of the hearing shall be given to the local governments and to owners and operators of any waste collection, treatment, and disposal systems who in the judgment of the board may be affected.

(c) If after the hearing the board finds that there is an existing or proposed system or systems then capable or which in the reasonably foreseeable future will be capable of serving the waste collection, treatment, or disposal needs of all or part of the area defined and that the owners or operators of the system or systems are agreeable to providing the services, the board may enter an order designating the person to provide the waste collection, treatment, or disposal system or systems to serve all or part of the area defined.

(d) After the board enters an order under Subsection (c) of this section and if the board receives a timely and sufficient request for an election as provided in Section 21.206, the board shall designate a presiding judge for an election, to determine whether the proposed regional or area-wide system or systems operated by the designated regional entity should be created.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 21.203 by Acts 1977, 65th Leg., p. 255, ch. 121, § 1.

§ 26.084. Actions Available to Commission After Designations of Systems

(a) After the board has entered an order as authorized in Section 26.083 of this code, the commission may, after public hearing and after giving notice of the hearing to the persons who in the judgment of the commission may be affected, take any one or more of the following actions:

(1) enter an order requiring any person discharging or proposing to discharge waste into or

adjacent to the water in the state in an area defined in an order entered under Section 26.082 of this code to use a regional or area-wide system designated under Section 26.083 of this code for the disposal of his waste;

(2) refuse to grant any permits for the discharge of waste or to approve any plans for the construction or material alteration of any sewer system, treatment facility, or disposal system in an area defined in an order entered under Section 26.082 of this code unless the permits or plans comply and are consistent with any orders entered under Sections 26.081 through 26.086 of this code; or

(3) cancel or suspend any permit, or amend any permit in any particular, which authorizes the discharge of waste in an area defined in an order entered under Section 26.082 of this code.

(b) Before exercising the authority granted in this section, the commission shall find affirmatively:

(1) that there is an existing or proposed regional or area-wide system designated under Section 26.083 of this code which is capable or which in the reasonably foreseeable future will be capable of serving the waste collection, treatment, or disposal needs of the person or persons who are the subject of an action taken by the commission under this section;

(2) that the owner or operator of the designated regional or area-wide system is agreeable to providing the service;

(3) that it is feasible for the service to be provided on the basis of waste collection, treatment, and disposal technology, engineering, financial, and related considerations existing at the time, exclusive of any loss of revenue from any existing or proposed waste collection, treatment, or disposal systems in which the person or persons who are the subject of an action taken under this section have an interest;

(4) that inclusion of the person or persons who are the subject of an action taken by the commission under this section will not suffer undue financial hardship as a result of inclusion in a regional or area-wide system; and

(5) that a majority of the votes cast in any election held under Section 21.206 [1] of this code favor the creation of the regional or area-wide system or systems operated by the designated regional entity.

(c) An action taken by the commission under Section 26.085 of this code, excluding any person or persons from a regional or area-wide system because the person or persons will suffer undue financial hardship as a result of inclusion in the regional or area-wide system, shall be subject to a review at a later time determined by the commission in accordance with the criteria set out in this section, not to exceed three years from the date of exclusion.

(d) If a person or persons excluded from a regional or area-wide system fail to operate the excluded facilities in a manner that will comply with its permits, the permits shall be subject to cancellation after review by the commission, and the facilities may become a part of the regional or area-wide system.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] See [§ 26.087].

The text of this section incorporates the amendment to former § 21.204 by Acts 1977, 65th Leg., p. 255, ch. 121, § 2.

§ 26.085. Inclusion at a Later Time

Any person or persons who are the subject of an action taken by the commission under Section 26.084 of this code and who are excluded from a regional or area-wide system because the person or persons will suffer undue financial hardship as a result of inclusion in the regional or area-wide system may be added to the system at a later time under the provisions of Section 26.084 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.086. Rates for Services by Designated Systems

(a) On motion of any interested party and after a public hearing, the commission may set reasonable rates for the furnishing of waste collection, treatment, or disposal services to any person by a regional or area-wide system designated under Section 26.083 of this code.

(b) Notice of the hearing shall be given to the owner or operator of the designated regional or area-wide system, the person requesting the hearing, and any other person who in the judgment of the commission may be affected by the action taken by the commission as a result of the hearing.

(c) After the hearing, the commission shall enter an order setting forth its findings and the rates which may be charged for the services by the owner or operator of the designated regional or area-wide system.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[§ 26.087.] [1] Election for Approval of Regional or Area-Wide System or Systems

(a) After the board, under Sections 21.202 [2] and 21.203 [3] of this code, enters an order: defining an area for a regional or area-wide system or systems; designating a regional entity to operate the regional or area-wide system or systems; and appointing a presiding judge for the election, an election shall be held within the boundaries of the proposed regional or area-wide system or systems to be operated by

the designated regional entity upon the filing of a timely and sufficient request for an election except as provided in Subsection (i) of this section.

(b) Any person located within the boundaries of the proposed regional or area-wide system or systems requesting an election for the approval of the proposed regional or area-wide system or systems to be operated by the designated regional entity shall file a written request with the board within 30 days of the date the board enters an order under Section 21.203. The request shall include a petition signed by 50 persons holding title to the land within the proposed regional or area-wide system or systems, as indicated by the county tax rolls.

(c) Notice of the election shall state the day and place or places for holding the election, and the proposition to be voted on. The notice shall be published once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which the regional or area-wide system or systems is to be located. The first publication of the notice shall be at least 14 days before the day set for the election. Notice of the election shall be given to the local governments and to owners and operators of any waste collection, treatment, and disposal systems who in the judgment of the board may be affected.

(d) Absentee balloting in the election shall begin 10 days before the election and shall end as provided in the Texas Election Code. The ballots for the election shall be printed to provide for voting for or against the regional or area-wide system to be operated by the designated regional entity.

(e) Immediately after the election, the presiding judge shall make returns of the result to the executive director of the board. The executive director shall canvass the returns and report to the board his findings of the results at the earliest possible time.

(f) If a majority of the votes cast in the election favor the creation of the regional or area-wide system or systems operated by the designated regional entity, then the board shall declare the regional system is created and enter the results in its minutes. If a majority of the votes cast in the election are against the creation of the regional or area-wide system or systems operated by the designated regional entity, then the board shall declare that the regional system was defeated and enter the result in its minutes.

(g) The order canvassing the results of the confirmation election shall contain a description of the regional system's boundaries and shall be filed in the deed records of the county or counties in which the regional system is located.

(h) The legislature, through the General Appropriations Act, may provide funds for the conduct of elections required under this section. If no funds are appropriated for this purpose, the costs of conducting the election shall be assessed by the board.

(i) This subsection applies to regional or area-wide system or systems and regional entities which have been designated prior to the effective date of this Act. An election to approve creation of a regional or area-wide system or systems and the designation of a regional entity to operate those systems as provided in this section shall not be required for those regional systems or entities to which this subsection applies.

[Added by Acts 1977, 65th Leg., p. 256, ch. 121, § 3, eff. Aug. 29, 1977.]

[1] Enacted as § 21.206 by Acts 1977, 65th Leg., p. 256, ch. 121, § 3, and editorially reclassified.
[2] See, now, § 26.082.
[3] See, now, § 26.083.

[Sections 26.088 to 26.120 reserved for expansion]

SUBCHAPTER D. PROHIBITION AGAINST POLLUTION; ENFORCEMENT

§ 26.121. Unauthorized Discharges Prohibited

Text of section effective until delegation of NPDES permit authority

(a) Except as authorized by a rule, permit, or order issued by the department, no person may:

(1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state;

(2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; or

(3) commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office, or the Railroad Commission of Texas, in which case this subdivision does not apply.

(b) In the enforcement of Subdivisions (2) and (3) of Subsection (a) of this section, consideration shall be given to the state of existing technology, economic feasibility, and the water quality needs of the water that might be affected.

(c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any rule, permit, or order of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective upon delegation of NPDES permit authority, see § 26.121, post

§ 26.121. Unauthorized Discharges Prohibited

Text of section effective upon delegation of NPDES permit authority

(a) Except as authorized by a rule, permit, or order issued by the department, no person may:

(1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state;

(2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; or

(3) commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office, or the Railroad Commission of Texas, in which case this subdivision does not apply.

(b) In the enforcement of Subdivisions (2) and (3) of Subsection (a) of this section, consideration shall be given to the state of existing technology, economic feasibility, and the water quality needs of the water that might be affected.

(c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any rule, permit, or order of the department.

(d) Except as authorized by a rule, permit, or order issued by the department, no person may discharge any pollutant, sewage, municipal waste, recreational waste, agricultural waste, or industrial waste from any point source into any water in the state.

(e) No person may cause, suffer, allow, or permit the discharge from a point source of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of this chapter or of any rule, regulation, permit, or other order of the board.

[Amended by Acts 1977, 65th Leg., p. 1643, ch. 644, § 2; Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective until delegation of NPDES permit authority, see § 26.121, ante

For effective date of Acts 1977, 65th Leg., ch. 644, see note under § 26.001.

§ 26.122. Civil Penalty

Text of section effective until delegation of NPDES permit authority

A person who violates any provision of this chapter or any rule, permit, or order of the department is subject to a civil penalty of not less than $50 nor more than $1,000 for each act of violation and for each day of violation to be recovered as provided in this subchapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective upon delegation of NPDES permit authority, see § 26.122, post

§ 26.122. Civil Penalty

Text of section effective upon delegation of NPDES permit authority

(a) A person who violates any provision of this chapter, other than Subsection (d) or Subsection (e) of Section 21.251, [1] or who violates any rule, permit, or order of the department is subject to a civil penalty of not less than $50 nor more than $1,000 for each act of violation and for each day of violation to be recovered as provided in this subchapter.

(b) A person who violates Subsection (d) or Subsection (e) of Section 21.251 of this chapter is subject to a civil penalty of not more than $10,000 for each act of violation and for each day of violation, to be recovered as provided in this subchapter; provided, however, that in suits instituted pursuant to this subsection, the civil penalty, if any, assessed against the person who committed or who is committing the violation shall be no more than $1,000 for each act of violation and for each day of violation where the violation is of a limitation or condition included in a permit issued by the department prior to delegation by the Administrator of the United States Environmental Protection Agency of NPDES permit authority under Section 402(b) of the Federal Water Pollution Control Act,[2] or of any limitation or condition included in an identified state supplement to an NPDES permit issued after NPDES permit delegation by the Administrator of the United States Environmental Protection Agency.

[Amended by Acts 1977, 65th Leg., p. 1643, ch. 644, § 3; Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] See, now, § 26.121.

[2] 33 U.S.C.A. § 1342(b).

For text of section effective until delegation of NPDES permit authority, see § 26.122, ante

For effective date of Acts 1977, 65th Leg., ch. 644, see note under § 26.001.

§ 26.123. Enforcement by Department

Text of section effective until delegation of NPDES permit authority

(a) Whenever it appears that a person has violated or is violating or is threatening to violate any provision of this chapter or any rule, permit, or order of the department, then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than $50 nor more than $1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule,

permit, or order of the department, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the executive director, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty as authorized in Subsection (a) of this section.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective upon delegation of NPDES authority, see § 26.123, post

§ 26.123. Enforcement by Department

Text of section effective upon delegation of NPDES authority

(a) Whenever it appears that a person has violated or is violating or is threatening to violate any provision of this chapter, other than Subsection (d) or Subsection (e) of Section 21.251,[1] or has violated or is violating, or is threatening to violate, any rule, permit, or order of the department, then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than $50 nor more than $1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) Whenever it appears that a person has violated or is violating, or is threatening to violate, Subchapter (d) or Subchapter (e) of Section 21.251 of this chapter, then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not more than $10,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty; provided, however, that in suits instituted pursuant to this subsection, the civil penalty, if any, assessed against the person who committed or who is committing the violation shall be no more than $1,000 for each act of violation and for each day of violation where the violation is of a limitation or condition included in a permit issued by the board prior to delegation by the Administrator of the United States Environmental Protection Agency of NPDES permit authority under Section 402(b) of the Federal Water Pollution Control Act,[2] or of any limitation or condition included in an identified state supplement to an NPDES permit issued after NPDES permit delegation by the Administrator of the United States Environmental Protection Agency.

(c) On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, permit, or order of the department, the district court shall grant the injunctive relief the facts may warrant.

(d) At the request of the executive director, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty as authorized in Subsection (a) or (b) of this section.

[Amended by Acts 1977, 65th Leg., p. 1644, ch. 644, § 4; Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] See, now, § 26.121.
[2] 33 U.S.C.A. § 1342(b).

For text of section effective until delegation of NPDES permit authority, see § 26.123, ante

For effective date of Acts 1977, 65th Leg., ch. 644, see note under § 26.001.

§ 26.124. Enforcement by Others

(a) Whenever it appears that a violation or threat of violation of any provision of Section 26.121 of this code or any rule, permit, or order of the department has occurred or is occurring within the jurisdiction of a local government, exclusive of its extraterritorial jurisdiction, the local government, in the same manner as the department, may have a suit instituted in a district court through its own attorney for the injunctive relief or civil penalties or both, as authorized in Subsection (a) of Section 26.123 of this code, against the person who committed or is committing or threatening to commit the violation. This power may not be exercised by a local government unless its governing body adopts a resolution authorizing the exercise of the power. In a suit brought by a local government under this section, the department is a necessary and indispensable party.

(b) Whenever it appears that a violation or a threat of violation of any provision of Section 26.121 of this code or any rule, permit, or order of the department has occurred or is occurring that affects aquatic life or wildlife, the Parks and Wildlife Department, in the same manner as the department, may have a suit instituted in a district court for injunctive relief or civil penalties or both, as authorized in Section 26.123(a) of this code, against the person who committed or is committing or is threatening to commit the violation. The suit shall be brought in the name of the State of Texas through the county attorney or the district attorney, as appropriate, of the county where the defendant resides or in the county where the violation or threat of violation occurs.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.125. Venue and Procedure

(a) A suit for injunctive relief or recovery of a civil penalty or for both injunctive relief and penalty may be brought either in the county in which the defendant resides or in the county in which the violation or threat of violation occurs.

(b) In any suit brought to enjoin a violation or threat of violation of this chapter or any rule, permit, or order of the department, the court may grant the department, the Parks and Wildlife Department, or the local government, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders, after notice and hearing temporary injunctions, and permanent injunctions.

(c) A suit brought under this chapter shall be given precedence over all other cases of a different nature on the docket of the trial or appellate court.

(d) Either party may appeal from a final judgment of the court as in other civil cases.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.126. Disposition of Civil Penalties

(a) All civil penalties recovered in suits instituted by the State of Texas under this chapter through the department or the Parks and Wildlife Department shall be paid to the General Revenue Fund of the State of Texas.

(b) All civil penalties recovered in suits instituted by a local government or governments under this chapter shall be equally divided between the State of Texas and the local government or governments first instituting the suit, with 50 percent of the recovery to be paid to the General Revenue Fund of the State of Texas and the other 50 percent paid equally to the local government or governments first instituting the suit.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.127. Department as Principal Authority

The department is the principal authority in the state on matters relating to the quality of the water in the state. The executive director has the responsibility for establishing a water quality sampling and monitoring program for the state. All other state agencies engaged in water quality or water pollution control activities shall coordinate those activities with the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.128. Groundwater Quality

The executive director shall have investigated all matters concerning the quality of groundwater in the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.129. Duty of Parks and Wildlife Department

The Parks and Wildlife Department and its authorized employees shall enforce the provisions of this chapter to the extent that any violation affects aquatic life and wildlife as provided in Section 26.-124(b) of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.130. Duty of Department of Health Resources [1]

The Texas Department of Health Resources shall continue to apply the authority vested in it by Chapter 178, Acts of the 49th Legislature, 1945, as amended (Article 4477–1, Vernon's Texas Civil Statutes), in the abatement of nuisances resulting from pollution not otherwise covered by this chapter. The Texas Department of Health Resources shall investigate and make recommendations to the department concerning the health aspects of matters related to the quality of the water in the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] Name changed to Department of Health; see Civil Statutes, art. 4418g.

§ 26.131. Duties of Railroad Commission

The Railroad Commission of Texas is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from activities associated with the exploration, development, and production of oil or gas or geothermal resources. The Railroad Commission of Texas may issue permits for the discharge of waste resulting from these activities, and discharge of waste into water in this state resulting from these activities shall meet the water quality standards established by the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 395, ch. 185, § 3, eff. Aug. 27, 1979.]

§ 26.132. Act of God, War,.Etc.

Any pollution, or any discharge of waste without a permit or in violation of a permit, caused by an act of God, war, strike, riot, or other catastrophe is not a violation of this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.133. Effect on Private Remedies

Nothing in this chapter affects the right of any private corporation or individual to pursue any available common-law remedy to abate a condition of pollution or other nuisance or to recover damages.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.134. Repealed by Acts 1977, 65th Leg., p. 1647, ch. 644, § 11

Acts 1977, 65th Leg., p. 1647, ch. 644, § 11, repealed former § 21.264, which was identical to this section, as revised by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1.

See, now, § 5.053.

§ 26.135. Effect on Other Laws

(a) Nothing in this chapter affects the powers and duties of the department and the Railroad Commission of Texas with respect to injection wells as provided in Chapter 27 of this code.

(b) The department and the Water Well Drillers Board shall continue to exercise the authority granted to them in The Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes).

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 26.136 to 26.170 reserved for expansion]

SUBCHAPTER E. AUTHORITY OF LOCAL GOVERNMENTS

§ 26.171. Inspection of Public Water

A local government may inspect the public water in its area and determine whether or not:

(1) the quality of the water meets the state water quality standards adopted by the board;

(2) persons discharging effluent into the public water located in the areas of which the local government has jurisdiction have obtained permits for discharge of the effluent; and

(3) persons who have permits are making discharges in compliance with the requirements of the permits.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.172. Recommendations to Board

A local government may make written recommendations to the board as to what in its judgment the water quality standards should be for any public water within its territorial jurisdiction.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.173. Power to Enter Property

(a) A local government has the same power as the department has under Section 26.014 of this code to enter public and private property within its territorial jurisdiction to make inspections and investigations of conditions relating to water quality. The local government in exercising this power is subject to the same provisions and restrictions as the department.

(b) When requested by the executive director, the result of any inspection or investigation made by the local government shall be transmitted to the department for its consideration.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.174. Enforcement Action

A local government may bring an enforcement action under this chapter in the manner provided in Subchapter D of this chapter[1] for local governments.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] Section 26.121 et seq.

§ 26.175. Cooperative Agreements

(a) A local government may execute cooperative agreements with the department or other local governments:

(1) to provide for the performance of water quality management, inspection, and enforcement functions and to provide technical aid and educational services to any party to the agreement; and

(2) for the transfer of money or property from any party to the agreement to another party to the agreement for the purpose of water quality management, inspection, enforcement, technical aid and education, and the construction, ownership, purchase, maintenance, and operation of disposal systems.

(b) When in the opinion of the executive director it would facilitate and enhance the performance by a local government of its water quality management, inspection, and enforcement functions pursuant to a cooperative agreement between the local government and the department as authorized in Subsection (a) of this section, the executive director may assign and delegate to the local government during the period of the agreement such of the pertinent powers and functions vested in the department under this chapter as in the judgment of the executive director may be necessary or helpful to the local government in performing those management, inspection, and enforcement functions.

(c) At any time and from time to time prior to the termination of the cooperative agreement, the executive director may modify or rescind any such assignment or delegation.

(d) The executive director shall notify immediately a local government to whom it assigns or delegates any powers and functions pursuant to Subsections (b) and (c) of this section or as to when it modifies or rescinds any such assignment or delegation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.176. Disposal System Rules

(a) Every local government which owns or operates a disposal system is empowered to and shall, except as authorized in Subsection (c) of this section, enact and enforce rules, ordinances, orders, or resolutions, referred to in this section as rules, to control

and regulate the type, character, and quality of waste which may be discharged to the disposal system and, where necessary, to require pretreatment of waste to be discharged to the system, so as to protect the health and safety of personnel maintaining and operating the disposal system and to prevent unreasonable adverse effects on the disposal system.

(b) The local government in its rules may establish the charges and assessments which may be made to and collected from all persons who discharge waste to the disposal system or who have conduits or other facilities for discharging waste connected to the disposal system, referred to in this subsection as "users." The charges and assessments shall be equitable as between all users and shall correspond as near as can be practically determined to the cost of making the waste disposal services available to all users and of treating the waste of each user or class of users. The charges and assessments may include user charges, connection fees, or any other methods of obtaining revenue from the disposal system available to the local government. In establishing the charges and assessments, the local government shall take into account:

(1) the volume, type, character, and quality of the waste of each user or class of users;

(2) the techniques of treatment required;

(3) any capital costs and debt retirement expenses of the disposal system required to be paid for from the charges and assessments;

(4) the costs of operating and maintaining the system to comply with this chapter and the permits, rules, and orders of the department; and

(5) any other costs directly attributable to providing the waste disposal service under standard, accepted cost-accounting practices.

(c) A local government may apply to the commission for an exception from the requirements of Subsections (a) and (b) of this section or for a modification of those requirements. The application shall contain the exception or modifications desired, the reasons the exception or modifications are needed, and the grounds authorized in this subsection on which the commission should grant the application. A public hearing on the application shall be held in or near the territorial area of the local government, and notice of the hearing shall be given to the local government. If after the hearing the commission in its judgment determines that the volume, type, character, and quality of the waste of the users of the system or of a particular user or class of users of the system do not warrant the enactment and enforcement of rules containing the requirements prescribed in Subsections (a) and (b) of this section or that the enactment and enforcement of the rules would be impractical or unreasonably burdensome on the local government in relation to the public benefit to be derived, then the commission in its discretion may enter an order granting an exception to those requirements or modifying those requirements in any particular in response to circumstances shown to exist.

(d) At any time and from time to time as circumstances may require, the commission may amend or revoke any order it enters pursuant to Subsection (c) of this section. Before the commission amends or revokes such an order, a public hearing shall be held in or near the territorial area of the local government in question, and notice of the hearing shall be given to the local government. If after the hearing the commission in its judgment determines that the circumstances on which it based the order have changed significantly or no longer exist, the commission may revoke the order or amend it in any particular in response to the circumstances then shown to exist.

(e) In the event of any conflict between the provisions of this section and any other laws or parts of laws, the provisions of this section shall control. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.177. Water Pollution Control Duties of Cities

(a) Every city in this state having a population of 5,000 or more inhabitants shall, and any city of this state may, establish a water pollution control and abatement program for the city. The city shall employ or retain an adequate number of personnel on either a part-time or full-time basis as the needs and circumstances of the city may require, who by virtue of their training or experience are qualified to perform the water pollution control and abatement functions required to enable the city to carry out its duties and responsibilities under this section.

(b) The water pollution control and abatement program of a city shall encompass the entire city and may include areas within its extraterritorial jurisdiction which in the judgment of the city should be included to enable the city to achieve the objectives of the city for the area within its territorial jurisdiction. The city shall include in the program the services and functions which, in the judgment of the city or as may be reasonably required by the commission, will provide effective water pollution control and abatement for the city, including the following services and functions:

(1) the development and maintenance of an inventory of all significant waste discharges into or adjacent to the water within the city and, where the city so elects, within the extraterritorial jurisdiction of the city, without regard to whether or not the discharges are authorized by the department;

(2) the regular monitoring of all significant waste discharges included in the inventory pre-

pared pursuant to Subdivision (1) of this subsection;

(3) the collecting of samples and the conducting of periodic inspections and tests of the waste discharges being monitored to determine whether the discharges are being conducted in compliance with this chapter and any applicable permits, orders, or rules of the department, and whether they should be covered by a permit from the commission;

(4) in cooperation with the department, a procedure for obtaining compliance by the waste dischargers being monitored, including where necessary the use of legal enforcement proceedings; and

(5) the development and execution of reasonable and realistic plans for controlling and abating pollution or potential pollution resulting from generalized discharges of waste which are not traceable to a specific source, such as storm sewer discharges and urban runoff from rainwater.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 26.178 to 26.210 reserved for expansion]

SUBCHAPTER F. CRIMINAL PROSECUTION

§ 26.211. Definitions

As used in this subchapter:

(1) "Water" includes both surface and subsurface water, and "water in the state" means any water within the jurisdiction of the state.

(2) "Water pollution" means the alteration of the physical, chemical, or biological quality of, or the contamination of, any of the water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or public enjoyment of the water for any lawful or reasonable purpose.

(3) "Person" means an individual or private corporation.

(4) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste defined in this section.

(5) "Sewage" means waterborne human or animal wastes from residences, buildings, industrial establishments, cities, towns, or other places together with groundwater infiltration and surface water with which it is commingled.

(6) "Municipal waste" means waterborne liquid, gaseous, solid, or other waste substances or a combination of these that result from any discharge arising within or emanating from, or subject to the control of, any municipal corporation, city, town, village, or municipality.

(7) "Recreational waste" means waterborne liquid, gaseous, solid, or other waste substances or a combination of these that arise within or emanate from any public or private park, beach, or recreational area.

(8) "Agricultural waste" means waterborne liquid, gaseous, solid, or other waste substances that arise from any type of public or private agricultural activity, including poisons and insecticides used in agricultural activities.

(9) "Industrial waste" means waterborne liquid, gaseous, solid, or other waste substances or a combination of these that result from any process of industry, manufacturing, trade, or business.

(10) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste that may cause the quality of water in the state to be impaired.

(11) "To discharge" includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.212. Criminal Offense

Text of section effective until delegation of NPDES permit authority

(a) No person may discharge or cause or permit the discharge of any waste into or adjacent to any water in the state which causes or which will cause water pollution unless the waste is discharged in compliance with a permit or order issued by the department or the Railroad Commission of Texas.

(b) No person to whom the commission has issued a permit or other order authorizing the discharge of any waste at a particular location may discharge or cause or permit the discharge of the waste in violation of the requirements of the permit or order.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective upon delegation of NPDES authority, see § 26.212, post

§ 26.212. Criminal Offense

Text of section effective upon delegation of NPDES authority

(a) No person may discharge or cause or permit the discharge of any waste into or adjacent to any water in the state which causes or which will cause

water pollution unless the waste is discharged in compliance with a permit or order issued by the department or the Railroad Commission of Texas.

(b) No person to whom the commission has issued a permit or other order authorizing the discharge of any waste at a particular location may discharge or cause or permit the discharge of the waste in violation of the requirements of the permit or order.

(c) No person may wilfully or negligently cause, suffer, allow, or permit the discharge from a point source, of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of this chapter, or of any rule, regulation, permit, or other order of the commission.

(d) No person may knowingly make any false statement, representation, or certification in any application, notice, record, report, plan, or other document filed or required to be maintained under this chapter, or under any rule, regulation, permit, or other order of the commission.

(e) No person may falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this chapter, or under any rule, regulation, permit, or other order of the commission.

[Amended by Acts 1977, 65th Leg., p. 1645, ch. 644, § 5; Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective until delegation of NPDES permit authority, see § 26.212, ante

For effective date of Acts 1977, 65th Leg., ch. 644, see note under § 26.001.

§ 26.213. Criminal Penalty

Text of section effective until delegation of NPDES permit authority

A person who violates the provisions of Section 26.212 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $1,000. Each day that a violation occurs constitutes a separate offense.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective upon delegation of NPDES authority, see § 26.213, post

§ 26.213. Criminal Penalty

Text of section effective upon delegation of NPDES authority

(a) A person who violates the provisions of Subsection (a) or Subsection (b) of Section 26.212 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $1,000. Each day that a violation occurs constitutes a separate offense.

(b) A person who violates the provisions of Subsection (c), (d), or (e) of Section 26.212 is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25,000; provided, however, that violations of limitations or conditions included in permits issued by the commission prior to delegation by the Administrator of the United States Environmental Protection Agency of NPDES permit authority under Section 402(b) of the Federal Water Pollution Control Act,[1] or violations of limitations or conditions included in an identified state supplement to an NPDES permit issued after NPDES permit delegation by the Administrator, shall be punishable by a fine of not less than $10 nor more than $1,000. Each day that a violation occurs constitutes a separate offense.

[Amended by Acts 1977, 65th Leg., p. 1645, ch. 644, § 6; Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] 33 U.S.C.A. § 1342(b).

For text of section effective until delegation of NPDES permit authority, see § 26.213, ante

For effective date of Acts 1977, 65th Leg., ch. 644, see note under § 26.001.

§ 26.214. Criminal Penalty for Violation of Private Sewage Facility Order

(a) A person who violates any order entered by the commission under Section 26.031 of this code or adopted by a county under Section 26.032 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200. Each day that a violation occurs constitutes a separate offense.

(b) Jurisdiction for prosecution of a suit under this section is in the justice of the peace courts.

(c) Venue for prosecution of a suit under this section is in the justice of the peace precinct in which the violation is alleged to have occurred.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.215. Peace Officers

For purposes of this subchapter, the authorized agents and employees of the Parks and Wildlife Department are constituted peace officers. These agents and employees are empowered to enforce the provisions of this subchapter the same as any other peace officer, and for such purpose shall have the powers and duties of peace officers as set forth in the Code of Criminal Procedure, 1965, as amended.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.216. Act of God, War, Etc.

Any waste discharge otherwise punishable under this subchapter which is caused by an act of God, war, riot, or other catastrophe is not a violation of this subchapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.217. Venue

Text of section effective until delegation of NPDES permit authority

Venue for prosecution of any alleged violation is in the county court, the county criminal court, or the county court at law of the county in which the violation is alleged to have occurred.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective upon delegation of NPDES permit authority, see § 26.217, post

§ 26.217. Venue

Text of section effective upon delegation of NPDES permit authority

Venue for prosecution of any alleged violation of Section 21.552 [1] is in the county court, the county criminal court, or the county court-at-law of the county in which the violation is alleged to have occurred.

[Amended by Acts 1977, 65th Leg., p. 1645, ch. 644, § 6; Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] See, now, § 26.212.

For text of section effective until delegation of NPDES permit authority, see § 26.217, ante

For effective date of Acts 1977, 65th Leg., ch. 644, see note under § 26.001.

§ 26.218. Allegations

In alleging the name of a defendant private corporation, it is sufficient to state in the complaint, indictment, or information the corporate name or to state any name or designation by which the corporation is known or may be identified. It is not necessary to allege that the defendant was lawfully incorporated.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.219. Summons and Arrest

(a) After a complaint is filed or an indictment or information presented against a private corporation under the provisions of this subchapter, the court or clerk shall issue a summons to the corporation. The summons shall be in the same form as a capias except that:

(1) it shall summon the corporation to appear before the court named at the place stated in the summons;

(2) it shall be accompanied by a certified copy of the complaint, indictment, or information; and

(3) it shall provide that the corporation appear before the court named at or before 10 a. m. of the Monday next after the expiration of 20 days after it is served with summons, except when service is made upon the Secretary of State, in which instance the summons shall provide that the corporation appear before the court named at or before 10 a. m. of the Monday next after the expiration of 30 days after the Secretary of State is served with summons.

(b) No individual may be arrested upon a complaint, indictment, or information against a private corporation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.220. Service of Summons

(a) A peace officer shall serve a summons on a private corporation by personally delivering a copy of it to the corporation's registered agent for service. If a registered agent has not been designated or cannot with reasonable diligence be found at the registered office, the peace officer shall serve the summons by personally delivering a copy of it to the president or a vice-president of the corporation.

(b) If the peace officer certifies on the return that he diligently but unsuccessfully attempted to effect service under Subsection (a) of this section or if the corporation is a foreign corporation that has no certificate of authority, he shall serve the summons on the Secretary of State by personally delivering a copy of it to him or to the assistant secretary of state or to any clerk in charge of the corporation department of his office. On receipt of the summons copy, the Secretary of State shall immediately forward it by certified or registered mail, return receipt requested, addressed to the defendant corporation at its registered office or, if it is a foreign corporation, at its principal office in the state or country under whose law it was incorporated.

(c) The Secretary of State shall keep a permanent record of the date and time of receipt and his disposition of each summons served under Subsection (b) of this section together with the return receipt.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.221. Arraignment and Pleadings

In all criminal actions instituted against a private corporation under the provisions of this subchapter:

(1) appearance is for the purpose of arraignment; and

(2) the corporation has 10 full days after the day the arraignment takes place and before the day the trial begins to file written pleadings.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.222. Appearance

(a) A defendant private corporation appears through counsel or its representative.

(b) If a private corporation does not appear in response to summons or appears but fails or refuses

to plead, it is considered to be present in person for all purposes, and the court shall enter a plea of not guilty in its behalf and may proceed with trial, judgment, and sentencing.

(c) After appearing and entering a plea in response to summons, if a private corporation is absent without good cause at any time during later proceedings, it is considered to be present in person for all purposes, and the court may proceed with trial, judgment, or sentencing.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.223. Fine Treated as Judgment in Civil Action

If a private corporation is found guilty of a violation of this subchapter and a fine imposed, the fine shall be entered and docketed by the clerk of the court as a judgment against the corporation, and the fine shall be of the same force and effect and be enforced against the corporation in the same manner as if the judgment were recovered in a civil action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.224. Cumulative Provisions

Nothing in this subchapter repeals or amends any of the provisions of Subchapters A through E of this chapter, Chapter 27 of this code, or Article 6029a, Revised Civil Statutes, 1925, as added, but this subchapter is cumulative of those acts and they remain in full force and effect.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.225. Effect on Certain Other Laws

To the extent that any general or special law makes an act or omission a criminal offense and which act or omission also constitutes a criminal offense under this subchapter, the other general or special law is repealed, but only to that extent.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 26.226 to 26.260 reserved for expansion]

SUBCHAPTER G. COASTAL OIL AND HAZARDOUS SPILL PREVENTION AND CONTROL

§ 26.261. Short Title

This subchapter may be cited as the Texas Oil and Hazardous Substances Spill Prevention and Control Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.262. Policy

It is the policy of this state to prevent the spill or discharge of oil and other hazardous substances into the coastal waters of the state and to cause the removal of such discharges without undue delay.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.263. Definitions

As used in this subchapter:

(1) "Coastal land or water" means any land or water in the coastal area as defined in this section.

(2) "Coastal area" refers to the geographic area comprising all counties of Texas having any tidewater shoreline, including that portion of the bed and waters of the Gulf of Mexico within the jurisdiction of the State of Texas.

(3) "Discharge or spill" means an act or omission by which oil or hazardous substances in harmful quantities are spilled, leaked, pumped, poured, emitted, entered, or dumped onto or into coastal waters of this state or by which those substances are deposited where, unless controlled or removed, they may drain, seep, run, or otherwise enter coastal water in this state. The term "discharge" or "spill" shall not include any discharge which is authorized by a permit issued pursuant to federal law or any other law of this state.

(4) "Fund" means the Texas Coastal Protection Fund.

(5) "Harmful quantity" means that quantity of oil or hazardous substance the discharge or spill of which is determined to be harmful to the public health or welfare by the administrator of the Environmental Protection Agency pursuant to the Federal Water Pollution Control Act [1] and by the board.

(6) "Hazardous substance" means any substance designated as such by the administrator of the Environmental Protection Agency pursuant to the Federal Water Pollution Control Act and by the board.

(7) "Oil" means oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged soil.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] 33 U.S.C.A. § 1251 et seq.

§ 26.264. Administrative Provisions

(a) The department shall administer this subchapter. The department shall cooperate with other agencies, departments, and subdivisions of this state and of the United States in implementing this subchapter.

(b) The board may issue rules necessary and convenient to carry out the purposes of this subchapter.

(c) The executive director shall enforce the provisions of this subchapter and any rules given effect pursuant to Subsection (b) of this section.

(d) The executive director with the approval of the board may contract with any public agency or private persons or other entity for the purpose of implementing this subchapter.

(e) The executive director shall solicit the assistance of and cooperate with local governments, the federal government, other agencies and departments of this state, and private persons and other entities to develop regional contingency plans for prevention and control of oil and hazardous substance spills and discharges.

(f) The department and the State Department of Highways and Public Transportation, in cooperation with the governor and the United States Coast Guard, shall develop a contractual agreement whereby personnel, equipment, and materials in possession or under control of the State Department of Highways and Public Transportation may be diverted and utilized for spill and discharge cleanup as provided for in this subchapter. Under the agreement, the following conditions shall be met:

(1) the department and the State Department of Highways and Public Transportation shall develop and maintain written agreements and contracts on how such utilization will be effected, and designating agents for this purpose;

(2) personnel, equipment, and materials may be diverted only with the approval of the department and the State Department of Highways and Public Transportation, acting through their designated agents, or by action of the governor;

(3) all expenses and costs of acquisition of such equipment and materials or resulting from such cleanup activities shall be paid from the fund, subject to reimbursement as provided in this subchapter; and

(4) subsequent to such activities, a full report of all expenditures and significant actions shall be prepared and submitted to the governor, the Legislative Budget Board, and the state auditor, and shall be reviewed by the board.

(g) The executive director shall develop and revise from time to time written action and contractual plans with the designated on-scene coordinator provided for by federal law.

(h)(1) In developing rules and plans under this subchapter and in engaging in cleanup activities, the board shall recognize the authority of the predesignated United States Coast Guard on-scene coordinator to oversee, coordinate, and direct all private and public activities related to cleanup of discharges and spills. The executive director shall place the resources of the state at the disposal of the on-scene coordinator, if he is present, or shall engage in cleanup activities when directed to do so by the on-scene coordinator.

(2) Nothing in this subchapter shall prevent the executive director from acting independently if no on-scene coordinator is present and no action is being taken by an agency of the federal government.

(3) The department shall seek reimbursement from the designated agencies of the federal government for the reasonable costs incurred in cleanup operations, including but not limited to costs of personnel, equipment, the use of equipment, and supplies.

(i) The executive director shall after appropriate investigation prepare a report on the discharge or spill, and this report shall provide the following information:

(1) a description of the incident, including location, amount, and characteristics of the material discharged or spilled and the prevailing weather conditions;

(2) the time and duration of discharge or spill and the time and method by which the discharge or spill was reported;

(3) the action taken, and by whom, to contain and clean up the discharge or spill;

(4) an assessment of both the short-term and long-term environmental impact of the accidental discharge or spill;

(5) the estimated cost of cleanup operations and the source of payment of these costs;

(6) an evaluation of the principal causes of the discharge or spill and an assessment of how similar incidents might be prevented in the future; and

(7) a description of any legal action being taken to levy penalties or collect damages.

(j) This subchapter is cumulative of all other powers of the department.

(k) In the event that a discharge or spill presents or threatens to present an occurrence of disaster proportions, the governor shall utilize the authority granted him under the Texas Disaster Act of 1975 (Article 6889–7, Vernon's Texas Civil Statutes) to make available and bring to bear all resources of the state to prevent or lessen the impact of such a disaster.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.265. Texas Coastal Protection Fund

(a) There is hereby created the Texas Coastal Protection Fund. This fund shall not exceed $5 million, exclusive of fines and penalties received under this subchapter.

(b) The fund shall consist of money appropriated to it by the legislature and any fines or other reimbursement to the fund provided for under this subchapter. It is the intent of the legislature that the state attempt to recover money spent from the fund according to the following priority:

(1) direct reimbursement from the federal government as provided by federal law for costs incurred in cleanup operations;

(2) in the event that federal reimbursement is not available, the state shall seek to recover cleanup costs from the responsible party. If the responsible party refuses to pay, the state shall initiate legal action to collect the actual costs, provided, however, that such recovery may not exceed $5 million; and

(3) if federal reimbursement occurs but is insufficient to repay the fund, the state shall take action to collect the remainder from the responsible party as provided in Subdivision (2) of this subsection.

(c) Money in the fund may be expended only for the purpose of obtaining personnel, equipment, and supplies required in the cleanup of discharges and spills, including restoration of beaches and marine resources.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.266. Removal of Accidental Discharge

(a) Any person discharging or spilling oil or hazardous substances into coastal waters shall immediately undertake all feasible actions to abate and remove the discharge or spill subject to applicable federal and state requirements.

(b) In the event that the responsible party is unwilling or in the opinion of the executive director is unable to remove the discharge or spill, or the removal operation of such party is inadequate, the department may undertake the removal of the discharge or spill and may retain agents for these purposes who shall operate under the direction of the executive director.

(c) Any discharge or spill of oil or hazardous substance, the source of which is unknown, occurring in coastal waters or in waters beyond the jurisdiction of this state and which may reasonably be expected to enter coastal water may be removed by or under the direction of the executive director. Any expense involved in the removal of an unexplained discharge pursuant to this subsection shall be paid, on the board's approval, from the fund, subject to the authority of the board to seek reimbursement from an agency of the federal government, and from the responsible party if the identity of that party is discovered.

(d) In any activity undertaken pursuant to this section, the department shall act in accordance with the national contingency plan authorized by the Federal Water Pollution Control Act, as amended,[1] and with Section 26.264(h) of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] See 33 U.S.C.A. § 1321(c)(2).

§ 26.267. Exemptions

(a) No person shall be held liable under this subchapter for any accident resulting from an act of God, act of war, third party negligence, or an act of government.

(b) Nothing in this subchapter shall in any way affect or limit the liability of any person to any other person or to the United States, or to this state except as specifically provided in Section 26.265(b)(2) of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.268. Penalties

(a) This section is cumulative of all penalties and enforcement provisions provided elsewhere to the department.

(b) Any person who violates any provision of this subchapter or of a department rule or order issued pursuant to this subchapter is subject to a civil penalty of not less than $50 nor more than $1,000 for each act of violation and for each day of violation.

(c) Any person operating, in charge of, or responsible for a facility or vessel which causes a discharge or spill as defined in this subchapter and fails to report said spill or discharge upon discovery thereof shall be guilty of a Class A misdemeanor.

(d) Any person who knowingly falsifies records or reports concerning the prevention or cleanup of a discharge or spill of oil or hazardous substance as provided for in this subchapter is guilty of a felony of the third degree.

(e) The penalties authorized by this subchapter for discharges and spills shall not apply to any discharge or spill promptly reported and removed by the responsible party in accordance with the rules and orders of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

CHAPTER 27. DISPOSAL WELLS

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Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977, for disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

SUBCHAPTER A. GENERAL PROVISIONS

§ 27.001. Short Title

This chapter may be cited as the Disposal Well Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.002. Definitions

In this chapter:

(1) "Commission" means the Texas Water Commission.

(2) "Board" means the Texas Water Development Board.

(3) "Executive director" means the executive director of the Texas Department of Water Resources.

(4) "Department" means the Texas Department of Water Resources.

(5) "Railroad commission" means the Railroad Commission of Texas.

(6) "Pollution" means the alteration of the physical, chemical, or biological quality of, or the contamination of, water that makes it harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(7) "Industrial and municipal waste" means any liquid, gaseous, solid, or other waste substance, or combination of these substances, which may cause or might reasonably be expected to cause pollution of fresh water and which result from

(A) processes of industry, manufacturing, trade, or business;

(B) development or recovery of natural resources other than oil or gas; or

(C) disposal of sewage or other wastes of cities, towns, villages, communities, water districts, and other municipal corporations.

(8) "Oil and gas waste" means waste arising out of or incidental to drilling for or producing of oil or gas which includes but is not limited to salt water, brine, sludge, drilling mud, and other liquid or semi-liquid waste material.

(9) "Fresh water" means water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose.

(10) "Casing" means material lining used to seal off strata at and below the earth's surface.

(11) "Disposal well" means an artificial excavation or opening in the ground made by digging, boring, drilling, jetting, driving, or some other method, and used to inject, transmit, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; or a well initially drilled to produce oil and gas which is used to transmit, inject, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; but the term does not include any surface pit, surface excavation, or natural depression used to dispose of industrial and municipal waste or oil and gas waste.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 27.003 to 27.010 reserved for expansion]

SUBCHAPTER B. INDUSTRIAL AND MUNICIPAL WASTE

§ 27.011. Permit From Commission

Text of section effective until delegation of NPDES permit authority

No person may begin drilling a disposal well or converting an existing well into a disposal well to dispose of industrial and municipal waste without first obtaining a permit from the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective upon delegation of NPDES authority, see § 27.011, post

§ 27.011. Permit From Commission

Text of section effective upon delegation of NPDES authority

No person may continue utilizing a disposal well or begin drilling a disposal well or converting an existing well into a disposal well to dispose of industrial and municipal waste without first obtaining a permit from the commission.

[Amended by Acts 1977, 65th Leg., p. 1647, ch. 644, § 10; Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

For text of section effective until delegation of NPDES permit authority, see § 27.011, ante

For effective date of Acts 1977, 65th Leg., ch. 644, see note under § 26.001.

§ 27.012. Application for Permit

The department shall prescribe forms for application for a permit and shall make the forms available on request without charge.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.013. Information Required of Applicant

The commission shall require an applicant to furnish any information the commission considers necessary to discharge its duties under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.014. Application Fee

With each application, the department shall collect a fee of $25 for the benefit of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.015. Letter From Railroad Commission

A person making application to the department for a permit under this chapter shall submit with the application a letter from the railroad commission stating that drilling the disposal well and injecting industrial and municipal waste into the subsurface stratum will not endanger or injure any oil or gas formation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.016. Inspection of Well Location

On receiving an application for a permit, the executive director shall have an inspection made of the location of the proposed disposal well to determine the local conditions and the probable effect of the well and shall determine the requirements for the setting of casing, as provided in Sections 27.051, 27.055, and 27.056 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.017. Recommendations From Other Agencies

The executive director shall submit to the Texas Department of Health Resources,[1] the Water Well Drillers Board, and to other persons which the board may designate, copies of every application received in proper form. These agencies, persons, and divisions may make recommendations to the commission concerning any aspect of the application and shall have reasonable time to do so as the board may prescribe.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] Name changed to Department of Health; see Civil Statutes, art. 4418g.

§ 27.018. Hearing on Permit Application

If it is considered necessary and in the public interest, the commission may hold a public hearing on the application.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.019. Rules, Etc.

(a) The commission shall adopt procedures reasonably required for the performance of its powers, duties, and functions under this chapter, including rules for notice and procedure of public hearings.

(b) Copies of any rules under this chapter proposed by the board shall before their adoption be sent to the railroad commission, the executive director, the Texas Department of Health Resources,[1] the Water Well Drillers Board, and any other persons the board may designate. Any agency or person to whom the copies of proposed rules are sent may submit comments and recommendations to the board and shall have reasonable time to do so as the board may prescribe.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] Name changed to Department of Health; see Civil Statutes, art. 4418g.

[Sections 27.020 to 27.030 reserved for expansion]

SUBCHAPTER C. OIL AND GAS WASTE

§ 27.031. Permit From Railroad Commission

No person may begin drilling a disposal well or converting an existing well into a disposal well to dispose of oil and gas waste without first obtaining a permit from the railroad commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.032. Information Required of Applicant

The railroad commission shall require an applicant to furnish any information the railroad commission considers necessary to discharge its duties under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.033. Letter From Executive Director

A person making application to the railroad commission for a permit under this chapter shall submit with the application a letter from the executive director stating that drilling the disposal well and injecting oil and gas waste into the subsurface stratum will not endanger the freshwater strata in that area and that the formation or stratum to be used for the disposal is not freshwater sand.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.034. Railroad Commission Rules, Etc.

(a) The railroad commission shall adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under this chapter, including rules for notice and procedure of public hearings.

(b) Copies of any rules under this chapter proposed by the railroad commission shall, before their adoption, be sent to the department, the Texas Department of Health Resources,[1] the Water Well Drillers Board, and any other persons the railroad commission may designate. Any agency or person to whom the copies of proposed rules and regulations are sent may submit comments and recommendations to the railroad commission and shall have reasonable time to do so as the railroad commission may prescribe.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] Name changed to Department of Health; see Civil Statutes, art. 4418g.

[Sections 27.035 to 27.050 reserved for expansion]

SUBCHAPTER D. ISSUANCE OF PERMITS: TERMS AND CONDITIONS

§ 27.051. Issuance of Permit

(a) The commission or railroad commission may grant an application in whole or part and may issue the permit if it finds:

(1) that the installation of the disposal well is in the public interest;

(2) that no existing rights will be impaired; and

(3) that, with proper safeguards, both ground and surface fresh water can be adequately protected from pollution.

(b) In the permit the commission or railroad commission shall impose terms and conditions reasonably necessary to protect fresh water from pollution, including the necessary casing.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.052. Copies of Permit; Filing Requirements

(a) The department shall furnish the railroad commission, the Texas Department of Health Resources,[1] and the Water Well Drillers Board with a copy of each permit the commission issues. The railroad commission shall furnish the department with a copy of each permit the railroad commission issues and the executive director shall in turn forward copies to the Texas Department of Health Resources and the Water Well Drillers Board.

(b) Before beginning injection operations, a person receiving a permit to inject industrial and municipal waste shall file a copy of the permit with the health authorities of the county, city, and town where the well is located.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] Name changed to Department of Health; see Civil Statutes, art. 4418g.

§ 27.053. Record of Strata

The commission or railroad commission may require a person receiving a permit under this chapter to keep and furnish a complete and accurate record of the depth, thickness, and character of the different strata penetrated in drilling the disposal well.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.054. Electric or Drilling Log

If an existing well is to be converted to a disposal well, the commission or railroad commission may require the applicant to furnish an electric log or a drilling log of the existing well.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.055. Casing Requirements

The casing shall be set at the depth, with the materials, and in the manner required by the commission or railroad commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.056. Factors in Setting Casing Depth

Before setting the depth to which casing shall be installed, the commission or railroad commission shall consider:

(1) known geological and hydrological conditions and relationships;

(2) foreseeable future economic development in the area; and

(3) foreseeable future demand for the use of fresh water in the locality.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 27.057 to 27.100 reserved for expansion]

SUBCHAPTER E. CIVIL AND CRIMINAL REMEDIES

§ 27.101. Civil Penalty

(a) A person who violates any provision of this chapter, any rule of the board or the railroad commission made under this chapter, or any term, condition, or provision of a permit issued under this chapter shall be subject to a civil penalty in any sum not exceeding $5,000 for each day of noncompliance and for each act of noncompliance.

(b) The action may be brought by the executive director or the railroad commission in any court of competent jurisdiction in the county where the offending activity is occurring or where the defendant resides.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.102. Injunction, Etc.

The executive director or the railroad commission may enforce any valid rule made under this chapter or any term or condition of a permit issued by the commission or railroad commission under this chapter by injunction or other appropriate remedy. The suit shall be brought in a court of competent jurisdiction in the county where the offending activity is occurring.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.103. Procedure

(a) At the request of the executive director or the railroad commission, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both the injunctive relief and civil penalty, authorized in Sections 27.101 and 27.102 of this chapter.

(b) Any party to a suit may appeal from a final judgment as in other civil cases.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.104. Effect of Permit on Civil Liability

The fact that a person has a permit issued under this chapter does not relieve him from any civil liability.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

CHAPTER 28. WATER WELLS

Section
28.001. Definitions.
28.002. Underground Water: Regulations.
28.003. Certain Wells to be Plugged or Cased.
28.004. Penalty.

Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. For disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

§ 28.001. Definitions

In this chapter:

(1) "Department" means the Texas Department of Water Resources.

(2) "Commission" means the Texas Water Commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 28.002. Underground Water: Regulations

The department shall make and enforce rules and regulations for conserving, protecting, preserving, and distributing underground, subterranean, and percolating water located in this state and shall do all other things necessary for these purposes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 28.003. Certain Wells to be Plugged or Cased

The owner of a water well which encounters salt water or water containing mineral or other substances injurious to vegetation or agriculture shall securely plug or case the well in a manner that will effectively prevent the water from escaping from the stratum in which it is found into another water-bearing stratum or onto the surface of the ground.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 28.004. Penalty

If the owner of a well that is required to be cased or plugged by this chapter fails or refuses to case or plug the well within the 30-day period following the date of the commission's order to do so or if a person fails to comply with any other order issued by the commission under this chapter within the 30-day period following the date of the order, he is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $10 nor more than $500. He commits a separate offense each day the failure or refusal continues after the 30-day period.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

CHAPTER 29. SALT WATER HAULERS

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29.002. Definitions.

SUBCHAPTER B. PERMITS

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29.011. Application for Permit.
29.012. Application Form.
29.013. Contents of Application.
29.014. Rejecting an Application.
29.015. Bond.
29.016. Expiration of Permit.
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29.018. Suspension; Refusal to Renew.
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29.020. Suit to Compel Railroad Commission to Act.
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SUBCHAPTER D. OFFENSES; PENALTIES

29.041. Hauling Without Permit.
29.042. Exception.
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29.044. Disposing of Salt Water.
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29.046. Penalty.

Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. For disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

SUBCHAPTER A. GENERAL PROVISIONS

§ 29.001. Short Title

This chapter may be cited as the Salt Water Haulers Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.002. Definitions

In this chapter:

(1) "Person" means an individual, association of individuals, partnership, corporation, receiver, trustee, guardian, executor, or a fiduciary or representative of any kind.

(2) "Railroad commission" means the Railroad Commission of Texas.

(3) "Salt water" means water containing salt or other mineralized substances produced by drilling an oil or gas well or produced in connection with the operation of an oil or gas well.

(4) "Hauler" means a person who transports salt water for hire by any method other than by pipeline.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 29.003 to 29.010 reserved for expansion]

SUBCHAPTER B. PERMITS

§ 29.011. Application for Permit

Any person may apply to the railroad commission for a permit to haul and dispose of salt water.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.012. Application Form

The railroad commission shall prescribe a form on which an application for a permit may be made and shall provide the form to any person who wishes to submit an application.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.013. Contents of Application

The application for a permit shall:

(1) state the number of vehicles the applicant plans to use for salt water hauling;

(2) affirmatively show that the vehicles are designed so that they will not leak during transportation of salt water;

(3) include an affidavit from a person who operates an approved system of salt water disposal stating that the applicant has permission to use the approved system;

(4) state the applicant's name, business address, and permanent mailing address; and

(5) include other relevant information required by railroad commission rules.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.014. Rejecting an Application

If an application for a permit does not comply with Section 29.013 of this code or with reasonable rules of the railroad commission, the railroad commission may reject the application.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.015. Bond

Before issuing a permit to a person whose application it has approved, the railroad commission shall require the person to file with it a bond in the amount of $5,000, guaranteed by a corporate surety company and conditioned on the payment of full damages to any person who may acquire a judgment against the permittee for damages done to the person's property by the permittee's improper hauling, handling, or disposal of salt water. However, the railroad commission may dispense with the bond requirement on a proper showing of financial responsibility.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.016. Expiration of Permit

Permits issued under this chapter expire on August 31 of each year.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.017. Renewal of Permit

A permittee may apply to renew his permit by submitting an application for renewal on or before August 31 of each year.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.018. Suspension; Refusal to Renew

The railroad commission shall suspend or refuse to renew a permit for a period not to exceed one year if the permittee:

(1) violates the provisions of this chapter;

(2) violates reasonable rules promulgated under Section 29.031 of this code; or

(3) does not maintain his operation at the standards that entitled him to a permit under Section 29.013 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 24.018 by Acts 1977, 65th Leg., p. 1654, ch. 650, § 1.

§ 29.019. Appeal

Any person whose permit application is refused, whose permit is suspended, or whose application for permit renewal is refused by the railroad commission may file a petition in an action to set aside the railroad commission's act within the 30-day period immediately following the day he receives notice of the railroad commission's action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.020. Suit to Compel Railroad Commission to Act

If the railroad commission does not act within a reasonable time after a person applies for a permit or for renewal of a permit, the applicant may notify the railroad commission of his intention to file suit. After 10 days have elapsed since the day the notice was given, the applicant may file a petition in an action to compel the railroad commission to show cause why it should not be directed by the court to take immediate action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.021. Venue

The venue in actions under Sections 29.019 and 29.020 of this code is fixed exclusively in the district courts of Travis County.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 29.022 to 29.030 reserved for expansion]

SUBCHAPTER C. RULES

§ 29.031. Rulemaking Power

The railroad commission shall adopt rules to effectuate the provisions of this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.032. Copies of Rules

The railroad commission shall print the rules and provide copies to persons who apply for them.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.033. Effective Date of Rules

No rule or amendment to a rule is effective until after the 30-day period immediately following the day on which a copy of the rule is filed with the Secretary of State.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 29.034 to 29.040 reserved for expansion]

SUBCHAPTER D. OFFENSES; PENALTIES

§ 29.041. Hauling Without Permit

No hauler may haul and dispose of salt water off the lease, unit, or other oil or gas property where it is produced unless the hauler has a permit issued under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.042. Exception

A person may haul salt water for use in connection with drilling or servicing an oil or gas well without obtaining a hauler's permit under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.043. Using Haulers Without Permit

No person may knowingly utilize the services of a hauler to haul and dispose of salt water off the lease, unit, or other oil or gas property where it is produced if the hauler does not have a permit as required under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.044. Disposing of Salt Water

(a) No hauler may dispose of salt water on public roads or on the surface of public land or private property in this state in other than a railroad commission-approved disposal pit without written authority from the railroad commission.

(b) No hauler may dispose of salt water on property of another without the written authority of the landowner.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.045. Use of Unmarked Vehicles

No person who is required to have a permit under this chapter may haul salt water in a vehicle that does not bear the owner's name and the hauler's permit number. This information shall appear on both sides and the rear of the vehicle in characters not less than three inches high.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.046. Penalty

A person who violates any provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 nor more than $1,000 or by confinement in the county jail for not more than 10 days or by both.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

CHAPTER 30. REGIONAL WASTE DISPOSAL

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Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. For disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

SUBCHAPTER A. GENERAL PROVISIONS

§ 30.001. Short Title

This chapter may be cited as the Regional Waste Disposal Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.002. Purpose

The purpose of this chapter is to authorize public agencies to cooperate for the safe and economical collection, transportation, treatment, and disposal of waste in order to prevent and control pollution of water in the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.003. Definitions

In this chapter:

(1) "City" means any incorporated city or town, whether operating under general law or under its home-rule charter.

(2) "District" means any district or authority created and existing under Article XVI, Section 59 or Article III, Section 52 of the Texas Constitution, including any river authority.

(3) "Public agency" means any district, city, or other political subdivision or agency of the state which has the power to own and operate waste collection, transportation, treatment, or disposal facilities or systems, and any joint board created under the provisions of Section 14, Chapter 114, Acts of the 50th Legislature, Regular Session, 1947 (Article 46d–14, Vernon's Texas Civil Statutes).

(4) "River authority" means any district or authority created by the legislature which con-

tains an area within its boundaries of one or more counties and which is governed by a board of directors appointed or designated in whole or in part by the governor, or by the Texas Water Development Board, including without limitation the San Antonio River Authority.

(5) "River basins" and "coastal basins" mean the river basins and coastal basins now defined and designated by the Texas Water Development Board as separate units for the purposes of water development and inter-watershed transfers, and as they are made certain by contour maps on file in the offices of the Texas Department of Water Resources, including but not limited to the rivers and their tributaries, streams, water, coastal water, sounds, estuaries, bays, lakes, and portions of them, as well as the lands drained by them.

(6) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, waste heat, or other waste that may cause impairment of the quality of water in the state, including storm waters.

(7) The terms "sewage," "municipal waste," "recreational waste," "agricultural waste," "industrial waste," "other waste," "pollution," "water," or "water in the state," and "local government" shall have the meanings defined in Section 26.001 of this code.

(8) "Sewer system" means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

(9) "Treatment facility" means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement Chapter 26 of this code or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply, such as standby treatment units and clear well facilities; any works, including sites therefor and acquisition of the land that will be part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste or facilities to provide for the collection, control, and disposal of waste heat.

(10) "Disposal system" means any system for disposing of waste, including sewer systems and treatment facilities.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 2185, ch. 834, § 3, eff. Aug. 27, 1979.]

§ 30.004. Cumulative Effect of Chapter

(a) This chapter is cumulative of other statutes governing the Texas Department of Health Resources [1] and the Texas Department of Water Resources relating to:

(1) the issuance of bonds;

(2) the collection, transportation, treatment, or disposal of waste; and

(3) the design, construction, acquisition, or approval of facilities for these purposes.

(b) The powers granted to districts and public agencies by this chapter are additional to and cumulative of the powers granted by other laws. This chapter is full authority for any district or public agency to enter into contracts authorized by it and for any district to authorize and issue bonds under its provisions without reference to the provisions of any other law or charter. No other law or charter provision which limits, restricts, or imposes additional requirements on matters authorized by this chapter shall apply to any action or proceeding under this chapter unless expressly provided to the contrary in this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] Name changed to Department of Health; see Civil Statutes, art. 4418g.

§ 30.005. Construction of Chapter

The terms and provisions of this chapter shall be liberally construed to accomplish its purposes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 30.006 to 30.020 reserved for expansion]

SUBCHAPTER B. REGIONAL WASTE DISPOSAL SYSTEMS

§ 30.021. Disposal System

A district may acquire, construct, improve, enlarge, extend, repair, operate, and maintain one or more disposal systems.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.022. Purchase and Sale of Facilities

A district may contract with any person to purchase or sell by installments over such term as considered desirable any waste collection, transportation, treatment, or disposal facilities or systems.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.023. Lease of Facilities

A district may lease to or from any person for such term and on such conditions as may be considered desirable any waste collection, transportation, treatment, or disposal facilities or systems.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.024. Operating Agreements

A district may make operating agreements with any person for such terms and on such conditions as may be considered desirable for the operation of any waste collection, transportation, treatment, or disposal facilities or systems of any person by the district.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.025. Waste Disposal Contracts by District

A district may make contracts with any person, including any public agency located inside or outside the boundaries of the district, under which the district will collect, transport, treat, or dispose of waste for the person.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.026. Contracts by River Authority

Each river authority may make contracts authorized by this chapter with any person, including any public agency situated wholly or partly inside its boundaries and any public agency situated wholly or partly inside the river basin and any public agency situated wholly or partly inside the coastal basins adjoining its boundaries, but a river authority may not make contracts to serve a public agency situated wholly inside the boundaries of another river authority or to serve facilities of a person situated wholly within the boundaries of another river authority, except with the consent of the other river authority.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.027. Contract With Public Agency

A public agency may make contracts with a district under which the district will make a disposal system available to the public agency and will furnish waste collection, transportation, treatment, and disposal services to the public agency, group of public agencies, or other persons through the district's disposal system.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.028. Contract Provisions

(a) The contract may provide for:

(1) duration of the contract for a specified period or until issued and unissued bonds and refunding bonds of the district are paid;

(2) assuring equitable treatment of parties who contract with the district for waste collection, transportation, treatment, and disposal services from the same disposal system;

(3) requiring the public agency to regulate the quality and strength of waste to be handled by the disposal system;

(4) sale or lease to or use by a district of all or part of a disposal system owned or to be acquired by the public agency;

(5) the district operating all or part of a disposal system owned or to be acquired by the public agency; and

(6) other terms the district or the governing body of the public agency consider appropriate or necessary.

(b) The contract shall specify the method for determining the amounts to be paid by the public agency to the district.

(c) A contract made by a city may provide that the district shall have the right to use the streets, alleys, and public ways and places inside the city during the term of the contract.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.029. Continued Use of District Facilities

After amortization of the district's investment in the disposal system, the public agency is entitled to continued performance of the service during the useful life of the disposal system, on payment of reasonable charges reduced to take into consideration the amortization.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.030. Source of Contract Payments

(a) A public agency may pay for the waste collection, transportation, treatment, and disposal services with income from its waterworks system, sanitary sewer system, or both systems, or its combined water and sanitary sewer system, as prescribed by the contract. In the alternative, a joint board defined as a public agency in Section 30.003, Subdivision (3), may pay for these services from any revenue or other funds within its control specified in the contract if the city councils of the cities which created the joint board approve, by ordinance, the contract between the joint board and the district. These payments constitute an operating expense of each system whose revenue is so used.

(b) The obligation of contract payments on the income of the public agency's water system is subordinate to the obligation imposed by any bonds that are payable solely from the water system net revenue and that are outstanding at the time the contract is made, unless the ordinance or resolution

authorizing the bonds expressly reserved the right to give the contract payments a priority over the bond requirements.

(c) If a public agency having taxing power holds an election substantially according to the applicable provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended,[1] relating to the issuance of bonds by cities and it is determined that the public agency is authorized to levy an ad valorem tax to make all or part of the payments under a contract with a district, then the contract is an obligation against the taxing power of the public agency to the extent authorized, and payments under the contract may be payable from and constitute solely an obligation against the taxing powers of the city or may be payable both from taxes and from revenue prescribed in the contract. Otherwise, neither the district nor the holders of the district's bonds are entitled to demand payment of the public agency's obligation out of any tax revenue.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[1] Civil Statutes, art. 701 et seq.

§ 30.031. Rates

(a) When all or part of the payments under a contract are to be made from revenue of the waterworks system, sanitary sewer system, both systems, or a combination of both systems, the public agency shall establish, maintain, and periodically adjust the rates charged for services of the systems, so that the revenue, along with any taxes levied in support of the indebtedness, will be sufficient to pay:

(1) the expenses of operating and maintaining the systems;

(2) the obligations to the district under the contract; and

(3) the obligations of bonds that are secured by revenue of the systems.

(b) The contract may require the use of consulting engineers and financial experts to advise the public agency on the need for adjusting rates.

(c) Notwithstanding any provision of this chapter or any other law to the contrary, a district may use the proceeds of bonds issued for the purpose of constructing a waste disposal system or systems, and payable wholly or in part from ad valorem taxes, for the purchase of capacity in, or a right to have the wastes of the district treated in, a waste collection, treatment, or disposal system and facilities owned or to be owned exclusively or in part by another public agency, and a district may issue bonds payable wholly or in part from ad valorem taxes specifically for such purpose if a majority of the resident electors of the district have authorized the governing body of the district to issue bonds for that purpose or for the purpose of constructing a waste disposal system or systems. The bonds shall be issued in accordance with the provisions of, and shall be subject to the same terms and conditions of, the laws authorizing the district to issue bonds for the purpose of constructing waste collection, treatment, and disposal systems, except as otherwise provided in this subsection.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.032. Service to More Than One Public Agency

A contract or group of contracts may provide for the district to render services concurrently to more than one person through constructing and operating a disposal system and may provide that the cost of these services be allocated among the persons as provided in the contract or group of contracts.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.033. Property Acquired by Condemnation or Otherwise

(a) To accomplish the purposes of this chapter, a district may acquire by purchase, lease, gift, or in any other manner all or any interest in property inside or outside the boundaries of the district and may own, maintain, use, and operate it.

(b) To accomplish the purposes of the chapter, a district may exercise the power of eminent domain to acquire all or any interest in property inside or outside the boundaries of the district. The power shall be exercised according to the laws applicable or available to the district.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.034. Cost of Relocating, Altering, Etc.

If a district makes necessary the relocating, raising, rerouting, changing the grade of, or altering the construction of any highway, railroad, electric transmission line, pipeline, or telephone or telegraph properties or facilities in the exercise of powers granted under this chapter, the district shall pay all of the actual cost of the relocating, raising, rerouting, changing in grade, or altering of construction and shall pay all of the actual cost of providing comparable replacement of facilities without enhancement, less the net salvage value of the facilities.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.035. Elections

No election is required for the exercise of any power under this chapter except for the tax levy as provided by Section 30.030(c) of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 30.036 to 30.050 reserved for expansion]

SUBCHAPTER C. DISTRICT REVENUE BONDS

§ 30.051. Issuance of Bonds

In order to acquire, construct, improve, enlarge, extend, or repair disposal systems, the district may issue bonds secured by a pledge of all or part of the revenue from any contract entered into under this chapter and other income of the district.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.052. Form, Denomination, Interest Rate

The governing body of the district shall prescribe the form, denomination, and rate of interest for the bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.053. Refunding Bonds

A district may refund any bonds issued under this chapter on the terms and conditions and at the rate of interest the governing body prescribes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.054. Sale or Exchange of Bonds

A district may sell bonds issued under this chapter at public or private sale at the price or prices and on the terms determined by the governing body, or it may exchange the bonds for property or any interest in property of any kind considered necessary or convenient to the purposes authorized in this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.055. Interim Bonds

Pending the issuance of definitive bonds, a district may issue negotiable interim bonds or obligations eligible for exchange or substitution by use of definitive bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.056. Attorney General's Examination

(a) After issuance of the bonds is authorized, the bonds and the record relating to their issuance may be submitted to the attorney general for examination.

(b) When the bonds recite that they are secured by a pledge of the proceeds from a contract between the district and a public agency, a copy of the contract and the proceedings of the public agency authorizing the contract may also be submitted to the attorney general.

(c) If the attorney general finds that the bonds are authorized and that the contract is made in accordance with the constitution and laws of this state, he shall approve the bonds and the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.057. Registration by Comptroller

After the bonds have been approved by the attorney general, they shall be registered by the state comptroller.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.058. Validation Suit

(a) Instead of or in addition to obtaining the approval of the attorney general, the district may have the bonds validated by suit in the district court as provided in Chapter 316, Acts of the 56th Legislature, Regular Session, 1959 (Article 717m, Vernon's Texas Civil Statutes).

(b) The governing body of the district may wait until after termination of the validation suit to fix the interest rate and sale price of the bonds.

(c) If the proposed bonds recite that they are secured by the proceeds of a contract between the district and a public agency, the petition shall so allege, and the notice of the suit shall mention this allegation and shall specify the public agency's funds or revenues from which the contract payments are to be made.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.059. Bonds Incontestable

After the bonds are approved by the attorney general and registered with the comptroller, the bonds and the contract are incontestable.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.060. Negotiable Instruments

Bonds issued under this subchapter are negotiable instruments.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.061. Investment Securities Under Uniform Commercial Code

Bonds issued under this subchapter are investment securities governed by Chapter 8, Uniform Commercial Code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.062. Bonds as Authorized Investments

Bonds issued under this chapter are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees, and for the sinking funds of cities, towns, villages, school districts, and other political corporations or subdivisions of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.063. Security for Deposits

The bonds are eligible to secure deposits of any public funds of the state or any political subdivision of the state and are lawful and sufficient security for the deposits to the extent of their value when accompanied by unmatured coupons attached to the bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.064. Funds Set Aside From Bond Proceeds

The district may set aside out of the proceeds from the sale of bonds:

(1) interest to accrue on the bonds and administrative expenses to the estimated date when the disposal system will become revenue producing; and

(2) reserve funds created by the resolution authorizing the bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.065. Investment of Proceeds

Pending their use, proceeds from the sale of bonds may be invested in securities or time deposits as specified in the resolution authorizing the issuance of the bonds or the trust indenture securing the bonds. The earnings on these investments shall be applied as provided in the resolution or trust indenture.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.066. Rates and Charges

While any bonds are outstanding, the governing body of the district shall fix, maintain, and collect for services furnished or made available by the disposal system rates and charges adequate to:

(1) pay maintenance and operating costs of and expenses allocable to the disposal system;

(2) pay the principal of and interest on the bonds; and

(3) provide and maintain the funds created by the resolution authorizing the bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 30.067 to 30.100 reserved for expansion]

SUBCHAPTER D. RIVER AUTHORITY PLANNING

§ 30.101. Authorization of Regional Plans

Each river authority may prepare regional plans for water quality management, control, and abatement of pollution in any segment of its river basin and adjoining coastal basins which:

(1) are consistent with any applicable water quality standards established under current law within the river basin;

(2) recommend disposal systems which will provide the most effective and economical means of collection, storage, treatment, and purification of waste, and means to encourage rural, municipal, and industrial use of the works and systems; and

(3) recommend maintenance and improvement of water quality standards within the river basin and methods of adequately financing the facilities necessary to implement the plan.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.102. Planning in Related Fields

River authorities may conduct planning in related or affected fields reasonably necessary to give meaning to the water quality management and pollution control planning carried out under this subchapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.103. Joint Planning

(a) River authorities may join in the performance of planning functions with any district or public agency and enter into planning agreements for the term and on the conditions considered desirable to provide coordinated planning on a basin-wide scale, including adjacent coastal basins.

(b) River authorities may provide for river basin planning committees as entities with powers, responsibilities, functions, and duties conferred by mutual agreement.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.104. Coordination With Other Planning Agencies

A river authority performing planning functions under this subchapter shall coordinate its efforts and cooperate with other public planning agencies having significant planning interests in any segment of the river basin in or for which the planning is being conducted by the river authority.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.105. Financial Assistance

River authorities may make applications and enter into contracts for financial assistance in comprehensive planning which are appropriate under Section 3(c) of the Federal Water Pollution Control Act, as amended under 33 U.S.C. Section 1926 et seq., under 40 U.S.C. Section 461 et seq., and under any other relevant statutes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.106. Supervision by Texas Department of Water Resources

The Texas Department of Water Resources is authorized to exercise continuing supervision on behalf of the state of comprehensive plans prepared under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Chapters 31 to 40 reserved for expansion]

TITLE 3. RIVER COMPACTS

CHAPTER 41. RIO GRANDE COMPACT

Section
41.0031. Application of Sunset Act.

§ 41.0031. Application of Sunset Act

The office of Rio Grande Compact Commissioner for Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.093, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

CHAPTER 42. PECOS RIVER COMPACT

Section
42.0031. Application of Sunset Act.

§ 42.0031. Application of Sunset Act

The office of Pecos River Compact Commissioner for Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.091, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

CHAPTER 43. CANADIAN RIVER COMPACT

Section
43.0031. Application of Sunset Act.

§ 43.0031. Application of Sunset Act

The office of Canadian River Compact Commissioner for Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.090, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

CHAPTER 44. SABINE RIVER COMPACT

Section
44.0031. Application of Sunset Act.

§ 44.0031. Application of Sunset Act

The office of Sabine River Compact Administrator for Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.094, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

§ 44.006. Compensation; Expenses

Each member is entitled to compensation as provided by legislative appropriation and to reimbursement for actual expenses incurred in the discharge of his or her duties.

[Amended by Acts 1979, 66th Leg., p. 5, ch. 4, § 1, eff. Feb. 22, 1979.]

CHAPTER 45. NEGOTIATION OF RED RIVER COMPACT

Section
45.0011. Application of Sunset Act.

§ 45.0011. Application of Sunset Act

The office of Red River Compact Commissioner for Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.092, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

CHAPTER 46. RED RIVER COMPACT

Section
46.001. Ratification.
46.002. Original Copy.
46.003. Commissioner.
46.004. Term of Office.
46.005. Oath.
46.006. Compensation; Expenses.
46.007. Powers and Duties.
46.008. Executive Director.
46.009. Employees; Administrative Expenses.
46.010. Cooperation of Texas Department of Water Resources.
46.011. Notification of Other Parties; Copies.
46.012. Time When Compact Binding.
46.013. Text of Compact.

§ 46.001. Ratification

The Red River Compact, the text of which is set out in Section 46.013 of this code, is ratified and confirmed in all respects after having been signed at Denison Dam, on the Texas-Oklahoma border, on

May 12, 1978, by John P. Saxton, commissioner for the State of Arkansas, Orville B. Saunders, commissioner for the State of Oklahoma, Arthur R. Theis, commissioner for the State of Louisiana, and Fred Parkey, commissioner for the State of Texas, and approved by R. C. Marshall, representative of the United States.

[Added by Acts 1979, 66th Leg., p. 551, ch. 261, § 1, eff. May 24, 1979.]

§ 46.002. Original Copy

An original copy of the compact is on file in the office of the secretary of state.

[Added by Acts 1979, 66th Leg., p. 551, ch. 261, § 1, eff. May 24, 1979.]

§ 46.003. Commissioner

The governor, with the advice and consent of the senate, shall appoint a commissioner to represent this state on the commission established by Article IX of the compact.

[Added by Acts 1979, 66th Leg., p. 551, ch. 261, § 1, eff. May 24, 1979.]

§ 46.004. Term of Office

The appointed commissioner holds office for a term of two years and until his or her successor is appointed and qualified.

[Added by Acts 1979, 66th Leg., p. 551, ch. 261, § 1, eff. May 24, 1979.]

§ 46.005. Oath

The appointed commissioner shall take the constitutional oath of office and shall also take an oath to faithfully perform his or her duties as commissioner.

[Added by Acts 1979, 66th Leg., p. 551, ch. 261, § 1, eff. May 24, 1979.]

§ 46.006. Compensation; Expenses

(a) The appointed commissioner is entitled to receive as compensation $15,600 a year until otherwise provided by legislative appropriation and is entitled to reimbursement for actual and necessary expenses while traveling in the discharge of official duties.

(b) The appointed commissioner is not covered by Chapter 352, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes).

[Added by Acts 1979, 66th Leg., p. 551, ch. 261, § 1, eff. May 24, 1979.]

§ 46.007. Powers and Duties

The appointed commissioner is responsible for administering the provisions of the compact and has all the powers and duties prescribed by the compact.

[Added by Acts 1979, 66th Leg., p. 551, ch. 261, § 1, eff. May 24, 1979.]

§ 46.008. Executive Director

(a) The executive director of the Texas Department of Water Resources or a designated representative selected from the staff of the department shall also serve as a commissioner and represent this state on the commission established by Article IX of the compact.

(b) The executive director or the designated representative may exercise the powers and shall discharge the duties provided by the compact.

(c) The executive director or the designated representative is not entitled to additional compensation for performing the duties under the compact but is entitled to reimbursement for actual and necessary expenses incurred while traveling in the discharge of official duties.

[Added by Acts 1979, 66th Leg., p. 551, ch. 261, § 1, eff. May 24, 1979.]

§ 46.009. Employees; Administrative Expenses

The commissioners, in conjunction with other members of the commission and as authorized by the legislature, may employ engineering and clerical personnel and may incur necessary office expenses for the appointed commissioner and other expenses incident to the proper performance of their duties and the proper administration of the compact. However, the commissioner shall not incur any financial obligation on behalf of this state until the legislature has authorized and appropriated money for the obligation.

[Added by Acts 1979, 66th Leg., p. 551, ch. 261, § 1, eff. May 24, 1979.]

§ 46.010. Cooperation of Texas Department of Water Resources

The Texas Department of Water Resources shall cooperate with the commissioners in the performance of their duties and shall furnish them any factual data and information that are available.

[Added by Acts 1979, 66th Leg., p. 551, ch. 261, § 1, eff. May 24, 1979.]

§ 46.011. Notification of Other Parties; Copies

The governor shall notify the Governor of Arkansas, the Governor of Louisiana, the Governor of Oklahoma, and the President of the United States of the ratification of the compact by this state. On request of the governor, the secretary of state shall furnish to each of these other governors and the president a certified copy of the Act adopting this chapter of the code.

[Added by Acts 1979, 66th Leg., p. 551, ch. 261, § 1, eff. May 24, 1979.]

§ 46.012. Time When Compact Binding

The compact is binding and obligatory when it is ratified by the legislatures of Arkansas, Louisiana,

and Oklahoma and consented to by the United States under Article XIII of the compact.

[Added by Acts 1979, 66th Leg., p. 551, ch. 261, § 1, eff. May 24, 1979.]

§ 46.013. Text of Compact

The Red River Compact reads as follows:

"PREAMBLE

"The States of Arkansas, Louisiana, Oklahoma, and Texas, pursuant to the acts of their respective Governors or legislatures, or both, being moved by considerations of interstate comity, have resolved to compact with respect to the water of the Red River and its tributaries. By Act of Congress, Public Law No. 346 (84th Congress, First Session), the consent of the United States has been granted for said states to negotiate and enter into a compact providing for an equitable apportionment of such water; and pursuant to that Act the President has designated the representative of the United States.

"Further, the consent of Congress has been given for two or more states to negotiate and enter into agreements relating to water pollution control by the provisions of the Federal Water Pollution Control Act (P.L. 92–500, 33 U.S.C. Subsection 1251 et seq.).

"The Signatory States acting through their duly authorized Compact Commissioners, after several years of negotiations, have agreed to an equitable apportionment of the water of the Red River and its tributaries and do hereby submit and recommend that this compact be adopted by the respective legislatures and approved by Congress as hereinafter set forth:

"ARTICLE I

"PURPOSES

"§ 1.01. The principal purposes of this Compact are:

"(a) To promote interstate comity and remove causes of controversy between each of the affected states by governing the use, control and distribution of the interstate water of the Red River and its tributaries;

"(b) To provide an equitable apportionment among the Signatory States of the water of the Red River and its tributaries;

"(c) To promote an active program for the control and alleviation of natural deterioration and pollution of the water of the Red River Basin and to provide for enforcement of the laws related thereto;

"(d) To provide the means for an active program for the conservation of water, protection of lives and property from floods, improvement of water quality, development of navigation and regulation of flows in the Red River Basin; and

"(e) To provide a basis for state or joint state planning and action by ascertaining and identifying each state's share in the interstate water of the Red River Basin and the apportionment thereof.

"ARTICLE II

"GENERAL PROVISIONS

"§ 2.01. Each Signatory State may use the water allocated to it by this Compact in any manner deemed beneficial by that state. Each state may freely administer water rights and uses in accordance with the laws of that state, but such uses shall be subject to the availability of water in accordance with the apportionments made by this Compact.

"§ 2.02. The use of water by the United States in connection with any individual Federal project shall be in accordance with the Act of Congress authorizing the project and the water shall be charged to the state or states receiving the benefit therefrom.

"§ 2.03. Any Signatory State using the channel of Red River or its tributaries to convey stored water shall be subject to an appropriate reduction in the amount which may be withdrawn at the point of removal to account for transmission losses.

"§ 2.04. The failure of any state to use any portion of the water allocated to it shall not constitute relinquishment or forfeiture of the right to such use.

"§ 2.05. Each Signatory State shall have the right to:

"(a) Construct conservation storage capacity for the impoundment of water allocated by this Compact;

"(b) Replace within the same area any storage capacity recognized or authorized by this Compact made unusable by any cause, including losses due to sediment storage;

"(c) Construct reservoir storage capacity for the purposes of flood and sediment control as well as storage of water which is either imported or is to be exported if such storage does not adversely affect the delivery of water apportioned to any other Signatory State; and

"(d) Use the bed and banks of the Red River and its tributaries to convey stored water, imported or exported water, and water apportioned according to this Compact.

"§ 2.06. Signatory States may cooperate to obtain construction of facilities of joint benefits to such states.

"§ 2.07. Nothing in this Compact shall be deemed to impair or affect the powers, rights, or obligations of the United States, or those claiming under its authority, in, over and to water of the Red River Basin.

"§ 2.08. Nothing in this Compact shall be construed to include within the water apportioned by this Compact any water consumed in each state by livestock or for domestic purposes; provided, however, the storage of such water is in accordance with the laws of the respective states but any such impoundment shall not exceed 200 acre-feet, or such smaller quantity as may be provided for by the laws of each state.

"§ 2.09. In the event any state shall import water into the Red River Basin from any other river basin, the Signatory State making the importation shall have the use of such imported water.

"§ 2.10. Nothing in this Compact shall be deemed to:

"(a) Interfere with or impair the right or power of any Signatory State to regulate within its boundaries the appropriation, use, and control of water, or quality of water, not inconsistent with its obligations under this Compact;

"(b) Repeal or prevent the enactment of any legislation or the enforcement of any requirement by any Signatory State imposing any additional conditions or restrictions to further lessen or prevent the pollution or natural deterioration of water within its jurisdiction; provided nothing contained in this paragraph shall alter any provision of this Compact dealing with the apportionment of water or the rights thereto; or

"(c) Waive any state's immunity under the Eleventh Amendment of the Constitution of the United States, or as constituting the consent of any state to be sued by its own citizens.

"§ 2.11. Accounting for apportionment purposes on interstate streams shall not be mandatory under the terms of the Compact until one or more affected states deem the accounting necessary.

"§ 2.12. For the purposes of apportionment of the water among the Signatory States, the Red River is hereby divided into the following major subdivisions:

"(a) Reach I—the Red River and tributaries from the New Mexico-Texas State boundary to Denison Dam;

"(b) Reach II—the Red River from Denison Dam to the point where it crosses the Arkansas-Louisiana state boundary and all tributaries which contribute to the flow of the River within this reach;

"(c) Reach III—the tributaries west of the Red River which cross the Texas-Louisiana state boundary, the Arkansas-Louisiana state boundary, and those which cross both the Texas-Arkansas state boundary and the Arkansas-Louisiana state boundary.

"(d) Reach IV—the tributaries east of the Red River in Arkansas which cross the Arkansas-Louisiana state boundary; and

"(e) Reach V—that portion of the Red River and tributaries in Louisiana not included in Reach III or in Reach IV.

"§ 2.13. If any part or application of this Compact shall be declared invalid by a court of competent jurisdiction, all other severable provisions and applications of this Compact shall remain in full force and effect.

"§ 2.14. Subject to the availability of water in accordance with this Compact, nothing in this Compact shall be held or construed to alter, impair, or increase, validate, or prejudice any existing water right or right of water use that is legally recognized on the effective date of this Compact by either statutes or courts of the Signatory State within which it is located.

"ARTICLE III

"DEFINITIONS

"3.01. In this Compact:

"(a) The States of Arkansas, Louisiana, Oklahoma, and Texas are referred to as 'Arkansas,' 'Louisiana,' 'Oklahoma,' and 'Texas,' respectively, or individually as 'State' or 'Signatory State,' or collectively as 'States' or 'Signatory States.'

"(b) The term 'Red River' means the stream below the crossing of the Texas-Oklahoma state boundary at longitude 100 degrees west.

"(c) The term 'Red River Basin' means all of the natural drainage area of the Red River and its tributaries east of the New Mexico-Texas state boundary and above its junction with Atchafalaya and Old Rivers.

"(d) The term 'water of the Red River Basin' means the water originating in any part of the Red River Basin and flowing to or in the Red River or any of its tributaries.

"(e) The term 'tributary' means any stream which contributes to the flow of the Red River.

"(f) The term 'interstate tributary' means a tributary of the Red River, the drainage area of which includes portions of two or more Signatory States.

"(g) The term 'intrastate tributary' means a tributary of the Red River, the drainage area of which is entirely within a single Signatory State.

"(h) The term 'Commission' means the agency created by Article IX of this Compact for the administration thereof.

"(i) The term 'pollution' means the alteration of the physical, chemical, or biological characteristics of water by the acts or instrumentalities of man which create or are likely to result in a material and adverse effect upon human beings, domestic or wild animals, fish and other aquatic life, or adversely affect any other lawful use of such water; provided, that for the purposes of this Compact, 'pollution' shall not mean or include 'natural deterioration.'

"(j) The term 'natural deterioration' means the material reduction in the quality of water resulting from the leaching of solubles from the soils and rocks through or over which the water flows naturally.

"(k) The term 'designated water' means water released from storage, paid for by non-Federal interests, for delivery to a specific point of use or diversion.

"(*l*) The term 'undesignated water' means all water released from storage other than 'designated water.'

"(m) The term 'conservation storage capacity' means that portion of the active capacity of reservoirs available for the storage of water for subsequent beneficial use, and it excludes any portion of the capacity of reservoirs allocated solely to flood control and sediment control, or either of them.

"(n) The term 'runoff' means both the portion of precipitation which runs off the surface of a drainage area and that portion of the precipitation that enters the streams after passing through the portions of the earth.

"ARTICLE IV

"APPORTIONMENT OF WATER—REACH I

"OKLAHOMA—TEXAS

"Subdivision of Reach I and apportionment of water therein. Reach I of the Red River is divided into topographical subbasins, with the water therein allocated as follows:

"§ 4.01. Subbasin 1—Interstate streams—Texas.

"(a) This includes the Texas portion of Buck Creek, Sand (Lebos) Creek, Salt Fork Red River, Elm Creek, North Fork Red River, Sweetwater Creek, and Washita River, together with all their tributaries in Texas which lie west of the 100th Meridian.

"(b) The annual flow within this subbasin is hereby apportioned sixty (60) percent to Texas and forty (40) percent to Oklahoma.

"§ 4.02. Subbasin 2—Intrastate and Interstate streams—Oklahoma.

"(a) This subbasin is composed of all tributaries of the Red River in Oklahoma and portions thereof upstream to the Texas-Oklahoma state boundary at longitude 100 degrees west, beginning from Denison Dam and upstream to and including Buck Creek.

"(b) The State of Oklahoma shall have free and unrestricted use of the water of this subbasin.

"§ 4.03. Subbasin 3—Intrastate streams—Texas.

"(a) This includes the tributaries of the Red River in Texas, beginning from Denison Dam and upstream to and including Prairie Dog Town Fork Red River.

"(b) The State of Texas shall have free and unrestricted use of the water in this subbasin.

"§ 4.04. Subbasin 4—Mainstem of the Red River and Lake Texoma.

"(a) This subbasin includes all of Lake Texoma and the Red River beginning at Denison Dam and continuing upstream to the Texas-Oklahoma state boundary at longitude 100 degrees west.

"(b) The storage of Lake Texoma and flow from the mainstem of the Red River into Lake Texoma is apportioned as follows:

"(1) Oklahoma 200,000 acre-feet and Texas 200,000 acre-feet, which quantities shall include existing allocations and uses; and

"(2) Additional quantities in a ratio of fifty (50) percent to Oklahoma and fifty (50) percent to Texas.

"§ 4.05. Special Provisions.

"(a) Texas and Oklahoma may construct, jointly or in cooperation with the United States, storage or other facilities for the conservation and use of water; provided that any facilities constructed on the Red River boundary between the two states shall not be inconsistent with the Federal legislation authorizing Denison Dam and Reservoir project.

"(b) Texas shall not accept for filing, or grant a permit, for the construction of a dam to impound water solely for irrigation, flood control, soil conservation, mining and recovery of minerals, hydroelectric power, navigation, recreation and pleasure, or for any other purpose other than for domestic, municipal, and industrial water supply, on the

mainstem of the North Fork Red River or any of its tributaries within Texas above Lugert-Altus Reservoir until the date that imported water, sufficient to meet the municipal and irrigation needs of Western Oklahoma is provided, or until January 1, 2000, whichever occurs first.

"ARTICLE V

"APPORTIONMENT OF WATER—REACH II

"ARKANSAS, OKLAHOMA, TEXAS AND LOUISIANA

"Subdivision of Reach II and allocation of water therein. Reach II of the Red River is divided into topographic subbasins, and the water therein is allocated as follows:

"§ 5.01. Subbasin 1—Intrastate streams—Oklahoma.

"(a) This subbasin includes those streams and their tributaries above existing, authorized or proposed last downstream major damsites, wholly in Oklahoma and flowing into Red River below Denison Dam and above the Oklahoma-Arkansas state boundary. These streams and their tributaries with existing, authorized or proposed last downstream major damsites are as follows:

Stream	Site	Ac-ft	Location	
			Latitude	Longitude
Island-Bayou	Albany	85,200	33°51.5'N	96°11.4'W
Blue River	Durant	147,000	33°55.5'N	96°04.2'W
Boggy River	Boswell	1,243,800	34°01.6'N	95°45.0'W
Kiamichi River	Hugo	240,700	34°01.0'N	95°22.6'W

"(b) Oklahoma is apportioned the water of this subbasin and shall have unrestricted use thereof.

"§ 5.02. Subbasin 2—Intrastate streams—Texas.

"(a) This subbasin includes those streams and their tributaries above existing authorized or proposed last downstream major damsites, wholly in Texas and flowing into Red River below Denison Dam and above the Texas-Arkansas state boundary. These streams and their tributaries with existing, authorized or proposed last downstream major damsites are as follows:

Stream	Site	Ac-ft	Location	
			Latitude	Longitude
Shawnee Creek	Randall Lake	5,400	33°48.1'N	96°34.8'W
Brushy Creek	Valley Lake	15,000	33°38.7'N	96°21.5'W
Bois d'Arc Creek	New Bonham Reservoir	130,600	33°42.9'N	95°58.2'W
Coffee Mill Creek	Coffee Mill Lake	8,000	33°44.1'N	95°58.0'W
Sandy Creek	Lake Crockett	3,900	33°44.5'N	95°55.5'W
Sanders Creek	Pat Mayse	124,500	33°51.2'N	95°32.9'W
Pine Creek	Lake Crook	11,011	33°43.7'N	95°34.0'W
Big Pine Creek	Big Pine Lake	138,600	33°52.0'N	95°11.7'W
Pecan Bayou	Pecan Bayou	625,000	33°41.1'N	94°58.7'W
Mud Creek	Liberty Hill	97,700	33°33.0'N	94°29.3'W
Mud Creek	KVW Ranch Lakes (3)	3,440	33°34.8'N	94°27.3'W

"(b) Texas is apportioned the water of this subbasin and shall have unrestricted use thereof.

"§ 5.03. Subbasin 3—Interstate Streams—Oklahoma and Arkansas.

"(a) This subbasin includes Little River and its tributaries above Millwood Dam.

"(b) The States of Oklahoma and Arkansas shall have free and unrestricted use of the water of this subbasin within their respective states, subject, however, to the limitation that Oklahoma shall allow a quantity of water equal to 40 percent of the total runoff originating below the following existing, authorized or proposed last downstream major damsites in Oklahoma to flow into Arkansas:

Stream	Site	Ac-ft	Location	
			Latitude	Longitude
Little River	Pine Creek	70,500	34°06.8'N	95°04.9'W
Glover Creek	Lukfata	258,600	34°08.5'N	94°55.4'W
Mountain Fork River	Broken Bow	470,100	34°08.9'N	94°41.2'W

"(c) Accounting will be on an annual basis unless otherwise deemed necessary by the States of Arkansas and Oklahoma.

"§ 5.04. Subbasin 4—Interstate streams—Texas and Arkansas.

"(a) This subbasin shall consist of those streams and their tributaries above existing, authorized or proposed last downstream major damsites, originating in Texas and crossing the Texas-Arkansas state boundary before flowing into the Red River in Arkansas. These streams and their tributaries with existing, authorized or proposed last downstream major damsites are as follows:

Stream	Site	Ac-ft	Location	
			Latitude	Longitude
McKinney Bayou Trib.	Bringle Lake	3,052	33°30.6'N	94°06.2'W
Barkman Creek	Barkman Reservoir	15,900	33°29.7'N	94°10.3'W
Sulphur River	Texarkana	386,900	33°18.3'N	94°09.6'W

"(b) The State of Texas shall have the free and unrestricted use of the water of this subbasin.

"§ 5.05. Subbasin 5—Mainstem of the Red River and tributaries.

"(a) This subbasin includes that portion of the Red River, together with its tributaries, from Denison Dam down to the Arkansas-Louisiana state boundary, excluding all tributaries included in the other four subbasins of Reach II.

"(b) Water within this subbasin is allocated as follows:

"(1) The Signatory States shall have equal rights to the use of run-off originating in subbasin 5 and undesignated water flowing into subbasin 5, so long as the flow of the Red River at the Arkansas-Louisiana state boundary is 3,000 cubic feet per second or more, provided no state is entitled to more than 25 percent of the water in excess of 3,000 cubic feet per second.

"(2) Whenever the flow of the Red River at the Arkansas-Louisiana state boundary is less than 3,000 cubic feet per second, but more than 1,000 cubic feet per second, the States of Arkansas, Oklahoma, and Texas shall allow to flow into the Red River for delivery to the State of Louisiana a quantity of water equal to 40 percent of the total weekly runoff originating in subbasin 5 and 40 percent of undesignated water flowing into subbasin 5; provided, however, that this requirement shall not be interpreted to require any state to release stored water.

"(3) Whenever the flow of the Red River at the Arkansas-Louisiana state boundary falls below 1,000 cubic feet per second, the States of Arkansas, Oklahoma, and Texas shall allow a quantity of water equal to all the weekly runoff originating in subbasin 5 and all undesignated water flowing into subbasin 5 within their respective states to flow into the Red River as required to maintain a 1,000 cubic foot per second flow at the Arkansas-Louisiana state boundary.

"(c) Whenever the flow at Index, Arkansas, is less than 526 c.f.s., the states of Oklahoma and Texas shall each allow a quantity of water equal to 40 percent of the total weekly runoff originating in subbasin 5 within their respective states to flow into the Red River; provided however, this provision shall be invoked only at the request of Arkansas, only after Arkansas has ceased all diversions from the Red River itself in Arkansas above Index, and only if the provisions of Sub-sections 5.05(b)(2) and (3) have not caused a limitation of diversions in subbasin 5.

"(d) No state guarantees to maintain a minimum low flow to a downstream state.

"§ 5.06. Special Provisions.

"(a) Reservoirs within the limits of Reach II, subbasin 5, with a conservation storage capacity of 1,000 acre feet or less in existence or authorized on the date of the Compact pursuant to the rights and privileges granted by a Signatory State authorizing such reservoirs, shall be exempt from the provisions of Section 5.05; provided, if any right to store water in, or use water from, an existing exempt reservoir expires or is cancelled after the effective date of the Compact the exemption for such rights provided by this section shall be lost.

"(b) A Signatory State may authorize a change in the purpose or place of use of water from a reservoir exempted by subparagraph (a) of this section without losing that exemption, if the quantity of authorized use and storage is not increased.

"(c) Additionally, exemptions from the provisions of Section 5.05 shall not apply to direct diversions from Red River to off-channel reservoirs or lands.

"ARTICLE VI

"APPORTIONMENT OF WATER—REACH III

"ARKANSAS, LOUISIANA, AND TEXAS

"Subdivision of Reach III and allocation of water therein. Reach III of the Red River is divided into topographic subbasins, and the water therein allocated, as follows:

"§ 6.01. Subbasin 1—Interstate streams—Arkansas and Texas.

"(a) This subbasin includes the Texas portion of those streams crossing the Arkansas-Texas state boundary one or more times and flowing through Arkansas into Cypress Creek-Twelve Mile Bayou watershed in Louisiana.

"(b) Texas is apportioned sixty (60) percent of the runoff of this subbasin and shall have unrestricted use thereof; Arkansas is entitled to forty (40) percent of the runoff of this subbasin.

"§ 6.02. Subbasin 2—Interstate streams—Arkansas and Louisiana.

"(a) This subbasin includes the Arkansas portion of those streams flowing from Subbasin 1 into Arkansas, as well as other streams in Arkansas which cross the Arkansas-Louisiana state boundary one or more times and flow into Cypress Creek-Twelve Mile Bayou watershed in Louisiana.

"(b) Arkansas is apportioned sixty (60) percent of the runoff of this subbasin and shall have unrestricted use thereof; Louisiana is entitled to forty (40) percent of the runoff of this subbasin.

"§ 6.03. Subbasin 3—Interstate streams—Texas and Louisiana.

"(a) This subbasin includes the Texas portion of all tributaries crossing the Texas-Louisiana state boundary one or more times and flowing into Caddo Lake, Cypress Creek-Twelve Mile Bayou or Cross Lake, as well as the Louisiana portion of such tributaries.

"(b) Texas and Louisiana within their respective boundaries shall each have the unrestricted use of the water of this subbasin subject to the following allocation:

"(1) Texas shall have the unrestricted right to all water above Marshall, Lake O' the Pines, and Black Cypress damsites; however, Texas shall not cause runoff to be depleted to a quantity less than that which would have occurred with the full operation of Franklin County, Titus County, Ellison Creek, Johnson Creek, Lake O' the Pines, Marshall, and Black Cypress Reservoirs constructed, and those other impoundments and diversions existing on the effective date of this Compact. Any depletions of runoff in excess of the depletions described above shall be charged against Texas' apportionment of the water in Caddo Reservoir.

"(2) Texas and Louisiana shall each have the unrestricted right to use fifty (50) percent of the conservation storage capacity in the present Caddo Lake for the impoundment of water for state use, subject to the provision that supplies for existing uses of water from Caddo Lake, on date of Compact, are not reduced.

"(3) Texas and Louisiana shall each have the unrestricted right to fifty (50) percent of the conservation storage capacity of any future enlargement of Caddo Lake, provided, the two states may negotiate for the release of each state's share of the storage space on terms mutually agreed upon by the two states after the effective date of this Compact.

"(4) Inflow to Caddo Lake from its drainage area downstream from Marshall, Lake O' the Pines, and Black Cypress damsites and downstream from other last downstream dams in existence on the date of the signing of the Compact document by the Compact Commissioners, will be allowed to continue flowing into Caddo Lake except that any manmade depletions to this inflow by Texas will be subtracted from the Texas share of the water in Caddo Lake.

"(c) In regard to the water of interstate streams which do not contribute to the inflow to Cross Lake or Caddo Lake, Texas shall have the unrestricted right to divert and use this water on the basis of a division of runoff above the state boundary of sixty (60) percent to Texas and forty (40) percent to Louisiana.

"(d) Texas and Louisiana will not construct improvements on the Cross Lake watershed in either state that will affect the yield of Cross Lake; provided, however, this subsection shall be subject to the provisions of Section 2.08.

"§ 6.04. Subbasin 4—Intrastate streams—Louisiana.

"(a) This subbasin includes that area of Louisiana in Reach III not included within any other subbasin.

"(b) Louisiana shall have free and unrestricted use of the water of this subbasin.

"ARTICLE VII

"APPORTIONMENT OF WATER—REACH IV

"ARKANSAS AND LOUISIANA

"Subdivision of Reach IV and allocation of water therein. Reach IV of the Red River is divided into topographic subbasins, and the water therein allocated as follows:

"§ 7.01. Subbasin 1—Intrastate streams—Arkansas.

"(a) This subbasin includes those streams and their tributaries above last downstream major damsites originating in Arkansas and crossing the Arkansas-Louisiana state boundary before flowing into the Red River in Louisiana. Those major last downstream damsites are as follows:

			Location	
Stream	Site	Ac-ft	Latitude	Longitude
Ouachita River	Lake Catherine	19,000	34°26.6'N	93°01.6'W
Caddo River	DeGray Lake	1,377,000	34°13.2'N	93°06.6'W
Little Missouri River	Lake Greeson	600,000	34°08.9'N	93°42.9'W
Alum Fork, Saline River	Lake Winona	63,264	32°47.8'N	92°51.0'W

"(b) Arkansas is apportioned the waters of this subbasin and shall have unrestricted use thereof.

"§ 7.02. Subbasin 2—Interstate Streams—Arkansas and Louisiana.

"(a) This subbasin shall consist of Reach IV less subbasin 1 as defined in Section 7.01(a) above.

"(b) The State of Arkansas shall have free and unrestricted use of the water of this reach subject to the limitation that Arkansas shall allow a quantity of water equal to forty (40) percent of the weekly runoff originating below or flowing from the last downstream major damsite to flow into Louisiana. Where there are no designated last downstream damsites, Arkansas shall allow a quantity of water equal to forty (40) percent of the total weekly runoff originating above the state boundary to flow into Louisiana. Use of water in this subbasin is subject to low flow provisions of subparagraph 7.02(b).

"§ 7.03. Special Provisions.

"(a) Arkansas may use the beds and banks of segments of Reach IV for the purpose of conveying its share of water to designated downstream diversions.

"(b) The State of Arkansas does not guarantee to maintain a minimum low flow for Louisiana in Reach IV. However, on the following streams when the use of water in Arkansas reduces the flow at the Arkansas-Louisiana state boundary to the following amounts:

"(1) Ouachita—780 cfs

"(2) Bayou Bartholomew—80 cfs

"(3) Boeuf River—40 cfs

"(4) Bayou Macon—40 cfs

the state of Arkansas pledges to take affirmative steps to regulate the diversions of runoff originating or flowing into Reach IV in such a manner as to permit an equitable apportionment of the runoff as set out herein to flow into the State of Louisiana. In its control and regulation of the water of Reach IV any adjudication or order rendered by the State of Arkansas or any of its instrumentalities or agencies affecting the terms of this Compact shall not be effective against the State of Louisiana nor any of its citizens or inhabitants until approved by the Commission.

"ARTICLE VIII

"APPORTIONMENT OF WATER—REACH V

"§ 8.01. Reach V of the Red River consists of the mainstem Red River and all of its tributaries lying wholly within the State of Louisiana. The State of Louisiana shall have free and unrestricted use of the water of this subbasin.

"ARTICLE IX

"ADMINISTRATION OF THE COMPACT

"§ 9.01. There is hereby created an interstate administrative agency to be known as the 'Red River Compact Commission,' hereinafter called the 'Commission.' The Commission shall be composed of two representatives from each Signatory State who shall be designated or appointed in accordance with the laws of each state, and one Commissioner representing the United States, who shall be appointed by the President. The Federal Commissioner shall be the Chairman of the Commission but shall not have the right to vote. The failure of the President to appoint a Federal Commissioner will not prevent the operation or effect of this Compact, and the eight representatives from the Signatory States will elect a Chairman for the Commission.

"§ 9.02. The Commission shall meet and organize within 60 days after the effective date of this Compact. Thereafter, meetings shall be held at such times and places as the Commission shall decide.

"§ 9.03. Each of the two Commissioners from each state shall have one vote; provided, however, that if only one representative from a state attends he is authorized to vote on behalf of the absent Commissioner from that state. Representatives from three states shall constitute a quorum. Any action concerned with administration of this Compact or any action requiring compliance with specific terms of this Compact shall require six concurring votes. If a proposed action of the Commission affects existing water rights in a state, and that action is not expressly provided for in this Compact, eight concurring votes shall be required.

"§ 9.04.

"(a) The salaries and personal expenses of each state's representative shall be paid by the government that it represents, and the salaries and personal expenses of the Federal Commissioner will be paid for by the United States.

"(b) The Commission's expenses for any additional stream flow gaging stations shall be equitably apportioned among the states involved in the reach in which the stream flow gaging stations are located.

"(c) All other expenses incurred by the Commission shall be borne equally by the Signatory States and shall be paid by the Commission out of the 'Red River Compact Commission Fund.' Such Fund shall be initiated and maintained by equal payments of each state into the fund. Disbursement shall be made from the fund in such manner as may be authorized by the Commission. Such fund shall not be subject to audit and accounting procedures of the state; however, all receipts and disbursements of the fund by the Commission shall be audited by a qualified independent public accountant at regular intervals, and the report of such audits shall be included in and become a part of the

annual report of the Commission. Each state shall have the right to make its own audit of the accounts of the Commission at any reasonable time.

"ARTICLE X

"POWERS AND DUTIES OF THE COMMISSION

"§ 10.01. The Commission shall have the power to:

"(a) Adopt rules and regulations governing its operation and enforcement of the terms of the Compact;

"(b) Establish and maintain an office for the conduct of its affairs and, if desirable, from time to time, change its location;

"(c) Employ or contract with such engineering, legal, clerical and other personnel as it may determine necessary for the exercise of its functions under this Compact without regard to the Civil Service Laws of any Signatory State; provided that such employees shall be paid by and be responsible to the Commission and shall not be considered employees of any Signatory State.

"(d) Acquire, use and dispose of such real and personal property as it may consider necessary;

"(e) Enter into contracts with appropriate State or Federal agencies for the collection, correlation and presentation of factual data, for the maintenance of records and for the preparation of reports;

"(f) Secure from the head of any department or agency of the Federal or State government such information as it may need or deem to be useful for carrying out its functions and as may be available to or procurable by the department or agency to which the request is addressed; provided such information is not privileged and the department or agency is not precluded by law from releasing same;

"(g) Make findings, recommendations or reports in connection with carrying out the purposes of this Compact, including, but not limited to, a finding that a Signatory State is or is not in violation of any of the provisions of this Compact. The Commission is authorized to make such investigations and studies, and to hold such hearings as it may deem necessary for said purposes. It is authorized to make and file official certified copies of any of its findings, recommendations or reports with such officers or agencies of any Signatory State, or the United States, as may have any interest in or jurisdiction over the subject matter. The making of findings, recommendations, or reports by the Commission shall not be a condition precedent to the instituting or maintaining of any action or proceeding of any kind by a Signatory State in any court or tribunal, or before any agency or officer, for the protection of any right under this Compact or for the enforcement of any of its provisions; and

"(h) Print or otherwise reproduce and distribute its proceedings and reports.

"§ 10.02. The Commission shall:

"(a) Cause to be established, maintained, and operated such stream, reservoir and other gaging stations as are necessary for the proper administration of the Compact;

"(b) Cause to be collected, analyzed and reported such information on stream flows, water quality, water storage and such other data as are necessary for the proper administration of the Compact;

"(c) Perform all other functions required of it by the Compact and do all things necessary, proper and convenient in the performance of its duties thereunder;

"(d) Prepare and submit to the governor of each of the Signatory States a budget covering the anticipated expenses of the Commission for the following fiscal biennium;

"(e) Prepare and submit an annual report to the governor of each Signatory State and to the President of the United States covering the activities of the Commission for the preceding fiscal year, together with an accounting of all funds received and expended by it in the conduct of its work;

"(f) Make available to the governor or to any official agency of a Signatory State or to any authorized representative of the United States, upon request, any information within its possession;

"(g) Not incur any obligation in excess of the unencumbered balance of its funds, nor pledge the credit of any of the Signatory States; and

"(h) Make available to a Signatory State or the United States in any action arising under this Compact, without subpoena, the testimony of any officer or employee of the Commission having knowledge of any relevant facts.

"ARTICLE XI

"POLLUTION

"§ 11.01. The Signatory States recognize that the increase in population and the growth of industrial, agricultural, mining and other activities combined with natural pollution sources may lead to a diminution of the quality of water in the Red River Basin which may render the water harmful or injurious to the health and welfare of the people and

impair the usefulness or public enjoyment of the water for beneficial purposes, thereby resulting in adverse social, economic, and environmental impacts.

"§ 11.02. Although affirming the primary duty and responsibility of each Signatory State to take appropriate action under its own laws to prevent, diminish, and regulate all pollution sources within its boundaries which adversely affect the water of the Red River Basin, the states recognize that the control and abatement of the naturally-occurring salinity sources as well as, under certain circumstances, the maintenance and enhancement of the quality of water in the Red River Basin may require the cooperative action of all states.

"§ 11.03. The Signatory States agree to cooperate with agencies of the United States to devise and effectuate means of alleviating the natural deterioration of the water of the Red River Basin.

"§ 11.04. The Commission shall have the power to cooperate with the United States, the Signatory States and other entities in programs for abating and controlling pollution and natural deterioration of the water of the Red River Basin, and to recommend reasonable water quality objectives to the states.

"§ 11.05. Each Signatory State agrees to maintain current records of waste discharges into the Red River Basin and the type and quality of such discharges, which records shall be furnished to the Commission upon request.

"§ 11.06. Upon receipt of a complaint from the governor of a Signatory State that the interstate water of the Red River Basin in which it has an interest are being materially and adversely affected by pollution and that the state in which the pollution originates has failed after reasonable notice to take appropriate abatement measures, the Commission shall make such findings as are appropriate and thereafter provide such findings to the governor of the state in which such pollution originates and request appropriate corrective action. The Commission, however, shall not take any action with respect to pollution which adversely affects only the state in which such pollution originates.

"§ 11.07. In addition to its other powers set forth under this Article, the Commission shall have the authority, upon receipt of six concurring votes, to utilize applicable Federal statutes to institute legal action in its own name against the person or entity responsible for interstate pollution problems; provided, however, sixty (60) days before initiating legal action the Commission shall notify the Governor of the state in which the pollution source is located to allow that state an opportunity to initiate action in its own name.

"§ 11.08. Without prejudice to any other remedy available to the Commission, or any Signatory State, any state which is materially and adversely affected by the pollution of the water of the Red River Basin by pollution originating in another Signatory State may institute a suit against any individual, corporation, partnership, or association, or against any Signatory State or political or governmental subdivision thereof, or against any officer, agency, department, bureau, district or instrumentality of or in any Signatory State contributing to such pollution in accordance with applicable Federal statutes. Nothing herein shall be construed as depriving any persons of any rights of action relating to pollution which such person would have if this Compact had not been made.

"ARTICLE XII

"TERMINATION AND AMENDMENT OF COMPACT

"§ 12.01. This Compact may be terminated at any time by appropriate action of the legislatures of all of the four Signatory States. In the event of such termination, all rights established under it shall continue unimpaired.

"§ 12.02. This Compact may be amended at any time by appropriate action of the legislatures of all Signatory States that are affected by such amendment. The consent of the United States Congress must be obtained before any such amendment is effective.

"ARTICLE XIII

"RATIFICATION AND EFFECTIVE DATE OF COMPACT

"§ 13.01. Notice of ratification of this Compact by the legislature of each Signatory State shall be given by the governor thereof to the governors of each of the other Signatory States and to the President of the United States. The President is hereby requested to give notice to the governors of each of the Signatory States of the consent to this Compact by the Congress of the United States.

"§ 13.02. This Compact shall become effective, binding and obligatory when, and only when:

"(a) It has been duly ratified by each of the Signatory States; and

"(b) It has been consented to by an Act of the Congress of the United States, which Act provides that:

"Any other statute of the United States to the contrary notwithstanding, in any case or controversy:

"which involves the construction or application of this Compact;

"in which one or more of the Signatory States to this Compact is a plaintiff or plaintiffs; and

"which is within the judicial power of the United States as set forth in the Constitution of the United States;

"and without any requirement, limitation or regard as to the sum or value of the matter in controversy, or of the place of residence or citizenship of, or of the nature, character or legal status of, any of the other proper parties plaintiff or defendant in such case or controversy:

"The consent of Congress is given to name and join the United States as a party defendant or otherwise in any such case or controversy in the Supreme Court of the United States if the United States is an indispensable party thereto.

"§ 13.03. The United States District Courts shall have original jurisdiction (concurrent with that of the Supreme Court of the United States, and concurrent with that of any other Federal or state court, in matters in which the Supreme Court, or other court has original jurisdiction) of any case or controversy involving the application or construction of this Compact; that said jurisdiction shall include, but not be limited to, suits between Signatory States; and that the venue of such case or controversy may be brought in any judicial district in which the acts complained of (or any portion thereof) occur.

SIGNED AND APPROVED on the 12th day of May 1978 at Denison Dam.

John P. Saxton
John P. Saxton, Commissioner
State of Arkansas

Arthur R. Theis
Arthur R. Theis, Commissioner
State of Louisiana

Orville B. Saunders
Orville B. Saunders, Commissioner
State of Oklahoma

Fred Parkey
Fred Parkey, Commissioner
State of Texas

R. C. Marshall
R. C. MARSHALL, Major General
Representative
United States of America"

[Added by Acts 1979, 66th Leg., p. 551, ch. 261, § 1, eff. May 24, 1979.]

CHAPTER 47. CADDO LAKE COMPACT

Section
47.001. Ratification.
47.002. Original Copy.
47.003. Commissioner.
47.004. Oath.
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47.006. Executive Director.
47.007. Employees; Administrative Expenses.
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47.011. Text of Compact.

§ 47.001. Ratification

The Caddo Lake Compact, the text of which is set out in Section 47.011 of this code, is ratified and confirmed in all respects after having been signed at Marshall, Texas, on January 26, 1979, by Arthur R. Theis, Red River Compact Commissioner for the State of Louisiana, Fred Parkey, Red River Compact Commissioner for the State of Texas, William M. Huffman, Marshall, Texas, Senator Ed Howard, Texarkana, Texas, Senator Don Williamson, Shreveport, Louisiana, and Calhoun Allen, Shreveport, Louisiana.

[Added by Acts 1979, 66th Leg., p. 750, ch. 330, § 1, eff. June 6, 1979.]

§ 47.002. Original Copy

An original copy of the compact is on file in the office of the secretary of state.

[Added by Acts 1979, 66th Leg., p. 750, ch. 330, § 1, eff. June 6, 1979.]

§ 47.003. Commissioner

(a) The appointed Red River Compact Commissioner shall serve as a commissioner to represent this state on the commission established by Section 6 of the compact. Additionally, the governor with the advice and consent of the senate shall appoint a local commissioner from the Caddo Lake area in Texas to serve as another commissioner to represent the state on the commission established by Section 6 of the compact.

(b) The appointed Red River Compact Commissioner shall receive no additional compensation for serving as a Caddo Lake Compact Commissioner.

(c) The appointed local commissioner shall receive no compensation for serving as Caddo Lake Compact Commissioner but shall be entitled to reimbursement for actual and necessary expenses incurred in the discharge of official duties.

[Added by Acts 1979, 66th Leg., p. 750, ch. 330, § 1, eff. June 6, 1979.]

§ 47.004. Oath

The appointed Red River Compact Commissioner and local commissioner shall each take the constitutional oath of office and shall each also take an oath to faithfully perform his or her duties as commissioner.

[Added by Acts 1979, 66th Leg., p. 750, ch. 330, § 1, eff. June 6, 1979.]

§ 47.005. Powers and Duties

The appointed Red River Compact Commissioner and local commissioner are responsible for administering the provisions of the compact and have all the powers and duties prescribed by the compact.

[Added by Acts 1979, 66th Leg., p. 750, ch. 330, § 1, eff. June 6, 1979.]

§ 47.006. Executive Director

(a) The executive director of the Texas Department of Water Resources or a designated representative selected from the staff of the department shall also serve as a commissioner and represent this state on the commission established by Section 6 of the compact.

(b) The executive director or the designated representative may exercise the powers and shall discharge the duties provided by the compact.

(c) The executive director or the designated representative is not entitled to additional compensation for performing the duties under the compact but is entitled to reimbursement for actual and necessary expenses incurred while traveling in the discharge of official duties.

[Added by Acts 1979, 66th Leg., p. 750, ch. 330, § 1, eff. June 6, 1979.]

§ 47.007. Employees; Administrative Expenses

The commissioners, in conjunction with other members of the commission and as authorized by the legislature, may employ engineering and clerical personnel and may incur necessary office expenses for the appointed Red River Compact Commissioner and other expenses incident to the proper performance of their duties and the proper administration of the compact. However, the commissioners shall not incur any financial obligation on behalf of this state until the legislature has authorized and appropriated money for the obligation.

[Added by Acts 1979, 66th Leg., p. 750, ch. 330, § 1, eff. June 6, 1979.]

§ 47.008. Cooperation of Texas Department of Water Resources

The Texas Department of Water Resources shall cooperate with the commissioners in the performance of their duties and shall furnish them any factual data and information that is available.

[Added by Acts 1979, 66th Leg., p. 750, ch. 330, § 1, eff. June 6, 1979.]

§ 47.009. Notification of Other Parties; Copies

The governor shall notify the Governor of Louisiana and the President of the United States of the ratification of the compact by this state. On request of the governor, the secretary of state shall furnish to the Governor of Louisiana and the President of the United States a certified copy of the Act adopting this chapter of the code.

[Added by Acts 1979, 66th Leg., p. 750, ch. 330, § 1, eff. June 6, 1979.]

§ 47.010. Time When Compact Binding

This compact is binding and obligatory when the Red River Compact has been ratified by the State of Texas and this compact is ratified by the Legislature of Louisiana and consented to by the United States.

[Added by Acts 1979, 66th Leg., p. 750, ch. 330, § 1, eff. June 6, 1979.]

§ 47.011. Text of Compact

The Caddo Lake Compact reads as follows:

"CADDO LAKE COMPACT

PREAMBLE

The States of Louisiana and Texas, by acts of their respective governors, and based upon previous acts of their legislatures, have appointed representatives, including their respective Red River Compact Commissioners, to negotiate, in the interest of interstate comity and equitable apportionment and use of water, a Compact on Caddo Lake to augment and amplify the provisions of the Red River Compact dealing with Caddo Lake.

The Act of Congress, Public Law No. 346 (84th Congress, First Session), grants consent of federal government to the negotiation of this Compact; pursuant to that act, the President has designated the representative of the United States.

Because the water and water rights of the States of Oklahoma and Arkansas under the Red River Compact are completely unaffected by this Compact, Oklahoma and Arkansas have no objection to this Compact and did not participate in the negotiation of this Compact.

In order to resolve current controversies regarding the use of Caddo Lake water, controversies not adequately dealt with in the Red River Compact, the States of Texas and Louisiana, acting through their authorized representatives, have agreed to an equitable apportionment and use of the water of Caddo Lake and do hereby submit this Compact to amplify the Red River Compact and recommend that it be adopted by their respective legislatures and approved by Congress as hereinafter set forth:

Sec. 1. **Purposes**

In addition to the purposes specified in the Red River Compact, this compact is intended to preserve and protect Caddo Lake as a valuable environmental, cultural and natural resource and enhance water resource and recreational potentials, while allowing its utilization for water needs of adjacent portions of Louisiana and Texas. A primary means of accomplishing these purposes is to raise the spillway elevation of Caddo Lake to an elevation of 170.5 feet above mean sea level.

Nothing in this Compact shall be deemed to impair or affect the powers, rights, or obligations of the United States or those claiming under its authority in, over, and to water of Caddo Lake; nor shall this Compact be construed as interfering with the application of the National Environmental Policy Act of 1969.[1]

[1] 42 U.S.C.A. § 4321 et seq.

Sec. 2. **Relation to the Red River Compact**

(a) This compact augments and amplifies the Red River Compact. It shall be construed harmoniously with the Red River Compact; it is not intended to amend, replace, or supersede any provisions of the Red River Compact, nor are any of the provisions of the Red River Compact intended to prevent the effective implementation of this Compact.

(b) In the event the Red River Compact is not enacted by all concerned states and ratified by Congress, or in the event that such action occurs after the effective date of this Compact, this Compact shall be fully effective pursuant to the provisions of Section 9.

Sec. 3. **Dedication**

The States of Louisiana and Texas hereby dedicate the water of Caddo Lake below 167.5 feet above mean sea level to serve as a recreation and navigation pool. Neither Louisiana nor Texas shall allow the diversion or consumptive use of the water of Caddo Lake below that level except as authorized in this Compact.

Sec. 4. **Diversion of Dedicated Water**

(a) In order to divert water when the level of Caddo Lake is below 167.5 feet above mean sea level, any water user diverting more than 1,000 gallons per day from Caddo Lake must submit water use plans to the Caddo Lake Commission providing for conservation and efficient use of water.

(b) The Caddo Lake Commission shall authorize users with approved water use plans to divert water from Caddo Lake when the lake level is below 167.5 feet above mean sea level, at times and under conditions authorized by the Caddo Lake Commission. The Caddo Lake Commission shall give priority to domestic users, municipalities or municipal use by political subdivisions and industries, in that order.

(c) In the event any user of water from Caddo Lake shall purchase water which is delivered into Caddo Lake from another source, that user making the purchase shall have the use of such purchased water, minus transportation or storage losses if any, as determined by the Commission, free from the regulation of the Caddo Lake Commission.

Sec. 5. **Operating Rules**

As provided in Section 7, the Caddo Lake Commission shall have the power to establish operating criteria to govern the diversion and use of water from Caddo Lake. Unless modified, supplemented or changed by the Caddo Lake Commission, the following rules shall govern the diversion and use of water from Caddo Lake.

(a) The following operating rules shall be in effect until Caddo Lake is enlarged by raising the spillway level as provided in Section 8.

(1) Whenever water is spilling over the existing spillway at 168.5 feet above mean sea level, each state may withdraw or divert water from Caddo Lake without restriction.

(2) Whenever Caddo Lake is not spilling over the existing spillway at 168.5 feet above mean sea level, the total consumptive use by each state shall not exceed 8,400 acre-feet during the drawdown period; provided that neither state shall divert more than 3,600 acre-feet during any one month or 4,800 acre-feet during any two consecutive months.

(3) In addition to the requirements of Section 5(a)(2), when the lake level of Caddo Lake is at or below 167.5 feet above mean sea level,

(a) Any diversion by either state must be approved by the Caddo Lake Commission, as provided in Section 4; and,

(b) The total consumptive use by each state shall not exceed an average of 1,000 acre-feet per month, or more than 3,000 acre-feet during any two consecutive months; however,

(c) The limitations above shall not apply to a municipality or political subdivision during an emergency caused by the destruction or contamination of the municipality's or political subdivision's other water source.

(b) The following operating rules shall be in effect after Caddo Lake is enlarged by raising the spillway level as provided in Section 8.

(1) Whenever water is spilling over the raised spillway level, each state may withdraw or divert water from Caddo Lake without restriction.

(2) Whenever Caddo Lake is not spilling over the raised spillway, and the lake surface elevation is above 167.5 feet above mean sea level,

(a) If each state obtains 50% of the water above 168.5 feet above mean sea level, as authorized in Section 8, each state shall be entitled to divert 16,800 acre-feet during a drawdown period.

(b) If each state does not obtain 50% of the water above 168.5 feet above mean sea level, as authorized in Section 8, the total consumptive use by that state shall not be reduced below the amount of water to which it was entitled under Section 5(a).

(3) Whenever Caddo Lake is at or below 167.5 feet above mean sea level, no diversions from Caddo Lake may be made except in the case of a catastrophic event (such as destruction of a municipality or political subdivision's other water supply source or a drawdown which is more severe than

the critical drawdown of record). Any emergency withdrawal or diversion must be specifically authorized by the Caddo Lake Commission, as provided in Section 4.

(c) The term 'drawdown' as used herein means that period commencing on the first day water ceases spilling over the existing spillway (or the raised spillway, if Caddo Lake is enlarged as authorized in Section 8) and continuing so long as the Caddo Lake surface elevation continues to fall, until the day when appreciable inflow reaches Caddo Lake, causing the Caddo Lake surface elevation to rise leading to a spill from Caddo Lake.

Sec. 6. **Administration**

(a) There is hereby created an interstate administrative agency to be known as the 'Caddo Lake Commission,' also referred to herein as the 'Commission.' It shall be composed of the Commissioners of Louisiana and Texas who serve as Red River Compact Commissioners and an appointed commissioner from each state who resides within one of the parishes or counties in which Caddo Lake is located. The Commissioners shall choose one member of the Commission to serve as a voting chairman. In the event this Compact becomes effective prior to, or without, the Red River Compact, the Governors of Texas and Louisiana shall each appoint three Commissioners to serve as Caddo Lake Commissioners. These Commissioners, or their successors, shall serve until the Red River Compact becomes effective and the offices of the nonlocal commissioners are assumed by the states' Red River Compact Commissioners.

(b) The Commission shall meet and organize within sixty (60) days after the effective date of this Compact. Thereafter, meetings shall be held at such times and places as the Commission shall decide.

(c) Each Commissioner shall have one vote; however, if one or more commissioners from a state is absent, the Commissioner(s) in attendance from that state is authorized to vote on behalf of the absent Commissioner(s) from that state. Any action concerning the administration of this Compact shall require four votes.

(d) The salaries and personal expenses of each state's Commissioners shall be paid by that state.

(e) All expenses incurred by the Commission shall be borne equally by the States of Louisiana and Texas and shall be paid by the Commission out of the 'Caddo Lake Commission Fund'. Such fund shall be initiated and maintained by equal payments of each state into the fund. Disbursements shall be made from the fund in such a manner as may be authorized by the Commission. Such fund shall not be subject to audit and accounting procedures of either state; however, all receipts and disbursements of the fund by the Commission shall be audited by a qualified independent public accountant at regular intervals, and the report of such audits shall be included in and become part of the annual report of the Commission. Each state shall have the right to make its own audit of the accounts of the Commission at any reasonable time.

Sec. 7. **Duties and Powers**

(a) The Commission shall have the power to:

(1) Adopt rules and regulations governing its operation and enforcement of the terms of the Compact;

(2) Establish and maintain an office for the conduct of its affairs and, if desirable, from time to time, change its location;

(3) Employ or contract with such engineering, legal, clerical and other personnel as it may determine necessary for the exercise of its functions under this Compact without regard to the Civil Service Laws of Louisiana or Texas; provided that such employees shall be paid by and be responsible to the Commission and shall not be considered employees of any state;

(4) Acquire, use and dispose of such real and personal property as it may consider necessary;

(5) Enter into contracts with appropriate state or federal agencies for the collection, correlation and presentation of factual data, for the maintenance of records and for the preparation of reports;

(6) Secure from the head of any department or agency of the federal or state government such information as it may need or deem to be useful for carrying out its functions and as may be available to or procurable by the department or agency to which the request is addressed; provided such information is not privileged and the department or agency is not precluded by law from releasing same;

(7) Make findings, recommendations or reports in connection with carrying out the purposes of this Compact, including, but not limited to, a finding that Louisiana or Texas is or is not in violation of any of the provisions of this Compact. The Commission is authorized to make such investigations and studies, and to hold such hearings as it may deem necessary for said purposes. It is authorized to make and file official certified copies of any of its findings, recommendations or reports with such officers or agencies of Louisiana or Texas or the United States, as may have any interest in or jurisdiction over the subject matter. The making of findings, recommendations, or reports by the Commission shall not be a condition precedent to the instituting or maintaining of any action or proceeding of any kind by Louisiana or

Texas, in any court or tribunal, or before any agency or officer, for the protection of any right under this Compact or for the enforcement of any of its provisions; and

(8) Print or otherwise reproduce and distribute its proceedings and reports.

(b) The Commission shall:

(1) Cause to be established, maintained, and operated such stream, reservoir and other gaging stations as are necessary for the proper administration of the Compact;

(2) Cause to be collected, analyzed and reported such information on stream flows, water quality, water storage and such other data as are necessary for the proper administration of the Compact;

(3) Adopt reasonable standards and criteria for the approval of water use plans required by Section 4, and procedures for the submission thereof;

(4) Establish operating criteria to govern the diversion and use of water from Caddo Lake;

(5) Perform all other functions required of it by the Compact and do all things necessary, proper and convenient in the performance of its duties thereunder;

(6) Prepare and submit to the Governors of Louisiana and Texas a budget covering the anticipated expenses of the Commission for the following fiscal year or biennium;

(7) Prepare and submit an annual report to the Governors of Louisiana and Texas and to the President of the United States covering the activities of the Commission for the preceding fiscal year, together with an accounting of all funds received and expended by it in the conduct of its work;

(8) Make available to the governor or to any official agency of Louisiana or Texas or to any authorized representative of the United States, upon request, any information within its possession;

(9) Not incur any obligation in excess of the unencumbered balance of its funds, nor pledge the credit of Louisiana or Texas; and

(10) Make available to Louisiana or Texas or the United States in any action arising under this Compact, without subpoena, the testimony of any officer or employee of the Commission having knowledge of any relevant facts.

Sec. 8. **Enlargement of Caddo Lake**

(a) It is the intention of Louisiana and Texas to enlarge Caddo Lake by raising the spillway level two feet. Each state has the guaranteed right to obtain 50% of the water above 168.5 feet above mean sea level made available from such an enlargement, subject to paying one-half of the total costs. Total costs of enlargement are equal to the sum of the cost of spillway construction, the cost of land and flowage easements in Texas, the current market value of land and flowage easements in Louisiana, as well as the administrative expenses incurred for each of the above listed items.

(b) Each state may obtain a proportionately larger share of the water resulting from the enlargement by paying the portion of the cost which would otherwise be paid by the other state under Section 8(a).

(c) Should Louisiana, or one of its political subdivisions, unilaterally raise the Caddo Lake spillway level without obtaining flowage easements in Texas, Louisiana would have the right to all water made available by the enlargement; provided, however, this provision constitutes an express waiver of any sovereign immunity or Eleventh Amendment defenses which might otherwise be available to the State of Louisiana in an action for damages by a Caddo Lake property owner in Texas for damage resulting from such action.

(d) This section does not prevent the enlargement of Caddo Lake by raising the spillway level some amount less than two feet, nor does it prevent a subsequent enlargement of Caddo Lake which might ultimately raise the level of Caddo Lake's spillway more than two feet.

Sec. 9. **Ratification and Effective Date of Compact**

(a) Notice of ratification of this Compact by the Legislatures of Louisiana and Texas shall be given by the Governor thereof to the Governor of the other state and to the President of the United States. The President is hereby requested to give notice to the Governors of Texas and Louisiana of the consent to this Compact by the Congress of the United States.

(b) This Compact shall become effective, binding and obligatory when, and only when:

(1) It has been duly ratified by Louisiana and Texas;

(2) The Red River Compact has been duly ratified by the State of Texas; and

(3) It has been consented to by an Act of the Congress of the United States, which Act provides that:

Any other statute of the United States to the contrary notwithstanding, in any case or controversy:

which involves the construction or application of this Compact; in which Louisiana or Texas is a plaintiff; and

which is within the judicial power of the United States as set forth in the Constitution of the United States;

and without any requirement, limitation or regard as to the sum or value of the matter in controversy, or of the place of residence or citizenship of, or of the nature, character or legal status of, any of the other proper parties plaintiff or defendant in such case or controversy:

The consent of Congress is given to name and join the United States as a party defendant or otherwise in any such case or controversy in the Supreme Court of the United States if the United States is an indispensable party thereto.

(c) The United States District Courts shall have original jurisdiction (concurrent with that of the Supreme Court of the United States, and concurrent with that of any other federal or state court, in matters in which the Supreme Court, or other court has original jurisdiction) of any case or controversy involving the application or construction of this Compact; that said jurisdiction shall include, but not be limited to, suits between Louisiana and Texas; and that the venue of such case or controversy may be brought in any judicial district in which the acts complained of (or any portion thereof) occur.

SIGNED AND APPROVED THIS 26th DAY OF JANUARY, 1979.

William M. Huffman	Don Williamson
WILLIAM M. HUFFMAN Marshall, Texas	SENATOR DON WILLIAMSON Shreveport, Louisiana
Ed Howard	Calhoun Allen
SENATOR ED HOWARD Texarkana, Texas	CALHOUN ALLEN Shreveport, Louisiana
Fred Parkey	Arthur R. Theis
FRED PARKEY Red River Compact Commissioner for Texas	ARTHUR R. THEIS, Red River Compact Commissioner for Louisiana"

[Added by Acts 1979, 66th Leg., p. 750, ch. 330, § 1, eff. June 6, 1979.]

TITLE 4. GENERAL LAW DISTRICTS

CHAPTER 50. PROVISIONS GENERALLY APPLICABLE TO DISTRICTS

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Section
50.025. Service on Districts.
50.055. Fire Departments.
50.056. Prohibited Charges and Fees.
50.056. Operation of Certain Motor Vehicles on or Near Public Water Facilities.

SUBCHAPTER G. DISSOLUTION OF INACTIVE DISTRICTS
50.257. Assets Escheat to State.

SUBCHAPTER I. NOTICE
50.303. Posting Notice in the District.

SUBCHAPTER K. AUDIT OF DISTRICTS
50.377. Financially Dormant Districts.
50.378. Audit Report Exemption.
50.379. Fiscal Year.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 50.024. Disqualification of Members of Governing Boards

(a) A person is disqualified from serving as a member of a governing board of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district and created by special act of the legislature if:

(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the governing board of the district, or the manager, engineer, or attorney for the district;

(2) he is an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

(5) he is:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the governing board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the governing board with a person who would not be disqualified.

(c) Any person who willfully occupies an office as a member of a governing board and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than $100 nor more than $1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out

any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

[Amended by Acts 1975, 64th Leg., p. 600, ch. 248, § 1, eff. May 20, 1975.]

§ 50.025. Service on Districts

The president or the general manager of any district shall be the agent of the district on whom process, notice, or demand required or permitted by law to be served upon the district may be served.

[Added by Acts 1975, 64th Leg., p. 1838, ch. 568, § 1, eff. June 19, 1975.]

SUBCHAPTER C. POWERS AND DUTIES

§ 50.055. Fire Departments

(a) A district may establish, operate, and maintain a fire department to perform all fire-fighting activities within the district as provided in this section and may issue, with voter approval, bonds for financing the establishment of the fire department including the construction and purchase of necessary buildings, facilities, and equipment and the provision of an adequate water supply.

(b) After approval of the district electors of a plan to operate or jointly operate a fire department, the district or districts shall provide an adequate system and water supply for fire-fighting purposes and may construct and purchase necessary buildings, facilities, and equipment and may employ all necessary personnel including supervisory personnel to operate the fire department.

(c) Bonds issued for establishment of the fire department shall be authorized and issued as provided by law for authorization and issuance of other bonds of the district.

(d) Two or more districts may contract to operate a joint fire department for their districts and shall include in the contract a system for joint administration and operation of the fire department, the extent of services to be provided, a method for funding the department from funds of each district, and any other terms and conditions the parties consider necessary.

(e) A district may contract with any other person to perform fire-fighting services within the district.

(f) Before a district establishes a fire department, contracts to operate a joint fire department, or contracts with another person to perform fire-fighting services within the district, the district must comply with the provisions of Subsections (g), (h), and (i) of this section.

(g) A district or districts proposing to act jointly shall develop a detailed plan for the establishment, operation, and maintenance of the proposed department, including a detailed presentation of all financial requirements. If a district is entering into a contract under Subsection (e) of this section, the district shall develop a plan that describes in detail the facilities and equipment to be devoted to service to the district and all proposals for providing the service and that includes a presentation of the financial requirements under the contract. Before adoption of a plan and any contract by the district, the governing board of the district shall hold a hearing at which any person residing in the district may present testimony for and against the proposed plan and any proposed contract. Notice of the hearing and the place at which the plan and any contract may be examined shall be posted in two public places within the district at least 10 days before the date of the hearing.

(h) After adoption of the plan and any contract by the governing board, the plan and financial presentation, together with any contract and a written report in a form prescribed by the executive director describing existing fire departments and fire-fighting services available within 25 miles of the boundaries of the district, shall be submitted to the executive director for consideration by the commission under rules adopted by the board. Before approval or disapproval, the commission shall hold a hearing. Notice of the hearing before the commission shall be posted by the governing board of the district in at least two public places in the district at least five days before the hearing. Before the commission approves the application, it must find that it is economically feasible for the district to implement the plan and meet the provisions of any contract and shall take into consideration in giving its approval the general financial condition of the district and the economic feasibility of the district carrying out the plan or meeting the obligations of the contract.

(i) After approval by the commission, the district shall submit to the electors of the district at the election to approve bonds for financing the plan, or if no bonds are to be approved, at an election called for approval of the plan, the proposition of whether or not the plan should be implemented or entered into by the district. The ballots at the election shall be printed, as applicable, to provide for voting for or against the proposition: "The implementation of the plan for (operation/joint operation) of a fire department"; or "The plan and contract to provide fire-fighting services for the district."

(j) No funds of the district may be used to establish a fire department, to enter into joint operation of a fire department, or to contract for fire-fighting services without the approval of a plan by the electors as provided in this section. However, the district may use available funds for preparation of a plan and any contract.

[Added by Acts 1977, 65th Leg., p. 1404, ch. 568, § 1. Amended by Acts 1979, 66th Leg., p. 2185, ch. 834, § 2, eff. Aug. 27, 1979.]

Section 2 of the 1977 Act provided:

"This Act takes effect only on adoption by the qualified electors of the constitutional amendments proposed in H. J. R. No. 42 of the 65th Legislature."

H.J.R. No. 42 was approved by the voters in an election held November 7, 1978.

§ 50.056. Prohibited Charges and Fees

Text as added by Acts 1979, 66th Leg., p. 437, ch. 198, § 1.

(a) In this section, "undeveloped property" means property within the district to which water or sewer services are actually available and to which no water or sewer connections have been made.

(b) Except as provided in Subsection (c) of this section, no water control and improvement district or municipal utility district in which the ratio of the assessed valuation of property to the amount of bonded indebtedness of the district is at least 15 to 1, which is created by special act of the legislature and which proposes to provide or actually provides water and sewer services or either of these services to household users as the principal function of the district, may adopt and impose on the owners of undeveloped property in the district a charge or fee on the undeveloped property that is in addition to taxes levied by the district on that property.

(c) If the governing board of a district covered by this section desires to adopt and impose a charge or fee prohibited by Subsection (b) of this section, it shall submit to the commission a petition for authority to adopt and impose the charge or fee. If the commission finds that it will be in the best interest of the district and property owners of the district, the commission shall approve the adoption and imposition of the charge or fee for a period of not more than three years. The imposition of a charge or fee may be renewed for additional periods of three years in the manner provided in this section for initial approval of the charge or fee.

[Added by Acts 1979, 66th Leg., p. 437, ch. 198, § 1, eff. Jan. 1, 1980.]

For text as added by Acts 1979, 66th Leg., p. 1395, ch. 621, § 1, see § 50.056, post

Section 2 of Acts 1979, 66th Leg., ch. 198, provided:

"This Act shall not apply to districts which do not as a principal function provide water and sewer services or either of these services to household users."

§ 50.056. Operation of Certain Motor Vehicles on or Near Public Water Facilities

Text as added by Acts 1979, 66th Leg., p. 1395, ch. 621, § 1.

(a) In this section, "motor vehicle" means a self-propelled device in, upon, or by which a person or property is or may be transported or drawn on a road or highway.

(b) Except as provided in Subsections (c) and (d) of this section, a person may not operate a motor vehicle on a levee, in a drainage ditch, or on land adjacent to a levee, canal, ditch, exposed conduit, pumping plant, or other facility for the transmission or storage of water or sewage that is owned or controlled by a district.

(c) A district may authorize the use of motor vehicles on land that it owns or controls by posting signs on the property.

(d) This section does not prohibit a person from:

(1) driving on a public road or highway; or

(2) operating a motor vehicle that is being used for repair or maintenance of public water facilities.

(e) A person who operates a motor vehicle in violation of Subsection (b) of this section commits an offense. An offense under this section is a Class C misdemeanor, except that if a person has been convicted of an offense under this section, a subsequent offense is a Class B misdemeanor.

[Added by Acts 1979, 66th Leg., p. 1395, ch. 621, § 1, eff. Sept. 1, 1979.]

For text as added by Acts 1979, 66th Leg., p. 437, ch. 198, § 1, see § 50.056, ante

SUBCHAPTER G. DISSOLUTION OF INACTIVE DISTRICTS

§ 50.257. Assets Escheat to State

Upon the dissolution of a district by the commission, all assets of the district shall escheat to the State of Texas. The assets shall be administered by the state treasurer and shall be disposed of in the manner provided by Article 3272a, Revised Civil Statutes of Texas, 1925, as amended.

[Added by Acts 1977, 65th Leg., p. 1510, ch. 610, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER I. NOTICE

§ 50.303. Posting Notice in the District

(a) Any district created under this title or by special act of the legislature, which is providing or proposing to provide, as the district's principal function, water and sewer services, or either of these services to household users, shall, within 30 days after the effective date of this section or the creation of the district, post signs indicating the existence of the district at at least two principal entrances to the district.

(b) The size and exact location of and the information contained on the signs shall be determined by the commission.

[Added by Acts 1975, 64th Leg., p. 246, ch. 96, § 1, eff. Sept. 1, 1975.]

[Sections 50.304 to 50.330 reserved for expansion]

SUBCHAPTER K. AUDIT OF DISTRICTS

§ 50.371. Duty to Audit

(a) The governing board of each district created under the general law or by special act of the legislature shall have the district's fiscal accounts and records audited annually at the expense of the district.

(b) In all areas of conflict the provisions of this subchapter shall take precedence over all prior statutory enactments.

(c) The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy.

(d) The audit required by this section shall be completed within 120 days after the close of the district's fiscal year, except for districts audited by the state auditor; district audits by the state auditor shall be completed within 12 months of the close of the district's fiscal year.

[Amended by Acts 1975, 64th Leg., p. 624, ch. 255, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 68, ch. 35, § 1, eff. Aug. 29, 1977.]

§ 50.372. Form of Audit

The commission shall adopt an accounting and auditing manual, and except as otherwise provided by this manual, the audit shall be performed according to the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants, hereinafter referred to as generally accepted auditing standards, and shall include the auditor's representation that the financial statements have been prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants, hereinafter referred to as generally accepted accounting principles.

[Amended by Acts 1977, 65th Leg., p. 68, ch. 35, § 2, eff. Aug. 29, 1977.]

§ 50.374. Filing of Audits, Affidavits, and Financial Reports

(a) After the governing board of the district has approved the audit, it shall submit a copy of the report to the Texas Water Rights Commission for filing within 135 days after the close of the district's fiscal year unless the audit is performed by the state auditor, in which case it will be filed in accordance with Section 50.104 of this code.

(b) If the governing board of the district refuses to approve the annual audit report, the governing board shall submit a copy of the report to the commission for filing accompanied by a statement from the board explaining the reasons for its failure to approve the report within 135 days after the close of the district's fiscal year, except as specified in Subsection (a) of this section.

(c) Copies of the audit or the annual financial dormancy affidavit or annual financial report described in Sections 50.377 and 50.378 of this code shall be filed annually in the office of the district and with the city secretary or other designated city official in whose extraterritorial jurisdiction the district is located. If the district is not located within the extraterritorial jurisdiction of a city, the audit, annual financial dormancy affidavit, or annual financial report shall be filed annually with the clerk of the county within which the district is located; provided, however, this subsection shall not apply to any district which is located within all or parts of more than two counties; however, each such district shall file a copy of its annual audit, annual financial dormancy affidavit, or annual financial report with the county clerk of the county within which the greater part of the district resides.

(d) Each district shall file with the commission an annual filing affidavit in a format prescribed by the commission, executed by the current president or chairman of the board, or by a county judge who is presiding as chairman of the governing board, stating that all copies of the annual audit report, annual financial dormancy affidavit, or annual financial report have been filed under this section.

(e) The annual filing affidavit shall be submitted to the commission within 15 days after the applicable annual document has been submitted to the commission for filing as prescribed by this subchapter.

(f) The commission shall file with the attorney general the names of any districts that do not comply with the provisions of this section.

(g) Any district that violates the provisions of this section is subject to a civil penalty of not less than $50 nor more than $100 a day for each act of violation and for each day a violation continues. Before a district is subject to the penalty provided in this subsection, it must continue to violate this section after receipt of written notice of violation from the commission sent by certified mail, return receipt requested.

[Amended by Acts 1975, 64th Leg., p. 247, ch. 97, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 624, ch. 255, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 68, ch. 35, § 3, eff. Aug. 29, 1977.]

§ 50.375. Review by Commission

(a) The Texas Water Rights Commission shall review the audit report of each district, and if the commission has any objections or determines any violations of generally accepted auditing standards or accounting principles, statutes, or commission rules, or if the commission has any recommendations, it shall notify the governing board of the district.

(b) Before the audit report may be accepted by the commission as being in compliance with the provisions of this subchapter, the governing board and the auditor shall remedy objections and correct violations of which they have been notified by the commission.

[See Compact Edition, Volume 1 for text of (c)]

[Amended by Acts 1977, 65th Leg., p. 69, ch. 35, § 4, eff. Aug. 29, 1977.]

§ 50.376. Access to and Maintenance of District Records

(a) The commission shall have access to all vouchers, receipts, district fiscal and financial records, and other district records which the commission considers necessary for the review, analysis, and approval of an audit report.

(b) All district fiscal records shall be prepared on a timely basis and maintained in an orderly manner in accordance with generally accepted accounting principles. The fiscal records shall be available for public inspection during regular business hours. A district's fiscal records may be removed from the district's office for the purpose of recording its fiscal affairs and for preparing an audit, during which time the fiscal records are under the control of the district's auditor. Those districts proposing to provide or actually providing water and sewer services or either of these services to household users as the principal function of the district and having at least 100 qualified electors residing in the district shall maintain all district fiscal records in a district office located in the district.

[Amended by Acts 1977, 65th Leg., p. 69, ch. 35, § 5, eff. Aug. 29, 1977.]

§ 50.377. Financially Dormant Districts

(a) Those districts which can satisfy the criteria contained in this section may elect to submit to the commission for filing a financial dormancy affidavit in lieu of compliance with Section 50.371 of this code:

(1) the district had no revenue from operations, tax assessments, or any other sources during the fiscal period;

(2) the district had no expenditures of funds during the fiscal period; and

(3) the district had no bonds or any other liabilities outstanding during the fiscal period.

(b) The required annual affidavit shall be prepared in a format prescribed by the commission and shall be submitted for filing by the district's current president or chairman of the board, its attorney, or by a county judge who is presiding as chairman of the governing board.

(c) The affidavit must be filed annually with the commission and other governmental entities prescribed by Subsection (c) of Section 50.374 of this code within 30 days after the anniversary date of the district's creation, until such time as the district becomes financially active and the governing board adopts a fiscal year; thereafter, the district shall file annual audit reports as prescribed by this subchapter.

(d) A district that becomes financially dormant after having been financially active shall be required to file annual financial dormancy affidavits within 30 days after the close of the district's fiscal year, and each succeeding year thereafter, until such time the district is either dissolved or again becomes financially active.

(e) Districts governed by this section are subject to periodic audits by the commission.

[Added by Acts 1977, 65th Leg., p. 70, ch. 35, § 6, eff. Aug. 29, 1977.]

§ 50.378. Audit Report Exemption

(a) A district may elect to file annual financial reports with the commission and the other governmental entities prescribed by Subsection (c) of Section 50.374 of this code in lieu of the district's compliance with Section 50.371 of this code provided:

(1) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(2) the district did not have gross income in excess of $5,000 during the fiscal period; and

(3) the district's cash, receivables, and temporary investments were not in excess of $20,000 during the fiscal period.

(b) The annual financial report must be accompanied by an affidavit attesting to the accuracy and authenticity of the financial report signed by the district's current president or chairman of the board, or by a county judge who is presiding as chairman of the governing board.

(c) The annual financial report and affidavit in a format prescribed by the commission must be on file with the commission and other governmental entities prescribed by Subsection (c) of Section 50.374 of this code within 45 days after the close of the district's fiscal year.

(d) Districts governed by this section are subject to periodic audits by the commission.

[Added by Acts 1977, 65th Leg., p. 70, ch. 35, § 7, eff. Aug. 29, 1977.]

§ 50.379. Fiscal Year

When a district becomes financially active, the governing board of that district shall adopt a fiscal year by a formal board resolution and so note it in the district's minutes. The president or chairman of the governing board shall notify the commission of the adopted fiscal year within 30 days after adoption.

[Added by Acts 1977, 65th Leg., p. 71, ch. 35, § 8, eff. Aug. 29, 1977.]

CHAPTER 51. WATER CONTROL AND IMPROVEMENT DISTRICTS

SUBCHAPTER D. POWERS AND DUTIES

51.1751. Additional Sources for Payment of Lease.
51.195. Prohibited Charges and Fees.

SUBCHAPTER *O*. ADDING AND EXCLUDING TERRITORY AND CONSOLIDATING DISTRICTS

Section

51.737. Exclusion of Land.
51.738. Applicable Only to Land Annexed After Formation of District.
51.739. Application to Exclude Land.
51.740. Hearing.
51.741. Notice of Hearing.
51.742. Hearing Procedure.
51.743. Grounds for Exclusion.
51.744. Findings by the Board.
51.745. Excluding Land.
51.746. Payment of Taxes.
51.747. Review.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 51.0721. Disqualification of Members of the Board

(a) A person is disqualified from serving as a member of the board of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district, if:

(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the board, or the manager, engineer, or attorney for the district;

(2) he is an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

(5) he is:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who willfully occupies an office as a director and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than $100 nor more than $1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

[Amended by Acts 1975, 64th Leg., p. 601, ch. 248, § 2, eff. May 20, 1975.]

§ 51.0731. Election Date for Certain Directors

The election date for directors of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district shall be the first Saturday in April.

[Amended by Acts 1975, 64th Leg., p. 625, ch. 256, § 1, eff. Sept. 1, 1975.]

§ 51.086. Tax Assessor and Collector's Bond Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective Janu-

ary 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

SUBCHAPTER D. POWERS AND DUTIES

§ 51.139. Contracts for Materials, Machinery, Construction, Etc., for more than $10,000

[See Compact Edition, Volume 2 for text of (a) to (e)]

(f) Repealed by Acts 1977, 65th Leg., p. 379, ch. 187, § 2, eff. Aug. 29, 1977.

[Amended by Acts 1977, 65th Leg., p. 379, ch. 187, § 2, eff. Aug. 29, 1977.]

§ 51.140. Construction Bids

(a) A person who desires to bid on proposed construction work shall submit to the board a written sealed bid together with a cashier's check on a responsible bank in the state for at least two percent of the total amount of the bid, or a bid bond of at least two percent of the total amount of the bid issued by a surety legally authorized to do business in this state.

[See Compact Edition, Volume 1 for text of (b)]

(c) If the successful bidder fails or refuses to enter into a proper contract with the district or fails or refuses to furnish the bond required by law, he forfeits the amount of the cashier's check which accompanied his bid, or if a bid bond has been given, the district shall have the legal remedies available under the bond.

[Amended by Acts 1977, 65th Leg., p. 378, ch. 187, § 1, eff. Aug. 29, 1977.]

§ 51.1751. Additional Sources for Payment of Lease

(a) Notwithstanding any other provision of this chapter, a district may make payments from tax revenue under a lease of all or any part of an irrigation system as provided in Section 51.173 of this code if the lease is approved by a majority of the qualified voters voting at an election held for that purpose.

(b) An election for the approval of a lease shall be called and conducted, the returns canvassed, and notice of the election given under the same procedure as a bond election in the district. The election may be held on the same day as a bond election of the district.

(c) If the lease is approved at the election and authorized by the board of directors, it shall constitute an obligation against the taxing power of the district, and the district shall levy, assess, and collect taxes to the extent provided in the lease.

[Added by Acts 1979, 66th Leg., p. 883, ch. 403, § 2, eff. June 6, 1979.]

§ 51.184. Preference in Use of Water

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) The board may implement the action prescribed in Subsection (b) or in Subsections (b) and (c) above, and shall obtain necessary amendments to the district's permit, certified filing, or certificate of adjudication in the manner provided in Section 5.1211 of this code.

[Amended by Acts 1975, 64th Leg., p. 1250, ch. 473, § 1, eff. June 19, 1975.]

Section 2 of the 1975 Act provided:

"No action or proceeding commenced prior to the effective date of this Act and no right accrued by actual change prior to the effective date of this Act shall be affected by the enactment of this Act."

Section 3 thereof, the emergency provision, provided in part:

"The fact that a recent decision of the Austin Court of Civil Appeals may have limited the primary jurisdiction of the Texas Water Rights Commission to supervise and regulate changes in water rights and may have affected the jurisdiction of the commission to regulate and cancel water rights, and to administer the Water Rights Adjudication Act, creates an emergency * * ".

§ 51.195. Prohibited Charges and Fees

(a) In this section, "undeveloped property" means property within the district to which water or sewer services are actually available and to which no water or sewer connections have been made.

(b) Except as provided in Subsection (c) of this section, no district in which the ratio of the assessed valuation of property to the amount of bonded indebtedness of the district is at least 15 to 1, proposing to provide or actually providing water and sewer services or either of these services to household users as the principal function of the district, may adopt and impose on the owners of undeveloped property in the district a charge or fee on the undeveloped property that is in addition to taxes levied on that property.

(c) If the board of directors of a district covered by this section desires to adopt and impose a charge or fee prohibited by Subsection (b) of this section, it shall submit to the commission a petition for authority to adopt and impose the charge or fee. If the commission finds that it will be in the best interest of the district and property owners of the district, the commission shall approve the adoption and imposition of the charge or fee for a period of not more than three years. The imposition of a charge or fee may be renewed for additional periods of three years in the manner provided in this section for initial approval of the charge or fee.

[Added by Acts 1979, 66th Leg., p. 437, ch. 198, § 1, eff. Jan. 1, 1980.]

Section 2 of the 1979 Act provided:

"This Act shall not apply to districts which do not as a principal function provide water and sewer services or either of these services to household users."

SUBCHAPTER I. GENERAL FISCAL PROVISIONS

§ 51.356. Selection of Depository

[See Compact Edition, Volume 1 for text of (a)]

(b) The depository shall execute a good and sufficient bond or security that will be the same as provided by law for a county depository approved by the board to fully protect the district and to guarantee the preservation of the funds and the accountability of the depository as provided by law. The bond or security shall be recorded in the district office and kept in a fireproof vault or safe.

[See Compact Edition, Volume 1 for text of (c)]

[Amended by Acts 1975, 64th Leg., p. 566, ch. 223, § 1, eff. May 20, 1975.]

SUBCHAPTER K. ISSUANCE OF BONDS

§ 51.409. Purposes for Issuance of Bonds

The district may issue bonds to include:

(1) the cost of organization of the district;

(2) incidental expenses;

(3) the cost of investigation and making plans;

(4) the engineer's work and other incidental expenses;

(5) the cost of retirement of preliminary bonds;

(6) the cost of issuing and selling bonds;

(7) the estimated discount on the bonds;

(8) the cost of operation of district for the period of construction of the plant and improvements stated in the engineer's report;

(9) an amount to pay interest on the bonds during the period stated in the engineer's report, which shall be not more than three years from the time the bonds are sold;

(10) any additional cost or expense made necessary by any change or modification made in the proposed work by the district; and

(11) the payment of interest on or the creation of a reasonable reserve to pay interest on bonds and notes of the district for a period of time not to exceed three years from the date of the bonds and notes of the district.

[Amended by Acts 1979, 66th Leg., p. 883, ch. 403, § 1, eff. June 6, 1979.]

§§ 51.434, 51.435.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

SUBCHAPTER L. TAX PLAN

§ 51.509. Lien Created; No Limitation

Text of section effective January 1, 1982

Charges or assessments imposed by a district for maintenance and operation of works, facilities, and services of the district shall constitute a lien against the land to which the charges or assessments have been established. No law providing limitation against actions for debt shall apply.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 51.534. Laws Governing the Assessment and Collection of Taxes

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 51.537. Assessor and Collector's Report

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

SUBCHAPTER M. TAXATION ON THE AD VALOREM BASIS

§ 51.561. Assessment and Collection of District Taxes

Text of section effective January 1, 1982

The assessor and collector shall assess and collect taxes for the district.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§§ 51.562 to 51.590.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§§ 51.592 to 51.601.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective Janu-

ary 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

SUBCHAPTER N. TAXATION ON THE BENEFIT BASIS

§ 51.652. Setting Annual Value of Land Unnecessary

Text of section effective January 1, 1982

If the district adopts the uniform acreage valuation for taxation, the valuation shall be applied to all land in the district, and it is not necessary to annually fix the value of the land. It is also unnecessary for the board to appoint a commission to ascertain or fix the value of the improvement to particular land.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 51.653. Preparing Tax Rolls

Text of section effective January 1, 1982

(a) The board shall examine the tax rolls to determine if all property subject to taxation appears on the tax rolls under the proper classification. The board shall add to the tax roll any property which was left off and shall examine, correct, and certify the tax roll.

(b) Any property owner may protest to the board that his property has not been properly classified. The board shall consider the protest and enter its findings in the minutes.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 51.654. Rendition on Property Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 51.655. Law Governing Administration of Benefit Tax Plan

Text of section effective January 1, 1982

In a district that levies taxes on a benefit basis, the rate of taxation and the assessment and collection of taxes shall be governed by the law relating to ad valorem taxes to the extent applicable.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

SUBCHAPTER O. ADDING AND EXCLUDING TERRITORY AND CONSOLIDATING DISTRICTS

§ 51.734. Governing Consolidated Districts

[See Compact Edition, Volume 1 for text of (a) to (e)]

(f) The consolidation agreement may provide for the establishment of five voting precincts described in the agreement and for the election of one director from each precinct. A district that adopts the precinct method of election will retain that method if it elects to be governed by another chapter of this code.

[Amended by Acts 1977, 65th Leg., p. 1764, ch. 712, § 1, eff. Aug. 29, 1977.]

§ 51.737. Exclusion of Land

After a district is organized, acquires facilities, and votes, issues, and sells bonds for the purposes for which the district was organized, any land that has been added to the district by an order resulting from a petition of the owner or owners of the land added, may be excluded from the district by complying with the provisions of Sections 51.738 through 51.747 of this code.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.738. Applicable Only to Land Annexed After Formation of District

Sections 51.737 through 51.747 of this code shall only be applicable to land which was annexed after the district was formed and bonds were voted, issued, and sold.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.739. Application to Exclude Land

(a) A petition for exclusion of land under Sections 51.737 through 51.747 of this code must accurately describe the land to be excluded by metes and bounds or by reference to a plat recorded in the plat records of the county or counties in which the district is located.

(b) A petition for exclusion by the owner or owners of the land to be excluded shall be filed with the district at least 15 days before the hearing on the petition for exclusion and shall state clearly the particular grounds on which the exclusion is sought. Only the stated grounds shall be considered.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.740. Hearing

On receipt of a petition to exclude land as provided in Sections 51.737 through 51.747 of this code, the board shall hold a hearing to consider the petition for exclusion.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.741. Notice of Hearing

When the board sets a hearing as provided in Section 51.740 of this code, the board shall publish notice once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall appear at least 15 days and not more than 40 days before the date of the hearing.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.742. Hearing Procedure

The board may adjourn the hearing from one day to another and until all persons desiring to be heard are heard. At the hearing, the board shall first consider the petition or petitions for exclusion of land and shall hear evidence as to the grounds for exclusion. The board shall then give any voter or property owner within the district or other interested party an opportunity to be heard and present evidence with regard to approval of or protest against the proposed exclusion.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.743. Grounds for Exclusion

The board shall exclude land meeting the prerequisites of Sections 51.737 and 51.738 of this code, if it finds that either of the following grounds are present:

(1) to provide to the land to be excluded the necessary benefits, services, and protections on a basis substantially equal with the remainder of the district would create an undue economic burden on the remainder of the district, the land to be excluded, or the facilities of the district; or

(2) the anticipated or necessary financing for or availability of the necessary facilities, benefits, services, or protections to the land to be excluded are not reasonably available and no economically feasible alternative exists to provide the necessary facilities, benefits, services, or protections.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.744. Findings by the Board

Before determining to exclude any land under Sections 51.737 through 51.747 of this code, the board shall make the following findings:

(1) no district facilities have been installed on the land to be excluded;

(2) no district funds have been spent to construct or enlarge the facilities of the district for the sole purpose of providing benefits, services, or protections to the land to be excluded; and

(3) no bonds have been approved by the voters and issued by the district after the land to be excluded was annexed to the district.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.745. Excluding Land

After considering all engineering data and other evidence presented to it, if the board makes the findings provided in Section 51.744 of this code and determines that it would be in the best interest of the district to exclude the land, the board shall enter an order excluding all land meeting the conditions and shall redefine the boundaries of the district in order to embrace all land not excluded.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.746. Payment of Taxes

Before an order excluding land under Sections 51.737 through 51.747 of this code becomes effective, all taxes levied and assessed by the district on the land to be excluded shall be fully paid.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.747. Review

Any person owning an interest in land affected by the order excluding land may file a petition within 20 days after the effective date of the order to review, set aside, modify, or suspend the order. The venue of the action shall be in a district court located in the county in which the district is located and shall be tried in accordance with Sections 51.699 through 51.701 of this code.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER P. DISSOLUTION OF DISTRICT

§ 51.804. Determining Amount of Tax

Text of section effective January 1, 1982

(a) The value of all of the taxable property of the district shall be taken at the assessed value as determined in the manner provided by the Property Tax Code, and an amount equal to the total of the principal and all interest to maturity on the bonds voted plus the estimated cost of collection of taxes shall be assessed against the taxable property of the district on the ad valorem basis.

(b) The tax against the taxable property of each owner shall be that portion of the total principal and interest of the dissolution bonds and costs of collection which the assessed value of the taxable property of the owner bears to the total assessed values in the district.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 51.812. Dissolution Tax Roll

Text of section effective January 1, 1982

Before the issuance and delivery of the bonds, the board shall have the amount of dissolution tax imposed on each property in the district and its orders relating to the time and manner of payment of the tax entered on the current tax roll for the district.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§§ 51.813 to 51.818. Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 51.819. Filing Dissolution Tax Roll

Text of section effective January 1, 1982

After the preparation of the dissolution tax roll, the board shall file the tax roll with the assessor and collector of the county or counties in which the district is located.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 51.820. Collection of Taxes

Text of section effective January 1, 1982

The assessor and collector shall collect the taxes determined under Section 51.804 of this code on the land located in the county for which he is assessor and collector at the time and in the manner specified by the board in its various orders issuing the dissolution bonds and levying the taxes.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 51.824. Foreclosure of Lien

Text of section effective January 1, 1982

The lien may be foreclosed in the manner prescribed in the Property Tax Code in a suit or suits brought in the name of the district by the board, or by the trustee or his successor as provided by the board.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 51.836. Taxes to Pay Indebtedness After Dissolution

Text of section effective January 1, 1982

If a district has outstanding bonds or other indebtedness maturing beyond the current year in which the dissolution occurs, the commissioners court of the county in which the district is located shall levy and have assessed and collected, in the manner prescribed in the Property Tax Code sufficient taxes on all taxable property in the district to pay the principal of and interest on the bonds and other indebtedness when due.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

CHAPTER 53. FRESH WATER SUPPLY DISTRICTS

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 53.0631. Disqualification of Members of the Board

(a) A person is disqualified from serving as a member of the board if:

(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district or to a member of the board or the manager, engineer, or attorney for the district;

(2) he is an employee of any developer of property in the district or any other director, or the manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

(5) he is:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who willfully occupies an office as a supervisor and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than $100 nor more than $1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

[Amended by Acts 1975, 64th Leg., p. 602, ch. 248, § 3, eff. May 20, 1975.]

§ 53.074. Assessor and Collector's Bond

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§§ 53.078 to 53.083.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

SUBCHAPTER F. BOND AND TAX PROVISIONS

§§ 53.191 to 53.196.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§§ 53.199, 53.200.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER 54. MUNICIPAL UTILITY DISTRICTS

SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION OF DISTRICT

Section
54.0161. Review of Creation by County.

SUBCHAPTER D. POWERS AND DUTIES

54.2041. Prohibited Charges and Fees.
54.2271. County Standards.

SUBCHAPTER F. ISSUANCE OF BONDS

54.5161. Review of Bond Projects by Counties.
54.521. Use of Bond Proceeds to Pay Certain Interest.

SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION OF DISTRICT

§ 54.016. Consent of City

[See Compact Edition, Volume 1 for text of (a)]

(b) If the governing body of a city fails or refuses to grant permission for the inclusion of land within its extraterritorial jurisdiction in a district within 120 days after receipt of a written request, a majority of the electors in the area proposed to be included in the district or the owner or owners of 50 percent or more of the land to be included may petition the governing body of the city and request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district.

[See Compact Edition, Volume 1 for text of (c) to (e)]

(f) A city may provide in its written consent for the inclusion of land in a district that a contract ("allocation agreement") between the district and the city be entered into prior to the first issue of bonds, notes, warrants, or other obligations of the district. The allocation agreement shall contain the following provisions:

(1) a method by which the district shall continue to exist following the annexation of all territory within the district by the city, if the

district is initially located outside the corporate limits of the city;

(2) an allocation of the taxes or revenues of the district or the city which will assure that, following the date of the inclusion of all the district's territory within the corporate limits of the city, the total annual ad valorem taxes collected by the city and the district from taxable property within the district does not exceed an amount greater than the city's ad valorem tax upon such property;

(3) an allocation of governmental services to be provided by the city or the district following the date of the inclusion of all of the district's territory within the corporate limits of the city;

(4) such other terms and conditions as may be deemed appropriate by the city.

(g) In addition to all the rights and remedies provided by the laws of the state in the event a district violates the terms and provisions of a city's written consent, the city shall be entitled to injunctive relief or a writ of mandamus issued by a court of competent jurisdiction restraining, compelling or requiring the district and its officials to observe and comply with the terms and provisions prescribed in the city's written consent to the inclusion of land within the district.

(h) A city with a population of 1 million or less may provide in its written consent for the inclusion of land in a district that after annexation the city may set rates for water and/or sewer services for property that was within the territorial boundary of such district at the time of annexation, which rates may vary from those for other properties within the city for the purpose of wholly or partially compensating the city for the assumption of obligation under this code providing that:

(1) such written consent contains a contract entered into by the city and the persons petitioning for creation of the district setting forth the time and/or the conditions of annexation by the city which annexation shall not occur prior to the installation of 90 percent of the facilities for which district bonds were authorized in the written consent; and that

(2) the contract sets forth the basis on which rates are to be charged for water and/or sewer services following annexation and the length of time they may vary from those rates charged elsewhere in the city; and that

(3) the contract may set forth the time, conditions, or lands to be annexed by the district; and that

(4)(A) Each purchaser of land within a district which has entered into a contract with a city concerning water and/or sewer rates as set forth herein shall be furnished by the seller at or prior to the final closing of the sale and purchase with a separate written notice, executed and acknowledged by the seller, which shall contain the following information:

(i) the basis on which the monthly water and/or sewer rate is to be charged under the contract stated as a percentage of the water and/or sewer rates of the city;

(ii) the length of time such rates will be in effect;

(iii) the time and/or conditions of annexation by the city implementing such rates.

The provisions of Sections 50.301(d) through Section 50.301(n), as amended, and Section 50.301(p), Water Code, are herein incorporated by reference thereto, and are applicable to the separate written notice required by Section 54.016(h)(4).

A suit for damages under the provisions of these referenced sections must be brought within 90 days after the purchaser receives his or her first water and/or sewer service charge following annexation, or the purchaser loses his or her right to seek damages under this referenced section.

(B) The governing board of any district covered by the provisions of this subsection shall file with the county clerk in each of the counties in which all or part of the district is located a duly affirmed and acknowledged statement which includes the information required in Section 54.016(h)(4)(A) and a complete and accurate map or plat showing the boundaries of the district.

The provisions of Sections 50.302(c) through Section 50.302(j), Water Code, as amended, are herein incorporated by reference thereto.

[Amended by Acts 1975, 64th Leg., p. 247, ch. 98, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 2026, ch. 796, §§ 1, 4, eff. Aug. 27, 1979.]

Sections 2, 3, 5 and 6 of the 1979 amendatory act provided:

"Sec. 2. Each allocation agreement must be approved by the Texas Department of Water Resources prior to its implementation.

"Sec. 3. Notwithstanding any contrary provision of the law, a district which is a party to an allocation agreement, in accordance with Section 54.016(f), Water Code, as amended, shall continue to exist and perform those services provided by said contract after annexation of all of the territory within the district by the city which has entered into the contract. The district shall be abolished and the city shall succeed to all the remaining properties, powers, duties, assets, debts, liabilities, and obligations of the district on the date specified in the contract."

"Sec. 5. The provisions of this Act are severable. If any word, phrase, clause, paragraph, sentence, section, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid; and the legislature hereby declares that the Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, section, part, or provision.

"Sec. 6. All laws in conflict with the provisions of this Act are hereby expressly repealed to the extent of such conflict."

§ 54.0161. Review of Creation by County

(a) If all or part of a proposed district is to be located outside the extraterritorial jurisdiction of a city, the commissioners court of the county in which

the district is to be located may review the petition for creation and other evidence and information relating to the proposed district that the commissioners consider necessary. Petitioners for the creation of a district shall submit to the county commissioners court any relevant information requested by the commissioners court in the event a review is done.

(b) In the event of a review, the commissioners court shall submit to the commission, at least 10 days before the date set for the hearing on the petition, a written opinion stating whether or not the county would recommend the creation of the proposed district and stating any findings, conclusions, and other information that the commissioners think would assist the commission in making a final determination on the petition.

(c) In passing on a petition under this subchapter, the commission shall consider the written opinion submitted by the county commissioners.

[Added by Acts 1975, 64th Leg., p. 1293, ch. 485, § 1, eff. Sept. 1, 1975.]

§ 54.021. Granting or Refusing Petition

(a) After the hearing of the petition if it is found that the petition conforms to the requirements of Section 54.015 of this code and that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.

(b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider:

(1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and

(3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:

(A) land elevation;

(B) subsidence;

(C) groundwater level within the region;

(D) recharge capability of a groundwater source;

(E) natural run-off rates and drainage;

(F) water quality; and

(G) total tax assessments on all land located within a district.

(c) If the commission finds that not all of the land proposed to be included in the district will be benefited by the creation of the district, the commission shall so find and exclude all land which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.

(d) If the commission finds that the petition does not conform to the requirements of Section 54.015 of this code or that the project is not feasible, practicable, necessary, or a benefit to the land in the district, the commission shall so find by its order and deny the petition.

(e) A copy of the order of the commission granting or denying a petition shall be mailed to each city having extraterritorial jurisdiction in the county or counties in which the district is located who requested notice of hearings as provided in Section 54.019 of this code.

[Amended by Acts 1975, 64th Leg., p. 1292, ch. 484, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 54.1021. Disqualification of Members of the Board

(a) A person is disqualified from serving as a member of the board of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district, if:

(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district or to a member of the board or the manager, engineer, or attorney for the district;

(2) he is an employee of any developer of property in the district or any other director, manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

(5) he is:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of

either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who willfully occupies an office as director and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than $100 nor more than $1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

[Amended by Acts 1975, 64th Leg., p. 600, ch. 248, § 4, eff. May 20, 1975.]

§ 54.103. Election of Directors; Term of Office

[See Compact Edition, Volume 1 for text of (a)]

(b) On the first Saturday in April following the confirmation election, an election shall be held in a district for the election of two directors who shall be elected to serve two years. On the first Saturday in the second April, following the confirmation election, an election shall be held in the district for the election of three directors who shall be elected to serve two years. Thereafter, on the first Saturday in April of each following year, there shall be an annual election of two directors in one year and three directors in the next year in continuing sequence.

[Amended by Acts 1975, 64th Leg., p. 263, ch. 109, § 1, eff. Sept. 1, 1975.]

§ 54.123. Tax Assessor-Collector; Deputies Repeal

Subsections (b) and (c) of this section are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

SUBCHAPTER D. POWERS AND DUTIES

§ 54.2041. Prohibited Charges and Fees

(a) In this section, "undeveloped property" means property within the district to which water or sewer services are actually available and to which no water or sewer connections have been made.

(b) Except as provided in Subsection (c) of this section, no district in which the ratio of the assessed valuation of property to the amount of bonded indebtedness of the district is at least 15 to 1 may adopt and impose on the owners of undeveloped property in the district a charge or fee on the undeveloped property that is in addition to taxes levied by the district on that property.

(c) If the board of directors of a district covered by this section desires to adopt and impose a charge or fee prohibited by Subsection (b) of this section, it shall submit to the commission a petition for authority to adopt and impose the charge or fee. If the commission finds that it will be in the best interest of the district and property owners of the district, the commission shall approve the adoption and imposition of the charge or fee for a period of not more than three years. The imposition of a charge or fee may be renewed for additional periods of three years in the manner provided in this section for initial approval of the charge or fee.

[Added by Acts 1979, 66th Leg., p. 437, ch. 198, § 1, eff. Jan. 1, 1980.]

Section 2 of the 1979 Act provided:

"This Act shall not apply to districts which do not as a principal function provide water and sewer services or either of these services to household users."

§ 54.2271. County Standards

Construction work of a district located wholly or partly outside the extraterritorial jurisdiction of a city shall meet standards established by the commissioners court of the county in which the district is located to protect local drainage and to prevent flooding in flood-prone areas.

[Added by Acts 1975, 64th Leg., p. 1294, ch. 485, § 2, eff. Sept. 1, 1975.]

§ 54.228. Payment for Construction Work

(a) The district shall pay the contract price of construction contracts as provided in this section.

(b) The district will make progress payments under construction contracts monthly as the work proceeds, or at more frequent intervals as determined by the district engineer, on estimates approved by the district engineer.

(c) If requested by the district engineer, the contractor shall furnish a breakdown of the total con-

tract price showing the amount included for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates, the district engineer may authorize material delivered on the site and preparatory work done to be considered if the consideration is specifically authorized by the contract and if the contractor furnishes satisfactory evidence that he has acquired title to the material and that it will be utilized on the work covered by this contract.

(d) In making progress payments, 10 percent of the estimated amount shall be retained until final completion and acceptance of the contract work. However, if the board, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, it shall authorize any of the remaining progress payments to be made in full. Also, if the work is substantially complete, the board, if it finds the amount retained to be in excess of the amount adequate for the protection of the district, at its discretion may release to the contractor all or a portion of the excess amount.

(e) On completion and acceptance of each separate project, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention of a percentage.

(f) When construction work is completed according to the terms of the contract, the board shall draw a warrant on the district depository to pay any balance due on the contract.

[Amended by Acts 1979, 66th Leg., p. 1801, ch. 733, § 1, eff. Aug. 27, 1979.]

SUBCHAPTER F. ISSUANCE OF BONDS

§ 54.5161. Review of Bond Projects by Counties

(a) Before the commission gives final approval on any bond issue for the purpose of financing a project of a district located wholly or partly outside the extraterritorial jurisdiction of a city, the commission shall notify the county commissioners of the county in which the district is located that an application has been filed and give the county an opportunity within 30 days after notification to examine all information on file and submit a written opinion from the commissioners court stating any findings, conclusions, or other information that the commissioners court considers important to the commission's final determination.

(b) In passing on the approval of a bond issue under this section, if a written opinion is submitted by the commissioners court, the commission shall consider the written opinion before taking final action.

[Added by Acts 1975, 64th Leg., p. 1294, ch. 485, § 3, eff. Sept. 1, 1975.]

§ 54.521. Use of Bond Proceeds to Pay Certain Interest

The district may use bond proceeds to pay or to establish a reasonable reserve to pay not more than three years' interest on the notes and bonds of the district as provided in the bond orders or resolutions.

[Added by Acts 1979, 66th Leg., p. 882, ch. 402, § 1, eff. Aug. 27, 1979.]

SUBCHAPTER G. TAXES

§ 54.602. Establishment of Tax Rate in Each Year

Repeal

Subsection (a) of this section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 54.604. Assessment and Collection of District Taxes

Text of section effective January 1, 1982

The assessor and collector shall assess and collect taxes for the district.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§§ 54.605 to 54.632.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 54.633. Attorney to File Suits to Collect Delinquent Taxes

The board may employ an attorney to file suits to collect all delinquent taxes for fees or other compensation provided by the board, and if judgment is entered for the district, the district is entitled to recover reasonable attorney's fees.

[Amended by Acts 1979, 66th Leg., p. 372, ch. 167, § 1, eff. May 15, 1979.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§§ 54.634 to 54.637.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER 55. WATER IMPROVEMENT DISTRICTS

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 55.117. Tax Assessor and Collector's Bond

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

SUBCHAPTER K. BORROWING MONEY

§ 55.455. Taxes on Uniform Basis

Text of section effective January 1, 1982

(a) Any district which has the principal function of furnishing water for irrigation in the district may provide for the payment of principal and interest on any debts or obligations by levying taxes on land in the district on an equal or uniform basis with an equal charge per acre on each acre of land to be irrigated.

(b) The tax collector shall prepare a special tax roll showing each tract of land in the district, the number of acres in each tract, the total assessment of benefits on each tract, and the amount to be paid each year on each tract, and the roll shall be prepared or amended annually.

(c) The tax roll shall be examined, corrected, and approved by the board.

(d) The tax roll shall be prepared at the time and in the manner provided in the Property Tax Code. The valuation fixed on property shall be the assessment charge against each acre of land at the time the debt or obligation is incurred.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

SUBCHAPTER M. AD VALOREM TAXATION

§ 55.581. Assessment and Collection of District Taxes

Text of section effective January 1, 1982

The assessor and collector shall assess and collect taxes for the district.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§§ 55.582 to 55.599.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§§ 55.602, 55.603.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§§ 55.605 to 55.619.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§§ 55.621 to 55.624.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

SUBCHAPTER N. TAXATION ON A BENEFIT BASIS

§ 55.673. Setting Annual Value of Land Unnecessary

Text of section effective January 1, 1982

If the district adopts the uniform acreage valuation for taxation, the valuation shall be applied to all land in the district, and it is not necessary to annually fix the value of the land. It is also unnecessary for the board to appoint a commission to ascertain or fix the value of the improvement to particular land.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 55.674. Preparing Tax Rolls

Text of section effective January 1, 1982

(a) The board shall examine the tax rolls to determine if all property subject to taxation appears on the tax rolls under the proper classification. The board shall add to the tax roll any property which was left off and shall examine, correct, and certify the tax roll.

(b) Any property owner may protest to the board that his property has not been properly classified. The board shall consider the protest, hear evidence, and enter its findings in the minutes.
[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 55.675. Rendition of Property

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 55.676. Law Governing Administration of Benefit Tax Plan

Text of section effective January 1, 1982

In a district that levies taxes on a benefit basis, the rate of taxation and the assessment and collection of taxes shall be governed by the law relating to ad valorem taxes to the extent applicable.
[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

CHAPTER 56. DRAINAGE DISTRICTS

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Section
56.0641. Election Procedures.
56.0642. Applicability to Special Law Districts.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 56.064. Election of Directors

[See Compact Edition, Volume 1 for text of (a) to (c)]

(d) The first elected directors of the district hold office until the next regular election for state and county officers, and subsequent directors of the district are elected every two years at the general election except as otherwise provided by Subsection (e).

(e) The first elected directors of the districts in Calhoun, Galveston, Matagorda, and Victoria Counties hold office until April 15 of the next succeeding odd-numbered year or until their successors have qualified. Subsequent directors of the district are elected every two years on the first Saturday in April in each odd-numbered year, for a term of two years beginning on April 15 following the election.
[Amended by Acts 1975, 64th Leg., p. 1847, ch. 575, §§ 1 and 2, eff. Sept. 1, 1975.]

Section 5 of the 1975 amendatory act provided:
"In all drainage districts subject to this Act, the directors elected at the general election held on November 5, 1974, continue to hold office under the provisions of Article XVI, Section 17, of the Texas Constitution, until the directors chosen at the election on April 2, 1977, have qualified."

§ 56.0641. Election Procedures

(a) In those districts referred to in Subsection (e) of Section 56.064, until otherwise ordered by the board of directors, the three persons receiving the highest number of votes at each election are elected. By order made before the 60th day preceding an election for directors, the board of directors in those districts referred to in Subsection (e) of Section 56.064 may order that the election of directors for that district shall be by position or place, designated as Place No. 1, Place No. 2, and Place No. 3. The order shall designate the place numbers in relation to the directors then in office, and these place designations shall be observed in all future elections. The person receiving the highest number of votes for each position or place is elected. Once the board of directors has adopted the place system for election, neither that board nor their successors may rescind the action.

(b) A person wishing to have his name printed on the ballot as a candidate for director in those districts referred to in Subsection (e) of Section 56.064 shall file a signed application with the secretary of the board of directors not later than 5 p.m. of the 31st day preceding the election.

(c) The board of directors in those districts referred to in Subsection (e) of Section 56.064 shall order the election, appoint the election judges, canvass the returns, and declare the results of the election. In other respects, the procedures for conducting the election and for voting are as specified in the Texas Election Code. The expenses of holding the election shall be paid out of the construction and maintenance fund of the district.
[Added by Acts 1975, 64th Leg., p. 1847, ch. 575, § 3, eff. Sept. 1, 1975.]

§ 56.0642. Applicability to Special Law Districts

Subsection (e) of Section 56.064 and Section 56.0641 of this code apply to drainage districts created or governed by special law where the special law expressly adopts the provisions of Section 56.064 of this code or its predecessor statute (Article 8119, Revised Civil Statutes of Texas, 1925) or repeats its provisions, without change in substance, as those provisions existed at the time the special law was enacted; but they do not apply to any district established, reestablished, or otherwise affected by special law where the special law contains specific provisions relating to the method of selecting the governing body of the district which were at variance with the provisions of Section 56.064 of this code or its predecessor at the time the special law was enacted.
[Added by Acts 1975, 64th Leg., p. 1848, ch. 575, § 4, eff. Sept. 1, 1975.]

§ 56.073. Tax Assessor and Collector

Text of section effective January 1, 1982

The county assessor and collector shall assess and collect taxes for the district.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§§ 56.074, 56.075.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 56.077. Separate Assessor and Collector

Text of section effective January 1, 1982

(a) After a district is created and on the petition of 25 resident freeholders of the district, the commissioners court may order an election to determine whether or not the district will have a separate tax assessor and collector to assess and collect taxes. Notice of the election shall be given as in the original election.

(b) If the proposition is approved by a two-thirds vote, the commissioners court shall appoint a suitable person as assessor and collector, and the appointee shall assess and collect the district's taxes.

(c) The Property Tax Code governs the assessing and collecting of district taxes.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

SUBCHAPTER D. POWERS AND DUTIES

§ 56.119. Eminent Domain

(a) Any district may exercise the power of eminent domain to condemn and acquire the right-of-way over and through public and private lands necessary for making canals, drains, levees, and improvements in the district and for making necessary outlets thereto in any county in the state. A district which is not operating under Article XVI, Section 59, of the Texas Constitution may not condemn property used for cemetery purposes. No district may condemn right-of-way through any part of any incorporated city without the consent of the lawful authorities.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1975, 64th Leg., p. 253, ch. 102, § 1, eff. April 30, 1975.]

SUBCHAPTER G. TAXATION PROVISIONS

§§ 56.243 to 56.246.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 56.250. Law Governing Districts Levying Taxes on the Benefit Basis

Text of section effective January 1, 1982

A district that levies taxes on the benefit basis is governed by the provisions of this chapter. However, the rate of taxation and the assessment and collection of taxes is governed by the law relating to ad valorem taxes to the extent applicable and not inconsistent with this chapter.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

SUBCHAPTER H. DISSOLUTION

§ 56.298. Compensation of Officers

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER 57. LEVEE IMPROVEMENT DISTRICTS

SUBCHAPTER F. FISCAL PROVISIONS

Section
57.178. Alternative Authority for Appointment and Duties of District Officials.

SUBCHAPTER G. ISSUANCE OF BONDS

57.217. Eligibility of District Bonds for Investments and Public Funds.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 57.057. Election of Board of Directors

After creation of a district, an election may be held to determine whether or not directors for the district will be elected rather than appointed.

[Amended by Acts 1977, 65th Leg., p. 1248, ch. 483, § 5a, eff. Aug. 29, 1977.]

§ 57.058. Number of Elected Directors

In districts which have elected boards, there shall be five directors on the board. In countywide dis-

tricts, one director shall be elected by the electors of the entire district and one director elected from each county commissioners precinct by the electors of that precinct. In other districts, all five directors shall be elected from precincts within the district to be established by the commissioners court.

[Amended by Acts 1977, 65th Leg., p. 1248, ch. 483, § 5b, eff. Aug. 29, 1977.]

§ 57.060. Petition

Before an election is held under Section 57.057 of this code, a petition, signed by at least 25 electors in each county commissioners precinct who are qualified to vote at an election for directors if a countywide election, or by 50 electors if less than countywide, shall be presented to the county judge requesting that an election be held in the district to determine whether or not directors for the district should be elected and, if so, to elect directors to serve until the next regular election for state and county officers. The petition shall include the name of one or more nominees for each director's position.

[Amended by Acts 1977, 65th Leg., p. 1249, ch. 483, § 5c, eff. Aug. 29, 1977.]

§ 57.061. Procedure for Election

[See Compact Edition, Volume 1 for text of (a)]

(b) The election order shall designate the polling places which shall be the same as the polling places used in the last general election in the county, if a countywide election is held.

[See Compact Edition, Volume 1 for text of (c) and (d)]

(e) The district shall pay all expenses incident to calling and holding the election.

[Amended by Acts 1977, 65th Leg., p. 1249, ch. 483, § 5d, eff. Aug. 29, 1977.]

SUBCHAPTER D. POWERS AND DUTIES

§ 57.092. General Powers of District

(a) The district may enter into all necessary and proper contracts and employ all persons and means necessary to purchase, acquire, build, construct, complete, carry out, maintain, protect, and in case of necessity, add to and rebuild all works and improvements within the district necessary or proper to fully accomplish a reclamation plan lawfully adopted for the district.

[See Compact Edition, Volume 1 for text of (b)]

[Amended by Acts 1977, 65th Leg., p. 1247, ch. 483, § 1, eff. Aug. 29, 1977.]

§ 57.093. Repealed by Acts 1979, 66th Leg., p. 1376, ch. 615, § 3, eff. Aug. 27, 1979

§ 57.102. Repealed by Acts 1979, 66th Leg., p. 1376, ch. 615, § 3, eff. Aug. 27, 1979

§ 57.108. Conditions of Contract

(a) In order to complete the acquisition or construction of planned improvements for the amount of money or bonds available for that purpose, the contract shall include all levee improvements proposed to be constructed and authorized by the approved plan of reclamation.

(b) Contracts may be awarded or entered in sections for the purpose of the purchase, acquisition, construction, and improvement of pumping equipment, reservoirs, culverts, bridges, and drainage improvements as these may become necessary, but as funds are available, the district shall comply with Section 57.104.

[Amended by Acts 1977, 65th Leg., p. 1247, ch. 483, § 2, eff. Aug. 29, 1977.]

§ 57.109. Contractor's Bond

The contractor shall execute corporate surety bonds as required by general law for public works to guarantee the completion of the contract and the payment of laborers, subcontractors, materialmen, and suppliers.

[Amended by Acts 1977, 65th Leg., p. 1248, ch. 483, § 3, eff. Aug. 29, 1977.]

SUBCHAPTER F. GENERAL FISCAL PROVISIONS

§ 57.172. District Depository

[See Compact Edition, Volume 1 for text of (a)]

(b) The depository so selected shall provide for the security of the district's funds deposited in demand or time deposits in the manner provided by general law for the security of county deposits.

[Amended by Acts 1977, 65th Leg., p. 1248, ch. 483, § 4, eff. Aug. 29, 1977.]

§ 57.174. Duties of Tax Assessor and Collector

Text of section effective January 1, 1982

The county assessor and collector shall assess and collect taxes for the district.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§§ 57.175, 57.176.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 57.178. Alternative Authority for Appointment and Duties of District Officials

Text of section effective until January 1, 1982

Notwithstanding any section or provision of this chapter to the contrary, the commissioners court of

jurisdiction on its own motion may adopt and enter upon the minutes of such court an order permitting the district to select and appoint a treasurer, tax assessor and collector, and board of equalization for the district. Thereafter, the board shall annually select and appoint the district's treasurer, tax assessor and collector, and board of equalization and provide for their oaths, bonds, and compensation. Upon the appointment and qualification of such officials, the board and the district treasurer, district tax assessor and collector, and district board of equalization shall have the powers, functions, duties, and responsibilities with respect to the levy of taxes, including maintenance taxes, when authorized, and the accounting, payment, investment, and handling of the district's funds, the assessment and collection of taxes of the district, and the equalization of taxes and assessments, as would otherwise be conferred in this chapter upon the county judge or commissioners court and the county treasurer, county tax assessor and collector, and commissioners court sitting as the district's board of equalization, respectively.

[Added by Acts 1977, 65th Leg., p. 1248, ch. 483, § 5, eff. Aug. 29, 1977.]

For text of section effective January 1, 1982, see § 57.178, post

§ 57.178. Alternative Authority for Appointment and Duties of District Officials

Text of section effective January 1, 1982

Notwithstanding any section or provision of this chapter to the contrary, the commissioners court of jurisdiction on its own motion may adopt and enter upon the minutes of such court an order permitting the district to select and appoint a treasurer and tax assessor and collector for the district. Thereafter, the board shall annually select and appoint the district's treasurer and tax assessor and collector and provide for their oaths, bonds, and compensation. Upon the appointment and qualification of such officials, the board and the district treasurer and the district tax assessor and collector shall have the powers, functions, duties, and responsibilities with respect to the levy of taxes, including maintenance taxes, when authorized, and the accounting, payment, investment, and handling of the district's funds, and the assessment and collection of taxes of the district as would otherwise be conferred in this chapter upon the county judge or commissioners court and the county treasurer and county tax assessor and collector respectively.

[Added by Acts 1977, 65th Leg., p. 1248, ch. 483, § 5, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see § 57.178, ante

SUBCHAPTER G. ISSUANCE OF BONDS

§ 57.202. Petition

[See Compact Edition, Volume 1 for text of (a)]

(b) The petition shall state the maximum rate of interest to be borne by the bonds and shall request that an election be held in the district to determine whether or not bonds should be issued by the district for the purposes indicated in this section and for the amount stated and whether or not taxes should be levied in the district to pay for the bonds.

(c) The amount of bonds stated in the petition shall not be more than the sum of:

(1) the estimated cost of the acquisition or construction of improvements to be made according to the adopted plan of reclamation approved by the water development board;

(2) an amount to pay interest on the bonds during the period stated in the engineer's report, which shall not be more than two years from the time the bonds are issued as approved by the water development board;

(3) the cost of maintenance of the improvements for two years as estimated by the water development board;

(4) an additional 10 percent to meet emergencies, modifications, and charges lawfully made; and

(5) all damages awarded against the district.

[Amended by Acts 1977, 65th Leg., p. 1249, ch. 483, § 6, eff. Aug. 29, 1977.]

§ 57.208. Issuance of Bonds

(a) If the issuance of bonds and the levy of taxes to pay for the bonds are approved by the electors of the district, the board may order the issuance of the bonds in one or more installments as the board may deem necessary from time to time up to the amount approved at the election.

[See Compact Edition, Volume 1 for text of (b)]

(c) The bonds shall be:

[See Compact Edition, Volume 1 for text of (c)(1)]

(2) signed by the chairman of the board; and

(3) attested by the secretary of the board with the seal of the district affixed to the bonds.

(d) The board shall fix the denominations, terms and conditions of the bonds and make them payable at an expedient time not more than 30 years from the date on the bonds.

[Amended by Acts 1977, 65th Leg., p. 1249, ch. 483, § 7, eff. Aug. 29, 1977.]

§ 57.209. Approval of Bonds by Attorney General

(a) Before the bonds are delivered to the purchasers, a certified copy of all proceedings relating to organization of the district and issuance of the bonds

and other relevant information shall be sent to the attorney general.

[See Compact Edition, Volume 1 for text of (b)]

[Amended by Acts 1977, 65th Leg., p. 1249, ch. 483, § 7, eff. Aug. 29, 1977.]

§ 57.211. Sale of Bonds

(a) After the bonds are approved by the electors of the district, the board may appoint the county judge or another suitable person to assist in the sale of the bonds on the best terms and for the best price possible.

(b) The board shall give notice of all bond sales in the manner prescribed by Section 50.053, Water Code, as added by Chapter 262, Acts of the 63rd Legislature, Regular Session, 1973, and shall approve all bond sales, and no sale is complete until approved by the board.

(c) The county judge or other person appointed by the district to assist in selling the bonds is entitled to receive, as full compensation for his services in selling the bonds, an amount approved by the board.

(d) The board shall promptly pay the proceeds from the bond sales to the proper treasurer or depository, to the credit of the district.

[Amended by Acts 1977, 65th Leg., p. 1250, ch. 483, § 8, eff. Aug. 29, 1977.]

§ 57.217. Eligibility of District Bonds for Investments and Public Funds

A district's bonds, when certified and approved by the attorney general and registered by the comptroller as herein provided, shall be legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, and trustees and for all interest and sinking funds and other public funds of the State of Texas and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. A district's bonds shall be eligible and lawful security for all deposits of public funds of the State of Texas and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons attached to them.

[Added by Acts 1977, 65th Leg., p. 1250, ch. 483, § 9, eff. Aug. 29, 1977.]

SUBCHAPTER H. TAX PROVISIONS

§ 57.251. Levy of Taxes on the Ad Valorem Basis

Text of section effective until January 1, 1982

(a) If a district levies taxes on the ad valorem basis, it shall levy and have assessed and collected taxes on all taxable property in the district.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1977, 65th Leg., p. 1251, ch. 483, § 10, eff. Aug. 29, 1977.]

For text of section effective January 1, 1982, see § 57.251, post

§ 57.251. Levy of Taxes on the Ad Valorem Basis

Text of section effective January 1, 1982

(a) If a district levies taxes on the ad valorem basis, it shall levy and have assessed and collected taxes on all taxable property in the district.

(b) The taxes must be sufficient to pay the interest on the bonds as it is due, and to raise a sufficient amount to create a sinking fund to redeem and discharge the bonds at maturity.

[Amended by Acts 1977, 65th Leg., p. 1251, ch. 483, § 10, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1 and § 57.251, ante

§ 57.252. Assessment of Property in the District

The county assessor and collector shall assess all property inside the district and list it for taxation in books or rolls furnished to him by the commissioners court. The property of the district shall be assessed at the percentage of its actual value determined necessary by the board from year to year.

[Amended by Acts 1977, 65th Leg., p. 1251, ch. 483, § 10, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§§ 57.253 to 57.257.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 57.258. Assessment and Collection of Taxes for Districts With Land in More Than One County

Repeal

Subsections (c) and (d) of this section are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 57.277. Levy of Maintenance Tax

Text of section effective January 1, 1982

(a) If a maintenance tax is approved at an election, the commissioners court of each county in which any portion of the district is located shall levy and have assessed and collected taxes on all taxable property inside the district based on the net benefits to the property that will be accomplished by the plan of reclamation if the district provides for levying taxes on a benefit basis or on the value of each piece of property if the district provides for levying taxes on the ad valorem basis.

(b) The tax rate shall not be more than the specific rate approved at the election.

(c) The district shall use money obtained from the maintenance tax only for maintenance, upkeep, and repair, to make additions to the levees and other improvements in the district, and for other purposes stated in this chapter.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 57.279. Collection of Delinquent Taxes

Text of section effective January 1, 1982

(a) Taxes levied on the benefit basis under this chapter are a first and prior lien on all property against which they are assessed and are payable, mature, and become delinquent as provided in the Property Tax Code for ad valorem taxes.

(b) The Property Tax Code governs the collection of delinquent taxes levied on the benefit basis and the sale of property for the payment of the taxes.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§§ 57.280 to 57.284.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

SUBCHAPTER I. DISSOLUTION

§ 57.345. Compensation for Tax Assessor and Collector

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

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SUBCHAPTER A. GENERAL PROVISIONS

§ 58.001. Definitions

In this chapter:

(1) "District" means an irrigation district.

(2) "Board" means the board of directors of a district.

(3) "Director" means a member of the board of directors of a district.

(4) "Commissioners court" means the commissioners court of the county in which a district or part of a district is located.

(5) "Commission" means the Texas Water Rights Commission.[1]

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[1] See, now, the Department of Water Resources, § 5.001 et seq.

[Sections 58.002 to 58.010 reserved for expansion]

SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION OF DISTRICT

§ 58.011. Creation of District

An irrigation district may be created under and subject to the authority, conditions, and restrictions of either Article III, Section 52, of the Texas Constitution, or Article XVI, Section 59, of the Texas Constitution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.012. Composition of District

(a) A district may include all or part of one or more counties, including any town, village, or municipal corporation, and may include any other political subdivision of the state or any defined district, providing the land contained therein is agricultural in character.

(b) The areas composing a district do not have to be contiguous but may consist of separate bodies of land separated by land not included in the district; however, each segregated area, before it may be included in the district, must cast a majority vote in favor of the creation of the district.

(c) No district may include territory located in more than one county except by a majority vote of the electors residing within the territory in each county sought to be included in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.013. Petition

(a) A petition requesting creation of a district shall be signed by a majority of the persons who hold title to land in the proposed district which represents a total value of more than 50 percent of the value of all the land in the proposed district as indicated by the county tax rolls. If there are more than 50 persons holding title to land in the proposed district, the petition is sufficient if signed by 50 of them.

(b) The petition may be signed and filed in two or more copies.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.014. Contents of Petition

The petition shall include:

(1) the name of the district;

(2) the area and boundaries of the district;

(3) the provision of the Texas Constitution under which the district is to be organized;

(4) the purpose or purposes of the district;

(5) a statement of the general nature of the work to be done and the necessity and feasibility of the project, with reasonable detail and definiteness to assist the court or commission passing on the petition in understanding the purpose, utility, feasibility, and need; and

(6) a statement of the estimated cost of the project based on the information available to the person filing the petition at the time of filing.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.015. Place of Filing; Recording

(a) The petition shall be filed in the office of the county clerk of the county in which the district is located. If land in more than one county is included in the district, copies of the petition certified by the clerk shall be filed in the office of the county clerk of each county in which a portion of the district is located.

(b) The petition shall be recorded in a book kept for that purpose in the office of the county clerk.

(c) If more than one petition is filed and the petitions are identical except for the signature, one copy of the petition shall be recorded and all signatures on the other petitions shall be included.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.016. Board or Commission to Consider Creation of District

If the land to be included in a district is within one county, the creation of the district shall be considered and ordered by the commissioners court, but if the land to be included in a district is in two or more counties, the creation of the district shall be considered and ordered by the commission.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.017. Single-County District; Hearing

(a) If a petition is filed for the creation of a district within one county, the county judge shall issue an order setting the date of hearing on the petition by the commissioners court and shall endorse the order on the petition or on a paper attached to the petition.

(b) After the order is issued, the county clerk shall issue notice of the hearing.

(c) The petition may be considered at a regular or special session of the court.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.018. Single-County District; Notice of Hearing

(a) The notice of hearing on the petition shall include a statement of the nature and purpose of the district and the date, time, and place of hearing.

(b) The notice shall be prepared with one original and three copies. The county clerk shall retain one copy of the notice in his files and deliver the original and two copies to the county sheriff.

(c) The sheriff shall post one copy of the notice at the courthouse door 15 days before the day of the hearing and shall publish one copy in a newspaper of general circulation in the county once a week for two consecutive weeks. The first newspaper publication shall be made at least 20 days before the day of the hearing.

(d) Before the hearing, the sheriff shall make due return of service of the notice with copy and affidavit of publication attached to the original.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.019. Single-County District; Name

(a) A district located in one county may be named the ____ County Irrigation District Number ___ (insert the name of the county and proper consecutive number).

(b) A district may be known and designated by any term descriptive of the location of the district and descriptive of the principal powers to be exercised by the district; however, the word "district" shall be included in the designation and a consecutive number shall be assigned to it if other districts of the same name have been created in the county.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.020. Single-County District; Testimony at Hearing

(a) At the hearing on the petition, any person whose land is included in or would be affected by the creation of the district may appear and contest the creation of the district and may offer testimony to show that the district:

(1) is or is not necessary;

(2) would or would not be a public utility or benefit to land in the district; and

(3) would or would not be feasible or practicable.

(b) The hearing may be adjourned from day to day.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.021. Single-County District; Granting or Refusing Petition

(a) The commissioners court or the commission shall grant the petition requesting the creation of a district if it appears at the hearing that:

(1) organization of the district as requested is feasible and practicable;

(2) the land to be included and the residents of the proposed district will be benefited by the creation of the district;

(3) there is a public necessity or need for the district; and

(4) the creation of the district would further the public welfare.

(b) If the commissioners court or the commission fails to make the findings required by Subsection (a) of this section, it shall refuse to grant the petition.

(c) If the commissioners court or the commission finds that any of the land sought to be included in

the proposed district will not be benefited by inclusion in the district, it may exclude that land not to be benefited and shall redefine the boundaries of the proposed district to include only the land that will receive benefits from the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.022. Single-County District: Appeal from Order of Commissioners Court

(a) If the commissioners court grants or refuses to grant the petition, any person who signed the petition or any person who appears and protests the petition and offers testimony against the creation of the district may appeal from the order of the court by giving notice of appeal in open court at the time of the entry of the order, which shall be entered on the court's docket, and by filing with the clerk of the commissioners court within five days a good and sufficient appeal bond in the amount of $2,500.

(b) The appeal bond shall be approved by the clerk of the commissioners court payable to the county judge conditioned for the prosecution of the appeal with effect and the payment of all costs incurred with the appeal in the event the final decree of the court is against the appellant.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.023. Single-County District: Record on Appeal; Notice of Appeal

(a) On completion of an appeal as provided in Section 58.022 of this code, the clerk of the commissioners court shall, within 10 days, prepare a certified transcript of all orders entered by the commissioners court and transmit them with all original documents, processes, and returns on processes to the clerk of the district court to which the appeal is taken.

(b) All persons shall be charged with notice of the appeal without notice or service of notice. No person who fails to appear by petition, in person, or by attorney in the commissioners court may be permitted to intervene in the district court trial.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.024. Single-County District: Hearing in District Court; Procedure

(a) The district court, either in term time or in vacation time, shall schedule the appeal for hearing with all reasonable dispatch, and the judge shall give the appeal precedence over all causes that are not of like character.

(b) In the proceeding in the district court, formal pleadings shall not be required but, with the court's permission, may be filed.

(c) The trial and decision shall be by the court without the intervention of a jury, and the hearing shall be conducted as though the jurisdiction of the district court were original jurisdiction.

(d) The following matters may be contested in the district court:

(1) all matters that were or might have been presented in the commissioners court;

(2) the validity of the Act under which the district is proposed to be created; and

(3) the regularity of all previous proceedings.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.025. Single-County District: Judgment of District Court; Appeal

(a) In the appeal, the district court shall apply to the determination its full powers to the end that substantial justice may be done.

(b) An appeal from the judgment of the district court may be taken as in other civil causes, but appeals filed under Section 58.022 of this code shall be given precedence on the docket of any higher court over all causes that are not of similar public concern.

(c) The final judgment of the district court, or other court to which an appeal may be prosecuted, shall be certified and transmitted to the clerk of the commissioners court with all original documents and processes which were transmitted from the commissioners court to the district court on appeal.

(d) The commissioners court shall enter its order on the petition to conform to the decree entered by the court of final jurisdiction and shall enter other and further orders as may be required by law to execute the intent of the certified decree.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.026. Single-County District: Appointment of Directors; Bond

(a) If the commissioners court grants a petition for creation of a district, it shall appoint five directors who shall serve until their successors are elected or appointed in accordance with law.

(b) Each director shall, within 15 days after appointment, file his official bond in the office of the county clerk, and the county clerk shall present the bond to the county judge for approval. The county judge shall pass on the bond and approve it, if it is proper and sufficient, or disapprove it and shall endorse his action on the bond and return it to the county clerk.

(c) If approved, the bond of a director shall be recorded in a record kept for that purpose in the office of the county clerk, but if a bond is not approved, a new bond may be furnished within 10 days after disapproval.

(d) If any director appointed under this section fails to qualify, the commissioners court shall appoint another person to replace him.

(e) Each director appointed under this section shall take the oath of office as provided by Section 58.077 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.027. Multicounty District: Hearing by Commission

(a) The commission shall have exclusive jurisdiction and power to hear and determine all petitions for creation of a district that will include land or property located in two or more counties.

(b) The orders of the commission concerning the organization of a district shall be final, unless an appeal is taken from the orders as provided in this subchapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.028. Multicounty District: Notice of Hearing

(a) When a petition is filed, the commission shall give notice of a hearing in the manner provided in Section 58.018 of this code.

(b) The notice shall be posted at the courthouse door, on the bulletin board used for posting legal notices, in each county in which the district may be located.

(c) The notice shall be published in one or more newspapers with general circulation in the area of the proposed district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.029. Multicounty District: Deposit Accompanying Petition

(a) A petition to create a multicounty district shall be accompanied by a deposit of $250 for the use of the state, and no part of the deposit may be returned except as provided in Subsection (c) of this section.

(b) The deposit shall be placed with the state treasurer to be held in trust outside the state treasury until the commission either grants or refuses the petition. At the time of action on the petition, the commission shall direct the state treasurer to transfer the deposit into the general revenue fund.

(c) If at any time before the hearing on the petition, the petitioners withdraw the petition, and only in that event, the commission shall direct the refund of the deposit to petitioners or their attorney of record. The receipt of the attorney of record shall be sufficient receipt for the return of the money.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.030. Multicounty District: Hearing of Commission; Procedure

(a) The commission shall hear, consider, and determine on the issues a petition filed under Section 58.028 of this code.

(b) At the hearing of the petition, the commission shall be governed by the provisions of Section 58.021 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.031. Multicounty District: Appeal from Commission Decision

(a) When the commission grants or refuses a petition, any person who comes within the requirements specified in Sections 58.020–58.025 of this code may prosecute an appeal from the judgment of the commission under Sections 58.022–58.025 of this code.

(b) The appeal may be taken to any district court in any county in which part of the proposed district is located or to a district court in Travis County.

(c) The time within which an appeal bond may be approved and filed is 15 days after the entry of the final order by the commission.

(d) On the perfection of the appeal, the appellant shall pay the actual cost of the transcript of the record, which will be assessed as part of the costs incurred on the appeal.

(e) Whenever practicable, the original documents and processes with the returns attached shall be sent to the district court.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.032. Multicounty District: Appointment of Directors by Commission; Bond

(a) If the commission grants the petition for creation of the district, it shall appoint five directors, who shall serve until their successors are elected or appointed.

(b) A certified copy of the order of the commission granting a petition and naming the directors shall be filed in the office of the county clerk of each county in which a portion of the district is located.

(c) Each director named in the order shall, within 15 days after appointment, file his official bond in the office of the county clerk of the county of his residence. The county clerk shall present the bond to the county judge for approval.

(d) The county judge shall act on each bond in the manner provided in Section 58.026 of this code.

(e) If any director appointed under this section fails to qualify, the commissioners court of the county in which he lives shall appoint some qualified person to replace him.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.033. Order of Confirmation Election; Holding of Election; Preliminary Bond Proposition

(a) Within 30 days after the date of the first meeting of the board and before the district may incur any indebtedness other than for its operation and the holding of an election, the board shall issue and publish an order calling an election in the district to confirm the creation of the district.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition: "Confirmation of the district."

(c) The election shall be held in the manner provided for other elections.

(d) At the election, the proposition for the issuance of preliminary bonds may also be submitted to the district electors. Separate ballot boxes shall be provided for the different classifications of voters.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.034. Result of Election; Entry of Order

(a) If the majority of those voting at an election held under Section 58.033 of this code vote in favor of the confirmation of the district, the district is confirmed and ratified, but if the majority of those voting at the election vote against the confirmation of the district, the district shall have no further authority, except that any debts incurred shall be paid and the organization of the district shall be maintained until all the debts are paid.

(b) If the majority of those voting at the election favor the confirmation of the district and the result is declared, the board shall enter in their minutes an order substantially as follows: "An election having been held in _____ district on the ___ day of ___, for the purpose of voting on the confirmation of the creation of the district and the results of the election resulted in a vote of __ votes for confirmation and __ votes against confirmation of the district. The district is therefore declared to have been legally organized with the following boundaries: (Describe boundaries)."

(c) The order shall be signed by a majority of the board and acknowledged by the president of the board. The order shall be filed for record in the office of the county clerk of any county in which the district is situated and recorded in the deed records.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.035. Inclusion of City, Town, or Municipal Corporation in District

(a) No city, town, or municipal corporation may be included within any district created under this chapter unless the proposition for the creation of the district has been adopted by a majority of the electors in the city, town, or municipal corporation.

(b) Any municipal corporation included within a district shall be a separate voting district, and the ballots cast within the municipal corporation shall be counted and canvassed separately from the remainder of the district.

(c) No district that includes a city, town, or municipal corporation may include land outside of the municipal corporation unless the election to confirm and ratify the creation of the district favors the creation of the district independent of the vote within the municipal corporation.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.036. Confirmation Election in District Including Land in More Than One County

No district, the major portion of which is located in one county, may be organized to include land in another county unless the election held in the other county to confirm and ratify the creation of the district is adopted by those voting in the other county.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.037. Exclusion of Parts of District; Dissolution

(a) If any portion of a district governed by Sections 58.035 and 58.036 of this code votes against the creation of the district and the remainder of the district votes for the creation, the district is confirmed and ratified in those portions of the district voting for the creation, and the district is composed only of those portions.

(b) The excluded portions of the district shall be excluded from all debts and obligations incurred after the election; however, all land and property included in the original district shall be subject to the payment of taxes for the payment of all debts and obligations, including organizational expenses, incurred while it was a part of the district.

(c) If a district is created and portions of the proposed district are excluded by the vote in those portions, 10 percent of the voters in the district may file with the Board a petition asking for a new election on the issue. A new election shall be ordered and held for the remaining portion of the district or the district organization may be dissolved by order of the board and a new district formed.

(d) A petition requesting a new election shall be filed within 30 days after the day on which the result of the election is canvassed and declared by the board.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.038. Conversion of Certain Districts Into Districts Operating under This Chapter

(a) Any water improvement district or water control and improvement district which furnishes water for irrigation and does not furnish treated water or sewer services may be converted into a district operating under this chapter.

(b) The governing body of a district which desires to convert into a district operating under this chapter shall adopt and enter in the minutes of the governing body a resolution declaring that, in its judgment, conversion into an irrigation district operating under this chapter and under Article XVI, Section 59, of the Texas Constitution, would serve the best interest of the district and would be a benefit to the land and property included in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.039. Conversion of District; Notice

(a) Notice of the adoption of a resolution under Section 58.038 of this code shall be given by publishing the resolution in a newspaper with general circulation in the county or counties in which the district is located.

(b) The notice shall be published once a week for two consecutive weeks with the first publication not less than 14 full days before the time set for a hearing.

(c) The notice shall:

(1) state the time and place of the hearing;

(2) set out the resolution in full; and

(3) notify all interested persons to appear and offer testimony for or against the proposal contained in the resolution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.040. Conversion of District; Findings

(a) If, on a hearing, the governing body of the district finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, it shall enter an order making this finding and the district shall become a district operating under this chapter.

(b) If the governing body finds that the conversion of the district would not serve the best interest of the district and would not be a benefit to the land and property included in the district, it shall enter an order against conversion of the district into one operating under this chapter.

(c) The findings of the governing body of a district entered under this section are final and not subject to appeal or review.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.041. Effect of Conversion

A district that converts into a district operating under this chapter shall:

(1) be constituted an irrigation district operating under and governed by this chapter;

(2) be a conservation and reclamation district under the provisions of Article XVI, Section 59, of the Texas Constitution; and

(3) have and may exercise all the powers, authority, functions, and privileges provided in this chapter in the same manner and to the same extent as if the district had been created under this chapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.042. Reservation of Certain Powers for Converted Districts

(a) Any water improvement district or water control and improvement district, after conversion under Section 58.038 of this code, may continue to exercise all necessary specific powers under any specific conditions provided by the chapter of this code under which the district was operating before conversion, except that no district, after conversion, may engage in the treatment or delivery of treated water for domestic consumption or the construction, maintenance, or operation of sewage facilities.

(b) At the time of making the order of conversion, the governing body shall specify in the order the specific provisions of the chapter of the code under which the district had been operating which are to be preserved and made applicable to the operations of the district after conversion into a district operating under this chapter.

(c) A reservation of a former power under Subsection (a) of this section may be made only if this chapter does not make specific provision concerning a matter necessary to the effectual operation of the converted district.

(d) In all cases in which this chapter does make specific provision, this chapter shall, after conversion, control the operations and procedure of the converted district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.043 to 58.070 reserved for expansion]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 58.071. Board of Directors

The governing body of a district is the board of directors, which shall consist of five directors.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.072. Qualifications

To be qualified for election as a director, a person must be a resident of the state, be the owner of record of fee simple title to land in the district, and be at least 18 years of age.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.073. Election of Directors; Term of Office

(a) An election shall be held in the district on the second Tuesday in January following the creation of the district to elect five directors.

(b) The three directors receiving the highest number of votes shall serve as directors for two years, and the other two directors shall serve for one year.

(c) At the second election of directors, two directors shall be elected to serve for two years.

(d) After the second election of directors, an election shall be held each year with two directors elected one year and three the next year in continuing sequence.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.0731. Election of Directors from Precincts

A district that elected one director from each of five precincts before it converted to a district operating under this chapter shall continue to elect its directors in the same manner from precincts.

[Added by Acts 1979, 66th Leg., p. 70, ch. 44, § 1, eff. April 11, 1979.]

§ 58.074. Election to Replace Directors Temporarily Appointed by Commission

(a) A district organized by order of the commission shall elect five directors at the election which is held to confirm the creation of the district. The names of the five appointed directors shall be placed on the ballot, with a blank space left to write in the names of other persons.

(b) If the appointed directors are elected, they shall be confirmed without the necessity of furnishing new bonds and shall continue in office.

(c) If any of the appointed directors are not elected, the person or persons elected in their places must furnish bond, which shall be approved in the manner provided for directors first appointed.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.075. Application to Get on Ballot

A candidate for the office of director or other elective office may file an application with the secretary of the board to have his name printed on the election ballot. The application must be signed by the applicant or by at least 10 qualified electors of the district and must be filed at least 20 days before the date of the election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.076. Organization of Board

After a district is created and the directors have qualified, the board shall meet, elect a president, vice-president, and secretary, and begin the discharge of its duties.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.077. Director's Oath

Each director shall take the oath of office prescribed by law for county commissioners.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.078. Director's Bond

(a) Each director shall execute a good and sufficient bond for $5,000, payable to the district, conditioned on the faithful performance of his duties.

(b) After the creation of the district and the qualification of the first board of directors, all bonds required to be given by a director or other officer of the district are subject to the approval of the board.

(c) The county clerk of the county in which the director lives shall record each bond in the bond records of the county. The bond also shall be recorded in a bond record in the district office and filed for safekeeping in the depository of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.079. Compensation of Directors

(a) A director is entitled to receive compensation of not more than $25 a day for each day he actually spends performing his duties as a director, but the fees shall not be more than $100 for any one month.

(b) Before a director may receive compensation for his services, he shall file with the secretary a verified statement showing the number of days actually spent in the service of the district. The statement shall be filed on the last day of the month or as soon after that time as possible.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.080. Officers; Quorum

(a) The president is the chief executive officer of the district and presides at all meetings of the board. The vice-president shall act as president in case of the absence or disability of the president. The secretary is secretary of the board and is responsible for seeing that all records and books of the district are properly kept. In the case of the absence or inability of the secretary to act, the board shall select a secretary pro tem.

(b) Three directors constitute a quorum for any meeting, and a concurrence of three is sufficient for transacting any business of the district except letting construction contracts and drawing warrants on

the depository for payment of the contracts, which require the concurrence and signatures of four directors. Warrants to pay current expenses, salaries, and accounts may be drawn by an officer or employee designated by standing order entered in the minutes when these accounts have been contracted and ordered paid by the directors.
[Added by Acts 1977, 65th Leg., p. 1527, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.081. Vacancies

(a) All vacancies on the board and in other offices shall be filled for the unexpired term by appointment of the board.

(b) If the number of directors is reduced to fewer than three, the vacancies shall be filled by special election order by the remaining members of the board. If the director or directors fail to order an election within 15 days after the vacancies occur, any voter or creditor of the district may petition the district judge of any judicial district in which land of the district is located, and the judge may order the election, fixing the date, ordering the publication of notice by any county sheriff, and naming the officers to hold the election.

(c) The returns of the election ordered by a district judge shall be made and filed in the office of the clerk of the court and he shall declare the result of the election.

(d) The officers elected shall furnish bond and qualify in the manner provided in this chapter for directors first appointed for a district on its creation.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.082. General Manager

The board may employ a general manager and give him full authority in the management and operation of the affairs of the district subject only to the orders of the board.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.083. Director as Manager

A director may be employed as general manager with compensation fixed by the other four directors. When so employed, he shall continue to perform the duties of a director.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.084. District Tax Assessor and Collector

The board may appoint one person to the office of tax assessor and collector, or it may order an election to fill that office.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.085. Tax Assessor and Collector's Bond

(a) The tax assessor and collector shall execute a good and sufficient bond for $5,000, signed by at least two sufficient sureties or a surety company and approved by the board. The bond shall be conditioned on the faithful performance of his duties and on his paying to the depository all money or other things of value that he received in his capacity as tax assessor and collector.

(b) The board may require the tax assessor and collector to give additional bonds or security of a larger bond at any time.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.086. Deputy Tax Assessor and Collector

(a) The board may appoint one or more deputies to assist the tax assessor and collector for a period not to exceed one year.

(b) Each deputy may be required to furnish a bond with similar conditions to the bond required by the tax assessor and collector.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.087. Compensation of Tax Assessor and Collector and Deputies

The board shall fix the compensation of the tax assessor and collector and each deputy.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.088. Additional Duties

The board may require the tax assessor and collector to perform duties other than those specified in this chapter.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.089. Bonds of Officers of a District Acting as Fiscal Agent or Collecting Money for the United States

(a) If a district is appointed fiscal agent for the United States or if a district is authorized to make collections of money for the United States in connection with a federal reclamation project, each director and officer of the district including the tax assessor and collector shall execute an additional bond in the amount required by the Secretary of the Interior, conditioned on the faithful discharge of his respective office and on the faithful discharge by the district of its duties as fiscal or other agent of the United States under its appointment or authorization.

(b) The additional bonds shall be approved, recorded, and filed as provided in this chapter for other official bonds.

(c) Suit may be brought on the bonds by the United States or any person injured by the failure of the officers or directors of the district to fully, promptly, and completely perform their respective duties.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.090. Employees of the District

The board shall employ all persons necessary for the proper handling of the business and operation of the district, its plant and improvements. It may employ attorneys, bookkeepers, engineers, laborers, and a civil engineer, who shall be an officer of the district, to be known as "District Engineer."

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.091. Employees' Compensation and Terms of Employment

The board shall determine the term of office and compensation to be paid to the general manager and all employees. All employees may be removed by the board.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.092. Officer's and Employee's Bond

(a) The board shall require an officer or employee who collects, pays, or handles any funds of the district to furnish good and sufficient bond, payable to the district, for a sufficient amount to safeguard the district. The bond shall be conditioned on the faithful performance of his duties and on accounting for all funds and property of the district coming into his hands.

(b) The bond may be signed by individual sureties or by surety companies authorized to do business in the state.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.093. District Office

The board shall maintain a regular office for conducting the business of the district. The office shall be located inside the district, or if the district does not include towns which are within or adjoining the territory included in the district, it may be located in a nearby town that is best suited for the transaction of business.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.094. Meetings

The board shall hold regular meetings at the district office on the first Monday in February, May, August, and November of each year at 10 a. m. and may hold meetings at other times when required for the business of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.095. Minutes and Records of the District

The board shall keep a true and complete account of all its meetings and proceedings, and shall preserve its minutes, contracts, records, notices, accounts, receipts, and records of all kinds in a fireproof vault or safe. All minutes, contracts, records, notices, accounts, receipts, and other records are the property of the district and subject to public inspection.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.096. Recording Proceedings

All proceedings of the board and all decrees and orders of any court affecting the creation, boundaries, or validity of the district must be recorded in a special record book kept for that purpose in the office of the county clerk of each county in which the district is located. This recording is in addition to other recording provisions in this chapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.097. Contracts

District contracts shall be executed by the board in the name of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.098. Suits

A district may sue and be sued in the courts of this state in the name of the district by and through its board. All courts shall take judicial notice of the creation of the district and of its boundaries.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.099. Payment of Judgment Against District

Any court in the state rendering judgment for debt against a district may order the board to levy, assess, and collect taxes or assessments to pay the judgment.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.100. Actions Contesting District, Bonds, or Contracts; Suit by Attorney General

(a) Except as provided in Subsection (b) of this section, and as provided in Sections 58.021–58.025 of this code, no suit may be instituted in any court of this state contesting:

(1) the validity of the creation and boundaries of a district created under this chapter;

(2) any bonds or other obligations authorized under this chapter; or

(3) the validity or the authorization of a contract with the United States by the district.

(b) The matters listed in Subsection (a) of this section may be judicially inquired into at any time and determined in any suit brought by the State of Texas, through the attorney general, on his own motion or on the motion of any person affected by the existence or plans of the district. The action shall be brought on good cause shown, except where otherwise provided by other provisions of this chapter or by the Texas Constitution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.101 to 58.120 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES

§ 58.121. Purposes of District

(a) Irrigation districts operating under this chapter are limited purpose districts established primarily to deliver untreated water for irrigation and to provide for the drainage of lands and such other functions as are incidental to the accomplishment of such limited purposes. An irrigation district shall not engage in the treatment or delivery of treated water for domestic consumption or the construction, maintenance, or operation of sewage facilities or provide any other similar municipal services. An irrigation district may cooperate with the United States under the federal reclamation laws for the purpose of:

(1) construction of irrigation and drainage facilities necessary to maintain the irrigability of the land;

(2) purchase, extension, operation, or maintenance of constructed facilities; or

(3) assumption, as principal or guarantor of indebtedness to the United States on account of district lands.

(b) An irrigation district operating under this chapter may contract with municipalities, political subdivisions, water supply corporations, or water users for the delivery of untreated water.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.122. Powers of District

The district has the functions, powers, authority, rights, and duties which will permit the accomplishment of the purposes for which it was created, including the investigation and, in case a plan for improvements is adopted, the construction, maintenance, and operation of necessary improvements, plants, works, and facilities, and the acquisition of water rights and all other properties, land, tenements, materials, borrow and waste ground, easements, rights-of-way, and everything considered necessary, incident, or helpful to accomplish by any practicable mechanical means any one or more of the objects authorized for the district, subject only to the restrictions imposed by the Constitutions of Texas or the United States. A district also may acquire property deemed necessary for the extension or enlargement of the plant, works, improvements, or service of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.123. Acquisition of Property

(a) A district may acquire the land material, borrow and waste ground, rights-of-way, easements, or other property by gift, grant, purchase, or condemnation.

(b) The district may acquire either the fee simple title to or an easement on all land, public or private, located inside or outside the district.

(c) The district may acquire the title to or an easement on property other than land held in fee.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.124. Planning

The board may make investigations and plans necessary to the operation of the district and the construction of improvements. It may employ engineers, attorneys, bond experts, and other agents and employees required to perform this duty.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.125. Construction of Improvements

A district may construct all works and improvements necessary:

(1) for the irrigation of land in the district;

(2) for the drainage of land in the district, including drainage ditches or other facilities for drainage; and

(3) for the construction of levees to protect the land in the district from overflow.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.126. Purchase of Machinery and Supplies

The board may purchase machinery, materials, and supplies needed in the construction, operation, maintenance, and repair of district improvements.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.127. Adopting Rules

A district may adopt and make known reasonable rules to:

(1) prevent waste or the unauthorized use of water; and

(2) regulate residence, hunting, fishing, boating, and camping, and all recreational and busi-

ness privileges on any body or stream of water, or any body of land, or any easement owned or controlled by the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.128. Effect of Rules

After the required publication, rules adopted by the district under Section 58.127 of this code shall be recognized by the courts as if they were penal ordinances of a city.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.129. Publication of Rules

(a) The board shall publish once a week for two consecutive weeks a substantive statement of the rules and the penalty for their violation in one or more newspapers with general circulation in the area in which the property of the district is located.

(b) The substantive statement shall be as condensed as is possible to intelligently explain the purpose to be accomplished or the act forbidden by the rule.

(c) The notice must advise that breach of the rules will subject the violator to a penalty and that the full text of the rules is on file with the principal office of the district where it may be read by any interested person.

(d) Any number of rules may be included in one notice.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.130. Effective Date of Rules

The penalty for violation of a rule is not effective and enforceable until five days after the publication of the notice. Five days after the publication, the published rules shall be in effect and ignorance of it is not a defense for a prosecution for the enforcement of the penalty.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.131. Penalties for Violation of Rule

(a) The board may set reasonable penalties for the breach of any rule of the district, which shall not exceed fines of more than $200 or imprisonment for more than 30 days, or both.

(b) These penalties shall be in addition to any other penalties provided by the laws of the state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office is located.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.132. Enforcement by Peace Officers

A district may employ its own peace officers with power to:

(1) make arrests when necessary to prevent or abate the commission of any offense against the rules of the district and against the laws of the state when the offense or threatened offense occurs on any land, water, or easement owned or controlled by the district; or

(2) make an arrest in case of an offense involving injury or detriment to any property owned or controlled by the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.133. Constructing Bridges and Culverts across and over County and Public Roads

The district shall build necessary bridges and culverts across and over district canals, laterals, and ditches which cross county or public roads. Funds of the district shall be used to construct the bridges and culverts.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.134. Constructing Culverts and Bridges across and under Railroad Tracks, Roadways, and Interurban or Street Railways

(a) The district, at its own expense, may build necessary bridges and culverts across or under any railroad tracks or roadways of any railroad or any interurban or street railway to enable the district to construct and maintain any canal, lateral, ditch, or other improvement of the district.

(b) Before the district builds a bridge or culvert, the board shall deliver written notice to the local agent, superintendent, roadmaster, or owner. The railroad company or its owner shall have 60 days in which to build the bridge at its own expense and according to its own plans.

(c) The canal, culvert, ditch, or structure shall be constructed of sufficient size and proper plan to serve the purpose for which it is intended.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.135. Right to Enter Land

The board, the district engineer, and the employees of the district may enter any land inside or outside the district to make surveys for reservoirs, canals, rights-of-way, dams, or other contemplated improvements and to attend to any business of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.136. Power to Contract

The district may enter into a contract for the use by another of its water, facilities, or service, either inside or outside the district, except that a contract may not be made which impairs the ability of the district to serve lawful demands for service within the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.137. Investigation and Report of Engineer

(a) The district engineer shall make a thorough study and investigation of all plans of the district and make and file in the district office a report on all plans for construction of plants and improvements.

(b) The board shall provide and keep a book in the district office, to be known as the "Engineer's Record," in which all reports and recommendations made by the district engineer shall be recorded. The "Engineer's Record" shall be open to public inspection.

(c) A contract for more than $20,000 may not be made by the district unless the district has a district engineer who has made a proper study and report on it.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.138. Contracts for Materials, Machinery, Construction, Etc., for More Than $10,000

(a) With the exception of a district operating under a contract with the United States, the board shall not let a contract for more than $10,000 for the purchase of materials, machinery, and all things to constitute the plant, works, facilities, and improvements of the district or for construction except as specified in Subsections (b)–(d) of this section.

(b) The board shall advertise the letting of a contract, including the general conditions, time, and place of opening of sealed bids. The notice shall be published in one or more newspapers with general circulation in the state, and one or more newspapers published in each county in which all or part of the district is located to give general circulation in the district. If there are more than four counties in the district, notice may be published in any newspaper with general circulation in the district. If no newspaper is published in the county or counties in which the district is located, publication in one or more newspapers with general circulation in the state is sufficient. The notice shall be published once a week for three consecutive weeks prior to the date that the bids are opened, and the first publication shall be at least 21 days before the opening of sealed bids.

(c) A contract may cover all the improvements to be provided by the district, or the various elements of the improvements may be segregated for the purpose of receiving bids and awarding contracts.

(d) A contract may provide for the payment of a total sum which is the completed cost of the improvement or may be based on bids to cover cost of units of the various elements entering into the work as estimated and approximately specified by the district's engineers.

(e) A contract may be let and awarded in any other form or composite of forms and to any responsible person or persons which, in the board's judgment, will be most advantageous to the district and result in the best and most economical completion of the district's proposed plant, improvements, facilities, and works.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.139. Construction Bids

(a) A person who desires to bid on proposed construction work shall submit to the board a written sealed bid together with a cashier's check on a responsible bank in the state for at least two percent of the total amount of the bid, or a bid bond of at least two percent of the total amount of the bid issued by a surety legally authorized to do business in the state.

(b) Bids shall be opened at the same time, and the board may reject any or all of the bids.

(c) If the successful bidder fails or refuses to enter into a proper contract with the district or fails or refuses to furnish the bond required by law, he forfeits the amount of the cashier's check which accompanied his bid, or if a bid bond has been given, the district shall have the legal remedies available under the bond.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.140. Reports Furnished to Prospective Bidders

The board shall furnish to any person who desires to bid on construction work, and who requests it in writing, a copy of the engineer's report which shows the work to be done and all details of it. The board may charge for each copy of the engineer's report an amount sufficient to cover the cost of making the copy.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.141. Provisions of Contracts for Construction Work

(a) Any contract made by the board for construction work shall conform to the provisions of this chapter, and the provisions of this chapter will be

considered to be a part of the contract and shall prevail when the provisions of this chapter and the contract are in conflict.

(b) The contract shall contain, or have attached to it, the specifications, plans, and details for work included in the contract, and all work shall be done in accordance with these plans and specifications under the supervision of the board and the district engineer.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.142. Executing and Recording Construction Contract

(a) Contracts for construction work shall be in writing and signed by the board and the contractor.

(b) A copy of the contract shall be filed with the county clerk, and the county clerk shall record the contract in a book kept for that purpose.

(c) The contract shall be available for public inspection.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.143. Contractor's Bond

(a) The contractor shall execute a bond in an amount determined by the board, not to exceed the contract price, payable to the district, conditioned on the faithful performance of the obligations, agreements, and covenants of the contract.

(b) The bond shall provide that if the contractor defaults on the contract, he will pay to the district all damages sustained as a result of the default or complete the contract according to its terms.

(c) All sureties signing the bond are bound by it to the same extent that the principal is bound, regardless of the technical defenses.

(d) The bond shall be deposited in the district depository, and a true record of it shall be entered in a record book in the district office.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.144. Reports on Construction Work

During the progress of the construction work, the district engineer shall submit to the board detailed written reports showing whether or not the contractor is complying with the contract, and when the work is completed, the district engineer shall submit to the board a final detailed report showing whether or not the contractor has fully complied with the contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.145. Payments under Construction Contract

(a) The district shall pay the contract price of a contract as provided in this section.

(b) The district will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the district engineer, on estimates approved by the district engineer. If requested by the district engineer, the contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the district engineer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the contractor at locations other than the site may also be taken into consideration:

(1) if such consideration is specifically authorized by the contract; and

(2) if the contractor furnishes satisfactory evidence that he has acquired title to the material and that it will be utilized on the work covered by this contract.

(c) In making progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the contract work. However, if the directors, at any time after 50 percent of the work has been completed, find that satisfactory progress is being made, they may authorize any of the remaining progress payments to be made in full. Also, whenever the work is substantially complete, the directors, if they consider the amount retained to be in excess of the amount adequate for the protection of the district, at their discretion, may release to the contractor all or a portion of the excess amount.

(d) On completion and acceptance of each separate project, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention of a percentage.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.146. Partial Payment of Construction Work

The board may pay for a construction contract in partial payments as the work progresses, but partial payments shall not be more than 85 percent of the amount due at the time of the partial payment as shown by the report of the district engineer.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.147. Joint Ownership Contracts

(a) Two or more districts may enter into a contract to jointly own and construct irrigation works and reservoirs, levees, drainage systems, and all other plants, works, and improvements which they are authorized to own or construct. The contract may include provisions for joint construction and opera-

tion, but the terms and conditions may not conflict with the laws providing for the creation and operation of the districts.

(b) The parties joining in the contract shall have the terms of their agreement incorporated into a written or printed contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.148. Election to Approve a Joint Ownership and Construction Contract

(a) Before the districts may be bound by a joint ownership and construction contract made under Section 58.147 of this code, an election to approve the contract must be held in each of the districts.

(b) The election to approve the contract shall be held on the same day in each district.

(c) Notice of the election shall be the same as notice of the election for the creation of a district under this chapter.

(d) At least 15 days before the day of the election, a copy of the contract must be filed in the office of each of the districts and be made available for public inspection, and each district must furnish a copy of the contract to any elector who appears at the office and requests a copy.

(e) If a majority of the electors in each district approve the contract at the election, the contract is adopted and is binding.

(f) The contract may be amended in the manner provided for adopting the original contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.149. General Manager for Joint Projects

The boards of the districts which are parties to a joint ownership and construction contract may employ a general manager for the joint project. The duties of the general manager may be included in the provisions of the joint contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.150. Transactions in District Names under Joint Ownership and Construction Contract

All bids, bonds, contracts, and other transactions made under a joint ownership and construction contract may be made in the names of the districts which are parties to the contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.151. Joint Projects under Joint Ownership and Construction Contracts

(a) When districts operating under a joint ownership and construction contract plan to construct any improvements, the districts may call jointly for bids on these improvements.

(b) The bids may be opened and considered at the office of either of the districts which are parties to the contract.

(c) The boards shall approve the award of the contract and the contractor's bond. The boards may meet for this purpose either at an office outside the districts or at an office established for transaction of all business of the joint project.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.152. Additional Powers of Districts under Joint Ownership and Construction Contracts

Districts which are acting under a joint ownership and construction contract may exercise jointly all powers which may be exercised by a single district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.153. Contract with the United States

(a) The board may enter into a contract or other obligation with the United States for the investigation, construction, extension, operation, and maintenance of any federal reclamation project of benefit to the district and authorized under the National Reclamation Act of 1902, as amended.[1]

(b) The board may contract to secure a district water supply from the federal reclamation project and to pay to the United States the agreed cost of it in the form of construction charges, operation and maintenance charges, and water rental charges, as shown by the contract and in accordance with the terms and conditions of the national reclamation law.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[1] 43 U.S.C.A. § 372 et seq.

§ 58.154. Construction Charges under a Contract with the United States

The construction charges under a contract with the United States may include the cost of drainage and flood-control works necessary to control floods or to maintain the irrigability of district land.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.155. Election to Approve a Contract with the United States

(a) The electors of the district shall vote to approve every contract involving the payment of construction charges to the United States. The provisions of this chapter relating to the election to approve the validation of district bonds shall be followed, including the prosecution of an action in court to determine the validity of the contract.

(b) The notice of election shall state the maximum amount, exclusive of operation and maintenance charges, water rental charges, interest, and penalties, payable by the district to the United States under the contract.

(c) The ballot shall be printed to provide for voting for or against the proposition: "The contract with the United States and levy of taxes to make payments under the contract". This is the only proposition that may appear on the ballot.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.156. Conveying Property to the United States

A district may convey any property to the United States necessary for the construction, operation, or maintenance of federal reclamation works used or to be used for the benefit of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.157. Consent of United States to Alter District's Boundaries

Until all money has been paid by the district which is due to the United States under a contract relating to a federal reclamation project, the United States must consent to any change in the boundaries of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.158. Taxes Levied by District under Contract with the United States

(a) A district that enters into a contract with the United States shall levy annually sufficient taxes to provide payment of all installments required by the contract.

(b) The board may pay construction charges when provided by contract on the basis of the average gross annual acre income of the land of the district or designated divisions or subdivisions of the district. The Secretary of the Interior shall determine the annual gross acre income.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.159. Assessments for Contracts with the United States

The board shall levy annually sufficient assessments to collect the money required to pay all of the district's obligations in full when due regardless of any delinquency in payment of assessments by any tract of land. If collections in any year are insufficient to pay the obligations of the district, the levy shall be increased sufficiently the following year to cover the deficit.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.160. Duration of Annual Levies for Contracts with the United States

The board shall continue annual levies for payment of construction charges each year against each tract of land in the district even though construction charges apportioned against other tracts of land in the district may be paid sooner or later.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.161. Superiority of Lien to Secure Contract with the United States

The lien against district land created by a contract with the United States shall be superior to the lien created by any district bonds approved subsequent to the date of the contract with the United States.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.162. District's Authority to Solicit Cooperation, Donations, and Contributions from Other Agencies

A district organized under the provisions of this chapter may solicit cooperation, donations and contributions from:

(1) the United States, the state or nation;

(2) any county, municipality, water improvement district, water control and improvement district, drainage district, or any other political subdivision of the state; or

(3) any person, copartnership, corporation, or association.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.163. Expense of Procuring Cooperation and Contributions from Other Agencies

A district may incur reasonable expense to procure cooperation under Section 58.162 of this code in adding to the area of the district or with contributions to the cost of improvements made by the district. The contributions may be either a percentage of cost or a definite annual sum.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.164. Authority of Contributor

(a) Any water improvement district, water control and improvement district, levee improvement district, irrigation district, county, city, town, or other political subdivision of the state may contract to contribute to the cost of the construction of drainage and irrigation water distribution system improvements. The improvements to be constructed may be outside the contributing district, municipality, or other political subdivision of the state, and may be located outside the state or the United States.

(b) The works may be constructed by any agency.

(c) The contribution shall be proportionate to the benefit which the contributor will derive from the proposed improvements.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.165. Issuance of Bonds by Contributor

(a) The contract may provide for the issuance of bonds by the contributor and for direct payment from the proceeds of the bonds to contractors on the estimates of the engineer for the contributor.

(b) Before issuing bonds, a contributing political subdivision shall submit the contract for contribution to its electors for approval and for authority to issue the bonds, fix a lien to secure the bonds, and levy, assess, and collect taxes to retire the bonds. The procedure by a contributing political subdivision of the state shall conform to the applicable law under which the political subdivision was organized and authorized to create bonded indebtedness.

(c) The disposition of the proceeds of the bond shall conform to the approved contract of contribution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.166. Annual Tax by Contributor

(a) The contract for contribution may provide that instead of issuing bonds the contributor may levy, assess, and collect an annual tax in a specific sum. The levy or assessment is a lien on the property subject to the contributor's taxing power.

(b) The contributor shall collect the tax at its own expense and pay it annually to the district to which the contribution is to be made. The district shall hold the annual payment as a trust fund and annually apply it to the bonds issued by it to provide funds for the construction of the improvements to which the contribution is made.

(c) The contributor shall submit the contract of contribution to its electors for approval and for authority to levy and assess a sufficient tax to meet the annual payments fixed in the contract. The election for the approval of the contract and the authorized taxes for the fulfillment of the contract shall conform to appropriate law under which the contributing political subdivision was organized and authorized to create bonded indebtedness.

(d) Payment of the annual sums of contribution shall conform to the contract of contribution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.167. Contributions from Unappropriated or Available Funds of Contributor

(a) If the proposed contributor has an unappropriated fund or a fund which is not required for actual use even though otherwise appropriated, the fund may be withdrawn from the project which does not need it and may be applied to pay contributions to the cost of the improvements considered to be a benefit to the contributor but to be constructed by another agency or jointly by the contributor and another agency.

(b) The board of the contributing political subdivision may contract for contributions and contribute from an unappropriated or available fund without submitting the contract and contributions to a vote of the electors of the contributor. However, the contributions shall not be made if they impair the ability of the contributor to meet any outstanding obligation or to adequately and economically discharge the contributor's duty to its electorate or constituency.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.168. Liability on Contracts of Acquired Irrigation System

If a district acquires an established irrigation system which has contracted to supply water to others and the holders of the contracts or the lands entitled to service of water are not within the district, the contracts and duties shall be performed by the district in the same manner and to the same extent that any other purchaser of the system would be bound.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.169. Authority to Lease Irrigation System Serving the District

(a) The board, by resolution, may lease all or part of any irrigation system serving all or part of the district, including distribution laterals, trunk or transmission canals, pumping plants, intakes, and all usual or necessary appurtenances. The board's resolution will specify the term of the lease, which may not be more than 40 years.

(b) The board may lease property located partly outside the boundaries of the district and may sell surplus untreated water to other districts and to other consumers.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.170. Covenants and Agreements Included in Lease

(a) The lease shall expressly state that the sums payable under the terms of the lease and the lease itself shall not constitute an indebtedness or pledge of the general credit of the district within the meaning of any constitutional or statutory limitation of indebtedness. The lease shall contain a statement that payments due under it are not payable from any funds raised or to be raised by taxation.

(b) The lease may contain covenants and agreements which are not inconsistent with the provisions of this code which authorize the lease for:

(1) the management and operation of the leased properties;

(2) the imposition and collection of charges for water;

(3) the disposition of the proceeds of charges;

(4) the insurance, protection, and maintenance of the leased properties;

(5) the creation of other obligations payable from the revenues derived from the operation of the leased properties;

(6) the keeping of books and records by the district; and

(7) other pertinent provisions which the board considers desirable to assure the payment of amounts due under the lease.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.171. Revenue for Payment of Lease Rental

(a) All money due the lessor under the lease shall be payable solely from the revenue derived by the district from the sale of water supplied through the leased system.

(b) The board shall set and collect charges for the water supplied through the leased properties to produce sufficient revenue at all times to allow for delinquencies and to pay promptly all rental payments becoming due under the terms of the lease. The board may agree to deposit this money in a separate fund as a first charge on the gross revenue received each year from sales of water, and which shall not be used for any other purpose.

(c) The board may agree in the lease to pay all expenses of operating and maintaining the leased properties from the fund provided by the board each year for the maintenance and operation expenses of the district so that the gross revenue from sale of water will be available exclusively for payment of rentals until the amount required for rentals each year is paid into the separate rental fund.

(d) If the board includes this agreement in the lease, the board shall provide for the payment of sums into the maintenance fund from sources other than the remaining portions of the gross revenue from the sale of water not required to pay rentals which are sufficient each year to pay all expenses of operating the district and maintaining and operating its properties and facilities, including the leased properties.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.172. Receiver for Leased Irrigation System

(a) If the district defaults in the payments due under a lease, the lessor may petition a court of competent jurisdiction to appoint a receiver for the leased properties.

(b) The receiver shall operate the properties and collect and distribute the revenue according to the terms of the lease and the direction of the court.

(c) The receiver has the same rights and powers as the board in its operation of the leased properties.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.173. Joint Lease by Two or More Districts

The boards of two or more districts may adopt resolutions to enter into a joint lease under the provisions of Section 58.169 of this code. The joint lease shall specify clearly the respective rights and liabilities of the districts and shall be subject to all the provisions of Sections 58.169 and 58.172 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.174. Authority to Acquire Irrigation System Subject to Mortgage

A district may acquire by gift, grant, or purchase any part of an irrigation system serving the district which is subject to a mortgage or encumbrance. The mortgage or encumbrances shall not be assumed by the district and shall not be an indebtedness of the district but shall constitute solely a charge on the encumbered property and the revenue from it.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.175. Revenue for Payment of Mortgage

(a) The board may determine conclusively by resolution whether the mortgage or encumbrance represents all or part of the cost of the acquired property and constitutes a purchase money lien on the property.

(b) The board may contract to use and pledge its revenue derived solely from the sale of water and services supplied through the acquired properties for the payment of a purchase money lien.

(c) The board also may use revenue from taxation or from the issuance and sale of bonds to pay all or part of the amount due under the encumbrance if a majority of the electors of the district voting at an election on this proposition approve its use.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.176. Election to Approve Revenue for Payment of Mortgage

(a) If tax and bond revenue is pledged to pay amount due under the encumbrance, the district

must hold an election and receive the approval of the electors.

(b) An election to approve the use of tax and bond revenue shall be held in the same manner and with the same voters' qualifications as provided for elections on the issuance of the bonds of the district.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.177. Joint Acquisition of Mortgaged System by Two or More Districts

(a) Two or more districts jointly may acquire by gift, grant, or purchase any part of an irrigation system serving the districts subject to a mortgage or encumbrances in the same manner that a single district may acquire the system.

(b) In the proceedings authorizing the acquisition, the boards of the respective districts shall define clearly the respective rights, interest, and liability of the districts in the acquired property and in the mortgage or encumbrance.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.178. Authority to Lease Facilities to Water Customers

(a) A district may lease to any person, firm, or corporation which is a bona fide water customer of the district any of its facilities and may also lease any of the district's land which is appropriate to the utilization of the leased facilities, including, but not limited to land acquired by eminent domain.

(b) The board and the lessee shall agree on the form of the lease and its terms, conditions, provisions, and stipulations; however, the duration of the lease shall not be longer than the duration of the water contract between the district and the lessee under the primary term of the water contract and any renewal or extension of it.

(c) After a lease to a water customer is authorized by the board, the lease shall be executed by the president or vice-president of the board and attested by the secretary. The lease is valid and effective without any other requirement or prerequisite by the district.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.179. Expense of Relocation of Facilities

If any district operating under this chapter requires the relocation, raising, lowering, rerouting, or change in grade or alteration in the construction of any railroad, electric transmission, telegraph or telephone lines, conduits, poles, properties, or facilities, or pipelines in the exercise of the power of eminent domain or police power, or any other power, all of the relocation, raising, lowering, rerouting or changes in grade or alteration of construction shall be the sole expense of the district. The term "sole expense" means the actual cost of relocation, raising, lowering, rerouting, or change in grade or alteration of construction to provide comparable replacement without enhancement of facilities, after deducting the net salvage value derived from the old facility. This section does not apply to projects under construction or financed or for which bonds were voted and approved by another type of district on or prior to August 27, 1961, and which such district has subsequently elected to convert into a district operating under this chapter, unless the acts of the district authorizing the construction or financing are contained in the provisions of this section.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.180. Amendments to Water Rights

The board may apply to the commission to amend its water rights as provided by Section 5.1211 [1] of this code and the rules of the commission.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[1] See, now, § 11.122.

§ 58.181. Suit to Protect Water Rights

The board may institute and maintain any suit or suits to protect the water supply or other rights of the district, to prevent any unlawful interference with the water supply or other rights of the district, or to prevent a diversion of its water supply by others.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.182. Transfer of Water Right

If there is land in a district which has a water right from a source of supply acquired by the district but the land is difficult or impracticable to irrigate from that source of supply, the district may allow transfer of the water right to other land which is adjacent to the district. The adjacent land may be admitted to the district with the same right of water service as the land from which the water was transferred.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.183. Selling Waterpower Privileges

(a) The district may enter into a contract to sell waterpower privileges if power can be generated from water flowing from the district's reservoirs within its canal system.

(b) The sale of waterpower privileges may not interfere with the district's obligation to furnish an adequate supply of water for the purpose for which the district was organized and for municipal purposes in districts that furnish water for municipal purposes.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.184. Selling Surplus Water

The district may sell any surplus district water for use in irrigation or for domestic or commercial uses to any person who owns or uses land in the vicinity of the district or to other districts which include land in the same vicinity.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.185. Pumping Water to Another District

If the board considers it advisable, it may contract to pump for or supply another district any water in which the other district has a right. The board shall provide the terms of the contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.186. Obtaining Topographic Maps and Data

The Texas Water Development Board shall furnish to a district topographic maps and data concerning projects undertaken by the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.187. Sale of Property not Required for District's Plans

The board may sell at a public or private sale any property or land owned by the district which is not required to carry out the plans of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.188. Notice of Sale of Property not Required for District's Plans

Before either a public or a private sale of property not required by the district's plans, the district shall give notice of the intent to sell by publishing notice once a week for two consecutive weeks in one or more newspapers with general circulation in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.189. Use of Proceeds from Sale of Property not Required for District's Plans

(a) If the district has outstanding bonds, the proceeds of the sale of property not required for the district's plans shall be applied to retire outstanding emergency warrants, if any, issued to protect ultimate liability of the district in condemnation proceedings as provided in this chapter and the remainder, if any, to be placed in the interest and sinking fund account provided for the retirement of outstanding bonds of the district.

(b) If the district does not have money available from other sources to complete the plans for which its construction work and its bonds were authorized, the board may use the proceeds derived from the sale of the property or land not required to carry out the plans of the district to complete the work included in its plans for improvements to the degree required, and any excess of the proceeds shall be applied as provided in Subsection (a) of this section.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.190. Sale of Property not Acquired to Carry Out the Plans of the District

The board may sell property bid in by it at any sale under foreclosure of its tax lien or of its lien for charges or assessments, or any property acquired by it other than for the purpose of carrying out the plans of the district, without formally determining that the property is not required to carry out the plans of the district, without giving notice of the intent of the district to sell the property, and without applying the proceeds of the sale as provided in Sections 58.188 and 58.189 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.191 to 58.220 reserved for expansion]

SUBCHAPTER E. ELECTION PROVISIONS

§ 58.221. Election Procedure

(a) The board shall provide for holding elections and giving notice and shall appoint officers to hold the election at the time the election is ordered.

(b) The officers for the election shall include a presiding judge and an assistant judge and two clerks. More clerks may be appointed if necessary.

(c) The board shall name the polling places, and if more than one polling place is necessary, the board shall divide the district into election precincts. The polling places may be changed from time to time as required.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.222. Notice of Election

(a) Notice of an election shall be given by order of the board.

(b) The notice shall be signed by the president and secretary of the board and shall state:

(1) the purpose of the election;

(2) the propositions and officers to be voted on;

(3) the polling places; and

(4) the names of the election officers.

(c) The notice shall be published once a week for three consecutive weeks in a newspaper with general circulation published in the county or counties in which the district is located. If no newspapers are published in these counties, the notice shall be pub-

lished in the county nearest to the district. The first publication shall be not less than 21 days nor more than 35 days before the day of the election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.223. Preparation and Delivery of Returns

(a) The election officers shall make and deliver the election returns in triplicate. One copy shall be retained by the election judge, one copy shall be delivered to the president of the board, and one copy shall be delivered to the secretary of the board.

(b) The election officers shall give to the newspapers and to other persons requesting them the returns of the election in that box at the time the returns are made.

(c) The ballot boxes and other election records and supplies shall be delivered to the secretary of the board at the district office.

(d) The ballot boxes containing the voted or mutilated ballots shall be preserved for one year after the date of the election subject to the order of any court in which a contest of the election is filed.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.224. Canvass of Returns

The board shall meet and canvass the returns of the election not less than five nor more than seven days after the day of the election. If the returns cannot be canvassed within seven days after the date of the election, they shall be canvassed as soon as possible after that time.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.225 to 58.260 reserved for expansion]

SUBCHAPTER F. EMINENT DOMAIN

§ 58.261. Applicable Statutes

Districts operating under this chapter have the power of eminent domain and shall exercise that power in accordance with the general law of eminent domain contained in Articles 3264 through 3271, Revised Civil Statutes of Texas, 1925, as amended.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.262 to 58.300 reserved for expansion]

SUBCHAPTER G. WATER CHARGES AND ASSESSMENTS

§ 58.301. Statement Estimating Water Requirements and Payment of Charge

(a) Each person who desires to receive water at any time during the year shall furnish the secretary of the board a written statement of the acreage he intends to irrigate and the different crops he intends to plant with the acreage of each crop.

(b) At the time the acreage estimate is furnished to the secretary, each person applying for water shall pay the portion of the water charge or assessment set by the board.

(c) If a person does not furnish the statement of estimated acreage or does not pay the part of the water charge or assessment set by the board before the date for fixing the assessment, the district is not obligated to furnish water to that person during that year.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.302. Contracts with Person Using Water

(a) The board may require each person who desires to use water during the year to enter into a contract with the district which states the acreage to be watered, the crops to be planted, the amount to be paid for the water, and the terms of payment.

(b) If a person irrigates more land than his contract specifies, he shall pay for the additional service.

(c) The directors also may require a person using water to execute a negotiable note or notes for all or part of the amount owed under the contract.

(d) The contract is not a waiver of the lien given to the district under Section 58.309 of this code against the crops of a person using water for the service furnished to him.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.303. Authority to Determine Rules and Regulations

The board may adopt, alter, and rescind rules, and standing and temporary orders which do not conflict with the provisions of this subchapter and which govern:

(1) methods, terms, and conditions of water service;

(2) applications for water;

(3) assessments for maintenance and operation;

(4) payment and the enforcement of payment of the assessments;

(5) furnishing water to persons who did not apply for it before the date of assessment; and

(6) furnishing water to persons who wish to take water for irrigation in excess of their original applications or for use on land not covered by their original applications.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.304. Board's Estimate of Maintenance and Operation Expenses

The board, on or as soon as practicable after a date fixed by standing order of the board, shall estimate the expenses of maintaining and operating the irrigation system for the next 12 months.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.305. Distribution of Assessment

(a) Not less than one-third nor more than two-thirds of the estimated maintenance and operating expenses shall be paid by assessment against all land in the district to which the district can furnish water through its irrigation system or through an extension of its irrigation system.

(b) The assessments shall be levied against all irrigable land in the district on a per acre basis, whether or not the land is actually irrigated. The board shall determine from year to year the proportionate amount of the expenses which will be borne by water users.

(c) The remainder of the estimated expenses shall be paid by assessments against persons in the district who use or who make application to use water. The board shall prorate the remainder as equitably as possible among the applicants for water and may consider the acreage each applicant will plant, the crop he will grow, and the amount of water per acre he will use.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.306. Notice of Assessments

(a) Public notice of all assessments shall be given by posting printed notices of the assessment in at least three public places in the district.

(b) Notice shall be mailed to each landowner at the address which the landowner shall furnish to the board.

(c) The notice shall be posted in a public place and mailed to each landowner five days before the assessment is due, and notice of special assessments shall be given within 10 days after the assessment is levied.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.307. Payment of Assessments

(a) All assessments shall be paid in installments at the times fixed by the board.

(b) If a crop for which water was furnished by the district is harvested before the due date of any installment payment, the entire unpaid assessment becomes due at once and shall be paid within 10 days after the crop is harvested and before the crop is removed from the county or counties in which it was grown.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.308. Collection of Assessments by Tax Assessor and Collector

(a) Under the direction of the board, the assessor and collector, or other person designated by the board, shall collect all assessments for maintenance and operating expenses.

(b) The assessor and collector shall execute a bond in an amount determined by the board, conditioned on the faithful performance of his duties and accounting for all money collected.

(c) The assessor and collector shall keep an account of all money collected and shall deposit the money as collected in the district depository. He shall file with the secretary of the board a statement of all money collected once each week.

(d) The assessor and collector shall use a duplicate receipt book, give a receipt for each collection made, and retain in the book a copy of each receipt, which shall be kept as a record of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.309. Lien Against Crops

The district shall have a first lien, superior to all other liens, against all crops grown on each tract of land in the district to secure the payment of the assessment, interest, and collection or attorney's fees.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.310. List of Delinquent Assessments

Within 10 days after any assessment is due, the board shall post in a public place in the district a list of all persons who are delinquent in paying their assessments and shall keep posted a correct list of all persons who are delinquent in paying assessments. If a person who owes an assessment has executed a note and contract as provided in Section 58.302 of this code, he shall not be placed on the delinquent list until after the maturity of the note and contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.311. Water Service Discontinued

If a landowner fails or refuses to pay a water assessment when due, his water supply shall be cut off, and no water may be furnished to the land until all back assessments are fully paid. The discontinuance of water service is binding on all persons who own or acquire an interest in land for which assessments are due.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.312. Suits for Delinquent Assessments

Suits for delinquent water assessments may be brought either in the county in which the district is

located or in the county in which the defendant resides. All landowners are personally liable for assessments provided in this subchapter.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.313. Interest and Collection Fees

(a) All assessments shall bear interest from the date payment is due at the rate of 10 percent a year.

(b) If suit is filed to foreclose a lien on crops or if a delinquent assessment is collected by any legal proceeding, an additional amount of 10 percent on unpaid principal and interest shall be added as collection or attorney's fees.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.314. Rights of the United States

(a) If the board enters into a contract with the United States, the remedies in this subchapter available to the district also shall apply to enforce payment of charges due to the United States. The federal reclamation laws shall also apply.

(b) The directors shall distribute and apportion all water acquired by the district under a contract with the United States in accordance with acts of Congress, rules and regulations of the Secretary of the Interior, and provisions of the contract.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.315. Surplus Assessments

If assessments made under this subchapter are more than sufficient to pay the necessary expenses of the district, the balance shall be carried over to the next year.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.316. Insufficient Assessments

If the assessments made under this subchapter are not sufficient to pay the necessary expenses of the district, the unpaid balance shall be assessed pro rata, in accordance with the assessments made for the current year. The additional assessments shall be paid under the same conditions and penalties within 30 days after the date of assessment.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.317. Determining Maintenance and Operation Charges

The board may make, establish, and collect maintenance and operation charges for service on the basis of the quantity of water furnished or appropriate measure of the service rendered.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.318. Charges for Maintenance Expenses

(a) If maintenance charges are based on the quantity of water used, a fixed minimum charge may be made on all land, water connections, or other service entitled to receive and use water. An additional charge may be made for the use of more water than that covered by the minimum charge.

(b) The board may install proper measuring devices or require that they be installed.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.319. Charge to Cities and Towns

If a district supplies untreated water, the charge for the use of the water and the time and manner of payment shall be determined by the board or fixed by the contract made with the board.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.320. Loans for Maintenance and Operating Expenses

The board may borrow money to pay maintenance and operating expenses at an interest rate of not more than 10 percent a year and may pledge as security any of its notes or contracts with water users or accounts against them.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.321. Water Service: Refused

The board may refuse water service to any person who refuses to pay the charges and assessments for water service or who fails or refuses to pay any taxes levied against his property after six months from the date the taxes become delinquent.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.322 to 58.350 reserved for expansion]

SUBCHAPTER H. GENERAL FISCAL PROVISIONS

§ 58.351. Construction Fund

(a) The proceeds from the sale of bonds shall be deposited in the construction fund.

(b) Money deposited in the construction fund shall be used to pay expenses, debts, and obligations necessarily incurred in the creation, establishment, and maintenance of the district and to pay the purchase price of property and construction contracts, including purchases for which the bonds were issued.

(c) If the bonds were issued in accordance with a contract with the United States, debts and obligations may be paid from the construction fund under the terms of or incident to the contract.

(d) After the payment of obligations for which the bonds were issued, any remaining money in the

construction fund may be transferred to the maintenance fund.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.352. Maintenance Fund

(a) The district shall have a maintenance fund which shall include money collected by assessment or other method for the maintenance, repair, and operation of the properties and plant of the district or for temporary annual rental due to the United States.

(b) The maintenance fund shall be used to pay all expenses of maintenance, repair, and operation of the district except the expenses of assessing and collecting taxes for the interest and sinking fund shall be paid from the interest and sinking fund.

(c) The district may pay from the maintenance fund other expenses for which the payment is not provided in this chapter.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.353. Amortization and Emergency Fund

(a) The board shall have a competent engineer make an inspection and valuation of the physical property of the district which is subject to decay, obsolescence, injury, or damage by sudden, accidental, or unusual causes, and based on the inspection and valuation, the engineer shall determine as nearly as he can a sufficient amount to be set aside annually to pay for replacement of each item of physical property at the end of its economic life or for the restoration or replacement of any item of physical property if it is lost, injured, or damaged.

(b) The board shall set aside a portion of the maintenance fund as it is collected equal to the amount determined under Subsection (a) of this section and shall place this money in the amortization and emergency fund. No part of this fund may be spent except to replace amortized property or to replace or restore lost, injured, or damaged property.

(c) Any amount in the amortization and emergency fund which is not spent for the purposes for which the fund was created may be invested in bonds or interest-bearing securities of the United States.

(d) The board is not required to create an amortization and emergency fund, but if the board does create the fund, it shall be kept up and maintained.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.354. Expenditure of District Funds

Funds of the district shall be paid out on order of the board with warrants drawn for that purpose.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.355. Depository

Before bonds are sold, the board shall select a depository for the district as provided in this chapter, and the proceeds of the bonds shall be placed in the depository and disbursed as provided in this chapter.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.356. Selection of Depository

(a) The board shall select a depository for the district in the manner provided for the selection of a county depository and shall perform all duties provided by law for the selection of a depository, acceptance and approval of bonds, and other acts.

(b) The depository shall execute a good and sufficient bond approved by the board to fully protect the district and to guarantee the preservation of the funds and the accountability of the depository as provided by law. The bond shall be recorded in the district office and kept in a fireproof vault or safe.

(c) Except as otherwise provided, the duties and the bond and security of the depository shall be the same as provided by law for a county depository.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.357. Functions and Duties of Depository

(a) Funds of the district shall be deposited in the depository and shall be paid out as provided in this chapter.

(b) The funds shall be deposited in the interest and sinking fund account, the construction account, or the maintenance account, and each account shall be maintained separately.

(c) No money may be paid from the interest and sinking fund account except to pay interest and principal on bonds and to pay the expenses of assessing and collecting taxes to pay for the bonds.

(d) The depository shall make a report of all money received and paid out by it at the end of each month and shall file the report and the vouchers with the records of the district in the depository vault. A copy of the report shall be made available for inspection by any taxpayer and shall be delivered to the successor of the depository.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.358. Selecting a Bank as Depository in Which a District Director Has an Interest

(a) If the highest and best bidder to become the district depository is a bank in which a district director is a stockholder or a director, the bank may be selected as the depository if the interested director does not vote on the selection and the approval of the bond.

(b) Before the selection of the bank and the approval of the bond are effective, they must be submitted to and approved by the county judge in the county in which the district is located.

(c) If the county judge fails to approve the depository selected or the bond, new bids shall be requested and another bank selected as district depository.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.359. District Audit

The board shall have a yearly audit prepared and filed in accordance with the provisions of Sections 50.371 through 50.376 of this code, but the board shall have the authority to select its own fiscal year.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.360. Maintenance Tax

(a) A district may levy and collect a tax for maintenance purposes, including funds for planning, maintaining, repairing, and operating all necessary plants, properties, facilities, and improvements of the district and for paying costs of proper services, engineering and legal fees, and organization and administrative expenses.

(b) A maintenance tax may not be levied by a district until it is approved by a majority of the electors voting at an election held for that purpose.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.361. Maintenance Tax Election

(a) The maintenance tax election may be held at the same time and in conjunction with the election to authorize bonds, and the procedure for calling the election, giving notice, conducting the election, and canvassing the returns shall be the same as the procedure for a bond election.

(b) If only a maintenance tax election is called, the order calling the election shall be issued at least 15 days before the day of the election, and the election notice shall be published at least twice in a newspaper of general circulation in the district. The first publication of the notice shall be at least 14 days before the day of the election.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.362. Expenditure of Surplus Maintenance Tax Funds

If a district has any surplus maintenance tax funds which are not needed for the purposes for which they were collected, the funds maybe used for any lawful purpose.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.363 to 58.390 reserved for expansion]

SUBCHAPTER I. BORROWING MONEY

§ 58.391. Authority to Borrow Money

The board may declare that funds are not available to meet lawfully authorized obligations of the district, thereby creating an existing emergency, and may borrow money at a rate of not more than 10 percent a year on notes of the district to pay obligations.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.392. Security for Loan

To secure the loan, the board may pledge up to 85 percent of any levied tax of the district which has not been collected by the district or may pledge as collateral any district bonds which have been authorized but not sold.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.393. Maturity Date of Loan

(a) If taxes are pledged to pay for the loan, the loan shall mature not later than the following April 1.

(b) If preliminary or construction bonds are pledged to pay the loan, the loan shall mature not later than six months from the date it is made.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.394. Loan Secured by Bonds

The amount of the loan may not be more than 25 percent of the district's unsold bonds and the par value of the bonds may not be more than 10 percent of the amount of the loan.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.395. Expenditure of Loan Proceeds

No money obtained from a loan under Section 58.391 of this code may be spent for any purpose other than the purposes for which the pledged tax was levied or the pledged bonds were authorized.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.396. Loans Accomplished by Sale of District Bonds

If the loan is secured by the sale of district bonds, the district may enter into an obligation to be conditioned conformably with the usages of investment banking to repurchase the bonds within the five-year period immediately following the date of the loan.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.397. Pledge of Commercial Income

(a) The term "commercial income" means income other than revenue derived from taxation.

(b) If required to do so, a district may pledge its existing and expected commercial income to secure a loan to the extent the pledge will not obviously substantively impair the ability of the district to pay obligations which are held by others.

(c) If a district expects commercial income in the future but does not have the demonstrated income in an amount adequate to discharge the loan when it matures, the district may pledge the expected commercial income as provided in Subsection (b) of this section and in addition, or as an alternative, may pledge with a power of sale its unsold bonds in a par amount which shall not be more than the amount of the loan plus 10 percent. The district is not required to impound the bonds. The rate of interest on the loan may not be more than six percent.

(d) After commercial income is pledged, it may not be used for any purpose except to pay the debt which it secures, and it shall be applied to the reduction of the secured debt as rapidly as practicable.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.398. Evidence of Debt

To evidence loans which are not secured by the sale of bonds, the district may execute and deliver to the lender certificates of indebtedness, notes, or obligations and may pledge its full faith and credit for their payment to the same extent that it may be pledged by district bonds.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.399. Retiring Bonds

If bonds are impounded or pledged to secure a loan made to a district, as the loan is repaid a proportionate amount of the bonds may be withdrawn, cancelled, and retired.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.400 to 58.430 reserved for expansion]

SUBCHAPTER J. ISSUANCE OF BONDS

§ 58.431. Authority to Issue Bonds of Districts Operating under Article III, Section 52, of the Texas Constitution

A district which is operating under Article III, Section 52, of the Texas Constitution, may issue bonds and lend its credit in an amount of not more than one-fourth of the assessed valuation of the real property in the district. However, the total indebtedness of any city or town may never be more than the limits imposed by the Texas Constitution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.432. Authority to Issue Bonds of Districts Operating under Article XVI, Section 59, of the Texas Constitution

A district operating under Article XVI, Section 59, of the Texas Constitution, may incur debt evidenced by the issuance of bonds which is necessary to provide improvements and maintenance of improvements to achieve the purposes for which the district was created.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.433. Amount of Debt Limited by Constitution

No district may issue bonds or create indebtedness in an amount which is more than that authorized by the Texas Constitution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.434. Issuance of Preliminary Bonds

A district may issue preliminary bonds to create a fund to pay:

(1) costs of organization;

(2) costs of making surveys and investigations;

(3) attorney's fees;

(4) costs of engineering work;

(5) costs of the issuance of bonds; and

(6) other costs and expenses incident to organization of the district and its operation in investigating and determining plans for its plant and improvements and in issuing and selling bonds to provide for permanent improvements.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.435. Election on Preliminary Bonds

(a) The proposition for the issuance of preliminary bonds shall be submitted to the electors of the district.

(b) The election may be held at the same time as the election to confirm the creation of the district or at a later time.

(c) The board shall make an estimate of the expenses to be paid with the proceeds of the preliminary bonds and shall include this estimate in the notice of election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.436. Conditions of Preliminary Bonds

(a) After preliminary bonds have been authorized at an election, the board may order the issuance of the bonds in an amount which is not more than the amount stated in the notice of election.

(b) The bonds may be paid serially or on amortization at any time not more than 10 years from their date.

(c) Although the bonds will be known and designated in the records as preliminary bonds, it is not necessary to make this designation on the bonds.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.437. Tax to Pay Preliminary Bonds

At the time preliminary bonds are issued, a tax shall be levied to pay principal and interest as the bonds mature and to pay the cost of assessing and collecting the taxes.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.438. Issuance of Bonds

(a) After a district is created and has adopted plans for construction of a plant and improvements, it may issue bonds to pay for constructing the plant and improvements and to pay costs and charges incident to the construction including the cost of necessary property and the retirement of preliminary bonds.

(b) The maximum amount of bonds which may be issued may not be more than the amount of the engineer's estimate plus the additional amounts added by the board in the election order.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.439. Purposes for Issuance of Bonds

The district may issue bonds to include:

(1) the cost of organization of the district;

(2) incidental expenses;

(3) the cost of investigation and making plans;

(4) the engineer's work and other incidental expenses;

(5) the cost of retirement of preliminary bonds;

(6) the cost of issuing and selling bonds;

(7) the estimated discount on the bonds;

(8) the cost of operation of a district for the period of construction of the Plant and improvements stated in the engineer's report;

(9) an amount to pay interest on the bonds during the period stated in the engineer's report, which shall not be more than three years from the time the bonds are sold; and

(10) any additional cost or expense made necessary by any change or modification made in the proposed work by the district.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.440. Engineer's Report

(a) Before an election is held to authorize the issuance of bonds, an engineer's report, which includes the plans and improvements to be constructed together with maps, plats, profiles, and data showing and explaining the engineer's report, shall be filed in the office of the district and shall be available for public inspection.

(b) The engineer's report shall contain a detailed estimate of the cost of improvements, including the cost of any property to be purchased, and an estimate of the time required to complete the improvements to the degree to which they may provide service.

(c) The board shall consider the engineer's report and may make changes in the report and note them in the minutes.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.441. Election Order

(a) After the engineer's report is filed and approved, the board may order an election in the district to authorize the issuance of bonds.

(b) In the order, the board shall estimate the total amount of money needed to cover the items listed in Section 58.439 of this code.

(c) The election order shall state:

(1) the proposed maximum interest rate on the bonds;

(2) the maximum maturity date of the bonds;

(3) the time and places for holding the election; and

(4) the names of the election officers.

(d) The election order shall be entered in the minutes of the board.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.442. Notice of Election

(a) Notice of the bond election, signed by the president and secretary of the board, shall be published once a week for four consecutive weeks in a newspaper with general circulation in the county or counties in which all or part of the district is located. The first publication shall be at least 28 days before the day of the election.

(b) The notice shall include:

(1) the maximum amount of bonds to be issued;

(2) the proposed maximum interest rate;

(3) the maximum maturity date;

(4) the time and places for holding the election;

(5) a substantial statement of the proposition;

(6) a summary of the engineer's estimate of the cost of the proposed improvements; and

(7) a statement of any estimate or estimates made by the board in its order calling the election.

(c) If a contract with the United States is proposed at the election, the notice shall state the maximum amount of money to be paid for construction purposes, exclusive of penalties and interest.

(d) A copy of the election notice, together with a copy of the published notice with publisher's affidavit attached, shall be filed in the office of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.443. Ballots

(a) The proposition to be voted on shall be the issuance of the total amount of bonds covered by the engineer's estimate plus additional estimates made by the board.

(b) The ballots shall be printed to provide for voting for or against: "The issuance of bonds and the levy of taxes to pay for the bonds."

(c) If a contract is proposed with the United States under the federal reclamation laws, the ballots shall be printed to provide for voting for or against: "The contract with the United States and the levy of a tax to pay the contract."

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.444. Vote at Election

(a) Bonds of a district operating under the provisions of Article III, Section 52, of the Texas Constitution, may be issued only with the approval of two-thirds of the electors of the district participating in the election.

(b) In a district organized under the provisions of Article XVI, Section 59, of the Texas Constitution, bonds may be issued or indebtedness created only with the approval of a majority of the electors of the district participating in the election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.445. Order to Issue Bonds or Execute Contract

After the vote is canvassed and the results are declared to be favorable to the proposition, the board shall make and enter an order directing the issuance of the bonds or the execution of a contract with the United States. The bonds or contract shall be in a sufficient amount to pay for the improvements together with all necessary incidental expenses, but the amount may not be more than the amount specified in the election order and notice of election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.446. Record of Bond Proceedings Submitted to Attorney General

(a) After a district issues bonds other than preliminary bonds, but before they are sold, the record showing all the proceedings in the creation of the district and the issuance of the bonds shall be filed in the office of the attorney general.

(b) The attorney general shall examine the record and give his opinion on it.

(c) The record may be presented to the attorney general before the bonds are printed, and the bonds may be executed after the record is completed.

(d) After the record is approved, the bonds shall be issued or duly executed.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.447. Approval and Registration of Bonds

(a) After the bonds are issued and executed, they shall be submitted to the attorney general for approval.

(b) If the attorney general finds that the bonds are issued according to law and are valid, binding obligations of the district, he shall officially certify the bonds and execute a certificate, which shall be filed with the comptroller and recorded in the book kept for that purpose.

(c) The bonds may not be registered with the comptroller until 20 days after the day of the election authorizing the issuance of the bonds.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.448. Validity of Bonds

After the bonds are approved by the attorney general and registered by the comptroller, they shall be held to be valid, binding obligations of the district in any suit testing their validity. Any person interested in the bonds may file a suit before the bonds are registered to test the validity, but may not bring suit to test validity after the bonds are registered.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.449. Conditions of Bonds

(a) The bonds may be issued to mature at the end of a term of years or to mature serially at any date which is not later than the maximum maturity date stated in the election order.

(b) The bonds may be issued at any rate of interest which is not more than the rate of interest set in the election order.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.450. Form of Bonds

(a) The bonds shall be issued in the name of the district and shall be signed by the president and attested by the secretary, with the seal of the district attached.

(b) The bonds shall be issued in denominations of $100 or multiples of $100 and shall be payable annually or semiannually.

(c) The board shall determine and include in the bonds the time, place, manner, and condition of payment of principal and interest on the bonds, but none of the bonds may be made payable more than 40 years from their date.

(d) The lien for payments due to the United States under a contract that was not accompanied by a deposit of bonds with the United States shall be a preferred lien to that of any issue of bonds of any series or any issue of bonds subsequent to the date of the contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.451. Authority of Commission over Issuance of District Bonds

(a) As used in this section and Section 58.452 of this code, "designated agent" means any licensed engineer selected by the commission to perform the functions specified in those sections.

(b) The commission shall investigate and report on the organization and feasibility of all districts that issue bonds under this chapter.

(c) Any district that desires to issue bonds under this chapter shall submit to the commission a written application for investigation, together with copies of the engineer's report and data, profiles, maps, plans, and specifications prepared in connection with the engineer's report.

(d) The commission or its designated agents shall examine the application and accompanying documents and shall visit and carefully inspect the project. The commission or its designated agents may request and shall be supplied with additional data and information requisite to a reasonable and careful investigation of the project and proposed improvements.

(e) The commission or its designated agents shall file in their office written suggestions for changes and improvements and shall furnish a copy of the report to the board of the district.

(f) If the commission approves or refuses to approve the project or the issuance of bonds for the improvements, it shall make a full written report which it shall file in its office and a copy of the report shall be furnished to the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.452. Commission Supervision of Projects and Improvements

(a) During construction of projects and improvements approved by the commission, no substantial alterations may be made in the plans and specifications without the approval of the commission.

(b) The commission or its designated agent may inspect the improvements at any time during construction to determine if the project is being constructed in accordance with the plans and specifications by the commission.

(c) If the commission finds that the project is not being constructed in accordance with the approved plans and specifications, it shall give written notice immediately by certified mail to each member of the board of the district and the district's manager.

(d) If within 10 days after the notice is mailed the board of the district does not take steps to insure that the project is being constructed in accordance with the approved plans and specifications, the commission shall give written notice of this fact to the attorney general.

(e) After the attorney general receives this notice, he may bring an action for injunctive relief or quo warranto proceedings against the directors. Venue for either suit is exclusively in a district court in Travis County.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.453. Validation Suit

(a) A district may file a suit to determine the validity of the creation of the district and the bonds.

(b) If requested by the Secretary of the Interior, the district shall file a suit to validate a contract made with the United States.

(c) If a validation suit is filed, the bonds do not have to be approved by the attorney general.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.454. Effect of Prior Registration

If bonds are approved by the attorney general and registered by the comptroller before a validation suit is filed, the filing of the suit cancels the prior registration.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.455. Procedure in Validation Suit

(a) A validation suit shall be brought by the district in the district court of any county in which all or part of the district is located or in a district court in Travis County.

(b) The suit shall be in the nature of a proceeding in rem.

(c) Any person who is interested in the suit may intervene and file an answer.

(d) The issue shall be tried and determined by the court and judgment shall be entered on the findings.

(e) A validation suit has preference over all other suits to allow a speedy determination.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.456. Notice of Validation Suit

(a) To obtain jurisdiction of all parties to the validation suit, a general notice shall be published.

(b) The notice shall be published once a week for at least two consecutive weeks before the term of the court at which the notice is to be returned. The notice shall be published in a newspaper with general circulation in the county or counties in which the district is located, but if no newspaper is published inside the district, the notice shall be published in a newspaper in the nearest county in which a paper is published.

(c) Notice also shall be served on the attorney general in the manner provided in civil suits.

(d) The attorney general may waive notice if he is furnished a full transcript of the proceedings held in connection with the creation of the district and the issuance of the bonds or held in connection with the authorization of a contract with the United States. A copy of the contract with the United States also must be furnished.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.457. Duties of Attorney General in Validation Suit

(a) The attorney general shall examine all the proceedings and shall require any further evidence and make any further examination which he considers advisable.

(b) The attorney general then shall file an answer to the suit, submitting the issue of whether the proceedings are valid and the bonds are legal and binding obligations of the district, or whether the contract with the United States is legal and binding on the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.458. Judgment in Validation Suit

(a) After the trial of the validation suit, if the judgment of the court is adverse to the district on any issue, the district may make an exception and point out the error, and the error may be corrected by the judge in the manner directed by the court.

(b) The judgment shall be rendered showing that the corrections have been made and that the bonds or the contract with the United States are binding obligations of the district.

(c) After the judgment is entered, it is res judicata in all cases which may arise in connection with:

(1) the collection of the bonds or their interests;

(2) any taxes levied to pay charges or any money required to pay a contract with the United States; and

(3) all matters relating to the organization and validity of the district or the validity of the bonds or contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.459. Effect of Validation Suit

(a) After a final judgment is rendered in the validation suit, the bonds or the contract with the United States shall be incontestable.

(b) No suit may be brought in any court of this state to contest or enjoin the validity of the creation of the district, any bonds which are issued, any contract with the United States, or the authorization of a contract with the United States, except in the name of the State of Texas by the attorney general on his own motion or on the motion of any party affected on good cause shown.

(c) The attorney general may not file or prosecute such a suit unless it is based on allegations of fraud disclosed or found after the final judgment in the validation suit was rendered.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.460. Certified Copy of Decree

(a) After the judgment of the district court is entered, the clerk of the court shall make a certified copy of the decree which shall be filed with the comptroller. The comptroller shall record the decree in the book kept for that purpose.

(b) The certified copy of the decree or a certified copy of the comptroller's record of the decree shall be received in evidence in any suit which may affect the validity of the organization of the district or the validity of the bonds or the contract and shall be conclusive evidence of validity.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.461. Registration of Bonds and Decree

On the presentation of the bonds together with a certified copy of the decree of the court, the comptroller shall register the bonds in a book kept for that purpose. The comptroller shall attach to each bond a certificate stating that the court's decree has been filed and recorded in his office and shall sign the certificate and attach his official seal.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.462. Sale of Bonds

(a) After the bonds are issued by the district, the board shall sell the bonds on the best terms and for the best price possible.

(b) The board shall pay the proceeds from the sale of the bonds to the district depository.

(c) The district may exchange bonds for property acquired by purchase or to pay the contract price of work done for the use and benefit of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.463. Tax Levy

(a) At the time the bonds are voted, the board shall levy a tax on all property inside the district subject to district taxation in a sufficient amount to redeem and discharge the bonds at maturity.

(b) The board annually shall levy or have assessed and collected taxes on all property inside the district in a sufficient amount to pay installments and interest as they become due.

(c) If a contract is made with the United States, the board annually shall levy taxes on property inside the district in a sufficient amount to pay installments and interest as they become due.

(d) The board may issue the bonds in serial form or payable in installments, and the tax levy shall be sufficient if it provides an amount sufficient to pay the interest on the bonds, the proportionate amount of the principal of the next maturing bond, and the expenses of assessing and collecting the taxes for that year.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.464. Adjustment of Tax Levy

Text of section effective until January 1, 1982

(a) The tax levy made in connection with the issuance of bonds shall remain in force from year to year until a new levy is made.

(b) The board may from time to time increase or diminish the tax to adjust it for the taxable values of the property subject to taxation by the district and the amount required to be collected.

(c) The board shall raise an amount sufficient to pay the annual interest of and principal on all outstanding bonds.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

For text of section effective January 1, 1982, see § 58.464, post

§ 58.464. Adjustment of Tax Levy

Text of section effective January 1, 1982

(a) The board may from time to time increase or diminish the tax to adjust it for the taxable values of the property subject to taxation by the district and the amount required to be collected.

(b) The board shall raise an amount sufficient to pay the annual interest of and principal on all outstanding bonds.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see § 58.464, ante

§ 58.465. Changing Tax Rate

If the tax levied is based on the assessed value obtained from the county tax rolls, or the tax rolls of the district for the preceding year and new tax rolls are approved before the time for collection of taxes, the board may change the tax rate provided the new rate is sufficient when applied to the new assessed value to raise the needed amount.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.466. Interest and Sinking Fund

(a) The district shall have an interest and sinking fund which shall include all taxes collected under this chapter.

(b) Money in the interest and sinking fund may be used only:

(1) to pay principal and interest on the bonds;

(2) to defray the expenses of assessing and collecting the taxes; and

(3) to pay principal and interest due under a contract with the United States if bonds have not been deposited with the United States.

(c) Money in the fund shall be paid out of the fund on warrants by order of the board as provided in this chapter.

(d) The depository shall receive and cancel each interest coupon and bond as it is paid and shall deliver it to the board to be recorded, cancelled, and destroyed.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.467. Investment of Sinking Fund

(a) The board may invest any portion of the sinking fund of the district in bonds of the United States, the state, any county or city in the state, any irrigation or water improvement district, school dis-

trict, or other tax bonds issued under the laws of the state.

(b) The funds may be invested if the bonds to be paid with them do not mature within three years from the time the investment is made and if it is necessary to preserve the best interest of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.468. Refunding Bonds

(a) The district may refund any bonds issued by it by issuing new bonds.

(b) Refunding bonds may be issued only if the old bonds are taken in exchange at their face value or less or new bonds can be sold at a premium and the old bonds retired without loss to the district.

(c) The comptroller may not register the refunding bonds until the old bonds for which the refunding bonds are being issued are presented to him for cancellation or until a valid contract providing for the purchase or exchange of the old bonds is executed and a copy filed in his office.

(d) The comptroller shall keep the refunding bonds until the old bonds are presented to him for exchange or payment, and if the old bonds are presented for payment, the district shall pay them before the refunding bonds are registered.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.469. Limitation of Authority to Incur Debt and Issue Bonds

(a) For the benefit of purchasers or holders of bonds to be issued or sold, the board of a district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, may limit the authority of the district to incur debt or issue bonds.

(b) The board shall limit the authority by adopting a resolution which states that during a period of not more than 15 years the district will not issue bonds in an amount of more than 25 percent of the assessed value of taxable real property in the district according to the last assessment for district purposes or in an amount of more than a fixed sum or for certain named purposes.

(c) The board shall publish notice of the adoption of the resolution once a week for two consecutive weeks in a newspaper with general circulation in the district. The notice shall state that the resolution will take effect unless a petition against the proposed limitation signed by 20 percent of the electors of the district is presented within 20 days after the first publication of the notice.

(d) If a petition is filed against the limitation, the resolution will not take effect until it is approved at an election held in the district.

(e) The ballots for the election shall be printed to provide for voting for or against: "The limitation during the term of years of the maximum debt of the district to _____." (The blank space shall be filled with the purpose of the election).

(f) If the limitation is approved at an election or if no petition is filed against the resolution, the district may not issue bonds under any statute or constitutional provision in excess of the limitation during the designated term of years except to complete and make repairs to improvements whose cost will be within the debt limitation.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.470. Issuing Bonds in Excess of Limitation

(a) A district may issue bonds in excess of a limitation made under Section 58.469 of this code only after the commission has approved the plans and specifications with the estimate of costs.

(b) If the plans, specifications, and estimate are approved, notice of the intention to issue the bonds shall be published once a week for three consecutive weeks in a newspaper with general circulation in the district. The notice shall include a statement of the purpose for issuing the bonds, the amount of the proposed bond issue, and the time the hearing is to be held, which may not be less than 30 days after the notice is first published.

(c) The board shall hold the hearing and any taxpayer, bondholder, or other interested person may appear and be heard.

(d) If the board approves the issuance of the additional bonds in the amount and for the purpose stated in the notice, the question of issuing the bonds shall be submitted to the electors of the district at an election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.471. Modifications or Improvements

(a) After bonds are issued or a contract is entered into with the United States, the board may give notice of an election to be held to authorize the issuance of additional bonds or a further contract with the United States.

(b) Additional bonds may be issued or a supplemental contract made if the board considers it necessary to:

(1) make modifications in the district or its improvements;

(2) construct further or additional improvements and issue additional bonds on the report of the engineer;

(3) make a supplemental contract with the United States; and

(4) make, on its own motion, additional improvements or purchase additional property to accomplish the purposes of the district and to serve the best interest of the district.

(c) The board shall enter its findings in the minutes.

(d) The election shall be held and the returns made in the manner provided in this chapter for the original election.

(e) If the result of the election favors the issuance of the bonds or the supplemental contract with the United States, the board may order the bonds issued or the contract made with the United States in the manner provided in this chapter.

(f) If a supplemental contract is made with the United States and bonds are not to be deposited with the United States, it is not necessary to issue bonds. If the district is required to raise money in addition to the amount of the contract, the bonds shall be issued only in the additional amount needed.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.472. Issuance of Additional Bonds or Creation of Additional Indebtedness under Certain Conditions

(a) A district may issue additional bonds or create additional indebtedness:

(1) if works, improvements, and facilities constructed under a plan provided in Section 58.440 or 58.452 of this code are inadequate to accomplish the beneficial results which the district's location and conditions demand;

(2) if it is considered necessary to make repairs, replacements, or additions to the district's improvements which cost more than $25,000; or

(3) if additional money is needed to complete the improvements as planned.

(b) The district shall provide the additional money for the particular purpose in accordance with the provisions of this chapter regulating the creation of bond obligations subject to every limitation with respect to the original proceedings and the substantial protection of the substantive rights of holders of any of the district's outstanding obligations.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.473. Interim Bonds

After bonds, other than preliminary bonds or notes, are voted by a district, the board may declare an existing emergency with relation to money being unavailable to pay for engineering work, purchase of land, rights-of-way, construction sites, construction work, and legal and other necessary expenses and may issue interim bonds on the faith and credit of the district in the manner provided in Sections 58.474–58.479 of this code to pay these expenses.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.474. Limitations on Interim Bonds

(a) Interim bonds shall mature not later than 10 years from the date they are issued, and shall be redeemable at any time before they mature, as provided in this subchapter.

(b) The principal amount of the interim bonds may not be more than 25 percent of the principal amount of the district's bonds which have been voted but not sold.

(c) Before the issuance of the interim bonds, the board, by resolution, may limit the issue to any amount less than 25 percent, and after the amount is determined and fixed by the resolution, no additional interim bonds may be issued and sold until all outstanding interim bonds are paid.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.475. Issuance of Bonds and Levy of Tax

(a) After bonds other than preliminary bonds are voted, the board may authorize the issuance of the bonds in whole or in part as they are needed by the district.

(b) The board shall levy and annually assess and collect sufficient taxes to pay principal and interest on the bonds.

(c) The bonds may be approved by the attorney general and registered by the comptroller before the filing of the report of the Texas Water Rights Commission under Section 58.451 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.476. Deposit of Bonds to Secure Interim Bonds

(a) As the interim bonds are issued and sold, the board, by order, shall deposit bonds of the district which have been validated by a court or approved by the attorney general and registered by the comptroller as provided in Section 58.447 of this code in the district depository.

(b) The bonds deposited shall be credited to the interest and sinking fund account created to pay the interim bonds.

(c) The principal amount of the bonds deposited shall total at least 110 percent of the principal sum of the series of interim bonds which the bonds are deposited to secure.

(d) The interest rate on the interim bonds may not be more than the interest rate on the bonds deposited to secure them.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.477. Procedure for Issuance and Sale of Interim Bonds

(a) Interim bonds shall be issued in the name of the district, signed by the president, and attested by the secretary, with the district seal attached to each bond.

(b) The interim bonds may be issued in the denominations determined by the board and shall be approved by the attorney general and registered by the comptroller in the same manner as provided in Section 58.447 of this code.

(c) The interim bonds may be sold in the same manner and on the same terms provided by law for the sale of other bonds of the district.

(d) If interim bonds are sold at less than par value and accrued interest, the improvement bonds issued by the district must be sold at an increase over the price authorized by law in an amount sufficient to equal the discount allowed on the interim bonds.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.478. Payment of Interim Bonds

(a) The board shall appropriate the tax levied to pay the bonds deposited to the credit of the interest and sinking fund to pay the interim bonds or as much of that tax as necessary to secure the loan evidenced by the interim bonds.

(b) The proceeds of the tax shall be devoted exclusively to the payment of the principal and interest on the interim bonds.

(c) None of the provisions of this subchapter relating to interim bonds shall be construed as prohibiting the sale of bonds deposited to the credit of the interest and sinking fund to pay interim bonds or of any other bonds of the district, but if any of these bonds are sold, the district depository shall apply the proceeds to the payment of principal and accrued interest on the interim bonds and the remainder to the purposes for which the bonds were authorized.

(d) If none of the bonds are sold at the time an installment on the principal and interest of interim bonds matures, the depository shall cancel the deposited bonds and attached interest coupons in an amount equal to the principal and interest of the interim bonds paid off and discharged.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.479. Redemption of Interim Bonds

(a) At the option of the board, interim bonds may be redeemed at any time or times before maturity on payment by the district of the principal and accrued interest to the date fixed for redemption by the board.

(b) When interim bonds are called for redemption before maturity, the secretary shall give written notice of the redemption to the bank or banking house named as the place of payment in the bonds or to its successor or assign.

(c) In the notice, the secretary shall designate the bond or bonds called for redemption and payment and shall state the number or numbers of the bonds.

(d) The notice shall include the redemption date which shall not be more than 60 days after the date notice of call for payment is made.

(e) If any of the bonds which are called for redemption are not presented, they shall cease to bear interest from and after the date fixed for redemption.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.480. Alternate Methods for Paying Bonds

(a) As used in this section and in Sections 58.481–58.484 of this code, "net revenue" means income or increment which may come from ownership and operation of the improvements which are encumbered less the proportion of the district's revenue income reasonably required to provide for administration, efficient operation, and adequate maintenance of the district's services and facilities which are encumbered. Net revenue does not include money derived from taxation.

(b) A district which expects net revenue from operations may secure its bonds in any one of the following:

(1) as provided in Section 58.463 of this code;

(2) by entering into a contract to pledge the net revenue of the district and to mortgage and encumber part or all of the property and facilities, franchise, revenue, and income from operations, and everything acquired or to be acquired by the district; or

(3) as provided in both Subdivisions (1) and (2) of this subsection.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.481. Taxes to Secure Certain Bonds

(a) If bonds are secured as provided in Section 58.480(b)(3) of this code, at the time that net revenue together with money derived from taxes accumulates a surplus in the sinking fund equal to the amount required in the succeeding year to liquidate the interest and principal on the district's bonds maturing in that year, the district's annual tax levies may be lowered to produce not less than 25 percent of the bond maturities for the succeeding year.

(b) If three successive years demonstrate that this net revenue is adequate to protect the district's bonds as they mature, the district's tax may be discontinued until further experience demonstrates

the necessity to continue the tax to avoid default in the payment of the district's bonds as they mature.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.482. Election

(a) If the district proposes to issue bonds which will be secured under either Section 58.480(b)(2) or 58.480(b)(3) of this code, the proposition shall be presented at an election held under Section 58.443 of this code.

(b) The ballots for the election shall be printed to provide for voting for or against one of the following propositions:

(1) "The issuance of bonds and the pledge of net revenue for the payment of the bonds.";

(2) "The issuance of bonds, the pledge of net revenue, and the creation of a lien on physical property to secure payment of the bonds."; or

(3) "The issuance of bonds, the pledge of net revenue, and the levy of adequate taxes to pay the bonds."

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.483. Hearing and Election on Certain Bonds

(a) A district which plans to issue bonds payable from and secured by a pledge of net revenue and a lien on the physical property, either or both, without the levy of taxes, is not required to hold a hearing to exclude land or adopt a plan of taxation.

(b) The proposition for issuance of bonds may be submitted at the election held to confirm the creation of the district or at an election called by the board.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.484. Hearing Before Issuing Certain Bonds

If a district issues its original bonds under Section 58.480(b)(2) of this code and later desires to issue bonds payable in whole or in part from taxes or to levy a tax for maintenance purposes, the district shall hold a hearing to exclude land, and at the time provided by law, shall hold another hearing to adopt a plan of taxation. These hearings shall be held before an election is called to approve the issuance of tax-supported bonds or the levy of a maintenance tax.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.485 to 58.500 reserved for expansion]

SUBCHAPTER K. TAX PLAN

§ 58.501. Tax to Pay Preliminary Bonds

Taxes to pay principal and interest on preliminary bonds shall be levied and collected on the ad valorem basis.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.502. Hearing to Determine Basis of Taxation

After the board adopts plans for construction of a plant and improvements to accomplish the purposes of the district and after an election is held to authorize the issuance of construction bonds and the levy of a tax to pay for the bonds, the board shall hold a public hearing to determine whether the taxes to pay the construction bonds and maintenance, operation, and administrative costs of the district shall be levied, assessed, and collected on:

(1) the ad valorem basis;

(2) the basis of assessment of specific benefits;

(3) the basis of assessment of benefits on an equal sum per acre; or

(4) the ad valorem basis for part of the total tax or defined area or property and on the benefit basis for the other part of the tax or defined area or property.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.503. Notice of Hearing

Notice of the time and place of the hearing and the proposition to be determined shall be published once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall be made not less than 10 days before the day of the hearing set in the notice.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.504. Conduct of Hearing

(a) At the hearing, any person who is a taxpayer in the district may appear and offer testimony to show which plan of taxation will be most conducive to equitable distribution of taxes.

(b) The hearing may be adjourned from day to day until all persons wishing to testify have been heard.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.505. Order

(a) The board shall adopt the plan of taxation which will, in its judgment under the evidence, be most conducive to the equitable distribution of the district's tax.

(b) If the plan adopted by the board is made under the provisions of Section 58.512 of this code, the order shall specify the proportion of the tax which falls under each designated classification.

(c) The order of the board is final and cannot be reviewed or questioned in any court except on the ground of fraud or palpable and arbitrary abuse of discretion.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.506. Changing Tax Plan

If after a tax plan is adopted the directors find that the best interest of the district and the necessity to maintain adequately and equitably the district's tax requires a change in the tax plan, the board may give notice, hold a hearing, and determine a new plan in the manner provided in Sections 58.502–58.505 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.507. Effect of Sections 58.501–58.506 of This Code

Nothing in Sections 58.501–58.506 of this code shall be held to alter provisions of this chapter relating to districts which have contracts with the United States or to alter or impair the provisions of this code relating to taxes levied to provide local improvements to a defined area which do not affect the entire district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.508. Unlimited Authority to Collect Service Charges and Taxes

The provisions of this subchapter do not alter or impair the right of a district:

(1) to make, establish, and collect maintenance and operation charges for service rendered;

(2) to levy and collect taxes to secure funds to maintain, repair, and operate all works and facilities; and

(3) to give and maintain proper service for the purposes of its organization.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.509. Lien Created; No Limitation

Text of section effective until January 1, 1982

Taxes, charges, or assessments imposed by a district for maintenance and operation of works, facilities, and services of the district shall constitute a lien against the land to which the taxes, charges, or assessments have been established. No law providing limitation against actions for debt shall apply.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

For text of section effective January 1, 1982, see § 58.509, post

§ 58.509. Lien Created; No Limitation

Text of section effective January 1, 1982

Charges or assessments imposed by a district for maintenance and operation of works, facilities, and services of the district shall constitute a lien against the land to which the charges or assessments have been established. No law providing limitation against actions for debt shall apply.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see § 58.509, ante

§ 58.510. Purpose of Sections 58.511–58.529 of Code

The purpose of Sections 58.511–58.529 of this code is to give a district the flexibility of taxing power which will permit and cause the tax of the district to be equitably distributed and which will give the highest practicable degree of service under the peculiar physical and economic conditions of the district. To this end, these sections shall be liberally and sympathetically construed.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.511. Authority to Adopt Alternative Plans of Taxation

A district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, shall adopt a tax plan under the alternative provisions of Sections 58.512–58.529 of this code either at the time of its creation or before the appointment of commissioners of appraisement under this chapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.512. Alternative Plans of Taxation

(a) The district's taxes for all purposes, except to pay the cost of preliminary surveys, may be levied, assessed, and collected on an adopted basis to be chosen from the alternatives provided in this section.

(b) The district's tax plan may be based on any one of the following:

(1) ad valorem basis;

(2) benefit basis;

(3) ad valorem basis to obtain a part or percentage of the total tax or to apply to a specific part of the district and benefit basis applied to the other part of percentage of the tax or to the remaining part of the district; or

(4) either ad valorem or benefit basis on designated property or defined areas of the district to pay for improvements, facilities, or service peculiar to the defined part of the district and not generally and directly benefiting the district as a whole.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.513. Adoption of Plan of Taxation

(a) Except as provided in Section 58.512(b)(4) of this code, before the commission of appraisement is appointed and the construction bonds are sold, the board shall adopt a proposed plan of taxation as provided in Sections 58.502–58.505 of this code.

(b) If the tax plan is not based wholly on the ad valorem basis or on the benefit basis, the order adopting the proposed plan shall specify the portion of the tax to be based on the ad valorem basis and the portion to be based on the benefit basis. The board also shall state the physical and economic reasons, the peculiar diverse local needs, or the comparative potential benefits of different areas of designated property in the district which make it necessary or equitable to levy all or part of the tax on a defined part of the district on the ad valorem or benefit basis.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.514. Notice of Adoption of Plan and Hearing

(a) After the tax plan is adopted, the board shall publish notice once a week for two consecutive weeks in one or more newspapers with general circulation in the county or counties in which the district is located.

(b) The notice shall state:

(1) that the tax plan has been adopted;

(2) that the plan is available for public inspection in the district's office;

(3) that a hearing on the plan will be held by the board at a specified place and at a particular time, which shall not be less than 15 days nor more than 20 days after the first publication of notice; and

(4) that all interested persons may appear and support or oppose all or part of the proposed tax plan and offer testimony.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.515. Order Adopting Tax Plan

(a) After all persons have been heard, the board may approve the proposed tax plan or may change or modify the plan.

(b) The board shall adopt a tax plan which it considers, under the evidence before it, most equitably distributes the tax burden and conserves the public welfare.

(c) The board shall enter its order establishing the tax plan, and the plan shall become the basis for the assessment and collection of taxes until the district adopts a different plan.

(d) The order is not subject to judicial review except on the ground of fraud, palpable error, or arbitrary and confiscatory abuse of discretion.

(e) A new plan may be adopted if required to preserve equity of distribution in the manner provided for adopting the original plan; however, no change may be made in the tax plan which will impair the ability of the district promptly to meet all outstanding obligations of the district within the intent of Sections 58.464 and 58.467 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.516. Obtaining Funds to Construct, Administer, Maintain, and Operate Improvements and Facilities in Defined Part of District

On adoption of the plan of taxation provided in Section 58.512(b)(4) of this code, the district, in the manner provided in Sections 58.517–58.523 of this code, may provide, pay for, maintain, and operate improvements, service, or facilities peculiar to a designated area or defined property which do not affect the whole district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.517. Defining Area and Designating Property to be Benefited by Improvements; Adopting Tax Plan

(a) The board shall define the particular area to be taxed by metes and bounds or designate the property to be served, affected, and taxed.

(b) The board shall adopt a plan for improvements in the defined area or to serve the designated property in the manner provided in Sections 58.440–58.441 of this code.

(c) The board shall adopt a plan of taxation to apply to the defined area or designated property which may or may not be in addition to other taxes imposed by the district on the same area or property. The proportional tax or income contributions of the defined area or designated property and the proportional and equitable interest of the entire district shall be taken into consideration in imposing any tax to an area or piece of property.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.518. Notice and Hearing

The board shall give notice and hold a hearing in the same manner and for the same purpose as provided in Sections 58.514–58.515 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.519. Board's Order

At the hearing, if the board decides to define and serve the proposed separate tax area or separate designated property, it shall enter an order in the record, and if the proposal involves the issuance of bonds, the board shall call an election in the whole district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.520. Procedure for Election

(a) The election shall conform to the provisions of this code relating to an election to authorize the issuance of construction bonds.

(b) The board shall submit the appropriate issues to the electors, and the issues may be submitted on the same ballot to be used in another election.

(c) The notice of election shall define the area to be designated and the plan of taxation to be applied.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.521. Election not Required in Separate Election Precinct

If proposed improvements are considered to be required to promote the public welfare or if the owners of the land in a defined area file a petition acknowledged as required for deeds requesting the district to provide improvements and assess a tax only in the defined area, it is not necessary to constitute the area a separate election precinct and have a separate election in that area.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.522. Ballots

The ballots for an election under this subchapter shall be printed to provide for voting for or against substantially the proposition: "Designation of the area, issuance of bonds, and levy of a tax to retire the bonds."

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.523. Declaring Result and Issuing Order

If a majority of the electors approve the proposal, the board shall declare the result and, by order, shall establish the area and define it by metes and bounds or designate the specific property and shall fix the tax basis for the area or property. A certified copy of the order shall be recorded in the minutes of the district and shall constitute notice.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.524. Pledge of Faith and Credit

If at an election the electors approve the issuance of bonds and the levy of a tax which applies only to a defined area, the district may issue bonds which pledge only the faith and credit based on the property values in the defined area; however, the district may pledge the full faith and credit of the entire district under the condition of authorization in Section 58.528 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.525. Election in Separate Election Precinct

(a) If the improvements to be provided in a defined area are considered peculiarly for the benefit of that area and not required to conserve the public or general welfare in the district as a whole, and if the proposed improvements in that area will require the imposition of a tax only on the property in the area, the defined area is constituted a separate election precinct in which a separate election shall be held to determine if the improvements will be provided and a separate tax levied.

(b) The election shall be held in the manner provided for issuance of bonds under this subchapter.

(c) If a majority of the electors in the defined area approve the propositions, the district shall provide money when necessary and shall provide the improvements and levy the tax.

(d) At an election in the defined area, each qualified elector of the district who owns property in the defined area may elect to vote in the area and not in the precinct of his residence.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.526. Issuance of Bonds and Levy of Tax for Defined Area or Designated Property

(a) After the order is recorded, the district may issue its bonds to provide the specific plant, works, and facilities included in the plans adopted for the area or to serve the property and shall provide the plant, works, and facilities.

(b) In the appropriate case, the board shall levy, assess, and collect taxes on the property located in the defined area or on the designated property in conformity with the adopted tax plan.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.527. Contract to Provide Improvements, Facilities, and Services to Designated Property or Area

(a) Property or areas inside or outside the district may, by contract, be designated to obtain improvements, facilities, or service for the designated area or property.

(b) The designation shall be based on a written petition in conformity with the laws authorizing contracts by a petitioner or person owning, controlling, or governing the property or area to be designated.

(c) The board may make the designation in a contract to provide, administer, maintain, and operate the desired improvements, facilities, or service for the designated area or property, and the designated area or property shall be subject to a tax lien in an amount to retire the obligations incurred by the district to provide the facilities, improvements, or service and to cover the expenses necessary to administer, maintain, and operate the improvements and facilities under the contract.

(d) The contract may not violate the law of this state or the United States and may not result in impairing a vested right or causing the district to fail to serve fully and permanently water demands in the district in the order of preference of uses.

(e) The contract may provide that one governing body may establish the contractual and statutory tax lien in behalf of the district and may levy, assess, and collect the tax for and on behalf of the district.

(f) The district may not issue bonds pledging the full faith and credit of the district under this section or under Section 58.517 of this code without submitting the proposition to the electors of the whole district under the provisions of this subchapter or under the provisions authorizing the issuance of construction bonds.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.528. Authority of District

(a) If a majority of the electors in the whole district approve the proposal, the district may issue its bonds to provide the plant, improvements, and facilities peculiar to the defined area or designated property or peculiar to a contract for services and may pledge the full faith and credit of the district to pay for the bonds.

(b) The district shall have a lien on the property in the defined area or on the designated property and may levy, assess, and collect or have levied, assessed, and collected taxes in the area or on the property to protect the district from or to compensate any liability incurred on behalf of the defined area or designated property.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.529. Administrative Authority of Board

The board shall administer all business incident to the creation and operation of a defined area or service to designated property unless otherwise provided by contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.530 to 58.560 reserved for expansion]

SUBCHAPTER L. TAXATION ON THE AD VALOREM BASIS

§ 58.561. Assessment of District Property

The assessor and collector shall assess all taxable property in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.562. Law Governing Property Subject to Taxation

Text of section effective until January 1, 1982

The property subject to taxation in the district shall be determined by and governed by the law relating to taxation for state and county purposes, and these laws shall apply unless otherwise provided.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

For text of section effective January 1, 1982, see § 58.562, post

§ 58.562. Law Governing Property Subject to Taxation

Text of section effective January 1, 1982

The property subject to taxation in the district shall be determined by and governed by the Property Tax Code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1979. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see § 58.562, ante

§ 58.563. Rendition of Property

(a) The assessor and collector shall compile a record of all taxpayers and those subject to tax in the district and all taxable property and the name and post office address of the owners.

(b) On or before the first day of April of each year, the assessor and collector shall furnish to each taxpayer and to each owner of taxable property in the district a blank form for the rendition of property for taxation. The form may be delivered or mailed to the owner.

(c) Failure to receive the form furnished by the assessor and collector shall not excuse anyone from the duty of making and filing a statement and rendition. Any property owner failing to receive the form shall call at the office of the district for it.

(d) Each owner of taxable property in the district shall file in the office of the assessor and collector a full, accurate, and complete statement under oath of all property owned by him in the district which is subject to taxation.

(e) The statement shall include the true value of all property listed and owned by the party rendering

it. In rendering land improvements and all other property, the statement shall show both the market value and the real value.

(f) The statement shall be filed on or before March 31 of each year.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.564. Failure or Refusal to File Rendition

A person who fails or refuses to file, under oath, a true, full, and complete statement and rendition of all property owned by him which is subject to district taxation shall be precluded from making an objection, protest, or contest against the assessment made against him by the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.565. Property Owner's Oath

(a) The statement and rendition shall have attached to it substantially the following oath:

"I _____, on my oath, state that the foregoing statement and rendition is a true, full, and complete statement of all property owned by me, for whom this rendition is made or by whom this rendition is made, subject to taxation in the district. I have correctly stated the description, location, and value thereof and of each item thereof."

(b) The statement and oath shall be signed and made before an officer authorized by law to take oaths and acknowledgments.

(c) The officer taking the oath shall place on the oath his certificate substantially as follows: "Subscribed and sworn to by _____ before me this the ___ day of _____, _____." The officer also shall attach his official seal and signature.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.566. Agent May File Rendition Statement

The statement and rendition may be filed by any authorized agent of the owner of any property, but the agent shall state in the statement and rendition that he is filing as an agent.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.567. Verification of Rendition; Rendition of Property not Already Rendered

(a) The assessor and collector shall check, investigate, and verify each rendition of property and shall note on the rendition in writing his report. He shall include in the report any property omitted from the rendition with his estimate of the value of all the property not rendered at its full value or if the property is rendered at more than its full value.

(b) The assessor and collector shall make and file a rendition of all property in the district which is not rendered for taxation and shall file the rendition before June 1 of each year or as soon after that time as possible.

(c) In making the rendition of unrendered property, the assessor and collector shall include all property which is not rendered by the owner or his agent, and if the owner is unknown, the property shall be listed as being owned by "owner unknown."

(d) Property whose owner is unknown shall be taxed and taxes collected even though the owner is unknown and may be assessed against a person who is not the owner.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.568. Rendition of Property at a Later Date

On creation of the district, if it becomes necessary to have property rendered for taxation at a later date than provided for regular assessment, the board shall fix the time for the rendition to be made and the other necessary functions connected with it. After the first year, the assessments shall be made as provided in this subchapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.569. Authority to Administer Oaths

The assessor and collector may administer oaths to fully carry out his duties and assessment of property for taxation.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.570. Laws and Penal Statutes Applicable to Rendition of Property

The laws and penal statutes of this state providing for rendition of property for state and county purposes and providing penalties for making false oaths and for failing to render property shall apply to rendition of property by a district except as otherwise provided.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.571. Appointment of Board of Equalization

(a) The board, at their first meeting or as soon after that time as practicable and each following year, shall appoint three commissioners to the board of equalization.

(b) Each person appointed to the board of equalization shall be a qualified property taxpaying elector of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.572. First Meeting of Board of Equalization

(a) At the same meeting at which the first board of equalization is appointed, the board shall fix a time for the meeting.

(b) The board of equalization shall convene at the time designated by the board to receive all assessment lists or books of the assessor and collector for examination, correction, equalization, appraisement, and approval.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.573. Oath of Board of Equalization

(a) Before the board of equalization begins to perform its duties, each commissioner shall take and subscribe the following oath:

"I do solemnly swear (or affirm) that I will, to the best of my ability, make a full and complete examination, correction, equalization, and appraisement of all property contained in the district as shown by the assessment lists or books of the assessor and collector for the district and add all property not included of which I have knowledge."

(b) The oath shall be recorded in the minutes and shall be kept by the secretary of the board.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.574. Compensation of Board of Equalization

Members of the board of equalization shall receive the compensation fixed by the board.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.575. Secretary of Board of Equalization

The secretary of the board shall act as secretary of the board of equalization at all meetings and shall keep a permanent record of all the proceedings of the board of equalization.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.576. Annual Meeting Date of Board of Equalization

The board of equalization shall convene on the first Monday in June of each year and shall complete its work by September 1 or as soon after that time as possible.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.577. Powers and Duties of Board of Equalization

(a) At the time the board of equalization convenes, the assessor and collector shall bring to the meeting all assessment lists and books for examination so that the board of equalization may see whether or not each person has rendered his property at its full value.

(b) The board of equalization may send for persons and papers, administer oaths to persons who testify, and ascertain the value of all property subject to taxation.

(c) The board of equalization may raise or lower the valuation of any of the property, may correct any and all errors of assessments and renditions, and may add any unrendered property to the tax rolls.

(d) The board of equalization shall equalize as nearly as possible the value of all property rendered for taxation and fix the value of it for taxation.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.578. Complaints Filed with Board of Equalization

Any person may file with the board of equalization a complaint relating to the rendition and assessment of his own property or to any other property and the board of equalization shall consider all complaints.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.579. Lists of Persons and Property not on Tax Rolls Submitted to Board of Equalization

(a) Anyone may file with the board of equalization lists of property that is omitted from the tax rolls, and the board of equalization shall add to the tax rolls any property that has been omitted from them.

(b) The assessor and collector shall file with the board of equalization a list of all persons who fail or refuse to render their property.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.580. Hearing

After the board of equalization has passed on the renditions, it shall fix a date to hear protests from persons whose renditions have been raised.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.581. Notice of Hearing

At least 10 days before the hearing, the secretary shall mail written notice of the time and place of the hearing to all persons whose assessments have been raised. Failure to give the notice does not relieve the owner of the property of his duty to take notice of the hearing and to attend.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.582. Hearing Procedure

At the hearing, the board of equalization shall hear and consider all complaints and protests, reconsider the valuation of all property whose valuation is raised by them, and finally fix the valuation on all property.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.583. Final Approval of Tax Rolls

(a) After the assessor and collector makes his final tax rolls, the board of equalization shall meet and consider the tax rolls and make necessary corrections and endorse its approval on the rolls.

(b) The action of the board of equalization in approving the tax rolls is final and is not subject to revision by the board of equalization or any other tribunal.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.584. Preservation of Official Documents

(a) The assessor and collector shall prepare the tax rolls in duplicate and one copy shall be retained in his office, and one copy shall be filed in the district office.

(b) The minutes of the board of equalization, renditions, protests, and other papers filed in connection with the rendition of property and preparation of the tax rolls shall be preserved as official records in the district office.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.585. Permanent Finance Ledger

(a) The board shall provide a permanent finance ledger in which the assessor and collector shall be charged with the total assessment of property shown on the tax rolls.

(b) Credit shall be entered in the permanent finance ledger of all collections paid to the depository.

(c) The permanent finance ledger and the books and accounts of the assessor and collector shall be audited by the board semiannually on January 1 and July 1 of each year and at any other times ordered by the board.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.586. Date Taxes Are Due

All taxes are due and payable on October 1 of each year and shall be paid on or before January 31 of the following year.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.587. Delinquent Taxes

(a) All taxes which are not paid by January 31 become delinquent on February 1 of each year and shall be and remain a lien on the property for which they were assessed although the owner is unknown, the property is listed under the name of a person who is not the owner, or the ownership has changed.

(b) The property may be sold under a judgment of a court for all taxes, interest, penalty, and costs assessed against the property at any time after taxes become delinquent.

(c) The district may file suit to collect the delinquent taxes, and if the owner of the property is unknown, the suit may be filed against the unknown owner and the property sold under judgment of the court.

(d) Taxes are not barred by any statute of limitation, and no law providing for a period of limitation as to debts or actions shall apply to these taxes.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.588. Interest and Penalty on Delinquent Taxes

All delinquent taxes shall have a penalty of 10 percent of their amount added to them, which shall accrue at the time the taxes become delinquent. The delinquent taxes also shall bear interest at the rate of six percent a year from the date on which they become delinquent.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.589. Preparing and Filing Delinquent Tax Roll

The assessor and collector shall prepare and file with the board a delinquent tax roll on or before April 1 of each year. The delinquent tax roll shall show all charges on the tax rolls which have not been paid.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.590. Notice of Delinquent Tax List

(a) The board shall publish the delinquent tax list once a week in a newspaper published in the county in which the district or part of the district is located. If no newspaper is published in the district, the notice shall be published in a newspaper outside the district.

(b) The delinquent tax list shall include:

(1) the name of the owner;

(2) a description of the property; and

(3) the total amount of taxes due.

(c) The newspaper which publishes the notice shall be paid a reasonable fee fixed by agreement, but, the fee shall not be more than 20 cents for each rendition or tract of land using not more than three lines single column.

(d) The publisher of the newspaper which publishes the notice shall file in the district office a copy of each issue of the newspaper containing the notice with an affidavit of publication attached.

(e) The notice provided in this section is intended to be for the information of all taxpayers and shall not be held to be requisite to filing a suit for the collection of taxes. The suit may be filed without publishing notice.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.591. Attorney to File Suits to Collect Delinquent Taxes

(a) The board shall on or before April 1 of each year employ an attorney to file suits to collect all delinquent taxes.

(b) The attorney is entitled to receive a fee of 10 percent of the amount of all delinquent taxes collected or paid after suits are filed. The fees shall be charged as court costs.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.592. Delinquent Tax Suit

(a) A delinquent tax suit shall be filed as any other civil suit.

(b) If the owner of the property against which delinquent taxes are owed is unknown, the suit may be filed against the unknown owner and citation published in the manner provided for state and county taxes.

(c) All tax suits shall be for the collection of the amount due and foreclosure of the lien on the property against which the delinquent taxes are assessed.

(d) Costs of the suit shall be taxed in the order of sale.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective Janu-

ary 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.593. Sale of Property to Pay Delinquent Taxes

(a) Property on which delinquent taxes are owed shall be sold under order of sale.

(b) If more property is covered by the lien fixed by the judgment than is necessary to secure the amount due, the property may be divided and sold in parcels as necessary to collect the amount due.

(c) The officer executing the order of sale shall make deeds to the purchaser which shall be held to vest a good and perfect title in the purchaser, subject to contest only for fraud.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.594. Redemption of Property on Which Delinquent Taxes Are Owed

A person may redeem property on which delinquent taxes are owed at any time before the date of sale under a judgment by paying the taxes and all penalties, interest, attorney's fees, and court costs which have accrued.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.595. Authorizing Taxes to be Assessed and Collected by Assessor and Collector of County or City

(a) A majority of the board may adopt a resolution to have the district's taxes assessed and collected by the county assessor and collector or by the city assessor and collector of an incorporated city or town inside the boundaries of the district.

(b) The taxes shall be assessed and collected by the county or city assessor and collector in the manner provided by the board and turned over to the treasurer of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.596. Compensation of County or City Assessor and Collector

If the county or city assessor and collector is required to assess and collect the taxes of the district, he is entitled to receive one percent of the total taxes shown on the completed roll for assessing the taxes and one percent for collecting the taxes. The compensation for collection of delinquent taxes shall be five percent of the amount collected.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.597. Alternate Method for Assessment, Equalization, and Collection of Taxes

Instead of having taxes assessed, equalized, and collected as provided in Sections 58.561–58.596 of this code, the board may enter into a contract for this service with the commissioners court of each county in which taxable property of the district is located.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.598. Consideration and Costs under Contract

(a) The consideration for services rendered under a contract entered into under Section 58.597 of this code shall be computed as fees of office of the county officers rendering the services under the contract.

(b) The service charge to be paid by the district under the contract may not be more than the reasonable cost which would be added to the county's cost for assessing and collecting taxes if there were no contract.

(c) If the service may be accomplished by an extension of an ad valorem tax levy by the district on the rolls to be used for state and county taxes, the

cost shall not be more than $1,800 a year for the assessment and equalization of taxes and shall not be more than $1,500 a year for the collection of and accounting for the taxes, together with other acts which are lawful duties incident to collecting delinquent taxes.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.599. County Assessor and Collector's Bond

(a) The county assessor and collector shall be considered the assessor and collector of the district, and he may be required by the district to execute a surety company bond payable to the district. The premium on the bond shall be paid by the district.

(b) In the absence of a separate bond, the official bond of the county assessor and collector shall inure ratably to the benefit of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.600. Tax Assessment and Collection Procedure under Contract

(a) On entering into a contract under Section 58.597 of this code, the county assessor and collector shall perform for the contracting district the same duties which he is required by law to perform in assessing and collecting state and county taxes.

(b) Before the district requires service under the contract, it shall levy an ad valorem tax or fix the specific assessment of benefits or tax per acre for each year for which service is to be rendered under the contract.

(c) Within the time which will not delay the preparation of the county's tax rolls, the district shall deliver to the county tax assessor and collector a certificate showing the rate or amount of the district's tax levy or specific assessment for the current taxing year.

(d) The county assessor and collector shall pay to the district or the district depository all money collected by him for the district during any calendar month and shall furnish to the district on or before the 15th day of the next succeeding month an itemized statement of the collections made in the previous month, unless the contract provides for more frequent accounting.

(e) The district shall keep a finance ledger in which the full amount of the completed tax rolls shall be charged to the county assessor and collector and the amount of taxes collected and paid over to the district shall be entered.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.601. Audit

(a) The district under the contract may elect to require the county auditor to audit annually the collections and accounts of the county assessor and collector and furnish the district with a report of his finding.

(b) The district shall pay to the county the actual cost of the audit.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.602 to 58.630 reserved for expansion]

SUBCHAPTER M. TAXATION ON THE BENEFIT BASIS

§ 58.631. Method of Taxation for District under Contract with the United States

A district which is operated under contract with the United States may adopt the plan to levy and collect taxes on the benefit basis instead of the ad valorem basis and determine taxes under the provisions of Sections 58.632–58.634 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.632. Assessment Record

When necessary, the board shall apportion and assess the benefits conferred on property subject to taxation in the district and shall make a record showing the amount and value of benefits to accrue on property in the district and the amount of taxes to be levied and collected on the property. No taxes assessed or adjudged against the property subject to taxation may be more than the benefit which accrues to the property from the organization, operation, and maintenance of the district and its improvements.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.633. Notice of Taxes

After the board makes the record, it shall mail to each property owner whose name appears in the record notice of the amount of taxes levied on his property and the date and place at which the property owner may appear and contest the correctness and equitableness of the tax.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.634. Decision after Hearing

After the hearing, the board shall determine whether or not the tax is equitable and shall sustain, reduce, or increase the tax to an amount which in the board's judgment is equitable. The decision of the board is final.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.635. Method of Taxation for District not under Contract with the United States

If a district which is not operating under contract with the United States adopts the benefit basis plan for taxation, the levy, assessment, equalization of property values, and collection of taxes shall be made in the manner provided in Sections 58.636–58.648 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.636. Commissioners of Appraisement

As soon as practicable after the approval of the engineer's report and the adoption of the plan for improvements to be constructed, the board shall appoint three disinterested commissioners of appraisement. The commissioners shall be freeholders but not owners of land within the district which they represent.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.637. Compensation of Commissioners

On approval by the board, each commissioner is entitled to receive $25 a day for each day he actually serves, plus all necessary expenses.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.638. Notice of Appointment and Meeting

Immediately after the commissioners of appraisement are appointed, the secretary of the board shall give written notice to each appointee of his appointment and of the time and place of the first meeting of the commissioners.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.639. First Meeting of Commissioners

(a) The commissioners shall meet at the time specified in the notice from the secretary or as soon after that time as possible.

(b) At the meeting the commissioners shall take and subscribe an oath to discharge faithfully and impartially their duties as commissioners and make a true report of the work which they perform. They shall then organize by electing one commissioner as chairman and one commissioner as vice-chairman.

(c) The secretary of the board or, in his absence, a person appointed by the board shall serve as secretary to the commissioners of appraisement and shall furnish to the commissioners any information and assistance which is necessary for the commissioners to perform their duties.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.640. Assistance for Commissioners

Within 30 days after the commissioners qualify and organize, they shall begin to perform their duties, and in the exercise of their duties they may obtain legal advice and information relative to their duties from the district's attorney and, if necessary, may require the presence of the district engineer or one of his assistants at any time and for as long as necessary to properly perform their duties.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.641. Viewing Land and Other Property and Improvements in District

The commissioners shall view the land in the district which will be affected by the district's reclamation plans and shall assess the amount of the benefits and damages that will accrue to the irrigable land in the district from the construction of the improvement.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.642. Commissioners Report

(a) The commissioners shall prepare a report and file it with the secretary of the board. The report shall be signed by at least a majority of the commissioners.

(b) The report shall include:

(1) the name of the owner of each tract of land which is subject to assessment;

(2) a description of the property;

(3) the amount of the benefits or damages assessed on each tract of land;

(4) the time and place at which a hearing will be held on the report to hear objections; and

(5) the number of days each commissioner served and the actual expenses incurred during his service as commissioner.

(c) The day set in the report for the hearing may not be later than 20 days after the report is filed.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.643. Notice of Hearing

(a) After the commissioners' report is filed, the secretary of the board shall publish notice of the hearing on the report at least once a week for two consecutive weeks in a newspaper published in each county in which part of the district is located. The secretary shall mail written notice of the hearing to each person whose property will be affected if his address is known.

(b) The notice shall state:

(1) the time and place of the hearing;

(2) that the commissioners' report has been filed;

(3) that interested persons may examine the report and make objections to it; and

(4) that the commissioners will meet at the time and place indicated to hear and act on objections to the report.

(c) On the day of the hearing, the secretary shall file in his office the original notice and his affidavit stating the manner of publication, the names of persons to whom notice was mailed, and the names of persons to whom notice was not mailed because the secretary by reasonable diligence could not ascertain their addresses. Copies of the notice and affidavit shall also be filed with the commissioners of appraisement and the clerk of the commissioners court.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.644. Hearing

(a) At or before the hearing on the commissioners' report, an owner of land that is affected by the report or the reclamation plans may file exceptions to all or part of the report.

(b) At the hearing, the commissioners shall hear and make determinations on the objections submitted and may make necessary changes and modifications in the report for objections which are sustained.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.645. Witnesses at the Hearing

At the hearing, interested parties may appear in person or by attorney and are entitled, on demand, to have the chairman of the commissioners of appraisement issue process for witnesses. The commissioners shall have the same power as a court of record to enforce the attendance of witnesses.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.646. Costs of Hearing

The commissioners may adjudge and apportion the costs of the hearing in any manner they consider equitable.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.647. Commissioners' Decree

(a) After the commissioners have made a final decision, they shall issue a decree confirming their report insofar as it remains unchanged and shall approve and confirm changes in the report.

(b) The final decree and judgment of the commissioners shall be entered in the minutes of the board, and certified copies shall be filed as a permanent record with the county clerk of each county in which part of the district is located and shall be notice to all persons of the contents and purpose of the decree.

(c) The findings of the commissioners which relate to benefits and damages to irrigable land in the district are final and conclusive.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.648. Effect of Final Judgment and Decree

The final judgment and decree of the commissioners shall form the basis for all taxation in the district. Taxes shall be apportioned and levied on each tract of irrigable land in the district in proportion to the net benefits to the land stated in the final judgment and decree.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.649. Fixing Tax as Equal Sum on Each Acre

At the election at which the plan of taxation is determined or at any other time before the bonds are issued, the voters of any district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, may vote on the proposition of whether or not benefits for tax purposes shall be fixed as an equal sum on each acre of land that is irrigated or to be irrigated by gravity flow from the canal system of the district. The benefit per acre shall be voted on as it is applied to land in the district that can be irrigated by gravity flow from the irrigation system, and also the benefit to land in the district that cannot be irrigated by gravity flow.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.650. Election

(a) If the board desires to submit the question of whether or not to adopt the method of assessing benefits provided in Section 58.649 of this code, it shall order an election to be held in the district and shall submit the proposition in the manner provided for other district elections.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition: "Uniform assessment of benefits of $___ per acre on all irrigable land in the district."

(c) The board shall determine the amounts to fill the space in the proposition. The amount of charge per acre may be found by dividing the number of acres of land into the amount of debt to be incurred by the district in providing for irrigation.

(d) If a majority of the persons voting in the election vote in favor of the proposition, it shall be adopted.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.651. Setting Annual Value of Land Unnecessary

Text of section effective until January 1, 1982

If the district adopts the uniform acreage valuation for taxation, the valuation shall be applied to all irrigable land and it is not necessary for the assessor and collector or the board of equalization to annually fix the value of the land or equalize the values. It is also unnecessary for the board to appoint a commission to ascertain or fix the value of the improvement to particular land.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

For text of section effective January 1, 1982, see § 58.651, post

§ 58.651. Setting Annual Value of Land Unnecessary

Text of section effective January 1, 1982

If the district adopts the uniform acreage valuation for taxation, the valuation shall be applied to all irrigable land in the district, and it is not necessary to annually fix the value of the land. It is also unnecessary for the board to appoint a commission to ascertain or fix the value of the improvement to particular land.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 27, 1979. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see § 58.651, ante

§ 58.652. Preparing Tax Rolls

Text of section effective until January 1, 1982

(a) The board of equalization shall examine the renditions and tax rolls to determine if all property subject to taxation appears on the tax rolls. The board of equalization shall add to the tax roll any property which was left off or was not rendered for taxation and shall examine, correct, and certify the tax roll.

(b) Any property owner may protest to the board of equalization that his property has not been properly classified. The board of equalization shall consider the protest and enter its findings in the minutes in the manner provided by law.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

For text of section effective January 1, 1982, see § 58.652, post

§ 58.652. Preparing Tax Rolls

Text of section effective January 1, 1982

(a) The board shall examine the tax rolls to determine if all property subject to taxation appears on the tax rolls. The board shall add to the tax roll any property which was left off and shall examine, correct, and certify the tax roll.

(b) Any property owner may protest to the board that his property has not been properly classified. The board shall consider the protest and enter its findings in the minutes in the manner provided by law.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see § 58.652, ante

§ 58.653. Rendition of Property

Land which is taxed on the uniform acreage valuation shall be rendered for taxation as subject to irrigation. When land is rendered, the value need not be stated, and it is unnecessary for the person rendering the property to include the value of the land in an affidavit or for the assessor and collector to set a value on the land.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.654. Law Governing Administration of Benefit Tax Plan

Text of section effective until January 1, 1982

The rate of taxation, the collection of taxes, the assessment of property, and the rendition of property for taxation shall be governed by the law relating to ad valorem taxes.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

For text of section effective January 1, 1982, see § 58.654, post

§ 58.654. Law Governing Administration of Benefit Tax Plan

Text of section effective January 1, 1982

In a district that levies taxes on a benefit basis, the rate of taxation and the assessment and collec-

tion of taxes shall be governed by the law relating to ad valorem taxes to the extent applicable.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see § 58.654, ante

§ 58.655. Irrigating Nonirrigable Land

If land which is classified as nonirrigable is later irrigated by the district, before the owner of the land receives the water, he shall pay to the district an amount equal to the entire amount that would have been charged to the owner if the land had been originally classified as irrigable.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.656 to 58.690 reserved for expansion]

SUBCHAPTER N. ADDING AND EXCLUDING TERRITORY AND CONSOLIDATING DISTRICTS

§ 58.691. Excluding Land from District

After a district is organized, preliminary surveys are completed, and plans adopted by the district for the construction of a plant and improvements, and before the board calls an election for the authorization of construction bonds, the board must exclude land or other property from the district under the provisions of Sections 58.692–58.701 of this code, if the exclusions are practicable, just, or desirable.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.692. Hearing to Announce Proposed Exclusions and to Receive Petitions

Before the election to authorize construction bonds, the board shall give notice of a time and place of a hearing to announce its own conclusions relating to land or other property to be excluded and to receive petitions for exclusion of land or other property.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.693. Notice of Hearing

(a) The board shall publish notice of the hearing once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall appear at least 15 days and not more than 40 days before the day of the hearing.

(b) The notice shall advise all interested property owners of their right to present petitions for exclusions and to offer evidence in support of the petitions and their right to contest any proposed exclusion based on either a petition or the board's own conclusions and to offer evidence in support of the contest.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.694. Petition

(a) A petition for exclusion of land must accurately describe by metes and bounds the land to be excluded. A petition for exclusion of other property must describe the property to be excluded for identification.

(b) A petition for exclusion shall be filed with the district at least 10 days before the hearing and shall state clearly the particular grounds on which the exclusion is sought. Only the stated grounds shall be considered.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.695. Grounds for Exclusion

Exclusions from the district may be made on the grounds that:

(1) to retain certain land or other property within the district's taxing power would be arbitrary, would be unnecessary to conserve the public welfare, would impair or destroy the value of the property desired to be excluded, and would constitute the arbitrary imposition of a confiscatory burden;

(2) to retain any given land or other property in the district and to extend to it, either presently or in the future, the benefits, service, or protection of the district's facilities would create an undue and uneconomical burden on the remainder of the district; or

(3) the land desired to be excluded cannot be served with water or drained so as to make it useful for irrigation purposes, or otherwise benefited by the district's proposed improvements.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.696. Hearing Procedure

The board may adjourn the hearing from one day to another and until all persons desiring to be heard are heard. The board immediately shall specifically describe all property which it proposes to exclude on its own motion and shall hear first any protests and evidence against exclusions proposed on the board's own motion.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.697. Order Excluding Land

After considering all engineering data and other evidence presented to it, the board shall determine

whether the facts disclose the affirmative of the propositions stated in Subdivision (1) or (2) or, if appropriate, in Subdivision (3) of Section 58.695 of this code. If the affirmative exists, the board shall enter an order excluding all land or other property falling within the conditions defined by the respective subdivisions and shall redefine the boundaries of the district in the order to embrace all land not excluded.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.698. Suit to Review, Etc.

Any person owning an interest in land affected by the order may file a petition within 20 days after the effective date of the order to review, set aside, modify, or suspend the order.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.699. Venue of Suit

The venue in any action shall be in any district court which has jurisdiction in the county in which the district is located. If the district includes land in more than one county, the venue shall be in the district court having jurisdiction in the county in which the major portion of the acreage of the land sought to be excluded from the district is located.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.700. Trial Procedure

(a) A suit to review, modify, suspend, or set aside the order of the board shall be a trial de novo as that term is understood in an appeal from a justice of the peace court to a county court. The trial shall be strictly de novo with no presumption of validity or reasonableness or presumption of any character in favor of the order.

(b) The decision shall be made on a preponderance of the evidence and facts found in the trial as in other civil cases, independently of any action taken by the board.

(c) The procedure for the trial and the determination of the orders and judgments to be entered shall be governed solely by the rules of law, evidence, and procedure of the state courts according to the constitution, statutes, and rules of procedure for the trial of civil actions.

(d) The so-called "substantial evidence" rule enunciated by the courts for orders of other administrative or quasi-judicial agencies shall not apply in the trial.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.701. Appeal

A person may appeal from the judgment or order of a district court in a suit brought under the provisions of Sections 58.698–58.700 of this code to the court of civil appeals and supreme court as in other civil cases in which the district court has original jurisdiction. The appeal is subject to the statutes and rules of practice and procedure in civil cases.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.702. Exclusion of Nonagricultural and Nonirrigable Land from the District

After the district is organized, acquires facilities with which to function as an irrigation district, and votes, issues, and sells bonds for the purposes for which the district was organized, land within the district subject to taxation which is not agricultural land or cannot be irrigated in a practicable manner may be excluded from the district by complying with the provisions of Sections 58.703–58.713 of this code. The land may also be excluded pursuant to the provisions contained in either Chapter 119, Acts of the 47th Legislature, Regular Session, 1941, as amended, or Chapter 86, Acts of the 62nd Legislature, Regular Session, 1971,[1] in the same manner as if the district was a water control and improvement district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[1] See Water Code Special Laws Table, arts. 7880–76c, 8280–3.2.

§ 58.703. Prerequisite to Application for Exclusion

The owner of land in the district which is not agricultural land or cannot be irrigated in a practicable manner may apply for its exclusion from the district if all taxes levied and assessed by the district on the land to be excluded have been fully paid, including all bond tax and flat water rate assessment.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.704. Substituting Land of Equal Acreage and Value

Land which can be irrigated in a practicable manner of at least equal acreage and equal value to the land being excluded must be added to the district simultaneously with the exclusion of the nonagricultural or nonirrigable land.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.705. Securing Application to Substitute Land

The board may require an owner of land in the district who has applied for the exclusion of his

nonagricultural or nonirrigable land from the district to procure an application of the owner of land adjoining the boundaries or the canals of the district, and capable of being irrigated in a practicable manner from the facilities of the district, for inclusion in the district of his land in an amount and value at least equal to the land which is to be excluded under the application of the owner of nonagricultural or nonirrigable land. Each application shall set forth the facts concerning the land to be excluded from and the land to be added to the district, including evidence of their reasonable market value.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.706. Application of Owner of New Land to be Substituted

The owner of the new land to be added shall submit an application setting forth that the owner of the new land assumes the payment of all taxes to be levied on his land by the district after the date the land is added to the district. The application also shall set forth an agreement by the owner of the new land that the land will be subject to future taxes for bond tax and flat rate and all other assessments levied and assessed by the district as though the land had been incorporated originally in the district. The application also shall contain an agreement by the owner of the new land that the land will be subject to the same liens and provisions as all other land in the district and subject to the statutes governing all other land in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.707. Consent of Outstanding Bondholders

(a) The board shall communicate the contents of the applications to exclude nonagricultural or nonirrigable land and to include an equal amount of irrigable land to the holders of outstanding bonds voted, issued, sold, and delivered by the district and payable from taxes levied on property in the district.

(b) If the consent in writing of 95 percent or more of the bondholders to the plan is filed with the board, the board may hold a hearing on the applications.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.708. Notice of Hearing on Applications

The board shall give notice of the hearing on the applications by publishing the time, place, and nature of the hearing one time in a newspaper published in a county in which all or part of the district is located. The newspaper must have been published regularly for more than 12 months preceding the date of the publication of the notice and must have circulation in the district. The notice shall be published not less than 10 days nor more than 20 days before the date of the hearing.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.709. Hearing Procedure

The board shall hear all interested parties and all evidence in connection with the applications.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.710. Board's Resolution to Substitute Land

If the board finds that all the conditions provided for the exclusion of land and inclusion of other land in the district exist, it may adopt and enter in its minutes a resolution to exclude land which is nonagricultural or nonirrigable in a practicable manner and include land which may be irrigated from the facilities of the district in a practicable manner.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.711. Liability of Excluded and Included Land

The land excluded from the district is free from any lien or liability created on the excluded land by reason of its having been included in the district. Land added to the district is subject to all laws, liens, and provisions governing the district and the land in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.712. Duty to Advise Water Rights Commission

The board shall furnish the Texas Water Rights Commission a detailed description of the land excluded and a detailed description of the land included within 30 days after the exclusion and inclusion of land under the provisions of Sections 58.702–58.711 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.713. Right to Serve New Land Included in District

The district has the same right to furnish water service to the included land that it previously had to furnish service to the excluded land. The mere inclusion of a larger total acreage than that excluded does not give the district the right to irrigate a larger total acreage or to appropriate a larger quantity or volume of public water for irrigation than the district would have had the right to irrigate or to appropriate before the exclusion and inclusion of the land.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.714. Adding Land by Petition of Landowner

The owner of land may file with the board a petition requesting that the land described by metes and bounds in the petition be included in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.715. Petition Signed and Executed

The petition of the landowner to add his land to the district shall be signed and executed in the manner provided by law for the conveyance of real estate.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.716. Hearing and Determination of Petition

The board shall hear and consider the petition and may add to the district the land described in the petition if it is considered to be to the advantage of the district and if the water supply, canals, and other improvements are sufficient to supply the added land without injuring land already in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.717. Recording Petition

A petition which is granted adding land to the district shall be filed for record and shall be recorded in the office of the county clerk of the county in which the land is located.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.718. Adding Certain Territory by Petition

Landowners of a defined area of territory not included in a district may file a petition requesting inclusion with the secretary of the board signed by a majority of the landowners in the territory or by 50 landowners if the number of landowners is more than 50.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.719. Hearing on Petition

The board by order shall set the time and place of the hearing on the petition to include the territory in the district. The hearing shall be held not less than 30 days from the date of the order.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.720. Notice of Hearing

(a) The secretary of the board shall issue notice of the time and place of the hearing, and the notice shall describe the territory proposed to be annexed.

(b) The secretary shall post copies of the notice in three public places in the district and one copy in a public place in the territory proposed to be annexed. The notices shall be posted for at least 15 days before the day of the hearing.

(c) The notice shall be published one time in a newspaper with general circulation in the county. The notice shall be published at least 15 days before the day of the hearing.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.721. Resolution to Add Territory

If the board finds on hearing the petition that the addition would be of benefit to the district and that the water supply, canals, and other improvements are sufficient to supply the added territory without injuring the land already in the district, it may add the territory to the district by resolution entered in its minutes. The board does not have to include all the territory described in the petition if it finds that a modification or change is necessary or desirable.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.722. Elections to Ratify Annexation of Land

(a) Annexation of the territory is not final until ratified by a majority vote of the electors at a separate election held in the district and by a majority vote of the electors at a separate election held in the territory proposed to be added.

(b) If the district has outstanding debts or taxes, the same election shall determine also whether or not the territory to be added will assume its proportion of the debts or taxes if the land is added to the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.723. Notice and Procedure of Election

The notice of the election, the manner and the time of giving the notice, the manner of holding the election, and qualifications of the voters shall be governed by the provisions of Subchapter E of this chapter.[1]

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[1] Section 58.221 et seq.

§ 58.724. Liability of Added Territory

The added territory shall bear its pro rata part of all indebtedness or taxes that may be owed, contracted, or authorized by the district to which it is added.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.725. Liability of Land Added to a District Operating under Article XVI, Section 59, of the Texas Constitution

(a) If land is added to a district operating under Article XVI, Section 59, of the Texas Constitution, the order of the board adding the land to the district may contain an agreement that the added land will be taxed on the benefit basis instead of the ad valorem basis. The agreement may provide that the added land will be taxed on a uniform acreage basis or on the plan of a definite annual payment.

(b) The board, in its order adding land to the district, shall set the amount of the debts to be paid

by the owner of the added land and levy annual taxes against the land to pay the debts. The taxes assessed by the board constitute a lien against the added land in the same manner and to the same extent as if the land had been a part of the district at the time the indebtedness was incurred or authorized by an election held for that purpose.

(c) The added land is a part of the district and is liable for debts subsequently incurred by the district in the same manner as other land in the district.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.726. Consolidation of Districts

Two or more districts governed by the provisions of this chapter may consolidate into one district as provided by Sections 58.727–58.730 of this code.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.727. Elections to Approve Consolidation

(a) After the directors of each district have agreed on the terms and conditions of consolidation, they shall order an election in each district to determine whether the districts should be consolidated.

(b) The directors of each district shall order the election to be held on the same day in each district and shall give notice of the election for at least 20 days in the manner provided by law for other elections.

(c) The districts may be consolidated only if the electors in each district vote in favor of the consolidation.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.728. Governing Consolidated Districts

(a) After two or more districts are consolidated, they become one district, except for the payment of debts created before consolidation, and are governed as one district.

(b) During a period of 90 days after the date of the election to approve consolidation, the officers of each district shall continue to act jointly as officers of the original districts to wind up the affairs of their respective districts.

(c) The consolidation agreement may provide that the officers of the original districts shall continue to act jointly as officers of the consolidated district until the next general election or name persons to serve as officers of the consolidated district until the next general election if all officers of the original districts agree to resign.

(d) New officers of the consolidated district must qualify as officers of the district within the period of 90 days after the election and shall assume their offices at the expiration of the 90-day period.

(e) The current board shall approve the bond of each new officer.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.729. Debts of Original Districts

After two or more districts are consolidated, the debts of the original districts are protected and are not impaired. These debts may be paid by taxes or assessments levied on the land in the original districts as if they had not consolidated or contributions from the consolidated district on terms stated in the consolidation agreement.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.730. Assessment and Collection of Taxes

After consolidation, the officers of the consolidated district shall assess and collect taxes on property in the original district to pay debts created by the original district.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.731 to 58.780 reserved for expansion]

SUBCHAPTER O. DISSOLUTION OF DISTRICT

§ 58.781. Dissolution of District Prior to Issuance of Bonds

(a) If the electors of a district reject the proposal to issue construction bonds by a constitutional or statutory majority vote, the board must dissolve the district and liquidate the affairs of the district as provided in Sections 58.781–58.792 of this code.

(b) Subject to the provisions of Subchapter G of Chapter 50 of this code,[1] if a district finds at any time before the authorization of construction bonds or the final lending of its credit in another form that the proposed undertaking for any reason is impracticable or apparently cannot be successfully and beneficially accomplished, the board may issue notice of a hearing on a proposal to dissolve the district.

(c) Subject to the provisions of Subchapter G of Chapter 50 of this code, if 20 percent of the qualified voters of a district petition the board for a hearing on a proposal to dissolve the district and deposit with the board an amount estimated to cover the actual cost of giving notice and holding the hearing, the board shall publish notice of the hearing within 10 days and shall hold the hearing within 40 days after the filing of the petition, as provided in Sections 58.782–58.785 of this code. If the finding is against the petition, the deposit shall be applied to pay the cost of giving notice and holding the hearing.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[1] Section 50.251 et seq.

§ 58.782. Notice of Hearing

The board shall post notice of the hearing on the bulletin board at the courthouse door of each county in which the district is located and at three or more other public places within the boundaries of the district. The notice must be posted at least 10 days before the hearing on the proposed dissolution of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.783. Hearing

The board shall hear all interested persons and shall consider their evidence at the time and place stated in the notice.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.784. Board's Order to Continue or Dissolve District

The board shall determine from the evidence whether the best interests of the persons, land, and property in the district will be promoted by prosecuting the district's plans or whether the best interests of the persons and property in the district will be served by dissolving the district, and the board shall enter the appropriate findings and order in the record.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.785. Judicial Review of Board's Order

The board's decree to continue or to dissolve the district shall be final and cannot be judicially reviewed except on the ground of fraud, palpable error, or gross abuse of discretion.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.786. Appointment of Trustee

(a) If the board orders the dissolution of the district, it shall appoint a director or some other competent person as trustee to close the affairs of the district as soon as practicable.

(b) The board shall determine the term of service and the amount of compensation for the trustee.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.787. Discharge of District's Obligations by Trustees

(a) The trustee shall reduce all assets and resources of the district to possession and money and apply them to discharge the outstanding obligations of the district, having regard to specific funds.

(b) If required, the board shall levy, assess, and collect sufficient additional taxes to pay all necessary expenses and outstanding obligations of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.788. Discharge of Trustee

The trustee shall be discharged when all obligations of the district are paid and the trustee's account is verified and settled.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.789. Final Order of Dissolution

After all obligations are paid and the trustee is discharged, the board shall enter its final order of dissolution and record the final order in the deed records of the county or counties in which the district is located.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.790. Water Rights of Dissolved District

Water rights held from the state shall revert to the state and may not be assigned by the district in anticipation of dissolution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.791. Taxes in Excess of District's Obligations

(a) If taxes have been collected by the dissolved district in excess of the amount required to liquidate the obligations of the district, the excess shall be paid ratably to the county treasurer or treasurers of the county or counties in which the district was located.

(b) The commissioners courts shall credit the money received from the dissolved district to the interest and sinking fund for any outstanding county bonds. If the county has no outstanding bonds, the money may be applied as the commissioners court lawfully directs.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.792. Permanent Record of Dissolved District

All records, vouchers, and accounts of the district shall be delivered to the commissioners court of the county in which the district's principal office was located and shall be preserved as a permanent record.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.793. Dissolution of District for Failure to Complete Plant

Subject to the provisions of Subchapter G of Chapter 50 of this code,[1] if a district has not within 10 years from the date of its creation commenced and completed the construction of a plant and improvements to carry out the purposes of its creation in accordance with the plans adopted by the district, the board may enter a resolution in its minutes to dissolve the district under the provisions of Sections

58.794–58.828 of this code. After compliance with these provisions, a vote of the electors of the district, and the payment of its valid, enforceable indebtedness, the district may be dissolved.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[1] Section 50.251 et seq.

§ 58.794. Resolution to Dissolve District

The board shall find in its resolution to dissolve the district that the plans of the district are impracticable or that the purposes of the district should be abandoned and shall state the reasons for the finding.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.795. Statements of Indebtedness and Expenses

The board shall prepare or have prepared and shall approve a statement of all valid, enforceable indebtedness of the district and shall enter the statement in the minutes. The board shall prepare or have prepared an estimate of all expenses incurred or to be incurred in the dissolution of the district and in the collection of sufficient taxes to pay all valid, enforceable indebtedness of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.796. Election to Approve Dissolution of District and Issuance of Dissolution Bonds

The board shall enter an order calling an election to determine whether or not the district shall be dissolved and bonds issued to pay the district's indebtedness and estimated expenses.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.797. Maximum Amount, Interest Rate, and Maturity of Bonds

The maximum amount of bonds to be voted on and issued shall not be more than the total amount of the approved valid, enforceable indebtedness and the estimate of expenses, exclusive of the estimated cost of collection of taxes. The maximum amount of bonds, exclusive of interest and expenses of collection, to be issued for fees and expenses of dissolution of the district shall not be more than an amount equal to $2 times the number of acres in the district. The bonds shall mature serially over a period of not more than seven years.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.798. Notice of Election

(a) The president and secretary of the board shall issue notice of the election, stating:

(1) the findings of the board with reference to the dissolution of the district;

(2) the amount of bonds to be issued;

(3) the interest rate on the bonds; and

(4) the time and place of the election.

(b) The notice also shall contain a statement of the estimates and the expenses incurred and to be incurred in the dissolution of the district and the collection of taxes for the payment of the bonds and shall state that the bonds will be payable by the levy of taxes on the taxable property in the district in proportion to the values of the property as provided in Section 58.804 of this code.

(c) The notice shall be published once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which any part of the district is located. The first publication shall be at least 14 days before the day of the election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.799. Procedure for Holding Election

(a) The ballots for the election shall be printed to provide for voting for or against the proposition: "Dissolution of the district and issuance of dissolution bonds and the levy of taxes for the payment of the bonds."

(b) The election shall be conducted and returns made and canvassed according to the provisions in this chapter for construction bond elections.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.800. Issuance and Sale of Dissolution Bonds

(a) If a majority of the electors at the election vote in favor of the dissolution of the district and the issuance of bonds and the levy of taxes for the payment of the bonds, the board shall issue and sell the bonds or any part of them. The bonds shall be known as "dissolution bonds."

(b) The board may deliver the dissolution bonds or any part of them in satisfaction of the valid, enforceable indebtedness of the district for which the bonds are issued, or in payment of expenses incurred or to be incurred in connection with the dissolution of the district, or in payment of services rendered or to be rendered to the district.

(c) The dissolution bonds shall be:

(1) serially numbered, commencing with the first maturities;

(2) issued in the name of the district;

(3) signed by the president; and

(4) attested by the secretary, with the seal of the district attached.

(d) The board shall determine the maturities of the bonds not to exceed seven years from their date, the denominations of the bonds, and the interest.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.801. Destroying Unsold Bonds

If a majority of the electors at the election vote in favor of the dissolution of the district, the board shall destroy all unsold bonds of the district and enter an order cancelling all unissued and unsold bonds authorized by the electors. After the destruction and the entry of the order, the bonds shall have no further force or effect.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.802. Board's Authority to Contract

The board may contract with trustees, engineers, attorneys, and others it considers necessary or desirable to properly liquidate and wind up the affairs of the district. The board also may assume obligations made by others for the benefit of the district, or from which the district benefited, which in its judgment may be fair and equitable.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.803. Tax to Pay Dissolution Bonds

The order issuing the dissolution bonds shall provide that the principal of and interest on the bonds shall be payable from the proceeds of a tax to be levied on the taxable property located in the district. The tax shall be in an amount sufficient for the payment of the principal and interest.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.804. Determining Amount of Tax

Text of section effective until January 1, 1982

(a) The value of all of the taxable property of the district shall be taken at the assessed value as determined and approved by the board in the manner provided in this subchapter, and an amount equal to the total of the principal and all interest to maturity on the bonds voted plus the estimated cost of collection of taxes shall be assessed against the taxable property of the district on the ad valorem basis.

(b) The tax against the taxable property of each owner shall be that portion of the total principal and interest of the dissolution bonds and costs of collection which the assessed value of the taxable property of the owner bears to the total assessed values in the district.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

For text of section effective January 1, 1982, see § 58.804, post

§ 58.804. Determining Amount of Tax

Text of section effective January 1, 1982

(a) The value of all of the taxable property of the district shall be taken at the assessed value, and an amount equal to the total of the principal and all interest to maturity on the bonds voted plus the estimated cost of collection of taxes shall be assessed against the taxable property of the district on the ad valorem basis.

(b) The tax against the taxable property of each owner shall be that portion of the total principal and interest of the dissolution bonds and costs of collection which the assessed value of the taxable property of the owner bears to the total assessed values in the district.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see § 58.804, ante

§ 58.805. Payment of Tax

The amount of the tax on the taxable property of each owner shall be payable in equal annual installments, during the period in which the bonds mature, on dates specified in the order issuing the bonds.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.806. Advance Payment of Taxes in Cash

The order issuing the bonds shall provide that a property owner may secure release of the entire amount of his taxable property as assessed on the rolls from the tax levied for the dissolution bonds by the payment in cash of the full amount of tax.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.807. Computing Amount of Advance Cash Payment

(a) In order to compute the full amount of an advance cash payment, the interest rate on the bonds shall be applied on an annual basis to each unpaid installment of taxes for the number of years the installment of taxes must run before being due. The total of the items computed shall be deducted from the face amount of the unpaid installment of taxes.

(b) In order to compute the full amount of an advance cash payment, the interest rate on the bonds shall be applied on an annual basis to each unpaid past-due installment of taxes for the number of years the installment has been past due, and 10 percent of the face amount of each installment that is past due shall be added as a penalty. The total of the items computed shall be added to the unpaid installments.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.808. Surrender of Bonds in Payment of Taxes

The order issuing the bonds shall provide that any of the bonds with all unmatured interest and all appurtenant coupons may be surrendered at any time in payment of all unpaid installments of the taxes. The amount of taxes found to be due by the method provided in Section 58.809 of this code may be discharged by the surrender of the proper amount of dissolution bonds, together with all unpaid appurtenant interest coupons at the face value of the bonds and coupons.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.809. Computing Amount of Payment Made by Surrendering Bonds

(a) In order to compute payment by surrendering bonds, the interest rate on the bonds shall be applied on an annual basis to each unpaid installment of taxes for the number of years the installment must run before being due. The total of the items computed shall be deducted from the face amount of the unpaid installments of taxes.

(b) In order to compute payment by surrendering bonds, the interest rate on the bonds shall be applied to each unpaid installment of taxes for the number of years the installment has been past due and 10 percent of the face amount of each installment of taxes that is past due shall be added as penalty. The total of the items computed shall be added to the face amount of each unpaid installment of taxes.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.810. Use by Trustee of Advance Payments of Tax

The order issuing the bonds shall provide that the bonds shall be called and redeemed by the trustee in the inverse order of their maturity and in the inverse order of their serial numbers. They shall be paid out of any funds received in advance payment of taxes that are not required for meeting any past-due and unpaid principal and interest or the next maturing installment of principal and interest.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.811. Approval and Registration of Dissolution Bonds

After the dissolution bonds are issued by the board and before they are put in circulation, the bonds, at the option of the board, shall either be submitted to and approved by the attorney general and registered by the comptroller as provided in Sections 58.446–58.448 of this code or be validated by suit as provided in Sections 58.453–58.461 of this code. The provisions of these sections of this code which are not inconsistent with the provisions of this subchapter are applicable to the dissolution bonds provided for in this subchapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.812. Preparing Tax Roll

Text of section effective until January 1, 1982

Before the issuance and delivery of the bonds, the board shall prepare a tax roll in duplicate showing the full and true valuation of all property subject to taxation, the name of the owner of the property, if known; and if the name of the owner is not known, the tax roll shall state that the owner of the property is not known.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

For text of section effective January 1, 1982, see § 58.812, post

§ 58.812. Preparing Tax Roll

Text of section effective January 1, 1982

Before the issuance and delivery of the bonds, a tax roll shall be prepared in the manner provided by the Property Tax Code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see § 58.812, ante

§ 58.813. Filing Tentative Tax Roll

After the tax roll is prepared, it shall be filed in the district office, if any, and if there is not, in the office of the county clerk of the county or counties in which the district is located. The tax roll shall be subject to public inspection.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.814. Notice of Meeting as Board of Equalization

(a) After the tax roll has been filed for at least five days, the board shall publish a notice once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which any part of the district is located. The first publication shall be at least 14 days before the meeting of the board of equalization.

(b) The notice shall call attention to the filing of the tax roll and the name and place or places where the tax roll is filed and available for inspection, and shall notify all interested persons of the time and place of the meeting of the board for the purpose of acting as a board of equalization to examine, correct, equalize, appraise, and approve the valuations of the taxable property of the district and improvements on taxable property as set forth in the tax roll.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.815. Meeting as Board of Equalization

At the time and place stated in the notice, the board shall meet and examine the tax roll. The board shall equalize as nearly as possible the value of all property for taxation and fix the value of all property for taxation.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.816. Authority and Procedure as Board of Equalization

(a) Any interested person may appear at the meeting and offer evidence for or against any matter being considered by the board of equalization. The board may send for persons and papers, and may administer oaths to persons who testify before the board, and may ascertain the full true value of all property subject to taxation.

(b) The board may lower or raise the valuation of all property listed on the tax roll and place property on the roll which did not appear on it. The board shall correct any errors of assessment and equalize the value of property appearing on the roll.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.817. Approving Tax Roll

After the board of equalization finally fixes the valuation of all taxable property in the district and the tax roll of the district is finally prepared, the board shall meet and consider the tax roll, make all necessary corrections in the tax roll, and endorse its approval on the roll.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.818. Approved Tax Roll not Subject to Revision

The action of the board in finally approving the tax roll is final and is not subject to revision by the board or any other tribunal.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.819. Filing Approved Tax Roll

After the final approval of the tax roll by the board, the board shall file the tax roll with the assessor and collector of the county or counties in which the district is located.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.820. Collection of Taxes

Text of section effective until January 1, 1982

The assessor and collector shall collect the taxes shown on the roll on the land located in the county for which he is assessor and collector at the time and in the manner specified by the board in its various orders issuing the dissolution bonds and levying the taxes. The assessor and collector is entitled to one percent of the amount collected for his services in collecting the taxes.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

For text of section effective January 1, 1982, see § 58.820, post

§ 58.820. Collection of Dissolution Taxes

Text of section effective January 1, 1982

The county assessor and collector shall collect the taxes shown on the tax roll on the land located in the county for which he is assessor and collector.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see § 58.820, ante

§ 58.821. Appointment of Trustee

(a) Before the issuance and delivery of dissolution bonds, the board shall appoint a trustee of the funds to be collected from the taxes. The trustee shall be an individual or a bank or trust company in the county or one of the counties in which the district is located.

(b) The board may determine the powers, rights, duties, liabilities, and other matters relating to the trusteeship and the appointment of successor trustees which the board considers proper to effectuate the purpose of the trusteeship.

(c) The board may determine the bond to be given by the trustee and the amount to be paid to the trustee from the funds collected from the taxes.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.822. Authority of the Trustee

The trustee shall receive from the assessor and collector all proceeds from the assessments less the assessor and collector's charges and shall be the paying agent of the district for the bonds. The bonds shall be payable at the place of business of the trustee. The trustee shall be authorized by the order providing for the issuance of the bonds to institute suits in the name of the district for the use and benefit of the holders of the bonds and to apply all sums of money recovered in the suits to the payment of the bonds.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.823. Tax Lien

After filing the tax roll in the office of the assessor and collector, the taxes, penalties, interest, and attorney's fees shall become a specific charge on and be secured by a lien superior to all other liens, except tax liens, on the land listed on the tax roll regardless of whether the ownership of the land is correctly stated on the tax roll.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.824. Foreclosure of Lien

(a) The lien shall be foreclosed for the full amount due and order of sale issued against the property or as much of it as may be found in a suit brought for the recovery of the taxes.

(b) The lien may be foreclosed in a suit or suits brought in the name of the district by the board, or by the trustee or his successor as provided by the board.

(c) The procedure for the suit shall be the procedure for ordinary civil foreclosure suits.

(d) The provisions of Chapter 506, Acts of the 45th Legislature, Regular Session, 1937, as amended,[1] shall not be applicable to the suits.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 7345b.

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 58.825. Default in Payment of Tax Installment

(a) Default in the payment of an installment of taxes levied for the payment of dissolution bonds for 60 days after the installment becomes due and payable as provided by the board shall, at the option of the board or the trustee, immediately mature the remaining installments and cause the entire amount of the taxes to immediately become due and payable.

(b) The trustee shall bring suit for the collection of the entire amount of the taxes and for the foreclosure of the lien securing the payment of the taxes.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.826. Penalty and Attorney's Fee

(a) A penalty of 10 percent of the unpaid amount of taxes shall accrue immediately on default of payment of taxes after the 60 days.

(b) An attorney's fee of 10 percent of the unpaid amount of the taxes is due and payable immediately on institution of suit for collection and foreclosure.

(c) The penalty and attorney's fee shall be recovered in the suit and shall constitute an addition to the taxes and shall be secured by the tax lien.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.827. Discharge of Lien

(a) On the final payment of the taxes, either the assessor and collector or the trustee shall issue a certificate certifying that the taxes have been fully satisfied and the lien is released.

(b) The execution and acknowledgment of the certificate and the recording of the certificate in the deed records of the county in which the property is located shall be full and conclusive evidence of the discharge of the taxes and liens.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.828. District Considered Dissolved

(a) On the issuance and sale or delivery of the dissolution bonds and the appointment and qualification of the trustee, the secretary shall deposit all available existing records of the district in the office of the county clerk of the county or one of the counties in which the district is located.

(b) The district immediately is considered dissolved for all purposes, except that the taxes levied against the taxable property may be enforced in the name of the district on behalf of the bondholders by the trustee or his successors. The surviving board may meet from time to time until the dissolution bonds are paid and discharged and may delegate its powers and give instructions to the trustee or his successors as the board sees fit and circumstances warrant. After the payment of all dissolution

bonds, interest, and costs of collection the board shall be dissolved.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.829. Dissolution of District in Counties of Less Than 11,000 Population

Subject to the provisions of Sections 50.251–50.256 of this code, a district located entirely in a county having a population of less than 11,000, according to the last preceding federal census, may be abolished by a majority vote of those entitled to vote and voting at an election held for the purpose of determining whether or not the district should be dissolved.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.830. Petition for Dissolution of District

A petition for the dissolution of the district shall be filed with the board and shall state the name of the district and the purpose for which the election is requested. The petition may refer to the order establishing the district for boundaries, limits, and area of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.831. Signatures on Petition

A petition for dissolution of the district may be signed and filed in two or more copies. The petition shall be signed by a majority in number of the property owners with land in the district and the property owners of a majority in value of the land in the district, as shown by the tax rolls of the district, or 50 landowners if the number of landowners in the district is more than 50.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.832. Procedure for Holding Election

(a) An election to determine whether or not the district shall be dissolved shall be held in accordance with the provisions of Subchapter E of this chapter.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition: "The dissolution of district."

(c) The returns of the election shall be canvassed and the result declared by the board. The board shall enter an order in its minutes declaring the result of the election, which order shall be made and entered in accordance with Section 58.034 of this code. The order shall be filed in the office of the county clerk and recorded in the deed records of the county as provided in Section 58.034 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.833. Election in District Including City, Town, or Municipal Corporation

In an election to dissolve a district in which a city, town, or municipal corporation is located, the city, town, or municipal corporation shall be a separate voting precinct, and the ballots cast in the city, town, or municipal corporation shall be counted and canvassed to show the result of the election there. If the city, town, or municipal corporation votes against the dissolution of the district and the balance of the district votes for the dissolution of the district, the district shall be dissolved.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.834. Subsequent Election

If the proposition to dissolve the district fails to carry at the election held for that purpose, no other election for the same purpose shall be held within one year after the date of the election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.835. District Dissolved

If a majority of those voting at the election vote in favor of dissolving the district, the district shall be dissolved and shall have no further authority after the election, except that any debts incurred shall be paid and the organization shall be maintained until all the debts are paid.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.836. Taxes to Pay Indebtedness after Dissolution

If a district has outstanding bonds or other indebtedness maturing beyond the current year in which the dissolution occurs, the commissioners court of the county in which the district is located shall levy and have collected, as county taxes are assessed and collected, sufficient taxes on all taxable property in the district to pay the principal of and interest on the bonds and other indebtedness when due.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Chapter 59 reserved for expansion]

CHAPTER 60. NAVIGATION DISTRICTS—GENERAL PROVISIONS

SUBCHAPTER C. ADDITIONAL POWERS AND DUTIES OF CERTAIN DISTRICTS

§ 60.038. Sale or Lease of Land

(a) A district may sell or lease all or any part of land owned by it, whether the land is acquired by

gift or purchase, in settlement of any litigation, controversy, or claim in behalf of the district, or in any other manner, except that lands or flats heretofore purchased from the State of Texas under Article 8225, Revised Civil Statutes of Texas, 1925,[1] or granted by the State of Texas in any general or special act, may be sold only to the State of Texas or exchanged with the State of Texas for other lands or exchanged for adjacent littoral land as authorized by Section 61.117 of this code.

(b) Land which is sold or leased shall be declared surplus land and shall not be needed for use by the district in connection with the development of a navigation project.

(c) Sale or lease of land shall be made as provided by Sections 60.039–60.042 of this code.

[Amended by Acts 1975, 64th Leg., p. 801, ch. 310, § 1, eff. May 27, 1975.]

[1] Repealed; see, now, §§ 61.115 to 61.117.

Sections 4 and 5 of the 1975 amendatory act provided:

"Sec. 4. Venue for any action arising under this Act brought by or against the State of Texas, or involving the state's claim to title to land conveyed or sought to be conveyed under this Act, shall lie in a district court of Travis County, Texas.

"Sec. 5. Any and all laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict."

CHAPTER 61. ARTICLE III, SECTION 52, NAVIGATION DISTRICTS

SUBCHAPTER D. POWERS AND DUTIES

§ 61.116. Lease of State Owned Lands and Flats

(a) Any district organized under this chapter or any special law or any general law under which navigation districts may be created may apply for a lease from the State of Texas of the surface estate of any lands and flats belonging to the state which are covered or partly covered by the water of any of the bays or other arms of the sea; however, any navigation district created after the effective date of this Act may not lease the surface estate of any such lands or flats which are located within 10 miles of the boundary of any navigation district in existence on the effective date of this Act, without first receiving the written approval of the district now in existence. The words "navigation district," "district," or "districts" as used in Sections 61.116, 61.117, and 60.038 of the Texas Water Code shall apply to any incorporated city in this state which owns and operates wharves, docks, and other marine port facilities.

(b) The state, through the School Land Board, may lease these state owned lands or flats to eligible navigation districts only for purposes reasonably related to the promotion of navigation. The term "navigation" as used herein refers to marine commerce and immediately related activities, including but not limited to port development; channel construction and maintenance; commercial and sport fishing; recreational boating; industrial site locations; transportation, shipping, and storage facilities; pollution abatement facilities; and all other activities necessary or appropriate to the promotion of marine commerce; but specifically does not refer to residential development.

(c) In making application for a lease of state owned lands or flats, the district shall include the following information:

(1) a description of the lands or flats sought to be leased;

(2) a plan showing how it proposes to utilize the land and a timetable indicating approximately when such utilization will take place;

(3) a draft environmental impact statement assessing the effect of the proposed use on the environment, which statement shall generally conform to the requirements of the National Environmental Policy Act,[1] until such time as the legislature shall impose different requirements; however, a draft environmental impact statement shall not be required if the proposed use requires no dredging, filling, or bulkheading. If the proposed use does require dredging, filling, or bulkheading, but[2] the lease shall be processed as provided in Subsections (d), (e), and (f) of this section without the filing of a draft environmental impact statement if the applicant so requests in writing; but in such a case, the School Land Board shall include in the lease provisions requiring (i) that the draft environmental impact statement required by federal law be filed with the School Land Board before the district makes any use of such lands or flats which requires dredging, filling, or bulkheading; (ii) that approval of such use be obtained from the School Land Board after copies of the summary of the draft environmental impact statement and a description of the proposed use are circulated for comment and a hearing held as provided in Subsections (d) and (e) of this section and the School Land Board shall be authorized to give its approval to make such amendments to the lease as may then be deemed necessary by it as a result of information developed in the draft environmental impact statement; and (iii) that the lease shall cease to be effective at a time specifically stated in the lease unless prior to that time accord concerning environmental issues has been reached between the district and the School Land Board;

(4) proof satisfactory to the board establishing the public convenience and necessity for acquisition of lands sought to be leased.

(d) Upon receipt of an application and accompanying information, the School Land Board shall submit copies thereof to the member agencies of the Interagency Council on Natural Resources and the Environment and all other appropriate state agencies for

review and comment. In addition, the board shall submit for review and comment the proposed terms and conditions of the lease. The board shall allow 30 days for such review and comment, and may extend the review period for an additional 30 days upon written request by the executive director of any state agency.

(e) Following the expiration of the period provided for review and comment, or following the expiration of the 30 day extension of such period, if applicable, the School Land Board shall cause a hearing to be held in the county in which the land proposed to be leased is located. Notice of the hearing shall be given by publication for at least three days, not less than two weeks nor more than four weeks prior to the hearing, in the daily paper having the greatest circulation in the county. Members of the board or their designated representatives shall conduct the hearing, at which any party may offer testimony in support of or in opposition to the application, and the board shall consider the record of the hearing in making a decision on the application.

(f) After submission of all evidence, the School Land Board shall authorize the issuance or denial of the proposed lease and shall determine the reasonable cost to the district, term of years, special limitations, if any, and other conditions necessary to best serve the interest of the general public. In establishing the consideration to be paid to the state for the lease, due weight shall be given to the depth of the water over the submerged land, its proximity to development activities, and its proposed use. Final action shall be taken by the board no more than 60 days following the public hearing.

(g) The funds derived from the lease shall be paid to the General Land Office for transfer to the proper funds of the state.

(h) Districts may sublease lands leased from the state under the provisions of this section to third parties for activities reasonably related to navigation, but such sublease shall be subject to the approval of the School Land Board according to the procedures, requirements, and criteria set forth in Subsections (c) and (d) of Section 61.116 of this code; provided, however, that no approval by the School Land Board shall be required if the sublease is for a purpose contemplated by the district and approved by the board in the district's original lease. It is further provided that no environmental impact statement shall ever be necessary for any sublease which requires no dredging, filling, or bulkheading, and which would not have a substantial impact upon the environment, or which requires only insubstantial dredging, filling, or bulkheading, as determined by the board; nor shall a district in obtaining approval for a sublease under any circumstances be required to reveal the name of the tenant to whom the sublease is to be made.

(i) If lands or flats leased from the state under the provisions of this section are utilized by the district or its sublessee for any purpose or use not approved by the School Land Board, the district shall be given notice and an opportunity to change and correct the use. If the use is not changed and corrected within a reasonable time after receipt of such notice, the lease may be terminated by the School Land Board and the lands or flats shall revert to the State of Texas.

[Amended by Acts 1975, 64th Leg., p. 801, ch. 310, § 2, eff. May 27, 1975.]

[1] 42 U.S.C.A. § 4321 et seq.

[2] So in enrolled bill.

Sections 4 and 5 of the 1975 amendatory act provided:

"Sec. 4. Venue for any action arising under this Act brought by or against the State of Texas, or involving the state's claim to title to land conveyed or sought to be conveyed under this Act, shall lie in a district court of Travis County, Texas.

"Sec. 5. Any and all laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict."

§ 61.117. Limitations on Sales and Use of State Lands and Flats

(a) The State of Texas shall retain its rights in all mines and minerals, including oil, gas, and geothermal resources, in and under the land, together with the right to enter the land for the purpose of development when it leases land under Section 61.116 of this code.

(b) All leases of land under Section 61.116 are subject to oil, gas, or mineral leases in existence at the time of the lease to the district.

(c) Any land which has been franchised or leased or is being used by any navigation district or by the United States for the purpose of navigation, industry, or other purpose incident to the operation of a port shall not be entered or possessed by the State of Texas or by anyone claiming under the State of Texas for the purpose of exploring for oil, gas, or other minerals except by directional drilling. No easement, lease, or permit may be granted on land which has been leased to a navigation district which will interfere with the proposed use of the land by the navigation district, and the prior approval of the navigation district shall be obtained for such purpose.

(d) No surface drilling location may be nearer than 660 feet and special permission from the Commissioner of the General Land Office is necessary to make any surface location nearer than 2,160 feet, measured at right angles from the nearest bulkhead line designated by a navigation district or the United States as the bulkhead line or from the nearest dredged bottom edge of any channel, slip, or turning basin which has been dredged, or which has been authorized by the United States as a federal project for future construction, whichever is nearer.

(e) In the event land is leased to a navigation district for construction of a navigation project, the School Land Board may in the lease designate the

district to be the agent of the State of Texas with authority to grant to the United States of America such easements for dredging and disposal of dredged material as may be required for federal participation in the project. In designating the district to be the agent of the State of Texas for the purpose of granting spoil easements, the board may include a requirement that the district obtain the approval of the board before granting any such easement. Such approval may be given in the form of accepting a master plan for spoil disposal.

(f) Districts which, prior to the enactment of this provision, have obtained patents to state owned lands or flats under Article 8225, Revised Civil Statutes of Texas, 1925,[1] or under any general or special act, and which still claim title to any such lands or flats, may not hereafter dispose of any such lands or flats which were conveyed to them by the State of Texas and may not lease such lands or flats for a use for which districts are not authorized to lease their other lands; however, in the event a district possesses lands it finds to be in excess of its needs, it may sell such surplus lands or flats back to the State of Texas for the same consideration as originally paid to the state or exchange them for other lands with the State of Texas. It is further provided that the limitation on resale of lands or flats acquired from the State of Texas shall not prevent a district from exchanging such lands or flats for land, or rights in land, of an adjacent littoral owner for the purpose of adjusting or straightening the boundary between such lands. All such exchanges made after December 31, 1973, shall be subject to the approval of the School Land Board.

(g) Any district which, prior to the effective date of this Act has maintained, and which at the effective date of this Act is maintaining, any channel, dredged material disposal site, or other navigational aid or improvement on state owned lands to which the district holds no patent or lease from the state shall notify the General Land Office of the boundaries of such submerged land used by furnishing a map or other drawing acceptable to the General Land Office.

[Amended by Acts 1975, 64th Leg., p. 801, ch. 310, § 3, eff. May 27, 1975.]

[1] Repealed.

Sections 4 and 5 of the 1975 amendatory act provided:

"Sec. 4. Venue for any action arising under this Act brought by or against the State of Texas, or involving the state's claim to title to land conveyed or sought to be conveyed under this Act, shall lie in a district court of Travis County, Texas.

"Sec. 5. Any and all laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict."

SUBCHAPTER E. PORT FACILITIES

§ 61.169. Contracts

The provisions governing the award of contracts by districts shall apply in all cases consistent with the provisions of this subchapter except that in case of emergency contracts may be let by the commission for not more than $5,000 without advertisement for bids. In case of urgent necessity or present calamity, advertisement for bids may be waived.

[Amended by Acts 1977, 65th Leg., p. 804, ch. 299, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER G. BOND AND TAX PROVISIONS

§ 61.232. Limitation on Bond Issue

Text of section effective January 1, 1982

Outstanding bonds and additional bonds which are authorized may not be more than one-fourth of the assessed value of the real property in the district, as shown by the last tax roll for the district.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 61.237. Assessment and Collection of Taxes

Text of section effective January 1, 1982

The tax assessor and collector of each county in the district shall assess and collect district taxes.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

CHAPTER 62. ARTICLE XVI, SECTION 59, NAVIGATION DISTRICTS

SUBCHAPTER D. POWERS AND DUTIES

§ 62.110. Notice of Bids

Notice that a contract is to be awarded shall be given by publishing notice once a week for two consecutive weeks in one or more newspapers with general circulation in the state and by posting notice for at least 14 days in five public places in the county of jurisdiction, one of which shall be the courthouse door and at least two of which shall be inside the district.

[Amended by Acts 1977, 65th Leg., p. 805, ch. 299, § 2, eff. Aug. 29, 1977.]

SUBCHAPTER E. GENERAL FISCAL PROVISIONS

§ 62.153. Duties of District Treasurer

The district treasurer shall:

(1) open an account for all funds received by him for the district and all district funds which he pays out;

(2) pay out money on vouchers signed by the chairman of the commission, any two members of the commission, or the commissioners court, or any two of any number of persons delegated

by the commission with authority to sign vouchers, provided that the commission may, in such delegation, limit the authority of such persons and may require that each furnish a fidelity bond in such amount as the commission shall specify and subject to commission approval;

(3) carefully preserve all orders for the payment of money; and

(4) render a correct account to the commissioners court of all matters relating to the financial condition of the district as often as required by the commissioners court.

[Amended by Acts 1975, 64th Leg., p. 1915, ch. 618, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided:

"Any and all laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict."

SUBCHAPTER F. BOND PROVISIONS

§ 62.196. Duties of Attorney General

Text of section effective January 1, 1982

(a) Before the bonds are offered for sale, the district shall send to the attorney general:

(1) a copy of the bonds to be issued;

(2) a certified copy of the order of the commissioners court levying the tax;

(3) a copy of the order of the commissioners court levying the tax to pay interest and provide a sinking fund;

(4) a statement of the total bonded indebtedness of the district, including the series of bonds proposed and the assessed value of property for the purpose of taxation, as shown by the last official assessment by the district or, if the district has made no prior assessment, the last official assessment by the county; and

(5) other information which the attorney general may require.

(b) The attorney general shall carefully examine the bonds in connection with the facts, the constitution, and the laws on the execution of the bonds.

(c) If as the result of the examination the attorney general finds that the bonds were issued in conformity with the constitution and laws and that they are valid and binding obligations on the district, he shall officially certify the bonds.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

SUBCHAPTER G. TAX PROVISIONS

§ 62.251. Assessment and Collection of Taxes

Text of section effective January 1, 1982

The assessor and collector of each county in which the district is located shall assess and collect the taxes levied by the district in the county.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§§ 62.252 to 62.259.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER 63. SELF-LIQUIDATING NAVIGATION DISTRICTS

SUBCHAPTER I. ANNEXATION

Section
63.371. Annexation Authority.
63.372. Petition.
63.373. Scheduling Petition for Hearing; Notice.
63.374. Hearing.
63.375. Election Order.
63.376. Notice of Election.
63.377. Ballots.
63.378. Election Officials.
63.379. Canvass of Vote; Entry of Order.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 63.089. Election of Commissioners

(a) An election shall be held in the district on the first Tuesday after the first Monday in November of each even numbered year to elect the three commissioners. However, the commissioners may, by adopting an order duly entered on the minutes, determine to hold the election on the first Tuesday after the first Monday in October of each even numbered year to elect the commissioners authorized by law.

(b) Section 9b, Texas Election Code (Article 2.01b, Vernon's Texas Election Code), requiring that certain elections be held on specified uniform dates, does not apply to the election provided for in this section.

[Amended by Acts 1977, 65th Leg., p. 1978, ch. 791, § 1, eff. Aug. 29, 1977.]

§ 63.090. Placing Names of Candidates on Ballot

A candidate for commissioner must file an application with the secretary not later than 5 p. m. of the 31st day before the day of the election to have his name printed on the ballot. Also, a candidate's name may be placed on the ballot by petition of 20 or more qualified electors of the district filed with

the secretary by the deadline stated in the preceding sentence.

[Amended by Acts 1977, 65th Leg., p. 1978, ch. 791, § 2, eff. Aug. 29, 1977.]

§ 63.093. Notice of Election

[See Compact Edition, Volume 1 for text of (a)]

(b) The notice shall be published once a week for four consecutive weeks in a newspaper published in the district or, if a newspaper is not published in the district, in a newspaper located nearest to the boundaries of the district. The first publication shall be made not less than 32 days nor more than 46 days before the day of the election.

[Amended by Acts 1977, 65th Leg., p. 1978, ch. 791, § 3, eff. Aug. 29, 1977.]

§ 63.098. Commissioner's Compensation

(a) Each commissioner shall receive a fee of not more than $50 a day for each day of service necessary to the discharge of his duties, unless otherwise provided in accordance with Subsection (b) of this section.

(b) The commission may provide by an order entered in its minutes that compensation shall not be paid for the commissioners' services for a period of more than two years from the date of the order.

[Amended by Acts 1977, 65th Leg., p. 159, ch. 79, § 1, eff. April 25, 1977.]

§ 63.102. Assessor and Collector's Bond

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

SUBCHAPTER D. POWERS AND DUTIES

§ 63.168. Bids for Contract

(a) Before the commission enters into a contract requiring the expenditure of $5,000 or more, it shall submit the proposed contract for competitive bids.

[See Compact Edition, Volume 1 for text of (b) and (c)]

[Amended by Acts 1977, 65th Leg., p. 805, ch. 299, § 3, eff. Aug. 29, 1977.]

SUBCHAPTER G. TAX PROVISIONS

§ 63.284. Laws Governing Taxes

Repeal

This section is repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

§ 63.285. Duty of Assessor and Collector

Text of section effective January 1, 1982

The assessor and collector shall assess and collect taxes for the district.

[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§§ 63.286 to 63.297.

Repeal

These sections are repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(a)(3), effective January 1, 1982, § 1 of which enacts the Property Tax Code, constituting Title 1 of the Tax Code.

SUBCHAPTER H. ASSESSMENTS

§ 63.327. Board of Equalization

Text of section effective January 1, 1982

(a) If the commission finds in favor of levying assessments, it shall appoint three persons who are electors of the district to be commissioners on the board of equalization and shall designate the time for the meeting of the board of equalization.

(b) The board of equalization shall meet at the time fixed by the commission to receive the assessment lists or books of the district for examination, correction, equalization, and approval.

(c) The secretary of the commission shall act as secretary for the board of equalization and shall keep a permanent record of the proceedings of the board of equalization.

(d) Before beginning to perform the duties of the board of equalization, each member shall take the following oath: "I _____ do solemnly swear (or affirm) that I will, to the best of my ability, make a full and complete examination, correction, and equalization of all property contained in the district as shown by the assessment lists or books of the assessor and collector and add all property not included of which I have knowledge."

(e) The oath shall be entered in the minutes by the secretary.

(f) The completed tax roll shall be submitted to the board of equalization.

[Amended by Acts 1979, 66th Leg., p. 2312, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 63.329. Hearing by Board of Equalization

Text of section effective January 1, 1982

The owners of property shall have an opportunity to present evidence in hearings before the board of equalization. All interested persons shall have an opportunity to appear and present evidence as to the

benefits or lack of benefits to property in which they are interested.
[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

§ 63.339. Suit for Collection

Text of section effective January 1, 1982

(a) After the delinquent roll has been posted in the district office for 20 days, the attorney for the district may file suit for collection in any court with jurisdiction.

(b) An attorney's or collection fee of 10 percent on the amount of principal and interest due at the time of filing the suit shall accrue against the property owner and shall be charged as costs of court. The attorney's or collection fee is collectible against the property owner and the property from the date of the filing of the suit.

(c) Except as otherwise provided in this section, the suit shall be filed and prosecuted in the same manner as suits for the collection of delinquent ad valorem taxes.

(d) It is not necessary in the suit to specifically plead and prove the orders, notices, rules, and regulations of the commission relating to the assessment or reassessment. It is sufficient for the petition or other pleading to allege that the proceedings with reference to the making of the improvements and the assessments or reassessments were held in compliance with the law and that all prerequisites to the fixing of the assessment lien on the assessed property and the personal liability of the owner were performed.
[Amended by Acts 1979, 66th Leg., p. 2321, ch. 841, § 4(r), eff. Jan. 1, 1982.]

For text of section effective until January 1, 1982, see Compact Edition, Volume 1

SUBCHAPTER I. ANNEXATION

§ 63.371. Annexation Authority

A district created under this chapter or converted from a district created under Article III, Section 52 of the Texas Constitution, into a conservation and reclamation district under Article XVI, Section 59 of the Texas Constitution, may extend its boundaries and annex adjacent territory.
[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.372. Petition

Before territory is annexed to the district, a petition signed by 50 or a majority of the electors residing in the adjacent territory proposed to be annexed shall be presented to the commission requesting an election in the adjacent territory to determine whether or not the territory will be annexed and whether or not it will assume its pro rata part of the outstanding bonded debt of the district.
[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.373. Scheduling Petition for Hearing; Notice

(a) After a petition is presented under Section 63.372 of this code, the commission shall set the petition for a hearing to be held within 10 days from the date of presentation of the petition.

(b) Notice of the hearing shall be posted at three public places in the territory proposed to be annexed for at least five days before the hearing on the petition. The notice shall include the time and place of the hearing and the boundaries of the territory proposed to be annexed.
[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.374. Hearing

The commission shall hold the hearing on the subject of annexation of adjacent territory by the district, and any person who has taxable property in the territory proposed to be annexed may appear in person or by counsel and offer testimony or argument for or against the inclusion of all or any part of the land proposed to be annexed.
[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.375. Election Order

If after the hearing the commission finds that inclusion of the territory proposed to be annexed would be a direct benefit to all the land in that territory, the commission shall order an election to be held in the territory proposed to be annexed.
[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.376. Notice of Election

(a) The election shall be held not less than 20 nor more than 30 days from the day of the election order and after notice is given.

(b) Notice of the election shall be published once a week for 20 days immediately preceding the election in some newspaper published in the territory proposed to be annexed. If no newspaper is published in the territory, notice shall be posted in three public places inside the territory for at least 20 days immediately preceding the election.

(c) The notice:

(1) shall give the time and place or places for holding the election;

(2) shall give the boundaries of the territory proposed to be annexed; and

(3) may contain the substance of the order of the commission ordering the election.

(d) The secretary of the commission shall have the notice published or posted.

[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.377. Ballots

The ballots for the election shall be printed to allow for voting for or against: "Annexation to the navigation district" and "Assumption of a pro rata part of the bonded debt of the navigation district."

[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.378. Election Officials

The commission shall appoint one judge and two clerks for each election box or place to hold the election. The judge and clerks shall be electors in the territory proposed to be annexed and shall reside near the place for holding the election.

[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.379. Canvass of Vote; Entry of Order

(a) The election judges shall certify the election returns to the commission, and the commission shall canvass the returns.

(b) If a majority of the electors voting at the election favor annexation and assumption of the pro rata part of the bonded debt of the district, the commission shall enter an order in its minutes annexing the territory, and from and after the entry of the order, the annexed territory shall be a part of the district with all the rights, benefits, and burdens of property originally situated in the district.

(c) If a majority of the electors voting at the election favor annexation and the proposition to assume the bonded debt fails to carry, the commission shall enter an order in its minutes annexing the territory to the district, and from and after the entry of the order, the annexed territory shall be a part of the district with the exception of the assumption of the outstanding bonded indebtedness. The annexed territory shall be subject to a tax for maintenance and operation and shall be liable for all other bonded indebtedness and other indebtedness thereafter legally imposed by the district.

(d) After an order of annexation has been entered in the minutes of the commission, a certified copy of the order shall be prepared by the secretary of the commission and shall include the boundaries of the territory annexed. The secretary shall record the order or have it recorded in the real estate records of the county or counties in which the territory is located.

[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

TITLE 4. GENERAL LAW DISTRICTS

CHAPTER 64. WATER IMPORT AUTHORITIES

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SUBCHAPTER I. ANNEXATION

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SUBCHAPTER A. GENERAL PROVISIONS

§ 64.001. Authorization of the Ogallala Water Import Authority of Texas

Pursuant to and as expressly authorized by Article XVI, Section 59, of the Texas Constitution, there may be created within the State of Texas a water import authority to be known as The Ogallala Water Import Authority of Texas, a governmental agency and body politic and corporate, authorized to exercise all of the powers essential to the accomplishment of the purposes of that constitutional provision and to exercise the rights, powers, duties, privileges, and functions provided in this chapter and as may be contemplated and implied by Article XVI, Section 59, of the Texas Constitution and by this chapter and other laws of this state.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.002. Territory Included in Authority

The authority shall include all of the area in Texas that has beneath it the subsurface formation known as the Ogallala Formation as that area is determined, fixed, and certified by the Texas Water Development Board, together with all of any county, a part of which is included in that area, provided that the area in Borden, Crosby, Dickens, and Garza Counties, and any county which does not have at least a portion of the Ogallala Formation beneath it shall not be initially included in the import area. A county or any portion of a county which is not included in the import area shall not be subject to assessment or taxation by the authority unless subsequently annexed to the authority.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.003. Definitions

In this chapter:

(1) "Authority" means The Ogallala Water Import Authority of Texas.

(2) "Development board" means the Texas Water Development Board.

(3) "Import area" means the area or territory to be included in the authority.

(4) "Net revenues" means the gross revenues of the authority from all sources other than taxes, after deduction of amounts used to pay the costs of maintaining and operating the authority and its properties.

(5) "Board" means the board of directors of the authority.

(6) "United States" means the United States of America and includes any department, bureau, or agency of the United States of America.

(7) "State" means the State of Texas, and its officers, corporations, agencies, instrumentalities, departments, bureaus, and commissions acting for it, but excludes political entities that do not have statewide jurisdiction.

(8) "District" means a river authority, irrigation district, soil and water conservation district, flood control district, water control and improvement district, water supply district, underground water conservation district, municipal utility district, county, municipality, city, town, or any other district or political subdivision of the state located totally or partially within the authority and authorized by law to impound, manage, appropriate, use, reuse, store, treat, conserve, protect, control, or otherwise deal with water or deliver water to water users.

(9) "Attorney general" means the attorney general of the State of Texas.

(10) "Comptroller" means the comptroller of public accounts of the State of Texas.

(11) "Water," unless the term is coupled with some other qualifying or limiting term, means all water including surface water, underground water, water naturally existing locally, reclaimed waste water, and imported water.

(12) "Underground water" means the water existing below the earth's surface, including water injected by a person or district to a subsurface formation for later withdrawal by the person or district, but does not include defined

subterranean streams or the underflow of rivers or imported water that has been injected by the authority for underground storage and transmission as defined in this chapter.

(13) "Surface water" means water other than underground water.

(14) "Imported water" means surface water brought to the area of the authority for beneficial use in the authority from a source or sources not in or naturally tributary to the area.

(15) "Underground water reservoir" means a specific subsurface formation capable of storing water.

(16) "Importer" means any person bringing imported water from outside the authority to any point inside the authority or handling any part of the movement of imported water from its source toward the area of an authority for the purpose of making imported water available in the authority.

(17) "Underground storage and transmission" means the placing of water in subsurface formations or cavities through artificial recharge for storage underground and for lateral conveyance through the subsurface formations to points of withdrawal for beneficial use.

(18) "Waste" means:

(A) the failure to put to a beneficial use any water;

(B) the pollution or harmful alteration of the character of water within a surface reservoir, surface conduit, or underground reservoir by means of salt water or other deleterious matter; or

(C) wilfully causing[1] suffering, or permitting water to escape into any river, creek, natural water course, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or on land other than that on which it has been delivered for ultimate use.

(19) "Beneficial use" means the use of water for:

(A) agricultural, gardening, domestic, stock raising, municipal, or mining purposes;

(B) exploring for, producing, handling, and treating oil, gas, sulphur, or other minerals;

(C) manufacturing, industrial, commercial, recreational, or pleasure purposes; or

(D) any other use that is beneficial to the user of the water.

(20) "Work" means:

(A) dams and dam sites, treatment facilities, reservoirs and reservoir sites, underground reservoirs and storage space, wells, pumping plants, artificial recharge facilities, drainage facilities, waste water reclamation and treatment facilities, and all conduits and other facilities necessary and useful in the control, protection, conservation, storage, diversion, transmission, treatment, or distribution of water;

(B) any replacement, renovation, or improvement of the foregoing; and

(C) land, property, franchises, easements, rights-of-way, and privileges necessary or useful to operate or maintain any of the foregoing.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

[1] So in enrolled bill.

[Sections 64.004 to 64.010 reserved for expansion]

SUBCHAPTER B. CREATION OF THE AUTHORITY

§ 64.011. Designation of the Import Area

(a) On its own motion or on receiving a petition signed by at least 50 landowners in the proposed import area, the development board, after notice and hearings, shall define and certify the import area.

(b) The development board shall schedule and conduct a minimum of five hearings within the import area to allow adequate opportunity for testimony from those who wish to appear. Notice of the hearings shall be published in a newspaper or newspapers with general circulation within the import area at least 14 days before the day of the hearing.

(c) Additional special hearings may be conducted in each county for which a petition containing the signatures of not less than 10 percent of the registered voters in that county is submitted if the petition is submitted within 30 days after the development board hearings begin, requesting a special hearing to be conducted in that county. Notice of each special hearing, if any, shall be published in a newspaper with general circulation within the county in which the special hearing is to be held at least 14 days before the day of the special hearing.

(d) The executive director of the Department of Water Resources shall prepare available evidence relating to the import area demonstrating the cost and benefit to be reasonably expected from the importation of water into the area and the estimated quantities of water that are or may be made available and are required for import into the area, as well as evidence showing the economic, environmental, and human costs and benefits that will result within each county within the import area if water is imported into the area.

(e) The development board shall give consideration to all relevant evidence presented at the public hearing held by it and shall not authorize an election until it determines that adequate water would be contractually available on an equitable basis for all

the water needs existing within the authority for import into the area.
[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.012. Method of Creating Authority; Name

After the import area has been defined and certified, the authority may be created. Except as otherwise provided in this chapter, the provisions of Chapter 54 of this code apply to the creation of this water import authority to the extent those provisions are applicable.
[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.013. Consent of Districts Not Required

The consent of any district located wholly or partially in the import area is not required before the authority may be created.
[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.014. Findings and Action by Development Board

(a) If the development board finds, after public hearing, that the authority is feasible and practicable, that it would be a benefit to the area included in the authority, and that it would be a public benefit or utility, the development board shall make these findings and shall grant the petition, otherwise the petition shall be denied.

(b) The development board's findings of benefit to the land included in the authority are final and conclusive unless judicial review is sought in the manner provided in Subchapter J of Chapter 5 of this code[1] for appeals from other orders of the development board, and after the development board's order of creation is final, no land may be excluded from the authority, but land may be added and annexed in the manner provided in this chapter.
[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

[1] Section 5.351 et seq.

§ 64.015. Dividing Authority into Precincts

At the time a petition for creation is granted, the development board, in its order, shall divide the authority into 15 precincts, with each precinct having approximately the same number of persons residing in its area as each of the other precincts.
[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.016. Confirmation of Authority

(a) Within 180 days from the effective date of the order of the development board granting the petition for creation of the authority, the board of the authority shall order an election to be held throughout the authority within 60 days, at which there is to be submitted the question of whether or not the establishment of the authority is confirmed, the question of election of directors, the question of levying, assessing, and collecting an ad valorem tax throughout the authority, and any other questions required by this chapter or by the board.

(b) Notice of the election shall be published in a newspaper or newspapers that individually or collectively have general circulation in the authority at least 14 days but not more than 30 days before the date set for the election.

(c) The board shall appoint a presiding judge for each of the voting places determined by the board, and each of the presiding judges shall appoint the necessary judges and clerks to assist him or her in holding the election. The qualifications of voters in all elections authorized by this chapter are as specified by the Texas Election Code for those voting in the general election.

(d) If a majority of the votes cast in the election favor confirmation of the authority, the board shall declare the results, and the authority is created and shall have all of the powers and authority conferred by this chapter. If a majority of the votes cast in the election do not confirm the authority, no further election may be held for confirmation for at least 12 months, and if the authority is not confirmed within five years from the day of the development board's order granting the petition to create the authority or if the voters refuse to authorize the levy, assessment, and collection of an ad valorem tax through the authority within the five-year period, the authority is null and void, and the development board is to enter an order to this effect.
[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

[Sections 64.017 to 64.050 reserved for expansion]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 64.051. Governing Body

(a) The authority's powers and duties shall be exercised through a board of directors. The first directors shall be appointed by the development board in its order of creation, naming one director from each precinct, and subsequent directors shall be elected from each of the precincts into which the authority is divided, with one director being elected from each precinct.

(b) At the election called for confirmation of the authority, a director shall be elected from each precinct by a plurality vote of the qualified voters casting votes in the precinct for the election of director. Immediately after the first election, the 15 directors, by lot, shall determine which 7 of their number are to serve for an initial term of one year,

and which 8 are to serve for an initial term of two years. The election day for directors is to be on the same day of the same month every year, or as near to that time as the board of directors deems practicable.

(c) The election of directors of the authority shall be conducted in the manner provided for election of directors in Chapter 54 of this code, except as otherwise provided in this chapter.

(d) In the event of a vacancy on the board, the remaining directors may fill the vacancy for the unexpired term.

(e) The board of directors may redesignate or redistrict the precinct boundary lines from time to time as may be necessary in order to comply with the principle of equal representation. The changes by the board are to be accomplished only on an affirmative vote of at least eight directors.

(f) If the boundaries of precincts are redesignated or redistricted as provided in Subsection (e) of this section, at the next election all directors are to stand for election in the manner provided in this section, and after the election, the 15 directors shall draw lots for terms of office in the manner provided in this section.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.052. Qualification of Directors

To be qualified for membership on the board, a person shall possess all qualifications to vote in a general election under Texas law and be a bona fide resident in the authority and in the precinct from which he or she is elected or appointed. Each director shall subscribe to the oath of office, with conditions in the oath as required by law for members of the county commissioners court, shall execute a bond for the faithful performance of his or her duties in the amount of $10,000, and shall hold office until his or her successor has been elected and qualified.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.053. Board Action; Duties; Quorum; Compensation and Expenses

(a) The board shall perform official actions by motions or by resolutions, and a majority of its membership constitutes a quorum for transaction of business. A majority of the quorum present is sufficient in all official actions, including final adoption of resolutions, except as otherwise specifically provided in this chapter.

(b) The board shall hold regular meetings at least once each month at times established in the authority's bylaws or by resolution of the board. The president or any three board members may call necessary special meetings in the administration of the authority's business, but at least five days before the meeting date for a special meeting, the secretary of the board shall mail notice of the meeting to the current address of each board member. Notice of any meeting may be waived in writing by a director.

(c) Expenses of directors incurred in connection with performing their duties shall be reimbursed on the basis authorized by the board. In addition to expenses, a per diem of not to exceed $50 a day may be paid directors at the discretion of the board.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.054. Officers

(a) The board shall elect annually from among its members a president of the board. The president shall preside at the meetings of the board and shall perform all other functions that customarily are incident to his or her office.

(b) One or more vice-presidents shall be elected annually by the board from among its members, and if more than one is elected, they shall be designated in numerical order, and in that numerical order shall act as president in the event of the absence, inability, or failure of the president or a higher-numbered vice-president to act.

(c) A secretary and, at the option of the board, an assistant secretary shall be elected annually by the board with the board having discretion as to whether these officers are to be chosen from among the members of the board. The secretary and assistant secretary are charged with the duty of seeing that all books and records of the authority are properly kept.

(d) Except in the case of the secretary and assistant secretary, only members of the board are eligible to serve as officers of the board.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.055. Advisory Council

(a) If the authority is confirmed, an advisory council is created with authority to make and submit recommendations to the board.

(b) The advisory council shall act by majority vote of its duly qualified members. The membership of the advisory council consists of one resident representative from each county within the boundaries of the authority. Selection of these county representatives on the advisory council is by written resolution of each county commissioners court, filed with the authority, and each representative shall serve at the will of the commissioners court appointing him or her.

(c) No person may serve as a member of the board and as a member of the advisory council at the same time, and any attempt to do so disqualifies the person from serving as a member of the advisory council.

(d) The first meeting of the advisory council is to be called by the board within 30 days after the confirmation of the authority. At the first meeting of the advisory council, the president of the board shall preside for the purpose of the election of a chairman, vice-chairman, and secretary of the advisory council, each being elected for a term of one year by a majority vote of the advisory council members. Also, at the first meeting of the advisory council, an annual meeting date shall be determined for the election of officers of the advisory council. The chairman may call a meeting of the group by giving five days' notice of the meeting by mail to each member.

(e) The chairman of the advisory council shall act as an ex officio board member without the right to vote on the board and is entitled to sit in all board meetings and report to the board the action, if any, of the advisory council.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 26, 1979.]

§ 64.056. Executive Director; Employees

(a) The board may employ an executive director for the authority and may delegate full power and authority to him or her in the management and operation of the affairs of the authority, subject only to the orders of the board, and may determine his or her compensation. The board may employ a deputy executive director with the authority the board may delegate.

(b) The board may also employ a treasurer and other employees including engineers, hydrologists, geologists, technical experts, accountants, attorneys, economists, and assistants to its officers, and determine the compensation of those employees, including reimbursement of expenses, as it may deem appropriate to the proper conduct of the authority's affairs. The board may provide for the discharge of any employee.

(c) The treasurer of the authority has charge of its funds, shall see that the funds are kept safely, and shall account for the funds to the board. The funds of the authority are disbursed only on checks, drafts, or other instruments signed by the treasurer and other persons authorized by the board.

(d) The executive director, deputy executive director, and treasurer each shall execute a bond in an amount as may be required by the board, but in no event less than $50,000.

(e) All bonds required to be executed by the directors, officers, and employees of the authority are to be executed by a surety company authorized to do business in this state. The authority may pay the premiums on the bonds. The directors may also require bonds on any employee.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.057. Authority Office; Books, Records, Etc.

(a) A regular office shall be established and maintained for the conduct of the authority's business which shall be at a location within the authority to be determined by the board. The board may establish branch offices.

(b) The board shall have a true and full account of the proceedings of its meetings kept in writing and shall preserve originals or copies of its minutes, contracts, records, notices, accounts, receipts, and records of any character, all of which are public records, in the manner and for the length of time specified by the state auditor.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

[Sections 64.058 to 64.090 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES

§ 64.091. Purposes

The authority is created:

(1) to obtain supplemental supplies of imported water for use on an equitable basis within the boundaries of the authority;

(2) to preserve, conserve, protect, replenish, prevent waste, recharge, store, manage, treat, distribute, drain, exchange, and sell imported water;

(3) to contract for imported water; and

(4) to provide for the storage, sale, management, treatment, drainage, and distribution of imported water.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.092. General Powers

In addition to those specifically otherwise provided, the authority may exercise the following powers:

(1) contract with the State of Texas or any state, the United States, and any district, or any person for a supply of imported water, for the financing and construction of works, for the operation and maintenance of works, for the purchase of storage space, and for any purpose consistent with this chapter;

(2) purchase, lease, store, control, conserve, protect, distribute, process, treat, transport, utilize, contract for, sell, exchange, and otherwise manage and deal with imported water, and prevent waste of imported water;

(3) provide by purchase, contract, lease, gift, or in any other lawful manner, and to develop all facilities and works deemed necessary or useful for the purpose of storing, purchasing, leasing, acquiring, controlling, conserving, protecting, distributing, processing, treating, utiliz-

ing, contracting for, exchanging, and selling imported water, and the transportation of imported water to or from any point within the authority chosen by the board for municipal, domestic, agricultural, livestock, industrial, and other beneficial or useful purposes permitted by law;

(4) construct, operate, repair, improve, maintain, renew, replace, discontinue, relocate, and extend works;

(5) acquire and develop any available source of imported water supply and construct, acquire, develop, operate, and maintain all facilities deemed necessary or useful with respect to an imported water supply;

(6) establish or otherwise provide for public parks and recreational facilities, acquire land adjacent to any reservoir in which the authority owns water storage rights for those purposes, and contract for the lease of land acquired by it for recreational or concession purposes under terms that the board may determine;

(7) contract with districts and persons for the sale and distribution of imported water, provided, however, that the authority shall not contract with any person or other entity being supplied water by an existing district unless the district is unable or unwilling to make available adequate water to meet those persons' or entities' requirements;

(8) exchange water over which the authority has control for other property rights or things of value;

(9) acquire by purchase, construction, lease, gift, or in any other lawful manner, and maintain, use, and operate property of any kind or any interest in property within or without the boundaries of the authority necessary for the exercise of the powers, rights, functions, and purposes possessed by the authority under this chapter;

(10) acquire by condemnation, property of any kind except water or any interest in property except water necessary to the exercise of the powers, functions, and purposes possessed by the authority in the manner provided by Title 52, Revised Civil Statutes of Texas, 1925, as amended,[1] relating to eminent domain. The amount and character of the property to be acquired shall be determined by the board, provided, however, that as against districts that have the power of eminent domain, the fee title may not be condemned, but the authority may condemn only an easement; and provided further that the power of eminent domain shall apply only to property located within the boundaries of the authority;

(11) sell or otherwise dispose of surplus property of any kind or any interest in property that is not necessary for the operation of the authority, provided, that in all cases in which the board considers the value of the property to be in excess of $25,000, the property shall be sold only on competitive bids after adequate advertisement as provided in Section 54.220(b) of this code;

(12) formulate, promulgate, and enforce rules for the purpose of conserving, preserving, and protecting imported water, but those rules shall not supercede existing district rules pertaining to all other water;

(13) formulate, promulgate, and enforce rules to prevent waste of imported water and for the other purposes included in this chapter;

(14) acquire land and the use of land for the construction, erection, maintenance, replacement, alteration, removal, improvement, and expansion of, and otherwise to deal with works for the purpose of transporting imported water to and from works and for the other purposes included in this chapter;

(15) have made, in cooperation with any governmental or private entity or by competent professionals, surveys, investigations, and studies for acquisition of supplies, transportation, storage, distribution, sale, and management of imported water, as well as the environmental, economic, legal, and sociological impact and related problems, and determine the quantity of water that may be available from various sources and that may be feasible to market and use within the authority, taking into consideration the improvements, developments, works, and operations that may be required in connection with them;

(16) develop comprehensive plans for the realization and carrying out of the purposes of the authority;

(17) enforce by injunction, mandatory injunction, or other appropriate remedy in courts of competent jurisdiction, rules adopted by the authority, provided that no rule shall be effective until a brief resume of the rule has been published once a week for two consecutive weeks in one or more newspapers individually or collectively having general circulation within the authority and the rule shall be effective not less than 14 days after the date of first publication;

(18) in the event that the authority, in the exercise of the power of eminent domain or power of relocation, or any other power, makes necessary the relocation, raising, rerouting, or changing the grade of, or altering the construction of, any highway, railroad, electric transmission line, telephone or telegraph properties and

facilities, or pipeline, all necessary relocations, raising, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of the authority;

(19) cooperate and contract with the State of Texas, or any other state, the United States, any district, or any person for an imported supply of water, for the purposes of financing or construction of works, for the acquisition, purchase, extension, or operation and maintenance of those works, for the assumption as principal or guarantor of indebtedness, or for carrying out any powers and purposes of the authority;

(20) utilize the subsurface formations for underground storage and transmission of imported water and subsequently recapture imported water placed in underground storage by the authority at the same place or other locations away from the locations where the water was placed in storage;

(21) make contracts and execute instruments necessary to the exercise of the powers, functions, and purposes of the authority;

(22) incur indebtedness for any of the purposes for which the authority is created;

(23) borrow money for its lawful purposes, and, without limitation to the generality of the foregoing, borrow money and accept grants, gratuities, services, or other support from any source, and in connection with any loan, grant, or other support, enter into agreements as the board deems advisable;

(24) adopt, use, and alter a seal;

(25) sue and be sued;

(26) adopt bylaws for the management and regulation of its affairs;

(27) fix and collect charges and rates for water services and for water furnished by the authority, that shall be uniform for each class of entity within the authority receiving water or services;

(28) fix and collect assessments in accordance with this statute;

(29) impose penalties for failing to pay charges, assessments, and rates when due;

(30) levy, assess, and collect ad valorem taxes to provide funds necessary to carry out the purposes, powers, and functions granted the authority, provided, that the levy and assessment of ad valorem taxes shall not exceed 50 cents on each $100 of the fair market value of property;

(31) establish zones of benefit within the authority that reflect the degree of benefit resulting to each zone from the provision of an imported water supply from the authority, and levy assessments in proportion to benefits;

(32) provide for the compilation of information on facilities for producing imported water from subsurface formations underlying the authority or use from imported water supplies;

(33) regulate, manage, and control activities on the authority's property and protect the property from waste and damage;

(34) make contracts, employ labor and other personnel, and do all acts necessary for the full exercise of its powers, functions, and purposes, and construction or other work may be performed or carried out by contracts or by the authority;

(35) act jointly with or cooperate with the United States, the state, any district, and any person or other entity to carry out the provisions and purposes of this chapter, and in joint or cooperative activity, the authority may act within or without its boundaries; and

(36) do any and every lawful act within or without the authority necessary in order that sufficient water may be made available for any present or future beneficial use or uses of the land or inhabitants within the authority.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

[1] Civil Statutes, art. 3264 et seq.

§ 64.093. Contracts with Districts

(a) The authority may cooperate with and enter into contracts with districts and persons for the purpose of supplying and selling water to them. A contract may be on terms and for the time the parties may agree, and it may also provide that it will continue in effect until the authority's bonds, specified in the contract, and refunding bonds issued in lieu of those bonds, are fully paid.

(b) If the law requires a ratification of a proposed contract by the electorate, the contract becomes effective only when it is approved by a majority vote of the qualified voters voting at an election held for that purpose in the affected district, and if applicable, in the authority. The election shall be called, conducted, and results canvassed and announced in the manner provided in Chapter 54 of this code for tax bond elections.

(c) Should the board of directors, in regular meeting, adopt a plan of financing involving the issuance of bonds, contracts, or other obligations to be supported or secured wholly or partially by revenues to be derived from contracts for the sale of water or other services to one or more districts, the board shall promptly direct a certified copy of its resolution to that effect, together with a copy of the proposed contract, to each district in which the election is to be held. In this resolution, the board may designate a limit of time of not less than 60 days from the time of notice to the district in which the

district's governing body is to call the contract election, if appropriate. If the governing body of any district notified fails or refuses to call the election within the specified time, or if the election is held but results adversely to the approval of the proposed contract, the district is not entitled to any of the rights under the proposed contract.

(d) After having negotiated to contract with the authority for a water supply, no district may be eliminated from the boundaries or jurisdiction of the authority by virtue of its failure to call an election or approve a contract under the procedures in this section, but on this failure, the authority is not obligated to furnish the district the services or facilities to be supplied or constructed with the proceeds of the authority's bonds or other obligations, that are supported in any part by the money due the authority under the contracts.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.094. Awarding Construction or Purchase Contracts

(a) No contract requiring an expenditure of more than $25,000 is made until after publication of a notice to bidders in a manner and for a time deemed adequate by the board.

(b) The notice is sufficient if it states the time and place the bids will be opened, the general nature of the work to be done, or the material, equipment, or supplies to be purchased, and states when and on what terms copies of the plans and specifications may be obtained.

(c) Contracts for personal or professional services, and contracts with any entity for emergency work, materials, or services, and contracts with the United States, or the state or a district are exempt from the provisions of this section.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.095. Contracts with the United States, the State of Texas, or Their Agencies; Elections

(a) The authority may contract with the United States or the state and any of the agencies of either under any of the federal or state laws for the construction, operation, and maintenance of a work or facility by which imported water may be supplied and distributed to the authority under an act of congress or the legislature. In the event a contract is proposed to be made under which the authority is to be obligated to make payments wholly or partially from ad valorem taxes or otherwise, the contract may not be entered into unless authorized by an election at which a majority of the qualified voters voting at the election favor the execution of the contract. The procedures for calling the election, giving notice, and other requirements are the same as those provided in Chapter 54 of this code relative to issuance of bonds.

(b) In the event the authority enters into a contract with the United States or the state or any of the agencies of either, there may be no subsequent alteration of the territorial limits of the authority, and no proceedings for the exclusion of any area from the authority may be undertaken under the provisions of any law unless the alterations or exclusions have first received the approval of the United States or the state or its contracting agency, as the case may be.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.096. Municipal Utility District Laws Applicable When not in Conflict

(a) All powers conferred by Chapter 54 of this code relating to municipal utility districts are applicable to the authority created under the provisions of this chapter insofar as those powers are not in conflict with the provisions of this chapter.

(b) Except as otherwise provided in this chapter, the signing of petitions, the filing of petitions, the notices, public hearings, voting, elections, canvassing of results, contest of elections, and all other administrative and procedural matters relating to formation, administration, and alterations of the authority are subject to the requirements of Chapter 54 of this code, and if the requirements are met, the proceedings are conclusively presumed to be in accordance with all of the requirements of the laws of this state.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.097. Land to Remain in Authority

Once land is included within the authority and the authority is confirmed, the land may not be removed from the authority except as provided in Subchapter J of this chapter.[1] An unfavorable vote on any issue in some portion of the authority does not constitute grounds for excluding that portion from the authority.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

[1] Section 64.301 et seq.

§ 64.098. Adoption of Rules; Public Powers and Penalties

(a) The board may adopt and enforce rules, subject to the restrictions of Section 64.092(12) of this code, relating to the quality of all water in and to flow into a reservoir or conduit owned by the authority or that by contract or otherwise, it may control to prevent trespass, vandalism, waste of water, or the unauthorized use of water. The board may regulate residence, hunting, fishing, boating,

and camping, and all recreational and business privileges above, on, and in the reservoir, conduit, or any body of land or easement owned or controlled by the authority.

(b) On conviction in a court of competent jurisdiction of a violation of a rule adopted under this section, a fine shall be assessed in an amount of not less than $100 nor more than $1,000, or confinement in the county jail shall be imposed for not less than one day nor more than 30 days, or both. Each day of violation constitutes a separate offense. All fines are to be promptly paid to and become the exclusive property of the authority.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.099. Appeal

(a) An interested person affected by a law, rule, order, or act entered, made, or adopted by the authority who is dissatisfied with the law, rule, order, or act, is entitled to file a suit in a court of competent jurisdiction in the county in which the authority has its principal office to test the validity of this chapter or a law, rule, order, or act, or any of them. The suit shall be advanced for trial and be determined as expeditiously as possible, and no postponement or continuance may be granted except for a reason deemed imperative by the court. In these trials, the burden of proof is on the party complaining of the law, rule, order, or act, and the law, rule, order, or act is deemed prima facie valid.

(b) The trial is de novo and the court or jury shall determine independently all issues of fact and of law with respect to the validity and reasonableness of the law, rule, order, or act.

(c) The provisions of this section are cumulative of all rights of the affected parties and do not impair or restrict their right to equitable relief.

(d) The authority is not required to give a cost or supersedeas bond or to pay a cost deposit on any appeal from the judgment of any court of this state.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.100. Authority May Acquire Water Permits

The authority is authorized to acquire and own water permits on compliance with the provisions of Chapter 11, Water Code.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.101. Underground Water Rights

The ownership and rights of the owner of the land, his or her lessees and assigns, in underground water are recognized. Nothing in this chapter is to be construed as depriving or divesting the owner, his or her assigns or lessees, of the ownership or right subject to the rules promulgated by the authority pursuant to this chapter. Underground water naturally occurring within the import authority is not to be construed as surplus or imported and the authority shall not buy, sell, or transport that water as part of an import water supply.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.102. Prior Districts Inviolate

Nothing in this chapter shall ever be construed as giving the Ogallala Water Import Authority the right or the power to supercede, preempt, or otherwise interfere with the exercise of the powers, rights, duties, or functions of any other district existing as of the date of creation of the Ogallala Water Import Authority. Each such prior district shall continue to operate and carry out its authorized functions after creation of the Ogallala Water Import Authority. Provided, however, that this section shall not prevent any district from entering into a contract with the Ogallala Water Import Authority and the performance by the authority of such functions of the district as may be made its responsibility on terms of such contract acceptable to the district and the authority.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

[Sections 64.103 to 64.120 reserved for expansion]

SUBCHAPTER E. GENERAL FISCAL PROVISIONS

§ 64.121. Audits

(a) The board shall keep complete and accurate accounts, conforming to approved methods of bookkeeping, and those accounts and contracts, documents, and records of the authority are to be kept at its principal office and shall be open to public inspection at all reasonable times.

(b) Within 90 days after the end of each calendar year, the board shall have an audit made of books of account and financial records of the authority for the preceding calendar year by an independent, certified public accountant, or firm of certified public accountants.

(c) Copies of the written report of the audit, certified to by the accountant or accountants, shall be placed and kept on file at the office of the authority and shall be open to public inspection at all reasonable times. A copy of the audit shall be filed with the Department of Water Resources.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.122. Authority Depository and Methods of Selecting the Depository

(a) The board shall designate one or more banks within the authority to serve as depository for the

funds of the authority. Funds of the authority shall be deposited in the depository bank or banks, except those pledged to pay bonds that are deposited with the trustee bank or paying agent named in the bond proceedings and to the extent provided in the proceedings. To the extent that funds in the depository bank and the trustee bank are not insured by the F.D.I.C., they are to be secured in the manner provided by law for the security of county funds.

(b) Before designating a depository bank or banks, the board shall issue a notice stating the time and place the board will meet to make the designation, and shall invite the banks in the authority to submit applications to be designated depositories. The term of service for depositories shall be prescribed by the board. The notice shall be published one time in a newspaper or newspapers published in the authority and specified by the board, and the publication shall be completed at least 10 days before the date of the board meeting.

(c) At the time mentioned in the notice, the board shall consider the applications, the management and condition of the banks filing them, and other matters as may be to the best interest of the authority, and shall designate as depositories, the bank or banks that offer the most favorable terms and conditions for the handling of the funds of the authority, and that the board funds have proper management and are in condition to warrant handling the authority's funds.

(d) If no acceptable applications are received by the time stated in the notice, the board shall designate a bank or banks within or without the authority on terms and conditions advantageous to the authority.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.123. Financial Aid

In consideration of the fact that the authority may be incurring some obligations and making some expenditures before funds are available to pay the obligations and expenditures, for the purpose of providing funds needed to procure necessary engineering or economic surveys or to prepare for and conduct hearings and elections, the collection and compilation of data relating to general conditions influencing the determination of the character and extent of the improvements, works, and facilities to be used in connection with the accomplishment of any purpose of the authority, it is provided that the state or any district wholly or partially located within the authority may loan funds or its services for any or all of those purposes. Any district located wholly or partially within the authority may appropriate and spend money from its general funds or funds legally available for that purpose, and loan the funds to the authority. The authority may contract with the United States, the state, or any district to repay any money advanced as a loan to the authority or to reimburse the state or any district for the cost of services performed.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

[Sections 64.124 to 64.130 reserved for expansion]

SUBCHAPTER F. BONDS

§ 64.131. Issuance of Bonds

For the purpose of providing a source of imported water for beneficial purposes permitted by law, and for the purpose of carrying out any other authority conferred by this chapter, the authority may issue its negotiable bonds to be payable from all or any part of its net revenues or from taxes, or from both revenues and taxes of the authority pledged by resolution of the board of directors. In addition to the authority to issue bonds for those purposes, the authority is further authorized to contract in any other lawful manner and to prescribe the method of payment of any contract either by the use of all or any part of its net revenues, taxes, or both.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.132. Bond Conditions

Bonds may be authorized by resolution of the board, bear the date or dates, mature at the time or times, bear interest at the rate or rates, and be issued in the denominations the board may determine. The bonds shall be signed by the president and attested by the secretary, and have the seal of the authority impressed on them. Bonds may be sold at the price and under the terms determined by the board to be the most advantageous and reasonably obtainable, provided that the interest cost to the authority calculated by the use of standard bond interest tables currently in use by insurance companies and investment houses does not exceed 10 percent a year. Within the discretion of the board, bonds may be made callable and subject to redemption before their maturity at the times and at the prices prescribed in the authorizing resolution. Interest on all bonds may be payable annually or semiannually within the discretion of the board. Bonds may be issued on one or more than one series and from time to time as required in carrying out the purposes of this chapter. The bonds shall be in the form, either coupon or registered, carry the registration privileges as to principal only or as to both principal and interest, and as to exchange of coupon bonds for registered bonds or vice versa, and exchange of bonds of one denomination for bonds of other denominations, and be payable at the place or places within or without the State of Texas as the board determines and prescribes in the resolution or resolutions authorizing the bonds.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.133. Security for Bonds

Bonds may be secured by a pledge of all or any part of the net revenues or by all or any part of the taxes of the authority or by the net revenues of any one or more contracts or by other revenues in the manner specified by resolution of the board. Any pledge may reserve the right under conditions specified in the pledge to issue additional bonds which are to be on a parity with or subordinate to the bonds then being issued.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.134. Levy of Taxes to Pay Bonds and Interest

If bonds are issued payable wholly or partially from ad valorem taxes, it is the duty of the board to levy a tax sufficient to pay the bonds and the interest on the bonds as the bonds and interest become due, but the rate of the tax for any year may be fixed after giving consideration to the money received from the pledged revenues that may be available for the payment of the principal and interest to the extent and in the manner permitted by the resolution authorizing the issuance of the bonds.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.135. Revenues to Pay Bonds and Interest

If bonds or other contracts payable wholly or partially from revenues are issued or entered into, it is the duty of the board to establish by contract, with all member units that contract with it for a water supply or water facilities, the rates or compensation for water sold and services rendered by the authority sufficient to pay the expenses of operating and maintaining the authority and its facilities, and to pay as they mature all those obligations incurred including the reserve and other funds as may be provided for the bonds or other contracts under the terms of those obligations, and as may be provided in the board's resolution pertaining to those obligations.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.136. Proceeds of Bonds

From the proceeds of the sale of bonds, the authority may set aside an amount for the payment of interest expected to accrue during construction and for a reserve interest and sinking fund, which provisions are to be made in the resolution authorizing the bonds. Proceeds from the sale of bonds may also be used for the payment of all expenses necessarily incurred in accomplishing the purposes for which the authority is created, including expenses of issuing and selling bonds. Pending the use of bond proceeds for the purpose for which the bonds were issued, the board, in its discretion, may invest them in obligations of the State of Texas or the United States, or in obligations secured by the United States.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.137. Default on Bonds

In the event of a default or a threatened default in the payment of principal of or interest on bonds payable wholly or partially from revenues, any court of competent jurisdiction may, on petition of the holders of at least 25 percent of the outstanding bonds of the issue in default or threatened with default, appoint a receiver with authority to collect and receive all income of the authority except taxes, employ and discharge agents and employees of the authority, take charge of funds on hand except funds received from taxes that can be identified and manage the proprietary affairs of the authority without consent, interference, or hindrance by the directors. The receiver may also be authorized to sell or make contracts for the sale of water or renew contracts with the approval of the court appointing him or her.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.138. Approval and Registration of Bonds

Bonds issued by the authority under this subchapter constitute negotiable instruments within the meaning of the law of this state pertaining to negotiable instruments. Before any bonds are sold by the authority, a certified copy of the proceedings for the issuance thereof, including the form of the bonds, together with any other information which the attorney general may require, shall be submitted to the attorney general, and if he or she finds that the bonds are issued in accordance with the law, including compliance with Section 54.516 of this code, he or she shall approve the bonds and execute a certificate of approval that shall be filed in the office of the state comptroller and shall be recorded in a record kept for that purpose. No bonds are to be issued until registered by the state comptroller, who is to register the bonds if the attorney general has filed with the comptroller his or her certificate approving the bonds and the proceedings for the issuance of the bonds. If bonds or the proceedings pertaining to bonds recite that they are secured by a pledge of the proceeds of a contract made with the authority, a copy of the contract and proceedings of the contracting parties shall be submitted to the attorney general with the bond record, and if the bonds have been duly authorized and the contract made in compliance with law, the attorney general shall approve the bonds and contract and the bonds shall be registered by the state comptroller. If approved, the bonds and contract are valid and binding and incontestable for any cause. Whenever the

authority has issued bonds, including interim or temporary bonds, or has contracted with the United States or the State of Texas, or any corporation or agency of either or any other entity in connection with the financing of its works or facilities, the authority may validate the bonds or contracts by suit in the manner and with the same effect as provided by Chapter 51 of this code.
[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.139. Interim or Temporary Bonds

Pending the issuance of definitive bonds, the authority is authorized to issue and deliver interim or temporary bonds. The interim or temporary bonds issued may be taken up with the proceeds of the definitive bonds or the definitive bonds may be issued and delivered in exchange for and in substitution of the interim or temporary bonds. After any exchange and substitution, it is the duty of the authority to file proper certificates with the state comptroller, as to the exchange, substitution, and cancellation of the bonds. The certificates are to be recorded by the state comptroller.
[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.140. Refunding Bonds

The board may issue refunding bonds for the purpose of refunding any outstanding bonds authorized by this subchapter and the interest on the bonds without the necessity of an election. Refunding bonds may be issued to refund more than one series of outstanding bonds, and in the case of bonds secured in whole or in part by net revenues, the authority may combine the pledges for the outstanding bonds for the security of the refunding bonds and may secure them by other or additional revenues. The provisions of this subchapter with reference to the issuance of other bonds and their approval by the attorney general and the rights and remedies of the holders are to be applicable to refunding bonds. Refunding bonds are to be registered by the comptroller on the surrender and cancellation of the bonds to be refunded, but in lieu thereof, the resolution authorizing their issuance may provide that they are to be sold and their proceeds deposited in the bank where the original bonds are payable, in which case the refunding bonds may be issued in an amount sufficient to pay the interest on the original bonds to their option date or maturity date, and the comptroller is to register them without concurrent surrender and cancellation of the original bonds.
[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.141. Securing Bonds with Trust Indenture

Any bonds, including refunding bonds, authorized by this subchapter, not payable wholly from ad valorem taxes, may be secured additionally by a trust indenture under which the trustee is a bank having trust powers and is located either within or without the State of Texas. The trust indenture or mortgage may include provisions for a lien on all or any part of the physical properties of the authority and franchises, easements, water rights and appropriation permits, leases, and contracts, and all rights appurtenant to these properties, vesting in the trustee, in the event of default, power to operate the properties and all other powers for the further security of the bonds. The trust indenture, regardless of the existence of the deed of trust lien, may contain any provisions prescribed by the board for the security of the bonds and the preservation of the trust estate, including provision for an amendment or modification of the trust indenture, and the issuance of bonds to replace lost or mutilated bonds secured by the trust indenture. Any purchaser in a sale under the deed of trust lien where one is given is the owner of the properties, facilities, and rights purchased and has the right to maintain and operate them during the period prescribed by the trust indenture.
[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.142. Approval of Bonds at an Election

No bonds supported by taxes, except refunding bonds, may be issued unless authorized by an election in the manner provided by Chapter 54 of this code for bond elections.
[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.143. Bonds as Investments and Security

All bonds of the authority are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and sinking funds of cities, towns, villages, counties, school districts, or other political subdivisions of the State of Texas, and for all public funds of the state or its agencies, including the permanent school fund. The bonds are eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas, and the bonds are lawful and sufficient security for those deposits to the extent of their par value when accompanied by all unmatured coupons appurtenant thereto.
[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.144. District Free from Taxes

The accomplishment of the purposes stated in this chapter being for the benefit of the people of this

state and for the improvement of their properties and industry, the authority in carrying out the purpose of this chapter will be performing an essential public function under the constitution and is not required to pay any tax or assessments on all or any part of the project, and the bonds or other obligations issued under this subchapter and their transfer and the income from the bonds including the profits on the sale of the bonds is at all times free from taxation by the state or by any district, municipal corporation, county, or other political subdivision or taxing authority of the state, provided that the authority shall be responsible for and subject to payment of ad valorem tax on all leased or owned property within the state, but outside the jurisdiction of the authority.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

[Sections 64.145 to 64.180 reserved for expansion]

SUBCHAPTER G. TAXATION

§ 64.181. Tax Procedures

After an election in which a majority of those voting give their approval, taxes may be levied, assessed, and collected by the authority on an ad valorem basis to provide funds for all lawful purposes of the authority, including maintenance, operation, administration, and other expenses. Provisions of Chapter 54 of this code relating to the election for voter approval and the levy, assessment, and collection of taxes, including enforcement, and the processes for the collection of delinquent taxes are applicable to an authority. Ad valorem taxes assessed and collected by an authority are to be uniform and equal.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.182. Tax Officers

(a) Where applicable and not in conflict with this subchapter, the laws contained in Chapter 54 of this code, with reference to tax assessors and collectors, boards of equalization, tax rolls, and the levy, assessment, and collection of taxes and delinquent taxes are applicable to the authority, except that the board of equalization to be appointed each year by the board is to consist of at least one qualified resident property taxpayer in each county, any portion of which is within the authority.

(b) Instead of proceeding for the assessment, equalization, and collection of taxes in the manner provided in this chapter, the board may adopt an order to have the taxes of the authority assessed and collected by the assessor and collector of taxes of any political subdivision of the state. On the adoption of the order, the taxes shall be assessed and collected by these officials and turned over to the authority depository. The compensation of these officials shall be as agreed upon by the officials and the authority.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

[Sections 64.183 to 64.210 reserved for expansion]

SUBCHAPTER H. ASSESSMENTS

§ 64.211. Authorization of Assessments

For the purpose of making payments pursuant to contracts entered into by the authority with the United States, the state, or districts, the authority, in addition to the revenues and taxes otherwise provided in this chapter, may make assessments apportioned in accordance with the benefits and, for this purpose, may establish zones of benefit which reflect the degree of benefit resulting to each zone from the contracts.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.212. Considerations in Making Assessments and Establishing Zones

(a) In ascertaining the benefits derived through a contract, and in establishing zones of benefit, the authority shall consider all of the following:

(1) improvement in the underground water supply;

(2) the contribution to the underground water supply by water made available independently of the authority;

(3) the adequacy of the water supply made available independently of the authority;

(4) the prospective need for a water supply;

(5) extractions from the underground water supply in excess of natural and artificial recharge, not including naturally occurring underground water;

(6) the economic impact resulting from the water supply made available under the contract or contracts;

(b) provided, however, areas not receiving a water supply or a direct improvement in the underground water supply by reason of the contract shall not be assessed;

(c) nor shall any area not within the authority be assessed by the authority; and

(d) benefits derived from all imported water used in similar zones of benefit shall be given equal consideration and assessed on an equal basis.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.213. Notice and Hearing

(a) No assessment is to be levied under this subchapter unless the board, by resolution, declares that it intends to do so and that a public hearing is held on the assessment at a specified day, hour, and place within the proposed zone of benefit at which all interested persons may appear and be heard.

(b) Notice of this resolution shall be published once a week for two consecutive weeks in a newspaper or newspapers of general circulation in the authority and in the general area of the proposed zone of benefit.

(c) The hearing may be adjourned from time to time at the discretion of the board, and at the conclusion of the hearing, the board may declare the zone or zones of benefit established and the assessment to be levied under this subchapter.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.214. Basis of Assessment

Assessments made within zones of benefit shall be levied on all taxable property within the zone of benefit on an ad valorem basis.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.215. Election

Before an assessment may be levied and collected in a zone of benefit, an election shall be held in the zone, as designated by the authority, in the same manner and under the same procedure as an election for a tax election conducted under Chapter 54 of this code.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

[Sections 64.216 to 64.250 reserved for expansion]

SUBCHAPTER I. ANNEXATION

§ 64.251. Annexation Authority

Additional territory may be added to the authority with its prior consent by annexation in the manner provided in this subchapter.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.252. Petition for Annexation

(a) A petition requesting annexation, signed by at least 50 or by a majority of the qualified voters residing within the territory to be annexed, who own taxable property in the territory and who have duly rendered the property for taxation to the city, town, county, or state, shall be filed with the board.

(b) The petition shall describe the territory proposed to be annexed by metes and bounds or by other appropriate description which fully identifies the territory in compliance with the laws of this state.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.253. Hearing

If the petition is signed by the required number of qualified voters and complies with Section 64.252 of this code, the board, provided two-thirds of all members vote in favor thereof, shall adopt a resolution stating the conditions, if any, under which the territory may be annexed to the authority, and shall set a time and place for a hearing to be held on the questions of whether the territory will be benefitted by the proposed annexation, whether the annexation will result in an undue burden or disadvantage to the authority, and whether an election to approve the annexation should be called.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.254. Notice of Hearing

(a) Notice of the adoption of a resolution setting the time and place of hearing shall be published at least one time in one or more newspapers designated by the board of directors, and the newspaper or newspapers individually or collectively shall have general circulation in the authority and in the territory proposed to be annexed. The notice shall be published at least 10 days before the date of the hearing.

(b) The notice shall describe the territory in the same manner as the petition.

(c) At least 30 days before the hearing, the secretary of the board also shall send, by certified mail, a notice of the hearing addressed to each of the following persons and entities:

(1) the mayor and the elected governing body of each incorporated city or town located in the existing authority;

(2) the mayor and the elected governing body of each incorporated city or town located in the territory propose to be annexed;

(3) the county judge and commissioners court of each county that is located in whole or in part in the authority;

(4) the county judge and the commissioners court of each county that is located in whole or in part in the territory proposed to be annexed; and

(5) each district that has previously entered into a written contract to purchase water from the authority.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.255. Hearing Procedure

(a) Interested persons who reside within the authority or within the territory seeking annexation may appear at the hearing and offer evidence for or against the proposed annexation.

(b) The hearing may proceed in the order and under the rules prescribed by the board, and the hearing may be recessed from time to time.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.256. Findings and Resolution; Election

If, at the conclusion of the hearing, the board finds that the land in the territory will be benefitted by the proposed annexation, and further finds that the proposed annexation will not result in an undue burden or disadvantage to the existing authority, it shall adopt a resolution calling an election in the authority and in the territory to be annexed, stating the proposition or propositions to be voted on, the date of the election, and the place or places of holding the election, and appointing a presiding judge for each voting place. The presiding judge shall appoint the necessary assistant judges and clerks to assist in holding the election. The authority is authorized to conduct the elections.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.257. Notice of Election

Notice of election, stating the election date, the proposition or propositions to be voted on, the conditions under which the territory may be annexed, or making reference to the resolution of the board of directors fixing the conditions, and the place or places for holding the election, shall be published at least one time in a newspaper or newspapers designated by the board and published in the territory to be annexed, the newspaper or newspapers individually or collectively having general circulation in the territory, and also published one time in a newspaper or newspapers designated by the board and published within the authority, such newspaper or newspapers individually or collectively having general circulation in the authority. Each publication shall be made at least 10 days before the day set for the election. If, in the territory or in the authority, no newspaper or newspapers qualify, the authority or territory may accomplish publication by publishing at least 10 days before the date set for the election in a newspaper or newspapers, designated by the board, which individually or collectively have general circulation within the territory or the authority, as the case may be.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.258. Voter Qualification; Election Procedure

The qualifications of voters in elections held under this subchapter are those specified in the constitution and the procedures for conducting elections and for voting are those specified in the Texas Election Code, except as otherwise provided by this chapter.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.259. Conduct of Elections

The board may call, supervise, conduct, make returns, canvass, and declare results, and otherwise provide for the proper conduct of elections.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.260. Canvass and Election Results

(a) Not less than three nor more than seven days after the election, or as soon after that time as practicable, the board shall canvass the returns and shall adopt a resolution declaring the results.

(b) If the resolution shows that a majority of the votes cast in the election held within the authority and a majority of the votes cast in the election held within the territory both favor the annexation, the annexation shall be considered to be fully accomplished as of the time the board declares the results, and the annexation shall be incontestable except in the manner and within the time for contesting elections under Chapter 54 of this code.

(c) A certified copy of the order shall be recorded in the deed records of the county, and in each of the counties if there are more than one in which the territory is located.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.261. Assumption of Debt; Taxes

(a) In calling an election for the proposition of annexation of territory, the board of directors shall include as a part of the same election, the proposition of assumption of the proposed territory's proportionate part of all tax supported indebtedness and obligations of the authority then outstanding and in force and in the case of bonds, those previously voted, but not yet sold.

(b) The levy and collection of ad valorem taxes on taxable property in the territory are on the same basis as taxes are levied on the remainder of the authority.

(c) Unless the board finds it inequitable to do so at the same election there may be submitted in the territory to be annexed a proposition for assessment and collection of taxes in the territory to enable the territory to pay the authority, in installments as may be required by the board, an amount of money to be determined by the board which represents equitable reimbursement for a proper proportionate share of

costs that the authority has previously paid or incurred for work or works which may afford benefits to the territory.

(d) If each of the propositions submitted carries by a majority vote, both in the territory and in the authority, the territory shall be annexed and shall become a part of the authority. Otherwise, the territory is not annexed.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.262. Other Method of Annexation

The owner or owners of land contiguous to an authority or otherwise may be included in the authority in the same manner and under the same conditions as provided by Sections 54.711 through 54.715 of this code.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.263. Furnishing Description

The board shall furnish the development board a detailed description of land annexed to the authority within 30 days after the annexation.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

[Sections 64.264 to 64.300 reserved for expansion]

SUBCHAPTER J. DISANNEXATION

§ 64.301. Disannexation Authority

A county in the authority may be disannexed from the authority in the manner provided in this subchapter.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.302. Petition for Disannexation

(a) A petition requesting disannexation, signed by at least five percent of the qualified voters residing within the county to be disannexed, who own taxable property in the county and who have duly rendered the property for taxation to the county or to the state, shall be filed with the board. An election held under this section may not be held more than one time every 12 months.

(b) The petition shall name the county to be disannexed and shall request the board to call and hold an election in the county to determine whether or not the qualified voters of the county desire that the county be disannexed from the authority.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.303. Election

On receiving a petition under Section 64.302 of this code, the board shall adopt a resolution calling an election in the county named in the petition, stating the proposition or propositions to be voted on, the date of the election, and the place or places of holding the election, and appointing a presiding judge for each voting place. The presiding judge shall appoint the necessary assistant judges and clerks to assist in holding the election. The authority is authorized to conduct the election.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.304. Notice of Election

Notice of election, stating the election date, the proposition or propositions to be voted on, and the place or places for holding the election, shall be published at least one time in a newspaper or newspapers designated by the board and published in the county to be disannexed, the newspaper or newspapers individually or collectively having general circulation in the county. Publication of notice shall be made at least 10 days before the day set for the election. If, in the county, no newspaper or newspapers qualify, the authority may accomplish publication by publishing at least 10 days before the date set for the election in a newspaper or newspapers, designated by the board, which individually or collectively have general circulation within the county.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.305. Voter Qualification; Election Procedure

The qualifications of voters in elections held under this subchapter are those specified in the constitution and the procedures for conducting elections and for voting are those specified in the Texas Election Code, except as otherwise provided by this chapter.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.306. Conduct of Elections

The board may call, supervise, conduct, make returns, canvass, and declare results, and otherwise provide for the proper conduct of elections.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.307. Canvass and Election Results

(a) Not less than three nor more than seven days after the election, or as soon after that time as practicable, the board shall canvass the returns and shall adopt a resolution declaring the results.

(b) If the resolution shows that a majority of the votes cast in the election held within the county favor the disannexation, the disannexation shall be considered to be fully accomplished as of the time the board declares the results, and the disannexation shall be incontestable except in the manner and within the time for contesting elections under Chapter 54 of this code.

(c) A certified copy of the order shall be recorded in the deed records of the county.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

§ 64.308. Taxes on Disannexed Land

(a) If a county is disannexed from the authority at a time when the authority has outstanding debt, the disannexed county is not released from the payment of its pro rata share of the indebtedness.

(b) The authority shall continue to levy taxes each year on property in the county at the same rate levied on other property of the authority, until the taxes collected from the county equal its pro rata share of the indebtedness of the authority at the time of the disannexation of the county.

(c) The taxes collected under Subsection (b) of this section shall be charged only with the cost of levying and collecting the taxes and shall be applied exclusively to the payment of the pro rata share of the indebtedness.

[Added by Acts 1979, 66th Leg., p. 2085, ch. 816, § 1, eff. Aug. 27, 1979.]

NUMERICAL TABLE OF SPECIAL LAWS PERTAINING TO WATER

The tabulation below lists the special laws from the 64th to the Regular Session of the 66th Legislatures pertaining to water arranged numerically in Vernon's Texas Civil Statutes classification order or, where not so classified, in order of legislative enactment by subject matter.

Civ.St.Art.	Laws Citation	Subject Matter
7621d—2	1969, ch. 409 1971, ch. 202 1973, ch. 258 1973, ch. 466 1975, ch. 443 1979, ch. 630 1979, ch. 841	Gulf Coast Waste Disposal Authority
7621e	1965, ch. 409 1969, ch. 376 1971, ch. 387 1971, ch. 388 1973, ch. 266, § 22 1973, ch. 296 1977, ch. 735, § 2.034	Water Well Drillers Act
7808 to 7880	1918, 4th C.S., ch. 43 1971, ch. 899 1979, ch. 841	Water Control and Preservation Districts
		Drainage districts—Commissioners
8161b	1947, ch. 437 1961, ch. 482 1975, ch. 453	— —Powers, compensation, etc., counties of 150,000 to 350,000
8194 note	1961, ch. 520 1975, ch. 663	Nueces County Drainage and Conservation District No. 2, validation
8196 note	1963, ch. 236	Hidalgo, Willacy and Cameron County conservation and reclamation districts, contracts with U.S.
8198 note	1953, ch. 195 1957, ch. 291 1965, ch. 524 1977, ch. 701	Calhoun County Navigation District
8198 note	1963, ch. 1979 1967, ch. 25 1975, ch. 279 1979, ch. 25	Port of Port Arthur Navigation District of Jefferson County
		Navigation districts
8235a	1945, ch. 90 1947, ch. 242 1955, ch. 211 1957, ch. 71 1977, ch. 299, § 4	—District containing city of 375,000 or more
8248 to 8257	1920, 4th C.S., p. 3 1923, p. 42 1975, ch. 297	—Pilots
	Districts Created and/or Validated Pursuant to Const. Art. 16, § 59	
8280—101	1929, 2nd C.S., ch. 13 1931, 1st C.S., ch. 5 1935, ch. 19 1935, 1st C.S., ch. 368, § 14 1953, ch. 194, §§ 1, 2 1973, ch. 240	Brazos River Authority —Creation; powers, etc.
8280—101 note	1934, 4th C.S., ch. 3 1935, 1st C.S., ch. 368 1953, ch. 194, §§ 3 to 5 1975, ch. 152	—Donation of taxes; bonds, etc.

Districts Created and/or Validated Pursuant to Const. Art. 16, § 59—Continued

Civ.St.Art.	Laws Citation	Subject Matter
8280—106	1933, 1st C.S., ch. 75 1935, 1st C.S., ch. 410 1969, ch. 432 1975, ch. 433	Guadalupe-Blanco River Authority
8280—107	1934, 4th C.S., ch. 7 1935, 1st C.S., ch. 405 1937, ch. 350 1939, Spec.L., p. 1048 1941, ch. 398 1949, ch. 61 1951, ch. 90 1955, ch. 165 1959, ch. 327 1962, 3rd C.S., ch. 11 1965, ch. 124 1967, ch. 655 1967, ch. 678 1971, ch. 174 1971, ch. 298 1971, ch. 820 1973, ch. 268, § 1 1973, ch. 271 1975, ch. 74	Lower Colorado River Authority
8280—108	1935, ch. 97 1939, Spec.L., p. 1080 1945, ch. 287 1977, ch. 394	Angelina and Neches River Authority
8280—115	1935, 1st C.S., ch. 427 1937, 2nd C.S., ch. 20 1939, Spec.L., p. 1074 1943, ch. 390 1945, ch. 305 1971, ch. 695 1975, ch. 699 1979, ch. 138	Nueces River Authority
8280—119	1937, ch. 276 1939, Spec.L., p. 1083 1953, ch. 60 1957, ch. 504 1959, ch. 37 1961, ch. 233 1969, ch. 836 1975, ch. 301 1975, ch. 604	San Antonio River Authority
		Harris County Flood Control District
8280—120	1937, ch. 360 1967, ch. 631 1975, ch. 593	—Creation, powers, etc.
8280—135	1949, ch. 282 1950, 1st C.S., ch. 45 1957, ch. 144 1969, ch. 362 1975, ch. 249	Trinity Bay Conservation District
8280—141	1951, ch. 62 1969, ch. 122 1975, ch. 90	North Texas Municipal Water District
8280—145	1951 ch. 373 1954, 1st C.S., ch. 24 1971, ch. 737 1975, ch. 639 1977, ch. 91	San Patricio Municipal Water District
		Northeast Texas Municipal Water District
8280—147	1953, ch. 78 1959, ch. 375 1959, 2nd C.S., ch. 28 1975, ch. 193	—Creation, powers, etc.
8280—160	1954, 1st C.S., ch. 35 1957, ch. 73 1961, ch. 174 1965, ch. 555 1973, ch. 172	Green Belt Municipal and Industrial Water Authority

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	1969, ch. 593	
	1977, ch. 720	
8280—176	1955, ch. 376	Runnels County Water Authority
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8280—181	1955, ch. 505	Reagan County Water Supply District
	1979, ch. 222	
8280—182	1955, ch. 506	Bell County Water Control and Improvement District No. 3
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8280—188	1955, ch. 518	Trinity River Authority of Texas
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8280—189	1955, ch. 523	Bell County Water Control and Improvement District No. 1
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8280—202	1957, ch. 279	Pond Creek Watershed Authority
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8280—212	1957, 1st C.S., ch. 25	Ecleto Creek Watershed District
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8280—213	1957, 1st C.S., ch. 26	Hondos Creek Watershed Improvement District
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8280—219	1959, ch. 99	Edwards Underground Water District
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8280—228	1959, ch. 279	Red River Authority of Texas
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8280—257	1961, ch. 405	Upper Leon Pines Municipal Water District
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8280—280	1963, ch. 101	Clear Lake City Water Authority
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8280—285	1963, ch. 243	Clear Creek Drainage District of Galveston County
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8280—292	1963, ch. 307	Orange County Drainage District of Orange County
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8280—296	1963, ch. 337	Aransas County Conservation and Reclamation District
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8280—476	1969, ch. 307 1979, ch. 420	Brazoria County Conservation and Reclamation District No. 3
8280—477	1971, ch. 135 1977, ch. 117	Irving Flood Control District
8280—487	1971, ch. 347 1977, ch. 44	Cibolo Creek Municipal Authority
8280—537	1971, ch. 647 1975, ch. 461	Northwest Harris County Public Utility District —No. 3
—	1973, ch. 438 1975, ch. 115	Palo Duro River Authority
—	1973, ch. 379 1979, ch. 812	Sabine Pass Port Authority
—	1973, ch. 602 1977, ch. 691	Anna—Van Alstyne Water District
—	1975, ch. 36	Matador Water District
—	1975, ch. 201	Farmers Branch-Carrollton Flood Control District
—	1975, ch. 249	Parker County Utility District
—	1975, ch. 284 1977, ch. 557	Harris-Galveston Control Subsidence District
—	1975, ch. 437	Alvarado Water Authority
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—	1977, ch. 208	Llano Estacado Water District
—	1977, ch. 264	Upton County Water District
—	1977, ch. 337	West Jefferson County Municipal Water District
—	1977, ch. 518	Fort Bend County Municipal Utility District No. 13
—	1977, ch. 535	Northeast Tarrant County Water District
—	1977, ch. 687	Northwest Forest Municipal Utility District
—	1977, ch. 693	Port O'Connor Municipal Utility District
—	1977, ch. 696	East Cedar Creek Fresh Water Supply District
—	1977, ch. 713	Aquilla Water Supply District
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—	1979, ch. 288	Bowie Water Supply District
—	1979, ch. 343	Itasca Municipal Water District
—	1979, ch. 344	Sienna Plantation Fresh Water Supply District
—	1979, ch. 376	Rayburn Municipal Utility District
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—	1979, ch. 432	Beeville Water Supply District
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