REVISOR’S REPORT

TRANSPORTATION CODE
TITLES 1, 2, 3, 4, 6, AND 7

VOLUME I

A NONSUBSTANTIVE REVISION
OF THE STATUTES RELATING TO
TRANSPORTATION

Including
Carriers
Aviation
Navigation
Roadways
Vehicles and Traffic

To be submitted to the 74th Legislature
as part of the
Texas Legislative Council’s
Statutory Revision Program

Austin, Texas
March 1995
REVISOR'S REPORT
TITLES 1, 2, 3, 4, 6, AND 7, TRANSPORTATION CODE

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The Texas Legislative Council is required by law (Section 323.007, Government Code) to carry out a complete nonsubstantive revision of the Texas statutes. The process involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law if practicable—all toward promoting the stated purpose of making the statutes "more accessible, understandable, and usable" without altering the sense, meaning, or effect of the law.

Under the new classification scheme adopted by the council, our statutes will eventually consist of 26 codes. To date, the council has produced and the legislature has enacted the Agriculture Code, Alcoholic Beverage Code, Business & Commerce Code, Civil Practice and Remedies Code, Education Code, Election Code (which was a substantive revision), Government Code, Health and Safety Code, Human Resources Code, Labor Code, Local Government Code, Natural Resources Code, Parks and Wildlife Code, Property Code, Tax Code (Title 1 of which was a substantive revision), and Water Code. The council staff also assisted the state bar in the Penal Code and Family Code projects, which were substantive revisions, and revised miscellaneous criminal procedure provisions into Title 2 of the Code of Criminal Procedure.

Titles 1, 2, 3, 4, 6, and 7, Transportation Code, are a nonsubstantive revision of the Texas statutes relating to transportation. Because of the wide range of subjects that the council staff determined should be included in the code, the source law for the code is not compiled in Vernon's Texas Civil Statutes as a single group of statutes.

The code is divided into titles, subtitles, chapters, subchapters, and sections. Sections are numbered decimally, and the number to the left of the decimal point is the same as the chapter number. Gaps in chapter and section numbering are for future expansion.

The council staff encourages examination and review of the code by any interested person. Meticulous care has been taken within the staff to include in the proposed code all source law assigned to the code and to ensure that no substantive change has been made in the law. However, a complete and adequate outside review is necessary.

The reviser's report is arranged to facilitate review. The report states the Revised Law, which is the text of the proposed new language, and then provides the Source Law, which is the text of the current law from which the revised law is taken. If further explanation of either the revised law or the source law is required, a Reviser's Note is included after the source law. All substance in the source law should be revised in the revised law or the reason for its omission should be explained in a reviser's note.

Because of the extensive reorganization of many statutes, and even sentences within a statute, it may be helpful for a reviewer to refer to the source law as printed in Vernon's Texas Civil Statutes (so that the quoted source law may be seen in present context) and to the disposition table (showing where the current statutes appear, as revised, in the code). The disposition table is printed as Appendix C to the reviser's report.

The revision will require conforming amendments to several statutes not included in the code. These amendments are printed in
Appendix A to the reviser's report. Appendix A also includes a section listing the laws that will be repealed when the code takes effect and a section stating the legislature's intent that the code be a nonsubstantive revision.

Titles 1, 2, 3, 4, 6, and 7, Transportation Code, are proposed to become effective September 1, 1995.

In reviewing the proposed titles to the Transportation Code, the reader should keep in mind the following:

(1) The Code Construction Act (Chapter 311, Government Code) applies to the code. That Act sets out certain principles of statutory construction applicable to new codes and also provides some definitions. The Act is printed as Appendix B to the reviser's report.

(2) The proposed code is written in modern American English. Where possible, the present tense is used; the active rather than the passive voice is preferred; and the singular is used in preference to the plural.

(3) This is a nonsubstantive revision. The staff's authority does not include improving the substance of law. The sole purpose of this draft is to compile all the relevant law, arrange it in a logical fashion, and rewrite it without altering its meaning or legal effect. If a particular source statute is ambiguous and the ambiguity cannot be resolved without a potential substantive effect, the ambiguity is preserved.

This project is under the direction of Jonathan Davis, Legislative Counsel, of the council staff. Questions, comments, or suggestions may be directed to him at P.O. Box 12128, Capitol Station, Austin, Texas 78711, or at telephone number (512) 463-1143.
TRANSPORTATION CODE

TITLE 1. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

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Revised Law

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

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

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

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

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

(4) restating the law in modern American English to the greatest extent possible. (New.)
Sec. 1.002. CONSTRUCTION OF CODE. Chapter 311, Government Code (Code Construction Act), applies to the construction of each provision in this code except as otherwise expressly provided by this code. (New.)

Sec. 1.003. REFERENCE IN LAW TO STATUTE REVISED BY CODE. A reference in a law to a statute or a part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of that statute. (New.)

Sec. 1.004. DEFINITION. In this code, "Department of Public Safety" means the Department of Public Safety of the State of Texas. (New.)

[Chapters 2-4 reserved for expansion]

TITLE 2. GENERAL PROVISIONS RELATING TO CARRIERS

CHAPTER 5. DUTIES AND LIABILITIES OF COMMON CARRIERS

Sec. 5.001. DUTIES, LIABILITIES, AND REMEDIES OF CARRIER

(a) Unless otherwise provided by this code or other law:

(1) the duties and liabilities of a carrier in this state and the remedies against the carrier are the same as prescribed by the common law; and

(2) a carrier for hire may not limit its common-law
(b) This chapter does not prohibit a carrier from requiring notice to be given under Section 16.071, Civil Practice and Remedies Code. (V.A.C.S. Arts. 882, 883 (part.).)

Source Law

Art. 882. The duties and liabilities of carriers in this State and the remedies against them, shall be the same as are prescribed by the common law except where otherwise provided by this title.

Art. 883. [Railroad companies, and other carriers of passengers, goods, wares, and merchandise for hire, within this state, on land, or in boats or vessels on the waters entirely within this state,] shall not limit or restrict their liability as it exists at common law, by any general or special notice, or by inserting exceptions in the bill of lading or memorandum given upon the receipt of the goods for transportation or in any other manner whatsoever; . . . . Provided further, that a requirement of a notice or claim consistent with the provisions of Article 5546 of the Revised Civil Statutes of Texas, 1925, as heretofore amended, as a condition precedent to the enforcement of any claim or loss, damage and delay or either, or any of them, whether inserted in a bill of lading or other contract or arrangement for carriage, or otherwise provided, shall be valid and is not hereby prohibited.

Revisor's Note

(1) V.A.C.S. Article 883 refers to "[r]ailroad companies, and other carriers of passengers, goods, wares, and merchandise for hire, within this state, on land, or in boats or vessels on the waters entirely within this state . . . ." The revised law substitutes the term "carrier for hire" because the term "carrier for hire" includes the term "railroad companies, and other carriers."

(2) V.A.C.S. Article 883 refers to "Article 5546 of the Revised Civil Statutes of Texas, 1925." That statute was codified as Section 16.071, Civil Practice and Remedies Code. The revised law is drafted accordingly.

(3) V.A.C.S. Article 883 refers to "any general or special notice, or by inserting exceptions in the
bill of lading or memorandum given upon the receipt of
the goods for transportation or in any other manner
whatsoever . . . .” The revised law omits the
enumerated manners of providing notice because they are
included in the prohibition on limitations on
common-law liability.

(4) V.A.C.S. Article 883 refers to a carrier
operating "within this state" or "entirely within this
state." The revised law omits the phrase "within this
state" because laws of this state may only regulate
activities within the state and therefore the phrase is
unnecessary.

Revised Law
Sec. 5.002. RATES ESTABLISHED BY RAILROAD COMMISSION.
(a) The Railroad Commission of Texas may establish just and
reasonable rates for the transportation of:
(1) goods, wares, and merchandise described by:
   (A) commodity or article; or
   (B) generic grouping of commodity or article;
and
(2) the baggage and personal effects of passengers.
(b) Rates established under Subsection (a) shall be set
according to:
(1) the conditions surrounding the transportation; and
(2) the value of the freight:
   (A) declared in writing; or
   (B) agreed on in writing by the shipper or
passenger.
(c) If the commission sets rates under Subsection (a), the
liability of a carrier for loss or damage to baggage or personal
effects transported incident to the carriage of persons, goods,
wares, or merchandise is limited to the declared or agreed value.
(V.A.C.S. Art. 883 (part).)
Art. 883. ... provided, however, that the provisions hereof respecting liabilities of carriers as it exists at common law for loss, damage, or injury to baggage and personal effects of passengers transported incident to the carriage of persons, goods, wares, and merchandise shall not apply to property received for transportation concerning which the carriers shall have been or shall hereafter be expressly authorized or required by order of the Railroad Commission of Texas to establish and maintain rates dependent upon the value declared in writing by the shipper of the property or agreed upon in writing as the released value of the property, in which case, such declaration or agreement shall have no effect other than to limit liability and recovery to an amount not exceeding the value so declared or released, and so far as relates to values, shall be valid and is not hereby prohibited. The Railroad Commission of Texas is hereby authorized to fix and establish just and reasonable rates for transportation of goods, wares, and merchandise described by commodities or articles or by generic grouping of commodities or articles, and the baggage and personal effects of passengers, dependent upon the value thereof declared in writing, or agreed upon in writing by the shipper or passenger as the agreed value, under the circumstances and conditions surrounding such transportation. . . .

Sec. 5.003. LIABILITY OF CARRIER TRANSPORTING HOUSEHOLD GOODS, PERSONAL EFFECTS, OR USED OFFICE FURNITURE. (a) A carrier for hire is not required to accept for transportation household goods, personal effects, or used office furniture and equipment unless the shipper or owner of the property or the agent of the shipper or owner declares in writing the reasonable value of the property.

(b) A carrier transporting property with a value declared under Subsection (a) is not liable in damages for an amount more than the declared value of the property lost, destroyed, or damaged.

(c) The Railroad Commission of Texas shall establish adequate rates to be charged by a carrier consistent with the declared value of property under this section. If the commission fails to establish a rate, a carrier is authorized to collect reasonable transportation charges consistent with the declared value of the property.
(d) A shipper's declaration of value is not admissible evidence in a court action unless the carrier, when accepting the shipment, provides and maintains in an amount at least equal to the declared value of the property:

(1) insurance in a solvent company authorized to do business in this state; or

(2) bonds.

(e) The security requirement of Subsection (d) does not apply to steam or electric railroads. (V.A.C.S. Arts. 883(a), 883b.)

Source Law

Art. 883(a). No specialized motor carrier or other carrier for hire, including the carriers referred to in said Article 883, shall be required to accept for transportation household goods, personal effects or used office furniture and equipment, unless the shipper or owner thereof or his agent shall first declare in writing the reasonable value thereof. The carrier shall not be liable in damages for an amount in excess of such declared value for the loss, destruction or damage of such property. The Railroad Commission shall establish adequate rates consistent with such declared values to be assessed and collected by such carriers. If the Railroad Commission fails to establish such rates, then in that event such carriers are authorized to collect reasonable transportation charges consistent with the declared value of such property.

Art. 883b. The declaration of value by the shipper shall not be admissible as evidence in any court action unless the carrier at the time of acceptance of such shipment had or provided and maintained in force insurance in a solvent company authorized to do business in Texas, or bonds, in an amount equal to such declared value to protect the owner of such shipment against loss or damage thereto; provided, however, this requirement as to insurance or bonds shall not apply to steam or electrical railways.

Revisor's Note

(1) V.A.C.S. Article 883(a) refers to a "specialized motor carrier or other carrier for hire, including the carriers referred to in said Article 883 . . . ." The revised law substitutes the term "carrier for hire" for this phrase because the term more accurately describes the types of carriers regulated.
The revised law codifies V.A.C.S. Articles 883(a) and 883b in one section relating to liability of a common carrier for transporting certain types of freight. The attorney general has held that both of these articles apply only to carriers transporting household goods, personal effects, or used office furniture and are not a general restriction on common carrier liability. Op. Tex. Att'y Gen. No. V-1048 (1950). Further, V.A.C.S. Article 883b was originally a nonamendatory section in the same law that enacted V.A.C.S. Article 883(a). See Chapter 327, Acts of the 50th Legislature, Regular Session, 1947.

Revised Law
Sec. 5.004. REQUIREMENT TO RECEIVE AND CARRY GOODS. (a) On the tender of the legal or customary rate for goods offered for transportation, a common carrier, other than a railroad, shall receive and transport the goods if in the order presented:
(1) the carrier has the capacity to safely carry the goods on the pending trip; and
(2) the goods are of the kind usually transported by the carrier and are offered at a reasonable time.
(b) A common carrier that violates Subsection (a) is liable:
(1) for damages to a person injured by the violation; and
(2) to the owner of the goods for a penalty of not less than $5 or more than $500.
(c) An action under Subsection (b) must be brought in the county in which the damages occur or the common carrier resides.

Source Law
Art. 884. Upon the tender of the legal or customary rates of freight on goods offered for transportation, to a common carrier to other than a railroad, such carrier shall receive and transport such goods, provided his vehicle or vessel has capacity safely to carry the goods so offered on the trip or
voyage then pending, and such goods are of the kind
usually carried upon such vehicle or vessel, and are
offered at a reasonable time. Any common carrier
refusing to transport goods as above provided or to
take the same in the order presented, shall be liable
in damages to the party injured, by reason of such
refusal, and shall also be liable to a penalty of not
less than five nor more than five hundred dollars, to
be recovered in each case by the owner of the goods in
the county where the wrong is done or where the common
carrier resides.

Reviser's Note

V.A.C.S. Article 884 refers to goods carried on a
"trip or voyage." The revised law omits the term
"voyage" because the term "trip" includes a voyage.

Revised Law

Sec. 5.005. BILL OF LADING OR RECEIPT; CONDITION OF
TRANSPORTED GOODS. (a) A common carrier receiving goods for
transportation shall, when requested, give the shipper a bill of
lading or written receipt stating the quantity, character, order,
and condition of the goods.

(b) A common carrier shall deliver to the consignee the
goods listed on a bill of lading or receipt in an order and
condition similar to the order and condition of the goods when the
goods were accepted for transport, except for any unavoidable wear
and tear or deterioration because of the transportation of the
goods.

(c) A common carrier that violates Subsection (a) is liable
to the owner of the goods for a penalty of not less than $5 or more
than $500.

(d) An action under Subsection (c) must be brought in the
county in which the damages occur or the carrier resides.

(e) A common carrier that violates Subsection (b) is liable
for damages resulting from the violation as at common law.

(V.A.C.S. Art. 885.)

Source Law

Art. 885. Common carriers, when they receive
goods for transportation, shall give to the shipper,
when it is demanded, a bill of lading, or written
receipt stating the quantity, character, order and
condition of the goods; and such goods shall be
delivered in like order and condition to the consignee,
the unavoidable wear and tear and deterioration in due
course of transportation only, excepted. Any such
common carrier failing to deliver goods as herein
required shall be liable to the party injured for his
damages, as at common law; and on refusal to execute
and deliver a bill of lading or written receipt shall
be liable to a penalty of not less than five nor more
than five hundred dollars, to be recovered as in the
preceding article.

Revised Law
Sec. 5.006. LIABILITY AS WAREHOUSEMAN OR COMMON CARRIER.
(a) A common carrier having a depot or warehouse is liable, as is
a warehouseman at common law, for any goods stored at the depot or
warehouse:

(1) before the trip begins; or

(2) after the goods reach the destination if, after
the carrier uses due diligence to notify the consignee, the
consignee fails to take possession of the goods.

(b) A common carrier is liable as a common carrier from the
beginning of the trip until the goods are delivered to the
consignee at the point of destination.

(c) For purposes of this section, a trip begins when the
bill of lading is signed. (V.A.C.S. Arts. 886, 887.)

Source Law
Art. 886. Railroad companies and other common
carriers having depots and warehouses for storing goods
shall be liable as warehousemen are at common law for
goods and the care of the same stored at such depots or
warehouses before the commencement of the trip or
voyage on which said goods are to be transported. They
shall be liable as common carriers from the
commencement of the trip or voyage until the goods are
delivered to the consignee at the point of destination.
The trip or voyage shall be considered as having
commenced from the time of the signing of the bill of
lading, and the liability of the common carrier shall
attach, as at common law, from and after such signing.
Art. 887. If the carrier at the point of
destination shall use due diligence to notify the
consignee, and the goods are not taken by the
consignee, and have in consequence to be stored in the
depots or warehouses of the common carriers, they shall
thereafter only be liable as warehousemen.
Revised Law

Sec. 5.007. PRIORITY OF SHIPMENT OF STORED GOODS. (a) A common carrier that receives goods for transportation in its warehouse or depot shall transport the goods in the order received. (b) A common carrier that violates Subsection (a) is liable for any: (1) loss occurring while the goods are in the warehouse or depot; and (2) damage resulting from the delay in transporting the goods. (V.A.C.S. Art. 888.)

Source Law

Art. 888. Where common carriers receive goods for transportation into their warehouses or depots, they shall forward them in the order in which they are received, the first received to be first forwarded, without giving the preference to one over another. For failure to do so, they shall be liable for all losses occurring while the goods remain, and for all damages occasioned or in any wise resulting from the delay.

Revised Law

Sec. 5.008. CARE OF LIVESTOCK. (a) Unless otherwise provided by special contract, a common carrier transporting livestock shall feed and water the animals until the animals are: (1) delivered to the consignee; or (2) disposed of as provided by this title or other law. (b) A common carrier that violates Subsection (a) is liable: (1) for damages to a person injured by the violation; and (2) to the owner of the livestock for a penalty of not less than $5 or more than $500. (c) An action by an owner under Subsection (b)(2) must be brought in any county in which the damages occur or the carrier resides. (V.A.C.S. Art. 889.)

Source Law

Art. 889. A common carrier who conveys live stock of any kind shall feed and water the same during
the time of conveyance and until the same is delivered
to the consignee or disposed of as provided in this
title, unless otherwise provided by special contract.
Any carrier who shall fail to so feed and water said
live stock sufficiently shall be liable to the party
injured for his damages, and shall be liable also to a
penalty of not less than five nor more than five
hundred dollars, to be recovered by the owner of such
live stock in any county where the wrong is done or
where the common carrier resides.

CHAPTER 6. SALE OF UNCLAIMED GOODS

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CHAPTER 6. SALE OF UNCLAIMED GOODS

Revised Law
Sec. 6.001. SALE OF FREIGHT OR BAGGAGE. (a) A common
carrier may sell at public auction freight or baggage that it
conveyed to any point in this state if the owner, whether known or
unknown, of the freight or baggage, within three months of the date
of the conveyance, fails to claim it and pay any charges due at the
office, depot, or warehouse closest or most convenient to the
destination.

(b) Each article of freight or baggage must be offered
separately as consigned or checked. (V.A.C.S. Art. 900.)

Source Law
Art. 900. When any freight or baggage has been
conveyed by a common carrier to any point in this
State, and shall remain unclaimed for the space of
three months at the office or depot nearest or most
convenient to destination, and the owner, whether known
or not, fails within that time to claim such freight or
baggage, or to pay the proper charges if there be any
against it, it shall be lawful for such common carrier
to sell such freight or baggage at public auction,
offering each article separately as consigned or
checked.
Sec. 6.002. NOTICE OF SALE OF FREIGHT OR BAGGAGE. (a) Before selling the freight or baggage at auction, the common carrier must provide notice 30 days before the sale.

(b) The notice must:

(1) contain the time and place of sale and a descriptive list of the freight or baggage to be sold, including the names, numbers, or marks found on the freight or baggage; and

(2) be posted in three public places in the county where the sale is to be held and on the door of the office, depot, or warehouse where the freight or baggage is stored.

(c) The notice must also be published in a newspaper for 30 days before the sale in the county of sale if a newspaper is published in the county. (V.A.C.S. Art. 901 (part).)

Source Law

Art. 901. Thirty days' notice of the time and place of sale, and a descriptive list of the packages to be sold, with names and numbers or marks found thereon, shall be posted in three public places in the county where the sale is to be made and on the door of the depot or warehouse if any, where the goods are, and notice shall also be given in at least one newspaper in the county, if any be published therein, for thirty days before sale. . . .

Revisor's Note

The revised law substitutes "freight and baggage" for "packages" for consistency of terms within the chapter and because the terms, in the context of this chapter, are synonymous.

Revised Law

Sec. 6.003. DISPOSITION OF PROCEEDS. (a) The common carrier shall:

(1) deduct charges due on freight or baggage, including the cost of storage and sale, from the proceeds of the sale; and

(2) hold the remainder subject to Subsection (b).
(b) The owner of the freight or baggage may recover from the common carrier the proceeds of the sale less any deductions under Subsection (a) if the owner or the owner's agent presents proof of ownership of the sold items to the carrier within five years after the date of the sale. (V.A.C.S. Art. 901 (part).)

Source Law

Art. 901. . . . Out of the proceeds of such sale, the carrier shall deduct the proper charges on such freight or baggage, including costs of storing and costs of sale, and hold the overplus, if any, to the order of the owner any time within five years, on proof of ownership made by the claimant or his duly authorized agent or attorney.

Revised Law

Sec. 6.004. SALE OF LIVESTOCK. (a) A common carrier may sell at public auction livestock that is unclaimed for 48 hours after arrival at its destination if the carrier gives five days' notice of the sale.

(b) The notice must contain the same information and be given in the same manner as the notice described by Sections 6.002(b) and (c).

(c) The common carrier shall dispose of proceeds of the sale in the same manner as provided by Section 6.003. In addition to the deductions allowed under that section, the carrier may deduct reasonable expenses for the keeping, feeding, and watering of the livestock from its arrival until its sale. (V.A.C.S. Art. 902.)

Source Law

Art. 902. If any live stock remains unclaimed for the space of forty-eight hours after its arrival at the place of its destination, the carrier may sell the same at public auction after giving five days' notice of the time and place of such sale, as prescribed in the preceding article and apply the proceeds as prescribed in said article, after deducting reasonable expenses for keeping, feeding and watering said live stock from the time of its arrival at the place of its destination until disposed of as herein provided.
Reviser's Note

V.A.C.S. Article 902 refers to "the preceding article" (V.A.C.S. Article 901). That statute is codified in this chapter as Sections 6.002 and 6.003, and the revised law is drafted accordingly.

Revised Law

Sec. 6.005. SALE OF PERISHABLE PROPERTY. (a) A common carrier may sell at public auction perishable property that is unclaimed after arrival at its destination if:

1. the property is in danger of depreciation; and
2. the carrier gives five days' notice of the sale.

(b) The notice must contain the same information and be given in the same manner as the notice described by Sections 6.002(b) and (c).

(c) The common carrier shall dispose of the proceeds of the sale in the same manner as provided by Section 6.003. (V.A.C.S. Art. 903.)

Source Law

Art. 903. If any perishable property remains unclaimed after arrival of its place of destination until in danger of depreciation the carrier shall sell the same at public auction, after giving five days' notice of the time and place of sale, as prescribed in the second preceding article and apply the proceeds as prescribed in said article.

Reviser's Note

V.A.C.S. Article 903 refers to "the second preceding article" (V.A.C.S. Article 901). That statute is codified in this chapter as Section 6.002, and the revised law is drafted accordingly.

Revised Law

Sec. 6.006. INFORMATION KEPT BY CARRIER. A common carrier shall keep for each sale under this chapter:

1. an account of the sale;
2. expenses allocated to each article sold;
(3) a copy of each notice of sale; and

(4) a copy of the bill of sale. (V.A.C.S. Art. 904.)

Source Law

Art. 904. In each sale under the three preceding articles the carrier shall keep an account of such sale and the expense thereof proportioned to each article sold, a copy of the notice and a copy of the sale bill.

Revisor's Note

V.A.C.S. Article 904 refers to sales made "under the three preceding articles" (V.A.C.S. Articles 901, 902, and 903). Those statutes are codified in this chapter, and the revised law is drafted accordingly.

CHAPTER 7. CONNECTING CARRIERS

Sec. 7.001. DEFINITIONS

In this chapter:

(1) "Connecting carrier" means:

(A) an initial carrier; or

(B) each other common carrier that receives freight from another common carrier and recognizes or acts on a contract to transport the freight between points in this state.

(2) "Freight" includes baggage and other property transported by a common carrier.

(3) "Initial carrier" means a common carrier that contracts with a shipper of freight for delivery and initially transports the freight.

(4) "Shipper" includes the owner or the consignee of
the freight and the owner's or consignee's agent. (V.A.C.S. Art. 905 (part).)

Source Law

Art. 905. All common carriers in this State over whose transportation lines, or parts thereof, is transported any freight, baggage or other property received by either of such carriers for shipment or transportation between points in this State, on a contract for carriage recognized, acquiesced in, or acted upon by such carriers shall, with respect to the undertaking and matter of such transportation be considered and construed to be connecting lines.

Revisor's Note

The definitions of "connecting carrier," "freight," "initial carrier," and "shipper" are added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 7.002. DUTIES OF CONNECTING CARRIER. Each connecting carrier that transports freight is:

(1) an agent of each other connecting carrier that transports the freight; and

(2) considered to be under a contract with each other connecting carrier and the shipper to provide the safe and speedy transportation of the freight from its point of shipment to its destination. (V.A.C.S. Art. 905 (part).)

Source Law

Art. 905. . . . . Such lines shall be deemed and held to be agents of each other, each the agent of the others, and all the others the agents of each, and shall be deemed and held to be under a contract with each other and with the shipper, owner and consignee of such property for the safe and speedy transportation of such property from point of shipment to destination.

Revisor's Note

The revised law substitutes "connecting carrier" and "freight" for the terms "carrier" and "property"
found in V.A.C.S. Article 905 for the reason stated in
the reviser's note for Section 7.001 of this code.

Revised Law

Sec. 7.003. CONTRACT GOVERNING TRANSPORTATION. (a) Except
as provided by Subsection (b), the contract establishing the
rights, duties, and liabilities of an initial carrier and the
shipper applies to each subsequent connecting carrier.

(b) The contract between the initial carrier and the shipper
does not apply to a connecting carrier that executes a new contract
with the shipper supported by valuable consideration.

(c) For purposes of Subsection (b), valuable consideration
does not include the transportation of a caretaker with the
freight. (V.A.C.S. Art. 905 (part).)

Source Law

Art. 905. . . . and such contract as to the
shipper, owner and consignee of such property shall be
deemed and held to be the contract of each of such
common carriers. . . . In any suit brought hereunder,
the rights, duties and liabilities of the parties shall
be determined by the initial contract executed by and
between the owner, shipper or his or her duly
authorized agents and the initial carrier, unless it be
proved that a subsequent contract supported by a
valuable consideration moving to the owner or shipper,
in addition to that of the initial contract, was
executed by such owner, shipper or his or their duly
authorized agents with a subsequent connecting carrier
handling the shipment, and the transportation of a
caretaker shall not be deemed to be such valuable
consideration. . . .

Revised Law

Sec. 7.004. PROOF OF STATUS AS CONNECTING CARRIER. Proof
that a common carrier has received freight from another common
carrier for transportation, including a bill of lading, waybill,
receipt, check, or other instrument issued by a carrier, is prima
facie evidence that the carrier is subject to the relations,
duties, and liabilities imposed on connecting carriers under this
chapter. (V.A.C.S. Art. 905 (part).)

Source Law

Art. 905. . . . In any court of this State, any
A provision in a contract that is contrary to this chapter is void.

(b) This chapter applies regardless of whether the route of freight is chosen by the shipper or by the initial carrier.

Art. 905. . . . The provisions of this law shall apply whether the route of such freight, baggage or other property be chosen by the owner or his agents, or by the initial carrier to whom such property is delivered. . . . notwithstanding any stipulation or attempted stipulation to the contrary by such carrier, or either of them and any stipulation contained in any contract contrary to any provision of this law shall be void.

(1) The revised law substitutes "freight" for the term "property" found in V.A.C.S. Article 905 for the reason stated in the revisor's note to Section 7.001 of this code.

(2) The revised law substitutes "shipper" for the term "owner or his agents" found in V.A.C.S. Article 905 for the reason stated in the revisor's note to Section 7.001 of this code.
Revised Law

Sec. 7.006. RECOVERY OF DAMAGES. (a) A person who suffers damages because of injury to or loss of freight or delay in transporting freight may recover from the initial carrier or any connecting carrier that transported the freight.

(b) A common carrier held liable under Subsection (a) may, in a subsequent action, recover the amount of damages it was required to pay and is entitled to all costs of suit from the common carrier whose negligence caused the damages.

(c) To recover under Subsection (b), a common carrier must only:

(1) establish which other carrier or carriers caused the damage; and

(2) produce satisfactory evidence that the carrier seeking contribution has paid the judgment in the underlying suit.

(d) A law allowing the apportionment of damages is not applicable in a suit brought under Subsection (a) unless requested by the plaintiff. The law is applicable in a suit brought under Subsection (c). (V.A.C.S. Art. 906.)

Source Law

Art. 906. For any damage or injury to, or loss or delay of, any freight, baggage or other property, sustained anywhere during the transportation over connecting lines or either of them, as contemplated and defined in the preceding article, either or all of such connecting carriers, as the person or persons sustaining such damage may elect to sue therefor in this State, shall be held liable to such person or persons. The provisions of law allowing an apportionment of damage shall not be applicable to suits brought by such person or persons under the provisions of this subdivision except upon the plaintiff's request. Any carrier or carriers held liable under the provisions hereof shall be entitled in a subsequent action to recover the amount of any loss, damage or injury it has been required to pay hereunder, from the carrier or carriers through whose negligence the loss, damage or injury was sustained, together with all costs of suit; and for the purpose of such recovery, it shall only be necessary that the carrier against whom judgment was had, show which carrier or carriers caused the loss or damage and produce satisfactory evidence that the judgment rendered against it has been paid, and in such action between the carriers, the provisions of law allowing an apportionment of damage shall be applicable.
CHAPTER 8. PROTECTING MOVEMENT OF COMMERCE

Sec. 8.001. ISSUANCE OF PROCLAMATION

(a) The governor shall issue a proclamation under this chapter, to prevent interference with commerce, if after investigation the governor determines that:

(1) the movement of commerce by a common carrier of this state or another state is interfered with in violation of Chapter 42, Penal Code; and

(2) local authorities failed to enforce the law.

(b) The proclamation must:

(1) state that the conditions described by Subsection (a) exist; and

(2) describe the territory affected by the proclamation. (V.A.C.S. Art. 907.)

Source Law

Art. 907. If at any time the movement of commerce by common carriers of this State or of any of them is interfered with in violation of any of the provisions of Chapter 42 of the Penal Code, and the Governor, after investigation, becomes convinced that the local authorities were failing to enforce the law, either because they were unable or unwilling to do so, the Governor shall, in order to prevent such interference, forthwith issue his proclamations declaring such conditions to exist and describing the areas thus affected.

Revisor's Note

V.A.C.S. Article 907 refers to local authorities' failure to enforce a law "because they were unwilling or unable to do so." The reference to a local
authority's unwillingness or inability to enforce a law is omitted from the revised law because failure to enforce a law because of unwillingness or inability is included within the broader meaning of the phrase "local authorities failed to enforce the law."

Revised Law
Sec. 8.002. EFFECT OF PROCLAMATION. (a) On the issuance of a proclamation under this chapter, the governor shall exercise complete police jurisdiction over the territory described by the proclamation. The exercise of police jurisdiction by the governor supersedes the police authority of a local authority.

(b) The governor may not disturb the exercise of police jurisdiction by a local authority outside the territory described by the proclamation. (V.A.C.S. Art. 908.)

Source Law
Art. 908. Upon the issuance of the proclamation provided for in the preceding article, the Governor shall exercise full and complete police jurisdiction of the area described in the proclamation whether the same be all within or partly within, or partly without the limits of any incorporated city or county; the exercise of said police jurisdiction by the Governor as above set out, shall supersede all police authority by any and all local authority, provided that the Governor shall not disturb the local authorities in the exercise of police jurisdiction, at any place outside the district described in his proclamation.

Revisor's Note
(1) V.A.C.S. Article 908 refers to the governor's exercise of "full and complete" police jurisdiction. The reference to "full" is omitted from the revised law because "full" is included within the meaning of "complete."

(2) V.A.C.S. Article 908 refers to the governor's police jurisdiction even in an area that is "within or partly within, or partly without the limits of any incorporated city or county . . . ." The revised law omits this phrase because it is redundant
in light of the governor's complete power within the
territory described in the governor's proclamation.

(3) V.A.C.S. Article 908 refers to the
"district" described in the proclamation. The revised
law substitutes "territory" for "district" to provide
for uniform use of the term "territory" in this
chapter.

Revised Law

Sec. 8.003. ARRESTS. (a) After a proclamation issued under
this chapter takes effect, only a peace officer acting under the
authority of the governor may make an arrest in the territory
described by the proclamation.

(b) A person arrested in the territory described by the
proclamation shall be delivered forthwith to the proper authority
for trial. (V.A.C.S. Art. 909.)

Source Law

Art. 909. No peace officer of this State shall
be permitted to make arrests after the Governor's
proclamation has become effective, in the territory
embraced by such proclamation, except officers acting
under the authority of the Governor under the
provisions of this law. Persons arrested within the
district shall be delivered forthwith to the proper
authorities for trial.

Revisor's Note

The revised law substitutes "territory" for
"district" for the reason set out in Revisor's Note (3)
to Section 8.002 of this code.

Revised Law

Sec. 8.004. USE OF TEXAS RANGERS. (a) The governor may use
the Texas Rangers to enforce this chapter.

(b) If a sufficient number of Texas Rangers are not
available, the governor may employ other persons to serve as
special rangers.

(c) A special ranger has the same authority as a Texas
Ranger and shall be paid the same salary as a Texas Ranger. The salary of a special ranger shall be paid out of appropriations made to the executive office for the payment of rewards and the enforcement of the law. (V.A.C.S. Art. 910 (part).)

Source Law

Art. 910. The State Rangers may be used in the enforcement of the provisions of this law. If a sufficient number of Rangers are not available, the Governor is authorized to employ any number of men to be designated as special Rangers and such men shall have all the power and authority of the regular Rangers, and shall be paid the same salary as the Rangers are paid, and such salaries shall be paid out of the appropriation made to the executive office for the payment of rewards and the enforcement of the law.

Revisor's Note

(1) V.A.C.S. Article 910 refers to "State Rangers." At the time of enactment of Article 910, the state rangers were part of the adjutant general's office. (Title 113, Revised Statutes.) In 1935, the ranger force was transferred to the Department of Public Safety and was designated as the Texas Rangers. (Section 11, Chapter 181, General Laws, Acts of the 44th Legislature, Regular Session, 1935.) The revised law is drafted accordingly.

(2) V.A.C.S. Article 910 grants to "special Rangers" the "power and authority" of Texas Rangers. The reference to "power" is omitted from the revised law because "power" is included within the meaning of "authority."

Revised Law

Sec. 8.005. EFFECT ON DECLARATION OF MARTIAL LAW. (a) A declaration of martial law is not required for the implementation of this chapter.

(b) This chapter does not limit the authority of the governor to declare martial law and call forth the militia to execute the law. (V.A.C.S. Arts. 910 (part), 911 (part).)
Art. 910. The provisions of this law shall be effective without a declaration of martial law. . . .

Art. 911. Nothing in this law shall be construed as limiting the power and authority of the Governor to declare martial law and to call forth the militia for the purpose of executing the law, when in the judgment of the chief executive it is deemed necessary so to do. . . .

Reviser's Note

(1) V.A.C.S. Article 911 provides that the governor may declare martial law "when in the judgment of the chief executive it is deemed necessary so to do." The revised law omits this phrase as unnecessary. The power to declare martial law is derived from and is regulated by Section 7, Article IV, Texas Constitution, and may not be modified by statute.

(2) V.A.C.S. Article 911 does not limit the "power and authority" of the governor to act in certain circumstances. The reference to "power" is omitted from the revised law because "power" is included within the meaning of "authority."

Reviser's Note

(End of Chapter)

The revised law omits as unnecessary a portion of V.A.C.S. Article 911, relating to the cumulative effect of that article. An accepted general principle of statutory construction requires a statute to be given cumulative effect with other statutes unless it provides otherwise or unless the statutes are in conflict. The general principle applies to this revision. The omitted portion of Article 911 reads:

. . . This law shall be construed as cumulative of the existing laws of this State, and shall not be held to repeal any of the same except where in direct conflict herewith.

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CHAPTER 20. MISCELLANEOUS PROVISIONS

Revised Law

Sec. 20.001. CERTAIN CONTINGENT CONTRACTS PROHIBITED;
OFFENSE. (a) A part of an agreement or device for the transportation of property is void if:

(1) the part permits or requires a carrier, freight forwarder, shipper, or association or group of shippers to pay a levied charge, allowance, or compensation to any individual or organization; and

(2) the charge, allowance, or compensation is dependent or contingent on the use of another manner of transportation in addition to motor transportation for transportation of the property.

(b) An individual, an association of individuals, a firm, a partnership, or an organization that enters into an agreement or device described by Subsection (a) commits an offense. Each day a violation continues is a separate offense.

(c) An offense under Subsection (b) is a misdemeanor punishable by:

(1) a fine of not less than $100 or more than $500;

(2) confinement for a term of not less than 30 days or more than 90 days; or

(3) both the fine and confinement. (V.A.C.S. Art. 911h.)

Source Law

Art. 911h

Sec. 1. Any part of any agreement, arrangement or other device entered into shall be unlawful and void which as a condition to the transportation of property requires or permits a regulated for hire carrier of property, freight forwarder, private carrier or other carrier or shipper or association or group of shippers to pay a levied charge, allowance, assessment or compensation to any person or organization if such
levied charge, allowance, assessment or compensation is
dependent or contingent upon the use of another mode of
transportation in addition to motor transportation for
movement of such property.

Sec. 2. Should any person, firm, partnership,
organization, or association of persons violate any of
the provisions of this Act, they shall be guilty of a
misdemeanor and upon conviction shall be punished by a
fine of not less than One Hundred Dollars ($100) nor
more than Five Hundred Dollars ($500), or by
imprisonment for not less than thirty (30) days nor
more than ninety (90) days, or by both such fine and
imprisonment. Each day of the violation of any of the
provisions of this Act shall constitute a separate
offense.

Revisor's Note

(1) Section 1, V.A.C.S. Article 911h, refers to
an "agreement, arrangement or other device." The
reference to "arrangement" is omitted from the revised
law because "arrangement" is included within the
meaning of "agreement."

(2) Section 1, V.A.C.S. Article 911h, refers to
a "regulated for hire carrier of property . . . private
carrier or other carrier." The references to
"regulated for hire carrier of property" and "private
carrier" are omitted from the revised law because they
are included within the meaning of the term "carrier."

(3) Section 1, V.A.C.S. Article 911h, refers to
a "levied charge, allowance, assessment or
compensation." The reference to "assessment" is
omitted from the revised law because "assessment" is
included within the meaning of "charge."

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TITLE 3. AVIATION
CHAPTER 21. ADMINISTRATION OF AERONAUTICS
SUBCHAPTER A. GENERAL PROVISIONS

Revised Law
Sec. 21.001. DEFINITIONS. In this chapter:

(1) "Aeronautics" means:
(A) the art and science of flight of aircraft;
(B) aviation;
(C) the operation, navigation, piloting,
maintenance, and construction of aircraft or component parts of
aircraft;

(D) air navigation aids, including lighting,
markings, and aircraft, ground, and related communications;

(E) air crew and air passenger facilities;

(F) airports and airstrips and their design,
construction, repair, maintenance, or improvement; and

(G) the dissemination of information and
instruction concerning any of the matters in this subdivision.

(2) "Aircraft" means a device intended, used, or
designed for flight in the air.

(3) "Commission" means the Texas Transportation
Commission.

(4) "Department" means the Texas Department of
Transportation.

(5) "Director" means the director of the Texas
Department of Transportation. (V.A.C.S. Art. 46c-1, Subdivs. (b),
(d), (f), (g), (h).)

Source Law

Art. 46c-1. When used in this Act, unless
expressly stated otherwise:

(b) The term "aircraft" means any
contrivance now known or hereafter invented which is
intended, used or designed for flight in the air.

(d) The term "department" means the Texas
Department of Transportation.

(f) The term "aeronautics" means the art
and science of flight of aircraft of all types;
aviation; the operation, navigation, maintenance,
construction of aircraft and all component parts
thereof; and includes air navigation aids, such as
lighting, markings, radio, ground to aircraft, aircraft
to ground, aircraft to aircraft, and related
communications; navigation and piloting; and air crew
and air passenger facilities; and also includes
airports and airstrips and the design, construction,
repair or maintenance of all or any part thereof and
improvements thereto; and the dissemination of
information and instruction pertaining to all of the
foregoing.

(g) The term "executive director" means
the director of the Texas Department of Transportation.

(h) The term "commission" means the Texas
Transportation Commission.
Revisor's Note

(1) Subdivision (b), V.A.C.S. Article 46c-1, refers to "any contrivance" used or designed for flight. The revised law substitutes the term "device" for the source law term "contrivance" because the terms are synonymous and the former is more commonly used.

(2) Subdivision (b), V.A.C.S. Article 46c-1, refers to aircraft "now known or hereafter invented." The revised law omits the quoted language as unnecessary because the language clarifies that the statute applies prospectively, which is presumed unless there is evidence of intent that the statute apply only retroactively.

(3) Subdivision (f), V.A.C.S. Article 46c-1, refers to aircraft "of all types." The revised law omits the quoted language as unnecessary because Subdivision (2) of this section broadly defines the term "aircraft" as "a device intended, used, or designed for flight in the air."

(4) Subdivision (f), V.A.C.S. Article 46c-1, refers to air navigation aids "such as ... radio." The revised law omits the reference to "radio" because radio is included within the meaning of "air navigation aids" and "communication."

Revised Law

Sec. 21.002. AVIATION DIVISION. The powers and duties granted to the department by this chapter or by other law related to aviation shall be performed, under the direction of the commission, by the aviation division. (V.A.C.S. Art. 46c-2A.)

Source Law

Art. 46c-2A. The powers and duties granted to the department by this Act or other law pertaining to aviation shall be performed, under the direction of the commission, by a division of the department to be known as the aviation division.
Sec. 21.003. AVIATION ADVISORY COMMITTEE. (a) The aviation advisory committee consists of six members appointed by the commission to advise the commission and the department on aviation matters.

(b) A committee member must have five years of successful experience as:

(1) an aircraft pilot;
(2) an aircraft facilities manager; or
(3) a fixed-base operator.

(c) A committee member serves at the pleasure of the commission.

(d) A committee member may not receive compensation for serving as a member but is entitled to reimbursement for reasonable expenses incurred in performing the member's duties.

(e) The commission may adopt rules to govern the operations of the committee. (V.A.C.S. Art. 46c-3, Subsecs. (a), (b).)

Art. 46c-3. (a) The aviation advisory committee consists of six members appointed by the commission to advise the commission and the department on aviation matters. Each member must have five years of successful experience as an aircraft pilot, an aircraft facilities manager, or a fixed-base operator. A member serves at the pleasure of the commission. A member of the aviation advisory committee is not entitled to receive compensation for serving as a member but is entitled to reimbursement for reasonable expenses incurred in performing duties as a member of the advisory committee.

(b) The commission may adopt rules to govern the operations of the advisory committee.

Sec. 21.004. TEXAS AVIATION OPERATING ACCOUNT. (a) The Texas aviation operating account is an account in the state highway fund.

(b) The department shall deposit all money received from the sale of advertising in the Texas Airport Directory to the credit of the account.
(c) Money in the account may be appropriated for the
operation of the department or for other purposes as authorized by
the General Appropriations Act. (V.A.C.S. Art. 46c-6, Subdiv.
8(c).)

**Source Law**

(c) The Texas Aviation operating account is
created as a special account in the State Highway Fund.
The department shall deposit all revenues received from
the sale of advertising in the Texas Airport Directory
in the State Treasury to the credit of that account.
Money from the account may be appropriated for the
operation of the department and such other purposes as
may be determined in the General Appropriations Act.

**Revised Law**

Sec. 21.005. SUIT AGAINST DEPARTMENT. (a) An interested
party who is adversely affected by an act, decision, rate, charge,
order, or rule adopted by the department and who fails to get
relief from the department may file a petition against the
department in a district court of Travis County, Texas.

(b) The petition must set forth the air carrier's or party's
particular objections to the act, decision, rate, charge, order, or
rule.

(c) The court shall give priority to an action described by
Subsection (a) over all other causes on the docket of a different
nature. (V.A.C.S. Art. 46c-6, Subdiv. 3(e) (part).)

**Source Law**

(e) If any air carrier, or other party in
interest be adversely affected by any decision, rate,
charge, order, rule, act or regulation adopted by the
department, that party, after failing to get relief
from the department, may file a petition setting forth
its particular objections to the action of the
department in the District Court of Travis County,
Texas, against the department as defendant. This
action shall have precedence over all other causes on
the docket of a different nature. . . .

**Revisor's Note**

(1) Subdivision 3(e), V.A.C.S. Article 46c-6,
authorizes "any air carrier, or other party in
interest" to file a petition in district court under
certain conditions. The revised law omits the reference to "air carrier" as unnecessary because an air carrier authorized by the statute to file suit is included within the meaning of the revised law's term "interested party."

(2) Subdivision 3(e), V.A.C.S. Article 46c-6, refers to "any decision, rate, charge, order, rule, act or regulation." The reference to "regulation" is omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

Revised Law
Sec. 21.006. SAFE AIRCRAFT OPERATION. (a) An aircraft operated in the state shall be operated safely.

(b) An aircraft is operated safely if the operation complies with the United States laws and regulations governing air traffic and aeronautical operation. (V.A.C.S. Art. 46c-6, Subdiv. 5.)

Source Law
Subdiv. 5. Aircraft shall be operated in and over the state in a safe manner. Operation shall be deemed safe if conducted in compliance with the United States laws and regulations governing air traffic and aeronautical operation, now in existence or hereafter enacted.

Revisor's Note
Subdivision 5, V.A.C.S. Article 46c-6, refers to laws and regulations "now in existence or hereafter enacted." The revised law omits the quoted language as unnecessary because the language clarifies that the statute applies prospectively, which is presumed unless there is evidence of intent that the statute apply retroactively.
Revisor's Note

(End of Subchapter)

(1) The revised law omits the definition of "person" contained in V.A.C.S. Article 46c-1 because it is substantively identical to the definition provided by Section 311.005(2), Government Code (Code Construction Act), applicable to the revised law. The omitted law reads:

(a) The term "person" means any individual, firm, partnership, corporation, association, joint stock association or body politic; and includes any trustee, receiver, assignee, agent or authorized representative thereof.

(2) The revised law omits as unnecessary V.A.C.S. Article 46c-2, which states the purpose of the act, because this provision is nonsubstantive. The omitted law reads:

Art. 46c-2. It is hereby declared that the purpose of this Act is to further the public interest and aeronautical progress by providing for the protection, promotion, and development of aeronautics; by cooperating in effecting a uniformity of the laws relating to the development of aeronautics in the several states; by revising existing statutes relative to the development and regulation of aeronautics so as to grant to a state agency such powers and impose upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction; by assisting in the promotion of a state-wide system of airports; by cooperating with and assisting the political subdivisions of this state in order that those engaged in aeronautics of every character may so engage with the least possible restrictions consistent with the safety and the rights of other person or persons; and by providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this state by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions properly in the province of the federal agencies.

(3) The revised law omits Subsection (c),
V.A.C.S. Article 46c-3, which provided that the Texas Board of Aviation and the Texas Department of Aviation are subject to Chapter 325, Government Code (Texas Sunset Act). This provision was deleted by Section 1.11, Chapter 7, Acts of the 72nd Legislature, 1st Called Session, 1991, when the legislature abolished the board of aviation and department of aviation. The deleted provision was subsequently amended by Section 3.12, Chapter 17, Acts of the 72nd Legislature, 1st Called Session, 1991, to conform the citation to the Texas Sunset Act. The revised law omits Subsection (c), V.A.C.S. Article 46c-3, as unnecessary because the abolishment of the board and department of aviation makes the conforming amendment inapplicable. The omitted provision reads:

(c) The Texas Board of Aviation and the Texas Department of Aviation are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board and the department are abolished and this Act expires September 1, 1997.

[Sections 21.007-21.050 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Revised Law

Sec. 21.051. AERONAUTIC DEVELOPMENT. The department and the director shall encourage and assist the development of aeronautics in this state. (V.A.C.S. Art. 46c-6, Subdiv. 1 (part).)

Source Law

Art. 46c-6
Subdiv. 1. The department, and its Executive Director acting under its authority, is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and to encourage, aid and assist in the establishment of airports and airstrips and air navigational facilities in this state . . . .
Reviser's Note

(1) The source law refers to the director "acting under [the department's] authority." The revised law omits the quoted language as unnecessary because all acts of the director are under the department's authority.

(2) Subdivision 1, V.A.C.S. Article 46c-6, refers to the department's duty to "encourage," "foster," "aid," and "assist." The revised law omits "foster" and "aid" because "foster" is included within the meaning of "encourage" and "aid" is included within the meaning of "assist."

Revised Law

Sec. 21.052. COOPERATION WITH OTHER ENTITIES IN AERONAUTIC DEVELOPMENT. The department and the director may:

(1) cooperate with or assist the United States, a governmental subdivision of this state, or a person engaged in aeronautics or in the development of aeronautics; and

(2) coordinate the aeronautical activities of entities described by Subdivision (1). (V.A.C.S. Art. 46c-6, Subdiv. 1 (part).)

Source Law

Subdiv. 1. . . . The department and its Executive Director may cooperate with and assist the United States, municipalities or other governmental subdivisions of this state, or persons engaged in aeronautics or in the development of aeronautics, and may endeavor to coordinate the aeronautical activities of such others . . . .

Reviser's Note

Subdivision 1, V.A.C.S. Article 46c-6, refers to "municipalities or other governmental subdivisions of this state." The reference to "municipalities" is omitted from the revised law because "municipalities" is included within the meaning of "governmental
subdivision of the state."

**Revised Law**

Sec. 21.053. GOVERNMENTAL SUBDIVISION COOPERATION IN AERONAUTIC DEVELOPMENT. A governmental subdivision may cooperate with the department in the development of aeronautics. (V.A.C.S. Art. 46c-6, Subdiv. 1 (part)).

**Source Law**

Subdiv. 1. . . municipalities and governmental subdivisions are authorized to cooperate with the department in the development of aeronautics and aeronautical navigational facilities or aids in this state.

**Revisor's Note**

(1) Subdivision 1, V.A.C.S. Article 46c-6, refers to "municipalities and governmental subdivisions." The term "municipalities" is omitted from the revised law for the reason stated in the revisor's note under Section 21.052 of this code.

(2) Subdivision 1, V.A.C.S. Article 46c-6, refers to "aeronautical navigational facilities or aids." The revised law omits the quoted language because such a facility or aid is included within the meaning of "aeronautics" as defined by Section 21.001 of this code.

**Revised Law**

Sec. 21.054. AUTHORITY TO CONTRACT. (a) The department may contract as necessary or advisable to execute its powers under this chapter.

(b) The department may not enter an agreement that binds the state to make a payment that is not authorized by an appropriation from general revenues or from the aeronautics fund.

(c) The department shall submit a contract entered into by the department to the attorney general for approval as to form. (V.A.C.S. Art. 46c-6, Subdiv. 2.)
Source Law

Subdiv. 2. The department may enter into contracts which it deems necessary or advisable in conformity with and in the execution of the powers granted it by this Act, as amended. However, the department shall have no power to enter into any contract or agreement binding on the State of Texas for the payment of any moneys which have not been authorized by appropriation of the Legislature from the general revenues or from the Aeronautics Fund. All contracts entered into by the department shall be submitted to the attorney general for the approval as to form. The department shall not enter into any contract binding the State of Texas in excess of the power granted in this Act.

Revisor's Note

(1) Subdivision 2, V.A.C.S. Article 46c-6, provides that "the department shall not enter into any contract binding the State of Texas in excess of the power granted in this Act." The revised law omits the quoted language as unnecessary because Subsections (a) and (b) of the revised law fully describe the department's contracting authority.

(2) Subdivision 2, V.A.C.S. Article 46c-6, refers to a "contract or agreement" binding the state for the payment of money. The revised law omits the term "contract" because a contract binding the state for the payment of money is included within the meaning of "agreement."

Revised Law

Sec. 21.055. GRANT OR GIFT WITH PRESCRIBED PURPOSE. The department may accept from any person a grant or gift of money or property for which the person has prescribed a particular use for an aeronautical purpose. (V.A.C.S. Art. 46c-6, Subdiv. 6(b) (part).)

Source Law

(b) Independently and additionally, the department shall be authorized to accept any grant, payment, or gift of moneys, funds or property made to it by any person, individual, firm, association, corporation, municipality, county, or other political subdivision of the state, or from the United States, or
any department or agency thereof, as to which the donor has prescribed a particular use for one or more aeronautical purposes.

Revisor's Note

(1) Subdivision 6(b), V.A.C.S. Article 46c-6, refers to any "person, individual, firm, association, corporation, municipality, county, or other political subdivision of the state, or from the United States, or any department or agency thereof." The revised law substitutes the term "person" for the quoted language because under Section 311.005(2), Government Code (Code Construction Act), "person" is defined to include an association, corporation, government or governmental subdivision, or any other legal entity. That definition applies to the revised law.

(2) Subdivision 6(b), V.A.C.S. Article 46c-6, refers to "any grant, payment, or gift of moneys, funds or property." The revised law omits "payment" because the term is included within the meaning of "grant" and "gift" and omits "funds" because the term is included within the meaning of "money" and "property."

Revised Law

Sec. 21.056. RECORD OF GRANT OR GIFT. The department shall maintain in its office a record of money, property, or a grant given to the department under this chapter. (V.A.C.S. Art. 46c-6, Subdiv. 6(b) (part)).

Source Law

(b) ... A record shall be maintained in the department's offices of such properties and funds. ... .

Revised Law

Sec. 21.057. USE OF GRANT OR GIFT ACCORDING TO TERMS. The department shall use money, property, or a grant given to the department under this chapter according to the terms of the grant.
or gift. (V.A.C.S. Art. 46c-6, Subdiv. 6(b) (part).)

Source Law

(b) . . . The department shall utilize any such grant of property in accordance with the terms of the grant, and as to any such payment, or gift of funds or moneys, the department shall utilize such moneys for the purpose or purposes prescribed by the donor. . . .

Reviser's Note

Subdivision 6(b), V.A.C.S. Article 46c-6, provides that the department shall use a grant of property "in accordance with the terms of the grant" and shall use a gift of money "for the purpose or purposes prescribed by the donor." The revised law omits "for the purpose or purposes prescribed by the donor" because the meaning of that phrase is included within the meaning of "according to the terms of the grant or gift."

Revised Law

Sec. 21.058. EXPENDITURE OF GRANTS OR GIFTS OF MONEY. The department may not spend a grant or money given to the department unless the expenditure is authorized by order of the commission. (V.A.C.S. Art. 46c-6, Subdiv. 6(b) (part).)

Source Law

(b) . . . Such funds shall be expended only upon general or special order of the board, and all checks shall be signed by the Executive Director.

Reviser's Note

(1) The source law provides that the department may spend a grant or gift of money only as authorized by a "general or special" order of the commission. The revised law omits the quoted language because any order of the commission is either "general" or "special."

(2) The source law provides ". . . and all checks shall be signed by the Executive Director." The
revised law omits the quoted language because it has been superseded by Chapter 404, Government Code. A grant or money given to the Texas Department of Transportation is deposited in the state treasury and spent in accordance with that chapter.

Revised Law
Sec. 21.059. GIFTS OF LAND. To develop aeronautics for the common good and safety of the residents of the state or to provide for catastrophe, disaster, or state or national emergency, the state or department may accept from any person a gift of any interest in real property that:

1. may be used as a navigational aid;
2. is on or adjacent to an airport or airstrip; or
3. may be used as an airport or airstrip. (V.A.C.S. Art. 46c-6, Subdiv. 6(a) (part.).)

Source Law
Subdiv. 6. (a) To develop aeronautics for the common good, benefit, and safety of the citizens of Texas, and to provide for catastrophe, disaster, or state or national emergency, the state, or the department on behalf of the state, is granted the right, under its police power, to accept gifts or donations of all or any parts of lands on, adjacent to, or utilizable as, airports or airstrips, or utilizable as a navigational aid, in the judgment of the department, from the United States or any agency thereof or from any governmental, municipal, or other political subdivision of this state, or from any other person, firm, association, group, or corporation. . . .

Revisor's Note
(1) Subdivision 6(a), V.A.C.S. Article 46c-6, refers to "common good, benefit, and safety." The reference to "benefit" is omitted from the revised law because "benefit" is included within the meaning of "common good."

(2) The revised law substitutes "resident" for "citizen" because, in the context of this section, "citizen" and "resident" are synonymous and "resident"
is more commonly used.

(3) Subdivision 6(a), V.A.C.S. Article 46c-6, refers to "the United States or any agency thereof or from any governmental, municipal, or other political subdivision of this state, or from any other person, firm, association, group, or corporation." The revised law substitutes the term "person" for the quoted language for the reason stated in Revisor's Note (1) under Section 21.055 of this code.

(4) Subdivision 6(a), V.A.C.S. Article 46c-6, provides that "the state, or the department on behalf of the state," may accept gifts of land. The revised law omits references to the state because the department is an agency of the state and property given to the department is property of the state.

(5) Subdivision 6(a), V.A.C.S. Article 46c-6, refers to the right to accept property as part of the "police power" of the state. The revised law omits this reference as unnecessary.

(6) Subdivision 6(a), V.A.C.S. Article 46c-6, refers to "gifts or donations." The revised law omits the source law reference to "donations" because "donations" is included within the meaning of "gifts."

(7) Subdivision 6(a), V.A.C.S. Article 46c-6, provides that the department may accept a gift of "all or any parts of lands." The revised law substitutes for the quoted language "gift of any interest in land" because the latter term is equivalent.

Revised Law

Sec. 21.060. JURISDICTION, ADMINISTRATION, AND LEASING OF LAND, NAVIGATIONAL AIDS, OR FACILITIES. (a) The department has jurisdiction over and shall administer land given to the department.
(b) The department may:

(1) exercise jurisdiction over and administer navigational aids or facilities given to the state or to the department; and

(2) lease land, navigational aids, or facilities given to the state or to the department. (V.A.C.S. Art. 46c-6, Subdivs. 1 (part), 6(a) (part).)

Source Law

Subdiv. 1. . . . as to lands, or portions thereof, or navigational aids or facilities donated or given to the state, or to the department to be held by it in trust for the state, the department may control, administer, and have jurisdiction thereover, and may lease the same on the terms hereafter provided. . . .

Subdiv. 6. (a) . . . The same shall be administered by the department and shall be and remain under its control and jurisdiction. . . .

Revisor's Note

(1) Subdivisions 1 and 6(a), V.A.C.S. Article 46c-6, give the department the authority to "control," "administer," and "have jurisdiction" over land. The revised law omits the references to "control" because "control" is included within the meaning of the terms "administer" and "have jurisdiction."

(2) Subdivision 1, V.A.C.S. Article 46c-6, refers to land "donated or given" to the department. The reference to "donated" is omitted from the revised law because "donated" is included within the meaning of "given."

(3) Subdivision 1, V.A.C.S. Article 46c-6, provides that the department may lease certain land, aids, and facilities "on the terms hereafter provided." The revised law omits the quoted language as unnecessary because an accepted general principle of statutory construction requires a statute to be given cumulative effect with other statutes unless it
provides otherwise or unless the statutes are in conflict. The general principle applies to this revision, and thus it is unnecessary to state that the department may lease property on terms provided by other statutes.

(4) Subdivision 1, V.A.C.S. Article 46c-6, provides that the department may administer property given to "the department to be held by it in trust for the state." The revised law omits this provision as unnecessary because the department is an agency of the state and property given to the department is property of the state.

(5) Subdivision 6(a), V.A.C.S. Article 46c-6, provides that "the same" shall be administered by and remain under the jurisdiction of the department. The revised law substitutes "land given to the department" because the preceding sentence in the source law refers to land given to the department.

Revised Law
Sec. 21.061. FUNDING CONSTRUCTION OF FACILITIES AND IMPROVEMENTS. (a) The department may construct on land given to the department an improvement, facility, or navigational aid that the department determines is necessary or advisable.

(b) Money in the aeronautics fund may be used for a purpose described by Subsection (a). (V.A.C.S. Art. 46c-6, Subdiv. 6(a) (part).)

Source Law
Subdiv. 6. (a) . . . . The department is granted the right to utilize such portion of the Aeronautics Fund, or other moneys appropriated to it by the Legislature, to construct improvements, facilities or navigational aids thereon as the department shall deem advisable or necessary. . . .

Revisor's Note
Subdivision 6(a), V.A.C.S. Article 46c-6, refers
to the Texas Department of Transportation's right to use "... other moneys appropriated to it by the Legislature..." The revised law omits the quoted language because the authority to use appropriated money is granted by the act authorizing the appropriation, not by Subdivision 6(a).

Revised Law

Sec. 21.062. LEASE OF LAND OR IMPROVEMENT. (a) The department may lease land given to the department or an improvement on the land to any person if the department finds after investigation that:

(1) the lease is desirable or essential:

(A) to develop aeronautics for the common good and safety of the residents of this state; or

(B) to provide for catastrophe, disaster, or state or national emergency;

(2) the lessee is financially responsible; and

(3) the amount of periodic rental payments is at least equal to the amount that the department has spent for improvements on the land, amortized over the term of the lease.

(b) The department shall produce and maintain in the department's office a written statement of the findings required by Subsection (a).

(c) The department shall submit a lease entered into by the department to the attorney general for approval as to form before the lease becomes effective. (V.A.C.S. Art. 46c-6, Subdiv. 6(a) (part).)

Source Law

Subdiv. 6. (a) ... The department is granted the right to rent or lease such lands and improvements to any governmental or municipal agency or subdivision, or to any other person, firm, association, group, or corporation, ... and provided further, the department shall determine, after investigation, and reduce its findings to writing in a book or books to be maintained in the office of the department for that purpose: (1) that the lease is desirable or essential for the purpose above stated; (2) that the lessee is
financially responsible; and (3) that the amount of monthly or periodic rental payments shall be sufficient to amortize the amount it has expended thereon for improvements within the term of the lease. Any such lease, before the same shall become effective, shall be submitted to, and approved by, the attorney general as to form. . . .

Revisor's Note

(1) Subdivision 6(a), V.A.C.S. Article 46c-6, refers to the "rent or lease" of land and improvements. The reference to "rent" is omitted from the revised law because "rent" is included within the meaning of "lease."

(2) Subdivision 6(a), V.A.C.S. Article 46c-6, refers to "any governmental or municipal agency or subdivision, or to any other person, firm, association, group, or corporation." The revised law substitutes "person" for the quoted language for the reason stated in Revisor's Note (1) under Section 21.055 of this code.

(3) Subdivision 6(a), V.A.C.S. Article 46c-6, refers to "the purpose above stated." That purpose is found in the source law for Section 21.059 of this code and is restated in this section for clarity and convenience of the reader.

(4) Subdivision 6(a), V.A.C.S. Article 46c-6, refers to "monthly or periodic rental payments." The revised law omits as unnecessary the term "monthly" because that term is included within the meaning of "periodic."

(5) Subdivision 6(a), V.A.C.S. Article 46c-6, refers to written findings in a "book or books to be maintained in the office of the department for that purpose." The revised law omits this reference as unnecessary and obsolete because the source law provides that the findings are to be maintained in
written form in the office of the department.

Revised Law

Sec. 21.063. TERMS OF LEASE OF LAND OR IMPROVEMENT. (a) A lease of land given to the department or a lease of an improvement on the land must provide that:

(1) the lessee shall maintain, in accordance with the standards the department prescribes, the land, premises, and improvements the department placed on the land;

(2) if the lease or a rule or order of the department that pertains to the lease is violated:
   (A) the lease terminates immediately; and
   (B) the lessee shall surrender the premises to the department without liability and without court action; and

(3) in time of national or state disaster, emergency, or catastrophe, the department may use, for the department or others, the land, premises, or improvements the department placed on the land as the governor or the department determines, without liability or cost.

(b) The term of a lease of land given to the department or the lease of an improvement on the land may not exceed 20 years.

(V.A.C.S. Art. 46c-6, Subdiv. 6(a) (part).)

Source Law

Subdiv. 6. (a) ... provided any such lease so executed by the department shall be for a term not to exceed 20 years, ... . Any such lease shall provide that the lessee shall maintain the land, premises and improvements placed thereon by the department in accordance with the standards prescribed by the department and shall contain a provision that the lease shall immediately terminate and that the lessee shall surrender the premises to the department without liability, and without court action, in the event of violation of any of the provisions of the lease, or any rule, regulation or order of the department pertaining thereto; and provided further, the department shall have the right to utilize the same or any part thereof, for itself or others, without liability or cost, in time of national or state disaster, emergency, or catastrophe, as determined by either the Governor of Texas or the department.
Revisor's Note

(1) Subdivision 6(a), V.A.C.S. Article 46c-6, refers to "rules and regulations." The reference to "regulations" is omitted for the reason stated in Revisor's Note (2) under Section 21.005.

(2) Subdivision 6(a), V.A.C.S. Article 46c-6, refers to land or improvements "or any part thereof." The reference to "any part thereof" is omitted from the revised law because "land" and "improvement" include a part of the land or a part of the improvement.

Revised Law

Sec. 21.064. REPORTS AND INFORMATION. (a) The department may report to an appropriate agency of another state or of the United States that a proceeding has been instituted that charges a violation of this chapter or of a federal statute.

(b) The department on its own initiative or by request may issue to a state or municipal officer authorized by the department or by the United States to enforce a law relating to aeronautics a report about:

(1) a proceeding instituted that charges a violation of this chapter or of a federal statute;

(2) penalties; or

(3) other information.

(c) The department may receive a report of penalties or other information from an agency of another state or of the United States.

(d) The department may enter into a necessary agreement with the United States or an agency of another state governing the delivery, receipt, exchange, or use of a report or other information.

(e) The department shall submit an agreement entered into by the department under Subsection (d) to the attorney general for approval as to form.
(f) A report issued by the department is not evidence of a violation and may not be received as evidence by a court. (V.A.C.S. Art. 46c-6, Subdiv. 4 (part).)

Source Law

Subdiv. 4. ... It is authorized to report to the appropriate federal agencies and agencies of other states all proceedings instituted charging violations of this Act or of federal statutes. It is authorized to receive reports of penalties and other data from agencies of the United States and other states, and when necessary, to enter into agreements, approved by the Attorney General of Texas as to form, with the United States and the agencies of other states governing the delivery, receipt, exchange and use of reports and data. The department may make such reports, with or without request therefor, to any officer of the state or of a municipality authorized by the department or by the United States to enforce the aeronautics laws, but such reports shall not constitute evidence of any violation nor shall the same be received as evidence by any court.

Revised Law

Sec. 21.065. AERONAUTICAL EDUCATION PROGRAMS AND FLIGHT CLINICS. (a) The department may:

(1) organize and administer an aeronautical education program in colleges and schools of this state and for the public; and

(2) prepare and conduct one or more flight clinics for air crews.

(b) The department may charge for conducting a program or clinic under Subsection (a). (V.A.C.S. Art. 46c-6, Subdiv. 8(a).)

Source Law

Subdiv. 8. (a) The department may organize and administer a program of aeronautical education in the schools and colleges of the state and for the general public and may prepare and conduct flight clinics for air crews. The programs and clinics may be conducted with or without charge by the department.

Revised Law

Sec. 21.066. AERONAUTICAL PUBLICATIONS. (a) The department may issue aeronautical publications as required in the public interest.

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(b) The department shall charge a fee sufficient to recover the cost of preparing and distributing a department publication that does not clearly promote public safety. (V.A.C.S. Art. 46c-6, Subdiv. 8(b) (part).)

Source Law

(b) The department may issue aeronautical publications as required in the public interest . . . . The department shall charge a fee sufficient to recover the cost of preparing and distributing all department publications that do not clearly promote public safety . . . .

Revised Law

Sec. 21.067. TEXAS AIRPORT DIRECTORY. (a) The department may:

(1) issue the Texas Airport Directory;
(2) sell advertising in the directory; and
(3) advertise the sale of the directory in other publications.

(b) The department shall charge not less than $5 for the Texas Airport Directory. (V.A.C.S. Art. 46c-6, Subdiv. 8(b) (part).)

Source Law

(b) The department may issue . . . . the Texas Airport Directory. The department . . . . shall charge a fee of not less than $5 for the Texas Airport Directory. The department may sell advertising in the Texas Airport Directory and may also advertise the sale of the directory in other publications.

Revised Law

Sec. 21.068. ENGINEERING AND TECHNICAL SERVICES. (a) The department may provide engineering or technical services to any person in connection with aeronautical activities, including the planning, acquisition, construction, improvement, maintenance, or operation of an airport, air navigation facility, or other aeronautical activity, if providing the services is:

(1) reasonably possible; and
(2) in the interest of public safety and welfare.
(b) The department may charge for a service under this section. (V.A.C.S. Art. 46c-6, Subdiv. 9.)

Source Law

Subdiv. 9. In the interest of public safety and welfare, the department may, insofar as is reasonably possible, make available its engineering and technical services, with or without charge, to any municipality or person desiring them in connection with the planning, acquisition, construction, improvement, maintenance or operation of airports, air navigation facilities or other aeronautical activities.

Revisor's Note

Subdivision 9, V.A.C.S. Article 46c-6, refers to "any municipality or person." The reference to "municipality" is omitted from the revised law because under Section 311.005(2), Government Code (Code Construction Act), "person" is defined to include a municipality or any other legal entity. That definition applies to the revised law.

[Sections 21.069-21.100 reserved for expansion]

SUBCHAPTER C. AVIATION FACILITIES DEVELOPMENT AND FINANCIAL ASSISTANCE

Revised Law

Sec. 21.101. FINANCIAL ASSISTANCE FOR CONSTRUCTION AND REPAIR OF AVIATION FACILITIES. (a) The department may loan or grant money to a state agency with a governing board authorized to operate an airport or to a governmental entity in this state to establish, construct, reconstruct, enlarge, or repair an airport, airstrip, or air navigational facility if:

(1) the money has been appropriated to the department for that purpose; and

(2) providing the money will:

(A) best serve the public interest; and

(B) best discharge the governmental aeronautics function of the state or its political subdivisions.
(b) A loan or grant under this subchapter must be made under a contract. (V.A.C.S. Art. 46c-6, Subdiv. 10(a) (part).)

Source Law

Subdiv. 10. (a) When in the discretion of the commission the public interest will best be served, and the governmental function of the state or its political subdivisions relative to aeronautics will best be discharged, the department may provide funds, through loan agreements or grant contracts, appropriated to it for that purpose by the Legislature, to any state agency with a governing board that is authorized to operate airports, and to any governmental entity in this state for the establishment, construction, reconstruction, enlargement or repair of airports, airstrips or air navigational facilities... .

Revisor's Note

Subdivision 10(a), V.A.C.S. Article 46c-6, refers to "loan agreements or grant contracts." The revised law provides that a loan or grant under this subchapter must be made under a contract because, in the context of the source law, a loan agreement is a contract.

Revised Law

Sec. 21.102. LOAN PREFERRED. The department shall:

(1) make a loan instead of a grant whenever feasible under this subchapter; and

(2) carefully consider making a loan instead of a grant for an improvement that produces revenue. (V.A.C.S. Art. 46c-6, Subdiv. 10(f).)

Source Law

(f) Loans shall be made in lieu of grants whenever feasible under this subdivision, and in particular the department shall consider carefully the making of loans in lieu of grants for revenue-producing improvements.

Revised Law

Sec. 21.103. COMMISSION VOTE REQUIRED FOR GRANT OR LOAN.

Under this subchapter, the commission may not make:

(1) a grant unless two-thirds of the entire commission votes in favor of the grant; or
(2) a loan unless a majority of the entire commission votes in favor of the loan. (V.A.C.S. Art. 46c-6, Subdiv. 10(d) (part).)

Revised Law
Sec. 21.104. REVOLVING LOAN FUND. The department shall:
(1) place the principal and interest derived from a loan in a revolving loan fund; and
(2) administer the fund for future loans and their administration. (V.A.C.S. Art. 46c-6, Subdiv. 10(e) (part).)

Revised Law
Sec. 21.105. REQUIREMENTS FOR LOAN OR GRANT. (a) The commission may not approve a loan that bears interest of less than three percent annually or that has a term that exceeds 20 years.
(b) Before approving a loan or grant, the commission shall require that:
(1) the airport or facility remain in the control of each political subdivision involved for at least 20 years;
(2) the political subdivision disclose the source of all funds for the project and the political subdivision's ability to finance and operate the project;
(3) at least 10 percent of the total project cost be provided by sources other than the state; and
(4) the project be adequately planned. (V.A.C.S. Art. 46c-6, Subdiv. 10(e) (part).)
Prior to approving any loan or grant contract the commission shall require that:

1. The airport or facility remain in the control of the political subdivision or political subdivisions involved for at least 20 years, and
2. The political subdivision disclose the source of all funds for the project and its ability to finance and operate the project, and
3. All loans shall bear interest at the rate of at least three percent per annum and have a term of not longer than 20 years;
4. At least ten percent of the total project cost be provided from sources other than the State of Texas, and
5. The project be adequately planned.

Sec. 21.106. PRIORITIES FOR FINANCIAL ASSISTANCE. The commission, with the advice of the aviation advisory committee, shall establish and maintain a method for determining priorities among locations and projects eligible to receive state financial assistance for aviation facility development. (V.A.C.S. Art. 46c-6, Subdiv. 10(b) (part).)

(b) The commission shall, with the advice of the aviation advisory committee:

1. establish and maintain a method for determining priorities among locations and projects eligible to receive state financial assistance for aviation facility development;

Sec. 21.107. AVIATION FACILITIES DEVELOPMENT PROGRAM. (a) The commission, with the advice of the aviation advisory committee, through the preparation and adoption of an aviation facilities development program, shall provide for a statewide airport system to serve the state's air transportation needs for the least practicable cost.

(b) The program must identify:

1. the requirements for aviation facilities;
2. the location of aviation facilities;
3. the timing of aviation facilities;
(4) eligibility for funding; and

(5) the investment necessary for the program.

(V.A.C.S. Art. 46c-6, Subdiv. 10(b) (part).)

Source Law

(b) The commission shall, with the advice of the aviation advisory committee:

(1) prepare and adopt an aviation facilities development program identifying the aviation facility requirements, locations, timing, eligibility for funding, and the investment necessary for a state-wide airport system that, for the least practicable cost, will provide for the state's air transportation needs;

Revised Law

Sec. 21.108. AVIATION FACILITIES CAPITAL IMPROVEMENT PROGRAM. (a) The commission, with the advice of the aviation advisory committee, shall prepare a multiyear aviation facilities capital improvement program.

(b) The aviation facilities capital improvement program must:

(1) include the priorities determined under Section 21.106; and

(2) have an estimated annual cost for the total program that is approximately equal to the revenue that is forecast to be available for aviation facilities development during the year. (V.A.C.S. Art. 46c-6, Subdiv. 10(b) (part).)

Source Law

(b) The commission shall, with the advice of the aviation advisory committee:

(3) prepare ... a multi-year aviation facilities capital improvement program based on those priorities, with the estimated annual cost of the total program being approximately equal to revenues forecast to be available for aviation facilities development during the year; and

Revisor's Note

Subdivision 10(b)(3), V.A.C.S. Article 46c-6, provides that the aviation facilities capital
improvement program shall be based on "those priorities." The revised law substitutes the priorities set forth by V.A.C.S. Article 46c-6(10)(b)(2), codified as Section 21.106 of this code, for the term "those priorities" for the reader's convenience and because clearly these are the priorities to which the source law refers.

Revised Law
Sec. 21.109. REVIEW AND REVISION OF AVIATION FACILITIES CAPITAL IMPROVEMENT PROGRAM. The commission, with the advice of the aviation advisory committee, shall:

(1) periodically review the capital improvement program to determine the need to:

(A) revise the system development criteria;

(B) add or delete aviation facility requirements;

(C) revise program priorities; and

(D) add, delete, or revise the scope of projects in the program; and

(2) revise the program at least annually. (V.A.C.S. Art. 46c-6, Subdiv. 10(b) (part).)

Source Law

(b) The commission shall, with the advice of the aviation advisory committee:

(3) [prepare and] update at least annually a . . . capital improvement program . . .

(4) periodically review the adopted capital improvement program to determine the need for revision of system development criteria; addition or deletion of aviation facility requirements; revision of capital improvement program priorities; and the addition, deletion, or revision of the scope of projects in the program.

Revised Law
Sec. 21.110. AVIATION FACILITIES CAPITAL IMPROVEMENT PROGRAM; BUDGET PREPARATION. The department shall consider the aviation facilities capital improvement program in preparing the
department's biennial budget request to the legislature. (V.A.C.S. Art. 46c-6, Subdiv. 10(c) (part.).)

Source Law
(c) The aviation facilities capital improvement program shall be a partial basis for... preparation of the department's biennial budget request to the Legislature.

Revised Law
Sec. 21.111. PUBLIC HEARING. (a) The commission shall hold a public hearing before approving any financial assistance under this subchapter.
(b) The commission shall give each interested party an opportunity to be heard at the hearing. (V.A.C.S. Art. 46c-6, Subdiv. 10(d) (part.).)

Source Law
(d) Prior to approving any financial assistance under this Act the commission shall hold a public hearing at which all interested parties shall have an opportunity to be heard...

Revised Law
Sec. 21.112. EXPENDITURE OF AIR FACILITY CONSTRUCTION MONEY BY STATE GOVERNMENTAL ENTITIES. A governmental entity that receives money from the department to establish, construct, reconstruct, enlarge, or repair an airport, airstrip, or air navigational facility shall spend the money for those purposes and in conformity with commission rules. (V.A.C.S. Art. 46c-6, Subdiv. 10(a) (part.).)

Source Law
Subdiv. 10. (a) ... Provided that any such funds must be expended by the governmental entity for the purpose provided herein and in conformity with the laws of this state and with the rules and regulations which the commission is hereby authorized to promulgate.

Revisor's Note
(1) Subdivision 10(a), V.A.C.S. Article 46c-6,
refers to "the purpose provided herein." The revised law substitutes the phrase "to establish, construct, reconstruct, enlarge, or repair an airport, airstrip, or air navigational facility" for the quoted language because it is clear in the context of the source law that these activities constitute that purpose.

(2) Subdivision 10(a), V.A.C.S. Article 46c-6, provides that a governmental entity must spend funds "in conformity with the laws of this state." The quoted language is omitted from the revised law as unnecessary because another law of this state that prescribes a duty is sufficient authority for the duty.

(3) Subdivision 10(a), V.A.C.S. Article 46c-6, refers to "rules and regulations." The reference to "regulations" is omitted for the reason stated in Revisor's Note (2) under Section 21.005 of this code.

Revised Law

Sec. 21.113. AIRPORT HAZARD ZONING ORDINANCE REQUIRED. The department may not pay the final 10 percent of its share of project costs under a grant until the sponsor has enacted an airport hazard zoning ordinance or order under Chapter 241, Local Government Code.

(V.A.C.S. Art. 46c-6, Subdiv. 10(g).)

Source Law

(g) Under a grant contract, prior to payment by the department of the final ten percent of its share of project costs, the sponsor shall have enacted an airport hazard zoning ordinance or order under the Airport Zoning Act, as amended (Article 46e-1 et seq., Vernon's Texas Civil Statutes).

Revisor's Note

Subdivision 10(g), V.A.C.S. Article 46c-6, refers to "the Airport Zoning Act, as amended (Article 46e-1 et seq., Vernon's Texas Civil Statutes)." That statute has been codified as Chapter 241, Local Government Code, and the revised law is drafted accordingly.
Sec. 21.114. AGENT FOR FEDERAL FUNDS. (a) The department is the agent of the state and of each political subdivision of the state for the purpose of applying for, receiving, and disbursing federal funds for the benefit of a general aviation airport under federal law, including 49 U.S.C. Sections 2201-2227.

(b) This section does not apply to a reliever airport.

(V.A.C.S. Art. 46c-8A.)

Art. 46c-8A. The Texas Department of Transportation is the agent of this state and of each political subdivision of this state for the purpose of applying for, receiving, and disbursing federal funds for the benefit of general aviation airports, except reliever airports, under the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. Sections 2204-2205), or other applicable federal law.

Reviser's Note

V.A.C.S. Article 46c-8A refers to "the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. Sections 2204-2205)." That act has been amended and the revised law uses the correct citation.

[Sections 21.115-21.150 reserved for expansion]

INVESTIGATION AND ENFORCEMENT

Sec. 21.151. INVESTIGATION, INQUIRY, OR HEARING. (a) The department may conduct an investigation, inquiry, or hearing concerning a matter covered by this chapter or a rule or order of the department.

(b) The hearing shall be open to the public. (V.A.C.S. Art. 46c-6, Subdiv. 7 (part).)

Subdiv. 7. The department shall have the power to conduct and hold investigations, inquiries, and hearings concerning matters covered by the provisions of this Act and the rules, regulations and orders of the department, unless specifically provided otherwise herein. Hearings shall be open to the public.
Revisor's Note

(1) Subdivision 7, V.A.C.S. Article 46c-6, refers to "rules" and "regulations." The reference to "regulations" is omitted from the revised law for the reason stated in Revisor's Note (2) under Section 21.005 of this code.

(2) Subdivision 7, V.A.C.S. Article 46c-6, provides that the department may conduct investigations, inquiries, and hearings "unless specifically provided otherwise herein." The revised law omits the quoted language as unnecessary because no provision of the act contradicts this grant of authority.

Revised Law

Sec. 21.152. CONDUCT OF INVESTIGATION, INQUIRY, OR HEARING.

A member of the commission, the director, or an officer or employee of the department who has been designated by the commission to hold an investigation, inquiry, or hearing may:

(1) administer an oath;
(2) certify an official act;
(3) issue a subpoena;
(4) order the attendance and testimony of a witness; or
(5) order the production of a paper, book, or document. (V.A.C.S. Art. 46c-6, Subdiv. 7 (part).)

Source Law

Subdiv. 7. ... Each member of the commission, the Executive Director and every officer or employee of the department, designated by the commission to hold an inquiry, investigation or hearing, shall have the power to administer oaths, certify to all official acts, issue subpoenas, and order the attendance and testimony of witnesses and the production of papers, books and documents. ... 

Revised Law

Sec. 21.153. NONCOMPLIANCE WITH SUBPOENA OR ORDER. (a) If
a person fails to comply with a subpoena or order issued under
Section 21.152, the department shall notify the attorney general.

(b) The attorney general may bring suit to enforce the
subpoena or order in the name of the state in a district court of
Travis County.

(c) If the court determines that noncompliance with the
subpoena or order was not justified, the court shall order the
person to comply with the requirements of the subpoena or order.

(d) Failure to obey the order of the court is punishable as
contempt. (V.A.C.S. Art. 46c-6, Subdiv. 7 (part).)

Source Law

Subdiv. 7. . . . In the case of the failure of
any person to comply with any subpoena or order issued
under the authority of this section, the department
shall notify the attorney general who may bring suit in
the name of the state in any district court of Travis
County, Texas. The court, if it determines such
noncompliance was not justified, shall thereupon order
such person to comply with the requirements of the
subpoena or order, and failure to obey the order of the
court may be punished by the court as a contempt
thereof.

Revised Law

Sec. 21.154. CIVIL PENALTY. (a) A person, including an
officer, agent, servant, or employee of a corporation, is liable
for a civil penalty if the person:

(1) violates this chapter;

(2) violates an order, decision, rule, direction,
demand, or requirement of the department adopted under this
chapter; or

(3) procures or aids a violation of this chapter.

(b) A penalty under this section may not exceed $100 a day
for each day of the violation.

(c) The attorney general or the county or district attorney
in the county in which the violation occurs shall institute and
conduct a suit for the penalty:

(1) in the county in which the violation occurs; and

(2) in the name of the state. (V.A.C.S. Art. 46c-6,
Subdiv. 3(f) (part).

Source Law

(f) Every officer, agent, servant, or employee of any corporation and every other person who violates or fails to comply with or procures, aids or abets in the violation of any provision of this Act or who violates or fails to obey, observe or comply with any lawful order, decision, rule or regulation, direction, demand or requirement of the department shall be subject to and shall pay a penalty not exceeding $100 for each and every day of such violation. The penalty shall be recovered in any court of competent jurisdiction in the county in which the violation occurs. Suit for the penalty or penalties shall be instituted and conducted by the Attorney General of the State of Texas, or by the county or district attorney in the county in which the violation occurs in the name of the State of Texas.

Reviser's Note

(1) The description of the penalty as a "civil" penalty was added to the revised law for clarity. The penalty clearly is a civil penalty because of the terms of its punishment and enforcement.

(2) Subdivision 3(f), V.A.C.S. Article 46c-6, provides a penalty if a person "violates or fails to comply with . . . this Act" or "violates or fails to obey, observe or comply with" an order or rule of the department. The revised law omits as unnecessary the phrases "or fails to comply with" and "or fails to obey, observe, or comply with" because the meaning of the phrases are within the meaning of "violates."

(3) Subdivision 3(f), V.A.C.S. Article 46c-6, refers to "rules and regulations." The reference to "regulations" is omitted for the reason stated in Reviser's Note (2) under Section 21.005 of this code.

(4) Subdivision 3(f), V.A.C.S. Article 46c-6, refers to a suit brought "in a court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil
jurisdiction determine which courts have jurisdiction over the matter. For example see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 21.155. INJUNCTIVE RELIEF. (a) A district court of a county in which a violation of this chapter or a rule, order, or decree of the department under this chapter has occurred may restrain and enjoin the person who committed the violation from committing a further violation.

(b) The court may grant injunctive relief:

(1) in a suit for a civil penalty brought under this chapter; or

(2) on application of the department, the attorney general, a district or county attorney, or a competing air carrier even if a suit for a civil penalty has not been brought.

(c) The department, attorney general, or district or county attorney is not required to post a bond when seeking injunctive relief under this section.

(d) In this section, "air carrier" means a person who, wholly or partly in this state, owns, controls, operates, or manages an aircraft as a common carrier in the transportation of persons or property for compensation but does not include an air carrier who operates between a place in this state and a place outside this state. (V.A.C.S. Art. 46c-6, Subdiv. 3(f) (part); New.)

Source Law

(f) . . . Upon violation of any provision of this Act, or upon the violation of any rule, regulation, order or decree of the department promulgated under the terms of this Act, any district court of any county where such violation occurs shall have the power to restrain and enjoin the person, firm or corporation so offending from further violating the provisions of this Act or from further violating any of the rules, regulations, orders, and decrees of the department. Such injunctive relief may be granted upon the application of the department, the attorney general, or any district or county attorney or
competing air carrier. No bond shall be required when such injunctive relief is sought upon the application of the department, attorney general or any district or county attorney. Such relief may be granted in suits for penalties as provided in this section, but suit for penalties shall not be a condition precedent to the injunctive relief provided hereby.

Reviser's Note
(1) Subdivision 3(f), V.A.C.S. Article 46c-6, refers to "rules" and "regulations." The reference to "regulations" is omitted from the revised law for the reason stated in Reviser's Note (2) under Section 21.005 of this code.

(2) Subdivision 3(f), V.A.C.S. Article 46c-6, refers to a "person, firm or corporation." The reference to "firm or corporation" is omitted from the revised law because under Section 311.005(2), Government Code (Code Construction Act), "person" is defined to include a firm or corporation. That definition applies to the revised law.

(3) The definition of "air carrier" is added to the revised law for drafting convenience and to avoid unnecessary repetition of the substance of the definition. The definition is substantively the same as the definition of "air carrier" provided by V.A.C.S. Article 46c-1, which applies to the source law, V.A.C.S. Article 46c-6(f), but is not being revised in this codification.

Revised Law
Sec. 21.156. ENFORCEMENT OF CHAPTER. (a) The department may enforce this chapter by revoking or suspending a lease or permit.

(b) The department shall notify the attorney general of a violation of this chapter. The attorney general may bring suit to enforce this chapter in a district court of the defendant's county of residence.
(c) The court may enforce this chapter by injunction or other appropriate legal process. (V.A.C.S. Art. 46c-8.)

Source Law

Art. 46c-8. The department is authorized to enforce the provisions of this Act, by revocation or suspension of any lease or permit; in the event of violation of this Act, the department shall notify the attorney general thereof, who is authorized to enforce the same by bringing a suit in any of the district courts of the county of the residence of the defendant in such action, and any such court may enforce the same by injunction or other appropriate legal process.

Revised Law

Sec. 21.157. COOPERATION WITH UNITED STATES IN LAW ENFORCEMENT. The department shall work with agencies of the United States in enforcing the statutes, directives, rules, and regulations of the United States. (V.A.C.S. Art. 46c-6, Subdiv. 4 (part).)

Source Law

Subdiv. 4. The department shall work with the agencies of the United States in enforcing the statutes, directives, rules and regulations of the United States.

Revisor's Note

(End of Chapter)

(1) V.A.C.S. Article 46c-8B refers to the transfer of duties of the Texas Department of Aviation and the Texas Board of Aviation to the Texas Department of Transportation and the Texas Transportation Commission. The revised law omits the references as executed and because references to the Texas Department of Aviation and the Texas Board of Aviation have been corrected in the codification process. The board of aviation and department of aviation were abolished by Chapter 7, Acts of the 72nd Legislature, 1st Called Session, 1991. The omitted provision reads:

Art. 46c-8B. A reference in law to the Texas Department of Aviation means the Texas Department of Transportation. A reference in law to the Texas Board of...
Aviation means the Texas Transportation Commission.

(2) Subdivision 10(c), V.A.C.S. Article 46c-6, refers to the aviation facilities capital improvement program as a basis for the allocation of state financial assistance. The revised law omits this reference because it is unnecessary to the clear understanding of the law. The omitted provision reads:

    (c) [The aviation facilities capital improvement program shall be a partial basis for] allocation of state financial assistance . . . .

(3) Subdivision 3(c), V.A.C.S. Article 46c-6, refers to the service of a final determination order. The revised law omits the reference because the provision was impliedly repealed by enactment of the Administrative Procedure and Texas Register Act, the pertinent portion of which is codified as Chapter 2001, Government Code. Section 2001.142, Government Code, codifies those provisions of the act that specify methods of notification of an order or decision in a contested case. Those provisions were last amended by Section 1, Chapter 362, Acts of the 71st Legislature, Regular Session, 1989. Although Subdivision 3(c) was amended after the implied repeal, the amendment, substituting "commission" for "board," did not have the effect of reviving the substance of the repealed provision. See Section 1.12, Chapter 7, Acts of the 72nd Legislature, 1st Called Session, 1991. The omitted provision reads:

    (c) . . . The final determination of such application shall be . . . served upon the parties in such manner as the department shall specify . . . .

CHAPTER 22. COUNTY AND MUNICIPAL AIRPORTS

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CHAPTER 22. COUNTY AND MUNICIPAL AIRPORTS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 22.001. DEFINITIONS. In this chapter:

(1) "Air navigation facility" means:

(A) a facility, other than one owned and operated by the United States, used in or available or designed for use in aid of air navigation, including a structure, mechanism, light, beacon, marker, communications system, or other instrumentality;

(B) a device used or useful as an aid in the safe landing, navigation, or takeoff of aircraft or the safe and efficient operation or maintenance of an airport; or

(C) a combination of those facilities or devices.

(2) "Airport" means:

(A) an area used or intended for use for the landing and takeoff of aircraft;

(B) an appurtenant area used or intended for use for an airport building or other airport facility or right-of-way; and

(C) an airport building or facility located on an appurtenant area.
(3) "Airport hazard" means a structure, object of natural growth, or use of land that:

(A) obstructs the airspace required for the flight of aircraft in landing at or taking off from an airport; or

(B) is hazardous to the landing or takeoff of aircraft at an airport.

(4) "Airport hazard area" means an area on which an airport hazard could exist.

(5) "Area" includes land or water.

(6) "Local government" means a county or municipality in this state. (V.A.C.S. Arts. 46d-1(a), (b), (c), (d) (part); 46d-7(a); 46d-14(a)(3); New.)

Source Law

Art. 46d-1. As used in this Act, unless the text otherwise requires:

(a) "Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or right-of-ways, together with all airport buildings and facilities located thereon.

(b) "Air navigation facility" means any facility—other than one owned and operated by the United States—used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanism, lights, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(c) "Airport hazard" means any structure, object of natural growth, or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport or is otherwise hazardous to such landing or taking-off of aircraft.

(d) "Municipality" means any county, or any incorporated city, village or town of this State.

Art. 46d-7. (a) In this section "airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this Act.

[Art. 46d-14(a)]

(3) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this Act.
Revisor's Note

(1) V.A.C.S. Article 46d-1 states that the defined terms have the meanings given "unless the text otherwise requires." This limitation is omitted from the revised law because the defined terms are used consistently in the revision in the context to which the definition applies.

(2) V.A.C.S. Article 46d-1(d) defines "municipality" as "any county, or any incorporated city, village or town of this State." The revised law substitutes "local government" for "municipality" because the term "local government" properly includes a county, whereas the term "municipality" does not. The revised law substitutes "municipality" for "city, village or town" because that is the term used in the Local Government Code. The revised law omits "incorporated" because under the Local Government Code all municipalities must be incorporated.

(3) The revised law omits as unnecessary the definition of "municipal" contained in V.A.C.S. Article 46d-1(d) because the meaning is apparent from the context. The omitted law reads:

(d) ... "Municipal" means pertaining to a municipality as herein defined.

(4) The revised law omits the definition of "person" contained in V.A.C.S. Article 46d-1(e) because it is substantively identical to the definition provided by Section 311.005, Government Code (Code Construction Act). The omitted law reads:

(e) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee or other similar representative thereof.

(5) The definition of "area" is added to the
revised law for drafting convenience and to eliminate
frequent, unnecessary repetition of the substance of
the definition.

Revised Law

Sec. 22.002. PUBLIC PURPOSE; COUNTY OR MUNICIPAL PURPOSE.

(a) Subject to Chapter 101, Civil Practice and Remedies Code, the
following functions are public and governmental functions,
exercised for a public purpose, and matters of public necessity:

(1) the acquisition of an interest in real property
under this chapter;

(2) the planning, acquisition, establishment,
construction, improvement, equipping, maintenance, operation,
regulation, protection, and policing of an airport or air
navigation facility under this chapter, including the acquisition
or elimination of an airport hazard;

(3) the exercise of any other power granted by this
chapter to local governments and other public agencies, to be
severally or jointly exercised; and

(4) the acquisition and use of property and privileges
by or on behalf of a local government or other public agency in the
manner and for the purposes described by this chapter.

(b) In the case of a county, a function described by
Subsection (a) is a county function and purpose. In the case of a
municipality, a function described by Subsection (a) is a municipal
function and purpose. (V.A.C.S. Art. 46d-15.)

Source Law

Art. 46d-15. The acquisition of any land or
interest therein pursuant to this Act, the planning,
acquisition, establishment, development, construction,
improvement, maintenance, equipment, operation,
regulation, protection and policing of airports and air
navigation facilities, including the acquisition or
elimination of airport hazards, and the exercise of any
other powers herein granted to municipalities and other
public agencies, to be severally or jointly exercised,
are hereby declared to be public and governmental
functions, exercised for a public purpose, and matters
of public necessity; and in the case of any county, are
declared to be county functions and purposes as well as
public and governmental; and in the case of any
municipality other than a county, are declared to be municipal functions and purposes as well as public and governmental. All land and other property and privileges acquired and used by or on behalf of any municipality or other public agency in the manner and for the purposes enumerated in this Act shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity, and, in the case of a county or municipality, for county or municipal purposes, respectively.

Revisor's Note

(1) For the reader's convenience, the revised law adds a reference to Chapter 101, Civil Practice and Remedies Code, which contains conditions and limitations that apply to the tort liability of a governmental entity. V.A.C.S. Article 46d-15 was enacted in 1947. Chapter 101, Civil Practice and Remedies Code, which was originally enacted in 1969 as V.A.C.S. Article 6252-19, has been amended several times since then. As the later enactment, Chapter 101 of that code controls over Article 46d-15 to the extent of any conflict.

(2) V.A.C.S. Article 46d-15 refers to "development" and "planning [and] establishment." The reference to "development" is omitted from the revised law because "development" is included within the meaning of "planning [and] establishment."

Revised Law

Sec. 22.003. INTERPRETATION AND CONSTRUCTION. This chapter shall be interpreted to make uniform as far as possible the laws and regulations of this state, other states, and the United States relating to local governmental airports. (V.A.C.S. Art. 46d-19.)

Source Law

Art. 46d-19. This Act shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this State and other States and of the government of the United States having to do with the subject of municipal airports.
Revisor's Note
(End of Subchapter)

(1) The revised law omits as unnecessary V.A.C.S. Article 46d-20, providing that the municipal airports statute is severable, because that provision duplicates Section 311.032, Government Code (Code Construction Act), applicable to this code, and Section 312.013, Government Code. These provisions state that a provision of a statute is severable from each other provision of the statute that can be given effect. V.A.C.S. Article 46d-20 reads:

Art. 46d-20. If any provision of this Act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

(2) The revised law omits as unnecessary V.A.C.S. Article 46d-21, relating to the cumulative effect of the municipal airports statute. An accepted general principle of statutory construction requires a statute to be given cumulative effect with other statutes unless it provides otherwise or unless the statutes are inconsistent. V.A.C.S. Article 46d-21 reads:

Art. 46d-21. This Act is cumulative of and in addition to all laws of the State of Texas on this subject.

(3) The revised law omits as misleading V.A.C.S. Article 46d-22, providing that Chapter 114, Acts of the 50th Legislature, Regular Session, 1947, may be cited as the "Municipal Airports Act," because that act pertains to airports owned or operated by counties as well as municipalities. V.A.C.S. Article 46d-22 reads:

Art. 46d-22. This Act may be cited as the "Municipal Airports Act."

(4) Section 3, V.A.C.S. Article 1269h, enacted
in 1929, provides in part that a municipality or county is not liable for injuries caused by negligence in the construction or maintenance of an airport. Section 13, Article XI, Texas Constitution, authorizes the legislature to define those functions of a municipality that are governmental and those functions that are proprietary. Under that authorization, Section 101.0215, Civil Practice and Remedies Code, which was originally enacted in 1987, provides that a municipality is liable for damages arising from its governmental functions, including airports. Section 101.021, Civil Practice and Remedies Code, which was originally enacted in 1969 as V.A.C.S. Article 6252-19, provides that a governmental unit is liable for property damage, personal injury, and death caused by negligence in the operation or use of a motor vehicle. Section 101.022, Civil Practice and Remedies Code, which was originally enacted in 1969 as V.A.C.S. Article 6252-19, provides that a governmental unit is liable for a premises defect in certain circumstances. Accordingly, the revised law omits the pertinent part of Section 3, V.A.C.S. Article 1269h, as impliedly repealed by Chapter 101, Civil Practice and Remedies Code. The omitted law reads:

Sec. 3. ... and no city or county shall be liable for injuries to persons resulting from or caused by any defective, unsound or unsafe condition of any such Air Port, or any part thereof, or thing of any character therein or resulting from or caused by any negligence, want of skill, or lack of care on the part of any governing Board or Commissioners Court, officer, agent, servant or employee or other person with reference to the construction, improvement, management, conduct, or maintenance of any such Air Port or any structure, improvement, or thing of any character whatever, located therein or connected therewith.

[Sections 22.004-22.010 reserved for expansion]
SUBCHAPTER B. ESTABLISHMENT, ACQUISITION, OPERATION, MAINTENANCE, AND DISPOSAL OF AIRPORTS AND AIR NAVIGATION FACILITIES

Revised Law
Sec. 22.011. GENERAL POWERS REGARDING AIRPORTS AND AIR NAVIGATION FACILITIES. (a) A local government may plan, establish, construct, improve, equip, maintain, operate, regulate, protect, and police an airport or air navigation facility in or outside:

(1) the territory of the local government; or
(2) the territory of this state.

(b) The power granted under Subsection (a) includes:

(1) constructing, installing, equipping, maintaining, and operating at an airport a building or other facility, including a building or other facility for:

(A) the landing and takeoff of aircraft;
(B) cargo, freight, and mail handling, storage, and processing;
(C) the servicing or retrofitting of aircraft, aerospace aircraft, and other equipment and vehicles related to air transportation or aerospace flight; and
(D) the comfort and accommodation of air travelers, including a facility commonly found and provided at an airport; and
(2) buying and selling goods as an incident to the operation of the local government's airport.

(c) A local government, by eminent domain or any other method, may acquire an interest in property, including an easement in an airport hazard or land outside the boundaries of an airport or airport site:

(1) for a purpose described by Subsection (a); and
(2) as necessary to permit the safe and efficient operation of the airport or to prevent, eliminate, or mark an
airport hazard.

(d) A local government may acquire an existing airport or air navigation facility but may not acquire or take over an airport or air navigation facility owned or controlled by another local government or public agency of this state or another state without the consent of the other local government or the public agency.

(V.A.C.S. Arts. 46d-2(a) (part), (b); 1269h, Sec. 1, Subsecs. A (part), B (part), Sec. 3 (part).)

Source Law

Art. 46d-2. (a) Establishment, Operation, Land Acquisition. Every municipality is authorized, out of any appropriations or other moneys made available for such purposes, to plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police airports and air navigation facilities, either within or without the territorial limits of such municipality and within or without the territorial boundaries of this State, including:

(1) the construction, installation, equipment, maintenance and operation at such airports of any buildings and other facilities including but not limited to buildings or facilities for:

(A) the landing and taking off of aircraft;

(B) cargo, freight, and mail handling, storage, and processing facilities;

(C) the servicing or retrofitting of aircraft, aerospace aircraft, and other equipment and vehicles related to air transportation or aerospace flight;

(D) the comfort and accommodation of air travelers, (including but not limited to any facilities commonly found and provided at airports);

and

(2) the purchase and sale of supplies, goods and commodities as an incident to the operation of its airport properties. For such purposes the municipality may use any available property that it may now or hereafter own or control and may, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire property, real or personal, or any interest therein including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airport or to permit the removal, elimination—marking of obstruction—lighting of airport hazards or to prevent the establishment of airport hazards.

(b) Acquisition of Existing Airports. The municipality may by purchase, gift, devise, lease, proceedings or otherwise, acquire existing airports and air navigation facilities, provided however it shall not acquire or take over any airport or air navigation facility owned or controlled by another municipality or public agency of this or any other State without the consent of such municipality or public agency.
Art. 1269h
Sec. 1. A--The governing body of any incorporated city in this State may receive through gift or dedication, and is hereby empowered to acquire, by purchase without condemnation or by purchase through condemnation proceedings, and thereafter maintain and operate as an airport . . . tracts of land either within or without the corporate limits of such city and within the county in which such city is situated, and the Commissioners Court of any county may likewise acquire, maintain and operate for like purpose tracts of land within the limits of the county.
B--The governing body of any incorporated city in this State may receive through gift or dedication, and is hereby empowered to acquire by purchase without condemnation, and thereafter maintain and operate as an airport . . . tracts of land without the county in which such city is situated . . .

Sec. 3. Any Air Port acquired under and by virtue of the terms of this Act shall be under the management and control of the governing body of the city or the Commissioners Court of the county acquiring the same, which is hereby expressly authorized and empowered to improve, maintain and conduct the same as an Air Port, and for that purpose to make and provide therein all necessary or fit improvements and facilities . . .

Revisor's Note
(1) V.A.C.S. Article 46d-2(a) provides that a municipality, "out of any appropriations or other moneys made available for such purposes," may perform certain tasks. The revised law omits the quoted language as unnecessary because by implication a municipality may perform a task only with money available for that purpose.
(2) V.A.C.S. Article 46d-2(a) refers to "enlarge" and "improve." The reference to "enlarge" is omitted from the revised law because "enlarge" is included within the meaning of "improve."
(3) V.A.C.S. Article 46d-2(a)(1) contains the phrase "including but not limited to." "[B]ut not limited to" is omitted from the revised law because Section 311.005(13), Government Code (Code Construction Act), and Section 312.011(19), Government Code, provide that "includes" and "including" are terms of enlargement and not of limitation and do not create a
presumption that components not expressed are excluded.

(4) V.A.C.S. Article 46d-2(a)(2) refers to "supplies, goods and commodities." The references to "supplies" and "commodities" are omitted from the revised law because "supplies" and "commodities" are included within the meaning of "goods."

(5) V.A.C.S. Article 46d-2(a)(2) provides that a municipality may acquire "property, real or personal." "Real or personal" is omitted from the revised law because Section 311.005(4), Government Code (Code Construction Act), provides that "property" means real and personal property.

(6) V.A.C.S. Article 46d-2(a)(2) provides that a municipality may use or acquire property as necessary "to permit the removal, elimination, obstruction--marking of obstruction--lighting of airport hazards or to prevent the establishment of airport hazards." "Removal" is omitted from the revised law because it is included within the meaning of "elimination." "Lighting" is omitted from the revised law because it is included within the meaning of "marking."

(7) Subsection B, Section 1, V.A.C.S. Article 1269h, enacted in 1929, authorizes a municipality to acquire land outside the county in which the municipality is located for use as an airport if the land is not within five miles of a municipality with a population of more than 1,500. The revised law omits this limitation because it was impliedly repealed by the 1947 enactment of V.A.C.S. Article 46d-2, which permits a local government to acquire land for an airport in or outside the territory of the local government. The omitted law reads:

B--., provided said tracts are not within five (5) miles of another
incorporated city that has a population of more than fifteen hundred (1500) people, according to the last preceding Federal Census.

Revised Law
Sec. 22.012. FINANCING OF AIRPORT FACILITIES. Under Section 52-a, Article III, Texas Constitution, a local government may finance facilities to be located on airport property, other than those described by Section 22.011(b)(1), that the local government determines to be:
(1) beneficial to the operation or economic development of an airport; and
(2) for the public purpose of development and diversification of the economy. (V.A.C.S. Art. 46d-2(a) (part).)

Source Law
Art. 46d-2. (a) ... . . . and (E) in accordance with Article III, Section 52-a, of the Texas Constitution, a program is hereby authorized for the financing of any other facilities to be located on airport property which, in the discretion of the municipality, is deemed to be (i) beneficial to the operation or economic development of the airport and (ii) for the public purpose of development and diversification of the economy; ... .

Revised Law
Sec. 22.013. ESTABLISHMENT OF AIRPORTS ON PUBLIC WATERS. For the purposes of this chapter, a local government may:
(1) establish, acquire, or maintain, in or bordering the territory of the local government, an airport in, over, and on the public water of this state, submerged land under the public water of this state, or artificial or reclaimed land that before the artificial making or reclamation of that land was submerged under the public water of this state; and
(2) construct and maintain a terminal building, landing float, causeway, roadway, or bridge for an approach to or connection with an airport described by Subdivision (1) or a landing float or breakwater for the protection of an airport
described by Subdivision (1). (V.A.C.S. Art. 46d-2(c).)

(c) Establishment of Airports on Public Waters
and Reclaimed Lands. For the purposes of this Act, a
municipality may establish or acquire and maintain,
within or bordering upon the territorial limits of the
municipality, airports in, over and upon, any public
waters of this State, any submerged lands under such
public waters, and any artificial or reclaimed lands
which before the artificial making or reclamation
thereof constituted a portion of the submerged lands
under such public waters; and may construct and
maintain terminal buildings, landing floats, causeways,
roadways and bridges for approaches to or connecting
with any such airport, and landing floats and
breakwaters for the protection thereof.

Sec. 22.014. RULES AND JURISDICTION. (a) A local
government may adopt ordinances, resolutions, rules, and orders
necessary to manage, govern, and use an airport or air navigation
facility under its control or an airport hazard area relating to
the airport. This authority applies to an airport, air navigation
facility, or airport hazard area in or outside the territory of the
local government.

(b) An airport, air navigation facility, or airport hazard
area that is controlled and operated by a local government and that
is located outside the territory of the local government is,
subject to federal and state law, under the jurisdiction and
control of that local government. Another local government may not
impose a license fee or occupation tax for operations on the
airport, air navigation facility, or airport hazard area.
(V.A.C.S. Arts. 46d-7(b) (part); 1269h, Sec. 1, Subsec. E (part),
Sec. 3 (part).)

(b) Scope. A municipality, which has
established or acquired or which may hereafter
establish or acquire an airport or air navigation
facility, is authorized to adopt, amend and repeal such
reasonable ordinances, resolutions, rules, regulations
and orders as it shall deem necessary for the
management, government and use of such airport or air
navigation facility under its control or an airport
hazard area relating to the airport, whether situated
within or without the territorial limits of the municipality. ... To the extent that an airport, air
navigation facility, or airport hazard area controlled
and operated by a municipality is located outside the
territorial limits of the municipality, it shall,
subject to Federal and State laws, rules and
regulations, be under the jurisdiction and control of
the municipality controlling or operating it, and no
other municipality shall have any authority to charge
or exact a license fee or occupation tax for operations
thereon. ...

[Art. 1269h]
[Sec. 1]
E ... The Commissioners Court and governing
body of any incorporated city shall promulgate rules
and regulations for the use of any such airports.

Sec. 3. ... [the governing body of the city or
the Commissioners Court of the county acquiring the
same] ... [is hereby expressly authorized and
empowered to improve, maintain and conduct the same as
an Air Port, and for that purpose to] ... make rules
and regulations governing the use thereof. ...

Reviser's Note
(1) V.A.C.S. Article 46d-7(b) authorizes a
municipality to adopt, amend, and repeal ordinances,
resolutions, rules, regulations, and orders. A
municipality's power to amend or repeal ordinances or
other laws is contained in its power to adopt those
laws. This revision omits as unnecessary the language
authorizing a municipality to amend or repeal
ordinances or other laws. The reference to
"regulations" is omitted from the revised law because
under Section 311.005(5), Government Code (Code
Construction Act), a rule includes a regulation. That
definition applies to the revised law.

(2) V.A.C.S. Article 46d-7(b) refers to "Federal
and State laws, rules and regulations." The reference
to "rules and regulations" is omitted from the revised
law because in this context "rules and regulations" are
included within the meaning of "laws."

(3) Sections 1 and 3, V.A.C.S. Article 1269h,
authorize the governing body of a county or
municipality to adopt "rules and regulations." The
references to "regulations" are omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule includes a regulation. That definition applies to the revised law.

**Revised Law**

Sec. 22.015. ENFORCEMENT OF RULES. To enforce an ordinance, resolution, rule, or order adopted under Section 22.014(a), a local government, by ordinance or resolution as appropriate, may appoint airport guards or police, with full police powers, and establish a penalty for a violation of an ordinance, resolution, rule, or order, within the limits prescribed by law. A penalty is enforced in the same manner in which a penalty prescribed by other ordinances or resolutions of the local government is enforced. (V.A.C.S. Art. 46d-7(b) (part).)

**Source Law**

(b) ... For the enforcement thereof, the municipality, may, by ordinance or resolution, as may by law be appropriate, appoint airport guards or police, with full police powers, and fix penalties, within the limits prescribed by law, for the violation of the aforesaid ordinances, resolutions, rules, regulations and orders. Said penalties shall be enforced in the same manner in which penalties prescribed by other ordinances, or resolutions of the municipality are enforced. . . .

**Revised Law**

Sec. 22.016. RELATIONSHIP TO ZONING. This chapter does not:

(1) authorize a local government to adopt an ordinance, resolution, rule, or order that establishes zones or otherwise regulates the height of structures or natural growths in an area or in a manner other than as provided by Chapter 241, Local Government Code; or

(2) limit the power of a local government to regulate airport hazards by zoning. (V.A.C.S. Arts. 46d-7(b) (part), 46d-18.)
Source Law

[Art. 46d-7]
(b) ... Nothing in this Act shall authorize any municipality to adopt or amend any ordinances, resolutions, rules, regulations, or orders establishing zones or otherwise regulating the height of structures or natural growths in any area, or in any manner, other than as provided in the Airport Zoning Act (Article 46e-1 et seq., Vernon's Texas Civil Statutes).

Art. 46d-18. Nothing contained in this Act shall be construed to limit any right, power or authority of a municipality to regulate airport hazards by zoning.

Revisor's Note

(1) V.A.C.S. Article 46d-7(b) refers to the Airport Zoning Act (Article 46e-1 et seq., Vernon's Texas Civil Statutes). That statute was codified in 1987 as Chapter 241, Local Government Code. The revised law is drafted accordingly.

(2) V.A.C.S. Article 46d-7(b) provides that the municipal airports statute does not authorize a municipality to "adopt or amend" certain ordinances, resolutions, rules, regulations, or orders. A municipality's power to amend or repeal an ordinance or other law is contained in its power to adopt that law. This revision omits as unnecessary the reference to amending ordinances or other laws.

(3) V.A.C.S. Article 46d-7(b) refers to "rules" and "regulations." The reference to "regulations" is omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule includes a regulation. That definition applies to the revised law.

(4) V.A.C.S. Article 46d-18 refers to a municipality's "right, power or authority" to regulate airport hazards. The references to "right" and "authority" are omitted from the revised law because "right" and "authority" are included within the meaning of "power."
Revised Law

Sec. 22.017. DELEGATION OF AUTHORITY TO OFFICER, BOARD, OR AGENCY. (a) The governing body of a local government by resolution may delegate to an officer, board, or other local governmental agency any power granted by this chapter to the local government or the governing body for planning, establishing, constructing, improving, equipping, maintaining, operating, regulating, protecting, and policing an airport or air navigation facility established, owned, or controlled or to be established, owned, or controlled by the local government. The resolution must prescribe the powers and duties of the officer, board, or other local governmental agency.

(b) Notwithstanding Subsection (a), the local government is responsible for the expenses of planning, establishing, constructing, improving, equipping, maintaining, operating, regulating, protecting, and policing the airport or other air navigation facility. (V.A.C.S. Art. 46d-6.)

Source Law

Art. 46d-6. Any authority vested by this Act in a municipality or in the governing body thereof, for the planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection and policing of airports or other air navigation facilities established, owned or controlled, or to be established, owned or controlled by the municipality may be vested by resolution of the governing body of the municipality in an officer or board or other municipal agency whose powers and duties shall be prescribed in the resolution; provided however, that the expense of such planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection and policing shall be a responsibility of the municipality.

Revisor's Note

(1) V.A.C.S. Article 46d-6 refers to "development" and "planning [and] establishment." The reference to "development" is omitted from the revised law because "development" is included within the meaning of "planning [and] establishment."
(2) V.A.C.S. Article 46d-6 refers to "enlargement" and "improvement." The reference to "enlargement" is omitted from the revised law because "enlargement" is included within the meaning of "improvement."

Revised Law

Sec. 22.018. DESIGNATION OF TEXAS DEPARTMENT OF TRANSPORTATION AS AGENT IN CONTRACTING AND SUPERVISING. (a) A local government may designate the Texas Department of Transportation as its agent in contracting for and supervising the planning, acquiring, constructing, improving, equipping, maintaining, or operating of an airport or air navigation facility.

(b) A local government may enter into an agreement with the department prescribing the terms of the agency relationship in accordance with the terms prescribed by the United States, if federal money is involved, and in accordance with the laws of this state.

(c) The department, in acting as the agent of a local government under this section, shall make each contract in accordance with the law governing the making of contracts by or on behalf of the state. (V.A.C.S. Art. 46d-12(b) (part).)

Source Law

(b) Texas Department of Aviation as Agent. A municipality is authorized to ... designate the department as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, maintenance, equipment or operation of any airport or other air navigation facility. All contracts made, let or awarded by the department acting as agent of a municipality under authority of this Section, shall be made, let or awarded pursuant to the laws governing the making of contracts by or on behalf of the State. Such municipality may enter into an agreement with the department prescribing the terms and conditions of the agency in accordance with such terms and conditions as are prescribed by the United States, if Federal money is involved, and in accordance with the applicable laws of this State. . . .
Revisor's Note

(1) V.A.C.S. Article 46d-12(b) refers to the Texas Department of Aviation. Under Section 1.16, Chapter 7, Acts of the 72nd Legislature, 1st Called Session, 1991 (Article 46c-8B, Vernon's Texas Civil Statutes), a reference in law to the Texas Department of Aviation means the Texas Department of Transportation. Accordingly, the revised law refers to the Texas Department of Transportation.

(2) V.A.C.S. Article 46d-12(b) refers to an agreement prescribing the "terms and conditions" of the agency in accordance with the "terms and conditions" prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state. The reference to "conditions" is omitted from the revised law because "conditions" is included within the meaning of "terms."

(3) V.A.C.S. Article 46d-12(b) refers to "development" and "planning [and] establishment." The reference to "development" is omitted from the revised law because "development" is included within the meaning of "planning [and] establishment."

Revised Law

Sec. 22.019. CONTRACTS. A local government may enter into a contract necessary to the execution of a power granted the local government and for a purpose provided by this chapter. (V.A.C.S. Art. 46d-13.)

Source Law

Art. 46d-13. A municipality may enter into any contracts necessary to the execution of the powers granted it, and for the purposes provided by this Act.

Revised Law

Sec. 22.020. OPERATION OF AIRPORT BY ANOTHER. (a) A local
government, by contract, lease, or other arrangement, on a consideration fixed by the local government and for a term not to exceed 40 years, may authorize a qualified person to operate, as the agent of the local government or otherwise, an airport owned or controlled by the local government.

(b) A local government may not authorize a person to:

(1) operate the airport except as a public airport; or

(2) enter into a contract, lease, or other agreement in connection with the operation of the airport that the local government may not have made under Section 22.021.

(c) An arrangement made under this section must be made subject to the terms of a grant, loan, or agreement under Section 22.055. (V.A.C.S. Arts. 46d-4(b); 1269h, Sec. 1, Subsec. D.)

Source Law

[Art. 46d-4]

(b) Under Other Operation. Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to Section 12 of this Act, a municipality may by contract, lease or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed forty (40) years the privilege of operating, as agent of the municipality or otherwise, any airport owned or controlled by the municipality; provided that no such person shall be granted any authority to operate the airport other than a public airport or to enter into any contracts, leases or other agreements in connection with the operation of the airport which the municipality might not have undertaken under Subsection (a) of this Section.

[Art. 1269h, Sec. 1]

D---In addition to the power herein granted the Commissioners Courts of the several counties of this State are hereby authorized to lease any airport that has been or may be acquired by the county, as herein provided, to any incorporated city or municipality within such county, or to the Federal Government, or to any other person, firm or corporation for the purpose of maintaining and operating an airport; and providing further that any incorporated city having acquired land for an airport, or an airport, under the authority of this Act shall have the right to lease said land or airport to the county in which such incorporated city is located.

Revisor's Note

(1) V.A.C.S. Article 46d-4(b) refers to the "terms and conditions" of a grant, loan, or agreement.
The reference to "conditions" is omitted from the revised law because "conditions" is included within the meaning of "terms."

(2) V.A.C.S. Article 46d-4(b) refers to V.A.C.S. Article 46d-4(a). That statute is codified in this code as Section 22.021, and the revised law is drafted accordingly.

(3) V.A.C.S. Article 46d-4(b) refers to V.A.C.S. Article 46d-12. The relevant portion of that statute is codified in this code as Section 22.055, and the revised law is drafted accordingly.

Revised Law

Sec. 22.021. USE OF AIRPORT BY ANOTHER. (a) In operating an airport or air navigation facility that it owns, leases, or controls, a local government may enter into a contract, lease, or other arrangement for a term not exceeding 40 years with a person:

(1) granting the privilege of using or improving the airport or air navigation facility, a portion or facility of the airport or air navigation facility, or space in the airport or air navigation facility for commercial purposes;

(2) conferring the privilege of supplying goods, services, or facilities at the airport or air navigation facility; or

(3) making available services to be furnished by the local government or its agents at the airport or air navigation facility.

(b) In entering into the contract, lease, or other arrangement, the local government may establish the terms and fix the charges, rentals, or fees for the privileges or services. The charges, rentals, and fees must be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the local government.
(c) An arrangement made under this section must be made subject to the terms of a grant, loan, or agreement under Section 22.055. (V.A.C.S. Arts. 46d-4(a); 1269h, Sec. 3 (part).)

Source Law

Art. 46d-4. (a) Under Municipal Operation. In operating an airport or air navigation facility owned, leased or controlled by a municipality, such municipality may, except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to Section 12 of this Act, enter into contracts, leases and other arrangements for a term not exceeding forty (40) years with any persons:
   (1) granting the privilege of using or improving such airport or air navigation facility or any portion or facility thereof, or space therein for commercial purposes;
   (2) conferring the privilege of supplying goods, commodities, things, services or facilities at such airport or air navigation facility;
   (3) making available services to be furnished by the municipality or its agents at such airport or air navigation facility.

In each case the municipality may establish the terms and conditions and fix the charges, rentals or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the municipality.

[Art. 1269h]

[Sec. 3. . . . the governing body of the city or the Commissioners Court of the county acquiring the same, which is hereby expressly authorized and empowered . . . and to fix such reasonable charges for the use thereof as such governing body or Commissioners Court shall deem fit . . . .]

Reviser's Note

(1) V.A.C.S. Article 46d-4(a) refers to the "terms and conditions" of a grant, loan, or agreement. The reference to "conditions" is omitted from the revised law because "conditions" is included within the meaning of "terms."

(2) V.A.C.S. Article 46d-4(a) refers to V.A.C.S. Article 46d-12. The relevant portion of that statute is codified in this code as Section 22.055, and the revised law is drafted accordingly.

(3) V.A.C.S. Article 46d-4(a)(2) refers to "goods, commodities, things, services or facilities."

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The references to "commodities" and "things" are omitted from the revised law because "commodities" and "things" are included within the meaning of "goods."

Revised Law

Sec. 22.022. DURATION OF CERTAIN LEASES. (a) A lease of real property may not exceed 40 years if:

(1) the lease is made under Section 22.011(c) or (d), Section 22.020, or Section 22.021; and

(2) at the time of the execution of the lease, the property is used as nonaeronautical property and is located on an airport on which there are active federal governmental aircraft operations on federal government property.

(b) A renewal or extension of a lease under Subsection (a) may not exceed 40 years. If the lease provides for more than one renewal or extension, the renewals or extensions may not in the aggregate exceed 40 years.

(c) This section does not prevent the parties to a lease from making a new lease to take effect after the expiration of the previous lease or after the expiration of the period covered by a renewal or extension of the previous lease. (V.A.C.S. Arts. 46d-2(e), 46d-4(c).)

Source Law

[Art. 46d-2]
(e) Restriction on Certain Leases. The term of a lease made under Subsection (a) or (b) of this section of real property that at the time of the execution of the lease is used as nonaeronautical property and is located on an airport on which there are active federal government aircraft operations on federal government property may not exceed forty (40) years. The lease may be renewed or extended, and the renewal or extension may not exceed forty (40) years. If the lease provides for more than one renewal or extension of the lease, the renewals or extensions may not in the aggregate exceed forty (40) years. This subsection does not prevent the parties to a lease from making a new lease to take effect after the expiration of the prior lease or after the expiration of the period covered by a renewal or extension of the prior lease.

[Art. 46d-4]
(c) Restriction on Certain Leases. A lease made under this section of real property that at the time of
the execution of the lease is used as nonaeronautical
property and is located on an airport on which there
are active federal government aircraft operations on
federal government property may be renewed or extended,
and the renewal or extension may not exceed forty (40)
years. If the lease provides for more than one renewal
or extension of the lease, the renewals or extensions
may not in the aggregate exceed forty (40) years. This
subsection does not prevent the parties to a lease from
making a new lease to take effect after the expiration
of the prior lease or after the expiration of the
period covered by a renewal or extension of the prior
lease.

Revisor's Note

(1) V.A.C.S. Article 46d-2(e) refers to a lease
made under "Subsection (a) or (b) of this section,"
meaning V.A.C.S. Articles 46d-2(a) and (b). Those
statutes are codified in this code as Sections
22.011(c) and (d), respectively, and the revised law is
drafted accordingly.

(2) V.A.C.S. Article 46d-4(c) refers to a lease
made under "this section," meaning V.A.C.S. Article
46d-4. The relevant portions of that statute are
codified in this code as Sections 22.020 and 22.021,
and the revised law is drafted accordingly.

Revised Law

Sec. 22.023. LIENS. A local government has a lien on
personal property to enforce the payment of a charge for repairs or
improvements to, or the storage or care of, the property if the
property is made or furnished by the local government or its agents
in connection with the operation of an airport or air navigation
facility owned or operated by the local government. The lien is
enforceable as provided by law. (V.A.C.S. Art. 46d-5.)

Source Law

Art. 46d-5. To enforce the payment of any
charges for repairs or improvements to or storage or
care of, any personal property made or furnished by the
municipality or its agents in connection with the
operation of an airport or air navigation facility
owned or operated by the municipality, the municipality
shall have liens on such property, which shall be
enforceable by the municipality as provided by law.
Sec. 22.024. DISPOSAL OF AIRPORT PROPERTY BY LOCAL GOVERNMENT. (a) A local government may dispose of an airport or air navigation facility or other property, or a portion of or interest in property, acquired under this chapter in any manner, subject to the laws of this state or provisions of the charter of the local government governing the disposition of other property of the local government.

(b) A local government may dispose of the property to another local government or an agency of the state or federal government for use for aeronautical purposes, notwithstanding Subsection (a), in the manner and on the terms the governing body of the local government considers to be in the best interest of the local government.

(c) An arrangement made under this section is subject to the terms of a grant, loan, or agreement under Section 22.055.

(V.A.C.S. Arts. 46d-3; 1269h, Sec. 1, Subsecs. A (part), B (part), E (part).)

Source Law

Art. 46d-3. Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to Section 12 of this Act, every municipality may by sale, lease or otherwise, dispose of any airport, air navigation facility or other property, or portion thereof or interest therein, acquired pursuant to this Act. Such disposal by sale, lease or otherwise, shall be in accordance with the laws of this State, or provisions of the charter of the municipality, governing the disposition of other property of the municipality, except that in the case of disposal to another municipality or agency of the State or Federal government for aeronautical purposes incident thereto, the sale, lease, or other disposal may be effected in such manner and upon such terms as the governing body of the municipality may deem in the best interest of the municipality.

[Art. 1269h]

[Sec. 1. A--The governing body of any incorporated city in this State may] ... or lease, or sell, to the Federal Government, [tracts of land either within or without the corporate limits of such city and within the county in which such city is situated] . . . .

[Sec. 1. B--The governing body of any incorporated city in this State may] ... or lease, or sell to the Federal Government, [tracts of land without the county in which such city is situated] . . . .
In addition to the power which it may now have, the Commissioners Court of any county, or the governing body of any incorporated city in this State, shall have the power to sell, convey or lease all or part of any airport or property connected therewith, heretofore established or that may be hereafter established; also any land which has been or may be acquired under the provisions of this Act, to the United States of America for any purpose necessary for National Defense, or for air mail purposes or any other public purpose; or to the State of Texas or any branch of the State Government which may be authorized to own or operate airports, and to any person, firm or corporation.

Revisor's Note

(1) V.A.C.S. Article 46d-3 refers to the "terms and conditions" of a grant, loan, or agreement. The reference to "conditions" is omitted from the revised law because "conditions" is included within the meaning of "terms."

(2) V.A.C.S. Article 46d-3 refers to V.A.C.S. Article 46d-12. The relevant portion of that statute is codified in this code as Section 22.055, and the revised law is drafted accordingly.

Revised Law

Sec. 22.025. LIMITATION ON DESIGN AND OPERATION OF AIR NAVIGATION FACILITIES. An air navigation facility established or operated by a local government shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments. (V.A.C.S. Art. 46d-2(d).)

Source Law

(d) Limitation on Design and Operation of Air Navigation Facilities. All air navigation facilities established or operated by municipalities shall be supplementary to and coordinated in design and operation with those established and operated by the Federal and State governments.

Revised Law

Sec. 22.026. NOISE ABATEMENT. (a) The governing body of a municipality that owns an airport and is a party to an executory
grant agreement with the Federal Aviation Administration requiring
the municipality to plan, design, and acquire land for a
replacement airport shall:

(1) comply with the Aviation Safety and Noise
Abatement Act of 1979 (49 U.S.C. Sec. 2101 et seq.);

(2) provide adequate soundproofing and noise reduction
devices for each public building within the 65 or higher average
day-night sound level contour as determined by the governing body
in accordance with Federal Aviation Administration Advisory
Circulars; or

(3) award a contract for land acquisition services for
the purchase of real property required for the site of a
replacement airport, complete a master plan for the replacement
airport, and provide the replacement airport.

(b) A court may grant appropriate relief to enforce this
section in a suit brought by an affected person.

(c) In this section:

(1) "Public building" means a church, public or
private hospital, or building owned or leased by a governmental
entity, including a public school.

(2) "Replacement airport" means a new airport that is
planned, designed, and constructed to replace a municipal airport
operating on August 28, 1989.

(d) The governing body shall provide the replacement airport
under Subsection (a)(3) before January 1, 1997. This subsection
expires December 31, 1999. (V.A.C.S. Arts. 46d-16A(a), (b), (c),
(e).)

Source Law

Art. 46d-16A. (a) Application. This section
applies only to an airport owned by an incorporated
city, town, or village that is a party to a grant
agreement with the Federal Aviation Administration that
has not been completely performed and that requires the
city, town, or village to plan, design, and acquire
land for a replacement airport.

(b) Definitions. In this section:

(i) "Public building" means a church,
public or private hospital, or building owned or leased
by a governmental entity, including a public school.
(2) "Replacement airport" means a new airport that is planned, designed, and constructed to replace a municipal airport operating on the effective date of this section.

(c) Noise Abatement Requirements. The governing body of an incorporated city, town, or village that owns a municipal airport to which this section applies shall:

(1) not later than March 31, 1990, comply with the applicable provisions of the Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. Sec. 2101 et seq.);

(2) not later than December 31, 1991, provide adequate soundproofing and noise reduction devices for all public buildings within the 65 or higher average day-night sound level contour as determined by the governing body of the city, town, or village in accordance with applicable Federal Aviation Administration Advisory Circulars; or

(3) not later than March 31, 1990, an incorporated city, town, or village affected by this Act shall award a contract for land acquisition services for the purchase of real property required for the site of a replacement airport and complete a master plan for the replacement airport and, not later than December 31, 1996, provide the replacement airport.

(e) Enforcement. Any affected person may bring suit in a court of competent jurisdiction to enforce this section, and the court may grant appropriate relief.

Reviser's Note

(1) V.A.C.S. Article 46d-16A(a) refers to an airport owned by an "incorporated city, town, or village." The revised law substitutes "municipality" for "city, town, or village" because that is the term used in the Local Government Code. The revised law omits "incorporated" because under the Local Government Code all municipalities must be incorporated.

(2) V.A.C.S. Article 46d-16A(c) requires a municipality to take certain actions not later than March 31, 1990, or December 31, 1991. The revised law omits the references to those dates because those provisions are expired.

(3) V.A.C.S. Article 46d-16A(c)(3) requires a municipality to provide a replacement airport not later than December 31, 1996. Because this provision is only of temporary effect, the revised law provides that this
provision expires December 31, 1999.

(4) V.A.C.S. Article 46d-16A(d) requires a municipality to provide adequate soundproofing and noise reduction devices for certain public schools not later than August 15, 1991. This provision phases in the requirement in Subsection (c)(2) that a municipality, not later than December 31, 1991, provide adequate soundproofing and noise reduction devices for certain public buildings. Because Subsection (c)(2) is now applicable, the revised law omits as unnecessary Subsection (d). The omitted law reads:

(d) Noise Reduction. Notwithstanding Subsection (c)(2) of this section, the governing body of an incorporated city, town, or village that owns a municipal airport to which this section applies shall, not later than August 15, 1991, provide adequate soundproofing and noise reduction devices for all public schools that are within the 65 or higher average day-night sound level contour of the airport as determined by the governing body of the city, town, or village in accordance with applicable Federal Aviation Advisory Circulars and that are within one mile of the airport.

(5) V.A.C.S. Article 46d-16A(e) refers to a suit brought "in a court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may be brought only in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revisor's Note
(End of Subchapter)

(1) V.A.C.S. Article 46d-7(c) provides that a municipality may not adopt an ordinance, resolution, rule, regulation, or order under the Municipal Airports Act that is inconsistent with or contrary to an act of Congress, a law of this state, or regulations adopted
or standards established under an act of Congress or a law of this state. The revised law omits this provision as unnecessary because, under general preemption principles, a municipality may not take an action that is inconsistent with federal or state law. The omitted law reads:

(c) Conformity to Federal and State Law. No ordinance, resolution, rule, regulation or order adopted by a municipality pursuant to this Act shall be inconsistent with, or contrary to, any Act of the Congress of the United States or laws of this State, or to any regulations promulgated or standards established pursuant thereto.

(2) The revised law omits as unnecessary V.A.C.S. Article 46d-17, which provides that in addition to the general and special powers conferred by the Municipal Airports Act, a municipality may exercise the powers necessarily incidental to the exercise of those general and special powers. A municipality may exercise both those powers expressly granted by a statute and those necessarily or fairly implied in the grant. Foster v. City of Waco, 255 S.W. 1104, 1105 (Tex. 1923); City of Lucas v. North Texas Municipal Water District, 724 S.W. 2d 811, 823 (Tex. App.--Dallas 1986, writ ref'd n.r.e.). V.A.C.S. Article 46d-17 reads:

Art. 46d-17. In addition to the general and special powers conferred by this Act, every municipality is authorized to exercise such powers as are necessarily incidental to the exercise of such general and special powers.

(3) Subsection C, Section 1, V.A.C.S. Article 1269h, enacted in 1929, authorizes a municipality to acquire through condemnation land outside the county in which the municipality is located for use as an airport but provides that the municipality's authority to do so expires December 31, 1942. The revised law omits this
provision because it was impliedly repealed by the 1947 enactment of V.A.C.S. Article 46d-2 (revised as Section 22.011 of this code), which permits a local government to acquire by eminent domain land for an airport located in or outside the territory of the local government. Subsection C also permits a municipality to operate, lease, or sell an airport located outside the county in which the municipality is located and acquired by eminent domain before December 31, 1942. The revised law omits this provision as superseded by the 1947 enactment of V.A.C.S. Articles 46d-2 (revised as Section 22.011 of this code) and 46d-3 (revised as Section 22.024 of this code), which permit a local government to operate, lease, or sell an airport that is located in or outside the territory of the local government. The omitted law reads:

C--The governing body of any incorporated city in this State may, and is hereby empowered, to acquire through condemnation proceedings, tracts of land located without the county in which said city is located, provided said tracts of land are within six (6) miles of the county boundary of the county in which said city is located, and are not within five (5) miles of another incorporated city having a population in excess of fifteen hundred (1500) people, according to the last preceding Federal Census; and that said city may thereafter maintain and operate as an airport, or lease, or sell, said tracts to the Federal Government; provided, however, that the grant herein made to acquire land through condemnation proceedings, without the county in which said city is located, shall expire on December 31, 1942, but that tracts of land acquired prior to that date, and under the authority of this Act, may continue to be operated, leased, or sold, as provided in this Act.

[Sections 22.027-22.050 reserved for expansion]
Sec. 22.051. TAXATION. (a) The governing body of a local government may impose an annual property tax not to exceed five cents on each $100 valuation to improve, operate, and maintain an airport or air navigation facility or for any other purpose authorized by this chapter.

(b) The tax authorized by Subsection (a) is in addition to other taxes that may be imposed for the interest and sinking fund of bonds, notes, or time warrants issued under authority of this chapter or any other statute authorizing a local government to issue bonds, notes, or warrants for airport purposes. (V.A.C.S. Arts. 46d-8 (part); 1269h, Sec. 4 (part).)

Art. 46d-8. In addition to and exclusive of any taxes which may be levied for the interest and sinking fund of any bonds, notes or time warrants issued under authority of this Act, or any other Act of the Legislature authorizing municipalities to issue such bonds, notes, or warrants for airport purposes, the governing body of any municipality may and is hereby empowered to levy and collect a special tax not to exceed for any one year five cents (5¢) on each One Hundred Dollars ($100) for the purpose of improving, operating, maintaining and conducting an airport or air navigation facility, or for any other purpose falling within the purview of this Act . . . .

Sec. 4. That in addition to and exclusive of any taxes which may be levied for the interest and sinking fund of any bonds issued under the authority of this Act, the governing body of any city or the Commissioners Court of any county, falling within the terms hereof, may and is hereby empowered to levy and collect a special tax not to exceed for any one year five cents on each One Hundred Dollars for the purpose of improving, operating, maintaining and conducting any Air Port which such city or county may acquire under the provision of this Act, and to provide all suitable structures, and facilities therein. . . .

(1) V.A.C.S. Article 46d-8 refers to "operating" and "conducting." The reference to "conducting" is omitted from the revised law because "conducting" is
included within the meaning of "operating."

(2) The revised law omits as unnecessary the provisions in V.A.C.S. Article 46d-8 and Section 4, V.A.C.S. Article 1269h, to the effect that those acts do not authorize a local government to exceed the limits of indebtedness placed on it under the constitution. The legislature does not have the authority to authorize a local government to violate the constitution. The omitted law reads:

Art. 46d-8. ... provided, however, that nothing in this Act shall be construed as authorizing any municipality to exceed the limits of indebtedness placed upon it under the Constitution.

[Art. 1269h]

Sec. 4. ... Provided that nothing in this Act shall be construed as authorizing any city or county to exceed the limits of indebtedness placed upon it under the Constitution.

Revised Law

Sec. 22.052. BONDS. (a) A local government may pay wholly or partly from the proceeds of the sale of bonds the cost of planning, acquiring, establishing, constructing, improving, or equipping an airport or air navigation facility or the site of an air navigation facility or acquiring or eliminating airport hazards.

(b) For a purpose described by Subsection (a), a local government, in the manner provided by Title 22, Revised Statutes, may:

(1) issue any form of secured or unsecured bonds, including general or special obligation bonds, revenue bonds, or refunding bonds; and

(2) impose taxes to provide for the interest and sinking funds of any bonds issued.

(c) In a suit, action, or proceeding involving the security, validity, or enforceability of a bond issued by a local government that states on its face that it was issued under this chapter and
for a purpose authorized to be accomplished by this chapter, the
bond is considered to have been issued under this chapter for that
purpose.

(d) If the principal and interest of a bond issued by a
local government under this chapter is payable solely from the
revenue of an airport or air navigation facility, the bond must
state so on its face. (V.A.C.S. Arts. 46d-9; 1269h, Sec. 2(a.).)

Source Law

Art. 46d-9. The cost of planning and acquiring, establishing, developing, constructing, enlarging, improving, or equipping, an airport or air navigation facility, or the site therefor, including buildings and other facilities incidental to the operation thereof, and the acquisition or elimination of airport hazards, may be paid for wholly or partly from the proceeds of the sale of bonds of the municipality, as the governing body of the municipality shall determine. For such purposes a municipality may issue general or special obligation bonds, revenue bonds or other forms of bonds, secured or unsecured, including refunding bonds, and levy taxes to provide for the interest and sinking funds of any bonds so issued, the authority hereby given for the issuance of such bonds and levy and collection of such taxes to be exercised in accordance with the provisions of Title 22 of the Revised Civil Statutes of Texas, 1925, Article 701 et seq., and Acts amendatory thereof or supplementary thereto. All bonds issued by a municipality pursuant to this Act which are payable, as to principal and interest, solely from the revenues of an airport or air navigation facility shall so state on their face. In any suit, action or proceeding involving the security, or the validity or enforceability, of any bonds issued by a municipality, which bonds state on their face that they were issued pursuant to the provisions of this Act and for a purpose or purposes authorized to be accomplished by this Act, such bonds shall be conclusively deemed to have been issued pursuant to this Act for such purpose or purposes.

[Art. 1269h]

Sec. 2. (a) For the purpose of condemning or purchasing, either or both, lands to be used and maintained as provided in Section 1 hereof, and improving and equipping the same for such use, the governing body of any city or the Commissioners Court of any county, falling within the terms of such Section, may issue negotiable bonds of the city or of the county, as the case may be, and levy taxes to provide for the interest and sinking funds of any such bonds so issued, the authority hereby given for the issuance of such bonds and levy and collection of such taxes to be exercised in accordance with the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of 1925.
Revisor's Note

(1) V.A.C.S. Article 46d-9 refers to Title 22, Revised Statutes, and "Acts amendatory thereof or supplementary thereto." The revised law omits the reference to "Acts amendatory thereof or supplementary thereto" because under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, unless expressly provided otherwise, a reference to any portion of a statute applies to all reenactments, revisions, or amendments of the statute.

(2) V.A.C.S. Article 46d-9 refers to "developing" and "planning [and] establishing." The reference to "developing" is omitted from the revised law because "developing" is included within the meaning of "planning [and] establishing."

(3) V.A.C.S. Article 46d-9 refers to "enlarging" and "improving." The reference to "enlarging" is omitted from the revised law because "enlarging" is included within the meaning of "improving."

(4) V.A.C.S. Article 46d-9 refers to an airport "or the site therefor." The reference to the site of an airport is omitted from the revised law because the definition of an airport in V.A.C.S. Article 46d-1(a), codified in this code as Section 22.001(2), includes the site of an airport.

Revised Law

Sec. 22.053. TIME WARRANTS. (a) The commissioners court of a county with a population of 15,000 to 15,250 may issue time warrants to:

(1) condemn or purchase land to be used and maintained as provided by Sections 22.011, 22.020, and 22.024; and

(2) improve and equip the land for the use provided by Sections 22.011, 22.020, and 22.024.
(b) The commissioners court of a county that issues time warrants under this section shall comply with Chapter 163, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 2368a, Vernon's Texas Civil Statutes), regarding:

1. notice to issue the time warrants;
2. the levy and collection of taxes in payment of the time warrants; and
3. the right to a referendum. (V.A.C.S. Art. 1269h, Sec. 2(b).)

Source Law

(b) In addition to the powers herein granted, the Commissioners Courts of counties having a population of not less than fifteen thousand (15,000) and not more than fifteen thousand, two hundred and fifty (15,250), according to the last preceding Federal Census, are hereby authorized to issue time warrants for the purposes herein stated, but the Commissioners Court of any such county proposing to issue such warrants shall comply with the provisions of Chapter 163, Acts of the Forty-second Legislature, with reference to notice to issue such warrants and with reference to the levy and collection of taxes in payment thereof, and the right to referendum election therein shall apply.

Revisor's Note

(1) Section 2(b), V.A.C.S. Article 1269h, describes a population figure that is to be determined according to the most recent federal census. The revised law omits the reference to the federal census because the reference is unnecessary. Section 311.005(3), Government Code (Code Construction Act), and Section 312.011(20), Government Code, define "population" as population according to the most recent federal decennial census. That definition applies to the revised law.

(2) Section 2(b), V.A.C.S. Article 1269h, grants the commissioners courts of certain counties the power to issue time warrants "in addition to the powers herein granted." The revised law omits this provision.
as unnecessary because the provision does not add to
the clear meaning of the law. A power granted in this
section is granted in addition to other powers granted
by law.

(3) The revised law substitutes "15,000 to
15,250" for the source law phrase "not less than
fifteen thousand (15,000) and not more than fifteen
thousand, two hundred and fifty (15,250)" because under
Section 311.015, Government Code (Code Construction
Act), a statute that refers to a series of numbers
includes the first and last numbers in the series.

(4) Section 2(b), V.A.C.S. Article 1269h, refers
to issuing warrants "for the purposes herein stated."
This phrase refers to the purposes of condemning,
purchasing, improving, and equipping land as stated in
Section 2(a), V.A.C.S. Article 1269h, and the revised
law is drafted accordingly. In addition, Section 2(a),
V.A.C.S. Article 1269h, in setting out these purposes
refers to "Section 1 hereof." The pertinent parts of
Section 1 are codified in this chapter as Sections
22.011, 22.020, and 22.024, and the revised law refers
to those sections.

Revised Law

Sec. 22.054. APPLICATION OF AIRPORT REVENUE AND SALE
PROCEEDS. A local government shall deposit the revenue received by
the local government from the ownership, control, or operation of
an airport or air navigation facility, including proceeds from the
sale of an airport or a portion of an airport or of air navigation
facility property, in a fund to be designated the "_________ Airport Fund." The revenue may be used by the local government
only for the purposes authorized by this chapter. (V.A.C.S. Arts.
46d-11; 1269h, Sec. 3 (part).)
Art. 46d-11. The revenues obtained by a municipality from the ownership, control or operation of any airport or air navigation facility, including proceeds from the sale of any airport or portion thereof or air navigation facility property, shall be deposited in a special fund to be designated the "Airport Fund," which revenues shall be appropriated solely to, and used by the municipality for, the purposes authorized by this Act.

[Art. 1269h]
[Sec. 3] ... All proceeds from such charges shall be devoted exclusively to the maintenance, up-keep, improvement and operation of such Air Port and the facilities, structures, and improvements therein . . . .

Revisor's Note
The revised law deletes as unnecessary the designation in V.A.C.S. Article 46d-11 of the fund as being special. The designation of a fund as a special fund has no legal effect.

Revised Law
Sec. 22.055. FEDERAL AND STATE AID; OTHER GRANTS AND LOANS.
(a) A local government may accept, give a receipt for, disburse, and spend money from grants and loans for any of the purposes of this chapter. A local government must accept and spend federal money under this section on the terms prescribed by the United States and consistent with state law. A local government must accept and spend state money under this section on the terms prescribed by the state. Unless the agency from which the money is received prescribes otherwise, the chief financial officer of the local government shall deposit the money in separate funds designated according to the purposes for which the money is made available and shall keep it in trust for those purposes.

(b) A local government may designate the Texas Department of Transportation as its agent to accept, give a receipt for, and disburse money from grants and loans for any of the purposes of this chapter. The department shall accept and shall transfer or spend federal money accepted under this section on the terms
prescribed by the United States. The department shall deposit
money it receives under this subsection in the state treasury and,
unless the agency from which the money is received prescribes
otherwise, shall keep the money in separate funds designated
according to the purposes for which the money is made available,
and the state shall hold the money in trust for those purposes.

(V.A.C.S. Arts. 46d-12(a), (b) (part).)

Source Law

Art. 46d-12. (a) Acceptance Authorized, Conditions. Every municipality is authorized to
accept, receive, receipt for, disburse and expend Federal and State moneys and other moneys, public or
private, made available by grant or loan or both to accomplish, in whole or in part, any of the purposes of
this Act. All Federal moneys accepted under this Section shall be accepted and expended by the
municipality upon such terms and conditions as are prescribed by the United States and as are consistent
with State law; and all State moneys accepted under this Section shall be accepted and expended by the
municipality upon such terms and conditions as are prescribed by the State. Unless otherwise prescribed
by the agency from which such moneys were received, the chief financial officer of the municipality shall, on
its behalf deposit all moneys received pursuant to this Section and shall keep them, in separate funds
designated according to the purposes for which the moneys were made available, in trust for such purposes.

[(b) Texas Department of Aviation as Agent. A municipality is authorized to designate the Texas
Department of Aviation as its agent to accept, receive, receipt for and disburse Federal and State moneys, and
other moneys, public or private, made available by grant or loan or both to accomplish, in whole or in
part, any of the purposes of this Act .... All Federal moneys accepted under this Section by the
department shall be accepted and transferred or expended by the department upon such terms and
conditions as are prescribed by the United States. All moneys received by the department pursuant to this
Subsection shall be deposited in the State Treasury, and unless otherwise prescribed by the agency from
which such moneys were received, shall be kept in separate funds designated according to the purposes for
which the moneys were made available, and held by the State in trust for such purposes.

Revisor's Note

(1) V.A.C.S. Articles 46d-12(a) and (b) authorize a municipality and the Texas Department of
Aviation as the municipality's agent, respectively, to "accept" and "receive" money. The references to
receive" are omitted from the revised law because "receive" is included within the meaning of "accept."

(2) V.A.C.S. Articles 46d-12(a) and (b) authorize a municipality and the Texas Department of Aviation as the municipality's agent, respectively, to accept "Federal and State moneys and other moneys, public or private." The revised law merely refers to "money" because the categories listed cover money from all sources.

(3) V.A.C.S. Articles 46d-12(a) and (b) refer to the "terms and conditions" prescribed by the United States and the state. The references to "conditions" are omitted from the revised law because "conditions" is included within the meaning of "terms."

(4) V.A.C.S. Article 46d-12(b) refers to the Texas Department of Aviation. Under Section 1.16, Chapter 7, Acts of the 72nd Legislature, 1st Called Session, 1991 (Article 46c-8B, Vernon's Texas Civil Statutes), a reference in law to the Texas Department of Aviation means the Texas Department of Transportation. Accordingly, the revised law refers to the Texas Department of Transportation.

[Sections 22.056-22.070 reserved for expansion]

SUBCHAPTER D. JOINT OPERATIONS

Revised Law

Sec. 22.071. DEFINITIONS. In this subchapter:

(1) "Constituent agency" means a public agency that is a party to an agreement under Section 22.072 to act jointly under this subchapter.

(2) "Governing authority" means the governing body of a county or municipality or the head of a public agency other than a county or municipality.

(3) "Joint board" means a board created under Section

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(4) "Populous home-rule municipality" means a home-rule municipality with a population of more than 400,000.

(5) "Public agency" includes a local government, an agency of the state or of the United States, and a political subdivision or agency of another state. (V.A.C.S. Arts. 46d-14(a)(1), (2), (4); New.)

Source Law

Art. 46d-14. (a) Definitions. For the purposes of this Section, unless otherwise qualified:

(1) "Public agency" includes a municipality, as defined in this Act, any agency of the State government and of the United States, and any municipality, political subdivision, and agency of another State.

(2) "Governing body" means the governing body of a county or municipality, and the head of the agency if the public agency is other than a county or municipality.

(4) "Populous home-rule municipality" means a home-rule municipality with a population of more than 400,000, according to the most recent federal census.

Revisor's Note

(1) V.A.C.S. Article 46d-14(a) states that the defined terms have the meanings defined "unless otherwise qualified." This limitation is omitted from the revised law because the defined terms are used consistently in the revision in the context to which the definition applies.

(2) V.A.C.S. Article 46d-14(a)(4) describes a population number that is to be determined according to the most recent federal census. The revised law omits the reference to the federal census because Section 311.005(3), Government Code (Code Construction Act), defines "population" as population according to the most recent federal decennial census. That definition applies to the revised law.

(3) The definitions of "constituent agency" and
"joint board" are added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definitions.

(4) V.A.C.S. Article 46d-14(a)(1) refers to a "municipality [or] political subdivision." The reference to "municipality" is omitted from the revised law because "municipality" is included within the meaning of "political subdivision."

(5) V.A.C.S. Article 46d-14(a)(2) defines "governing body" in part as the head of an agency. Because referring to an individual as a "governing body" creates an artificial definition, the revised law substitutes "governing authority" for "governing body."

Revised Law

Sec. 22.072. JOINT-ACTION AGREEMENT. (a) Two or more public agencies may enter into an agreement with each other for joint action under this chapter. Concurrent action by ordinance, resolution, or otherwise of the governing authorities of the participating public agencies constitutes joint action.

(b) A joint-action agreement must specify:

(1) its duration;

(2) the proportionate interest each public agency has in the property, facilities, and privileges involved;

(3) the proportion each public agency pays of:

(A) the preliminary costs and costs of acquiring, establishing, constructing, improving, and equipping the airport, air navigation facility, or airport hazard area; and

(B) the costs of maintaining, operating, regulating, and protecting the airport, air navigation facility, or airport hazard area; and

(4) any other terms required by this subchapter.

(c) A joint-action agreement may include:

(1) provisions for amending the agreement;
(2) conditions and methods of terminating the agreement;

(3) provisions for disposing of all or any of the property, facilities, and privileges jointly owned before or after all or part of the property, facilities, and privileges cease to be used for the purposes of this chapter or on termination of the agreement;

(4) provisions for distributing the proceeds received on disposal of the property, facilities, and privileges and any funds or other property jointly owned and undisposed of;

(5) provisions for assuming or paying any indebtedness arising from the joint venture that remains unpaid on the disposal of all assets or on termination of the agreement; and

(6) any other necessary or convenient provision.

(V.A.C.S. Art. 46d-14(b).)

Source Law

(b) Agreement. Any two (2) or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this Act and any two (2) or more municipalities are specially authorized to make such agreement or agreements as they may deem necessary for the joint acquisition and operation of airports, air navigation facilities, or airport hazard areas. Concurrent action by ordinance, resolution or otherwise of the governing bodies of the participating public agencies shall constitute joint action. Each such agreement shall specify its duration, the proportionate interest which each public agency shall have in the property, facilities and privileges involved, the proportion to be borne by each public agency of preliminary costs and costs of acquisition, establishment, construction, enlargement, improvement, and equipment of the airport, air navigation facility, or airport hazard area, the proportion of the expenses of maintenance, operation, regulation and protection thereof to be borne by each and such other terms as are required by the provisions of this Section. The agreement may also provide for: amendments thereof, and conditions and methods of termination of the agreement; the disposal of all or any of the property, facilities and privileges jointly owned, prior to or upon said property, facilities and privileges, or any part thereof, ceasing to be used for the purposes provided in this Act, or upon termination of the agreement; the distribution of the proceeds received upon any such disposal, and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint venture which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be
necessary or convenient.

Revisor's Note

V.A.C.S. Article 46d-14(b) refers to "enlargement" and "improvement." The reference to "enlargement" is omitted from the revised law because "enlargement" is included within the meaning of "improvement."

Revised Law

Sec. 22.073. ADDITIONAL AUTHORIZATION. A power or privilege granted to a local government by this chapter may be exercised jointly with a public agency of another state or the United States to the extent permitted by the laws of that state or of the United States. A state agency, when acting jointly with a local government, may exercise a power or privilege granted to a local government by this chapter. (V.A.C.S. Art. 46d-14(a-1).)

Source Law

(a-1) Authorization. All powers, privileges, and authority granted to any municipality by this Act may be exercised and enjoyed jointly with any public agency of any other State or of the United States to the extent that the laws of such other State or of the United States permit such joint exercise or enjoyment. If not otherwise authorized by law, any agency of the State government when acting jointly with any municipality, may exercise and enjoy all of the powers, privileges, and authority conferred by this Act upon a municipality.

Revisor's Note

(1) V.A.C.S. Article 46d-14(a-1) refers to the "powers, privileges, and authority" granted to a municipality by the Municipal Airports Act. The revised law omits "authority" because it is included within the meaning of "powers" and "privileges."

(2) V.A.C.S. Article 46d-14(a-1) provides that the powers, privileges, and authority granted to a municipality by the Municipal Airports Act may be "exercised and enjoyed" jointly with a public agency of
another state or the United States. The revised law omits "enjoyed" because it is included within the meaning of "exercised."

Revised Law

Sec. 22.074. JOINT BOARD. (a) Public agencies acting jointly under this subchapter shall create a joint board consisting of members appointed by the governing authority of each participating public agency. The joint agreement shall provide for the number to be appointed and the members' terms and compensation, if any. The joint board shall organize, select officers for terms to be provided by the agreement, and adopt rules for its own procedures.

(b) A joint board may exercise on behalf of its constituent agencies all the powers of each with respect to an airport, air navigation facility, or airport hazard area, subject to the limitations of Sections 22.079-22.082.

(c) A joint board may plan, acquire, establish, construct, improve, equip, maintain, operate, regulate, protect, and police an airport, air navigation facility, or airport hazard area jointly acquired, controlled, and operated. The joint board may also realign, alter, acquire, abandon, or close a portion of a roadway or alleyway without a showing of paramount importance if the portions to be realigned, altered, acquired, abandoned, or closed are in the geographic boundaries of the airport at the time of or after the realignment, alteration, acquisition, abandonment, or closing. A taking of a right-of-way that occurs in the exercise of this power shall be compensated at fair market value.

(d) If the constituent agencies of a joint board are populous home-rule municipalities, a power described by Subsection (c) is exclusively the power of the board regardless of whether all or part of the airport, air navigation facility, or airport hazard area is located in or outside the territory of any of the constituent agencies. Another local government or other political
subdivision may not enact or enforce a zoning ordinance, subdivision regulation, construction code, or other ordinance purporting to regulate the use or development of property applicable in the geographic boundaries of the airport as it may be expanded. (V.A.C.S. Art. 46d-14(c).)

Source Law

(c) Joint Board. Public agencies acting jointly pursuant to this Section shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed, their term and compensation, if any, shall be provided for in the joint agreement. Each such joint board shall organize, select officers for terms to be fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board shall have power to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport, air navigation facility, or airport hazard area to be jointly acquired, controlled, and operated. The joint board also may realign, alter, acquire, abandon, or close portions of roads, streets, boulevards, avenues, and alleyways, without a showing of paramount importance, if the portions to be realigned, altered, acquired, abandoned, or closed are within the geographic boundaries of the airport at the time of, or following, the realignment, alteration, acquisition, abandonment, or closing. Any taking of rights-of-way that occurs in the exercise of this power shall be compensated at fair market value. If the constituent public agencies of a joint board are populous home-rule municipalities, these powers are exclusively the powers of the board regardless of whether all or part of the airport, air navigation facility, or airport hazard area is located within or outside the territorial limits of any of the constituent public agencies, and another municipality, county, or other political subdivision shall not enact or enforce a zoning ordinance, subdivision regulation, construction code, or any other ordinance purporting to regulate the use or development of property applicable within the geographic boundaries of the airport as it may be expanded. A joint board may exercise on behalf of its constituent public agencies all the powers of each with respect to such airport, air navigation facility, or airport hazard area, subject to the limitations of Subsection (d) of this Section.

Revisor's Note

(1) V.A.C.S. Article 46d-14(c) authorizes a joint board to "adopt and amend from time to time" rules for its own procedures. An agency's power to amend rules is contained in the agency's power to adopt rules, so this revision omits as unnecessary the
language authorizing a joint board to amend rules.

(2) V.A.C.S. Article 46d-14(c) refers to V.A.C.S. Article 46d-14(d). That statute is codified in this code as Sections 22.079-22.082, and the revised law is drafted accordingly.

(3) V.A.C.S. Article 46d-14(c) refers to "develop" and "plan [and] establish." The reference to "develop" is omitted from the revised law because "develop" is included within the meaning of "plan [and] establish."

(4) V.A.C.S. Article 46d-14(c) refers to "enlarge" and "improve." The reference to "enlarge" is omitted from the revised law because "enlarge" is included within the meaning of "improve."

Revised Law

Sec. 22.075. ACQUISITION OF PROPERTY BY POPULOUS HOME-RULE MUNICIPALITIES. (a) A joint board for which the constituent agencies are populous home-rule municipalities may not acquire in fee simple property in a municipality to enlarge an airport operated by the joint board, including property acquired for the runway protection zone and for mitigating the effects of additional airport noise caused by the enlargement of the airport, in more than an aggregate of 10 percent of that portion of the land area of the airport that is in the municipality unless the joint board has the consent of the municipality.

(b) Property acquired for the purpose of mitigating the effects of additional airport noise caused by the enlargement of the airport that is resold is not included as part of the limit prescribed by Subsection (a).

(c) A populous home-rule municipality may acquire property under Section 22.080(b) or Chapter 21, Property Code, for a purpose described by Subsection (a), except that the consent of the municipality in which the property is located is required for an
acquisition in excess of the limit prescribed by Subsection (a).

(V.A.C.S. Art. 46d-14(c-1).)

Source Law

(c-1) After March 1, 1993, a joint board, for which the constituent public agencies are populous home-rule municipalities, shall not acquire in fee simple property within a municipality for the purpose of enlarging an airport operated by the joint board, including property acquired in fee simple for the runway protection zone and for the purpose of mitigating the effects of additional airport noise caused by the enlargement of the airport, in more than an aggregate of 10 percent of that portion of the land area of the airport that lies within the geographic boundaries of the municipality, unless the joint board has the consent of that municipality. Any property that is acquired in fee simple for the purpose of mitigating the effects of additional airport noise caused by the enlargement of the airport and is resold shall not be included as part of this 10 percent limit. Any property, real or otherwise, acquired for the purposes set out in this subsection may be acquired by populous home-rule municipalities under Subsection (d)(3) of this section or Chapter 21, Property Code, except that the consent of the municipality in which the property is located shall be required for any acquisition in excess of the 10 percent limit set forth in this subsection.

Reviser's Note

(1) V.A.C.S. Article 46d-14(c-1) prohibits certain joint boards from acquiring property for certain purposes after March 1, 1993. The revised law omits the reference to that date because that date has passed.

(2) V.A.C.S. Article 46d-14(c-1) refers to "property, real or otherwise," acquired for the purposes set out in the source law. "[R]eal or otherwise" is omitted as unnecessary because Section 311.005(4), Government Code (Code Construction Act), provides that "property" means real and personal property. That definition applies to the revised law.

(3) V.A.C.S. Article 46d-14(c-1) refers to V.A.C.S. Article 46d-14(d)(3). That statute is codified in this code as Section 22.080(b), and the revised law is drafted accordingly.
Revised Law

Sec. 22.076. TREATMENT OF HAZARDOUS WASTE PROHIBITED. (a) A joint board may not construct a facility to treat hazardous waste as defined by Section 361.003, Health and Safety Code, in an area that the joint board acquires and that is subject to the limitation prescribed by Section 22.075 without first obtaining the permission of the municipality in which the facility is to be located.

(b) This section does not prohibit any process or other activity related to the deicing of aircraft, transportation or storage of fuel, or cleanup or remediation of a spill or leak.

(V.A.C.S. Art. 46d-14(c-3).)

Revised Law

Sec. 22.077. CERTAIN ACTIVITIES NEAR AIRPORT BOUNDARIES PROHIBITED. (a) A joint board for which the constituent agencies are populous home-rule municipalities may not begin construction in a prohibited area of any of the following without receiving the approval of the municipality in which the facility or site is to be located:

(1) a sewer and wastewater treatment plant;

Revisor's Note

V.A.C.S. Article 46d-14(c-3) refers to Subsection (c-1) of "this section," meaning V.A.C.S. Article 46d-14. That statute is codified in this code as Section 22.075, and the revised law is drafted accordingly.
(2) an aboveground aviation fuel storage facility, not including pipelines for transporting fuel;

(3) a sanitary landfill site;

(4) a hazardous-waste disposal site; or

(5) a facility designed primarily for aircraft engine testing.

(b) An area is a prohibited area for the purposes of construction of a facility or site described by Subsections (a)(1)-(4) if:

(1) the area is within 1,000 feet of any part of the boundary of the airport as the boundary existed on the date the airport began operations; or

(2) after the date the airport began operations the airport boundary is expanded under Section 22.075 to include contiguous property and the area is within 1,000 feet of any part of the boundary of the airport after that expansion.

(c) An area is a prohibited area for the purposes of construction of a facility or site described by Subsection (a)(5) if:

(1) the area is within 500 feet of any part of the boundary of the airport as the boundary existed on the date the airport began operations; or

(2) after the date the airport began operations the airport boundary is expanded under Section 22.075 by more than 500 feet to include contiguous property and the area is within 1,000 feet of any part of the boundary of the airport after that expansion.

(d) The construction of a deicing facility by the joint board does not require the approval of the local government in which the facility is to be located. (V.A.C.S. Arts. 46d-14(c-2)(1), (2), (3), (4), (5).)

Source Law

(c-2) Prohibitions and Agreements. (1) This subsection applies only to a joint board for which the constituent public agencies are populous home-rule
municipalities.

(2) The joint board may not construct in a prohibited area:

(A) a sewer and wastewater treatment plant;

(B) an above-ground aviation fuel storage facility, not including pipelines for transporting fuel;

(C) a sanitary landfill site;

(D) a hazardous-waste disposal site;

or

(E) a facility designed primarily for aircraft engine testing.

(3) An area is a prohibited area for the purposes of the prohibitions described by Subdivisions (2)(A) through (D) of this subsection if the area is within 1,000 feet of any part of the boundary of the airport operated by the joint board as the boundary existed on the date the airport began operations, except that if after that date the boundary is expanded under Subsection (c-1) of this section to include contiguous property, then within 1,000 feet of any part of the boundary of the airport after that expansion.

An area is a prohibited area for the purposes of the prohibition described by Subdivision (2)(E) of this subsection if the area is within 500 feet of any part of the boundary of the airport as the boundary existed on the date the airport began operations, except that if after that date the boundary is expanded under Subsection (c-1) of this section by more than 500 feet to include contiguous property, then within 1,000 feet of any part of the boundary of the airport after that expansion.

(4) A prohibition under Subdivision (2) of this subsection does not apply to the construction of:

(A) a facility or site for which the joint board receives, before beginning construction, the approval of the municipality in which the facility or site is to be located; or

(B) a deicing facility.

(5) The construction of a deicing facility by the joint board does not require the approval of the municipality in which the facility is to be located.

Revisor's Note

V.A.C.S. Article 46d-14(c-2) refers to Subsection (c-1) of "this section," meaning V.A.C.S. Article 46d-14. That statute is codified in this code as Section 22.075, and the revised law is drafted accordingly.

Revised Law

Sec. 22.078. INTERGOVERNMENTAL AGREEMENT WITH POLITICAL SUBDIVISION. A joint board for which the constituent agencies are populous home-rule municipalities may make an intergovernmental agreement with a political subdivision of the state. (V.A.C.S. 74C263 JD-D 119
Art. 46d-14(c-2)(6).)

Source Law

(6) The joint board may make intergovernmental agreements with political subdivisions of the state.

Revised Law

Sec. 22.079. BUDGET. On or before December 1 of each year, the governing authority of each constituent agency of a joint board shall approve a budget determining the total expenditures to be made by the joint board for any purpose in the following calendar year. (V.A.C.S. Art. 46d-14(d)(1).)

Source Law

(d) Limitations on Joint Board. (1) Expenditures. The total expenditures to be made by the joint board for any purpose in any calendar year shall be determined by a budget approved by the governing bodies of its constituent public agencies on or before the preceding December 1st.

Revised Law

Sec. 22.080. ACQUISITION AND DISPOSAL OF PROPERTY. (a) A joint board may not, without the consent of each governing authority of the board's constituent agencies:

(1) acquire an airport, air navigation facility, airport hazard, or property if the cost of the property exceeds the amount set by the joint agreement or allotted in the annual budget;

(2) dispose of an airport, air navigation facility, or real property under the jurisdiction of the board; or

(3) enter into a contract, lease, or other arrangement for the use and occupancy by another of airport property for a term of more than 40 years, including renewals or options to renew.

(b) Eminent domain proceedings under this subchapter may be instituted only by authority of the governing authorities of the constituent agencies of the joint board. Eminent domain proceedings must be instituted in the names of the constituent agencies jointly, and property acquired in eminent domain
proceedings shall be held by the agencies as tenants in common
until the agencies convey the property to the joint board.

(c) Except as provided by Subsection (a)(3), a joint board
may, without the consent of the governing authorities of the
board's constituent agencies, enter into a contract, lease, or
other arrangement for the use and occupancy by another of airport
property on the terms approved by the board, including the amounts
of rental, revenue, and payments, the periods of years, and the
options of renewal.

(d) The consent required by Subsection (a)(3) is unnecessary
if each governing authority by resolution waives that requirement.

(V.A.C.S. Arts. 46d-14(d)(2), (3), (4).)

Source Law

(2) Acquisitions Beyond Sums Allotted. No
airport, air navigation facility, airport hazard, or
real or personal property, the cost of which is in
excess of sums therefor fixed by the joint agreement or
allotted in the annual budget, may be acquired by the
joint board without the approval of the governing
bodies of its constituent public agencies.

(3) Eminent Domain. Eminent domain
proceedings under this Section may be instituted only
by authority of the governing bodies of the constituent
public agencies of the joint board. If so authorized,
such proceedings shall be instituted in the names of
the constituent public agencies jointly, and the
property so acquired shall be held by said public
agencies as tenants in common until conveyed by them to
the joint board.

(4) Disposal of Real Property, Use of
Property by Others. The joint board shall not dispose
of any airport, air navigation facility or real
property under its jurisdiction except with the consent
of the governing bodies of its constituent public
agencies. However, the joint board may, without such
consent, enter into contracts, leases, or other
arrangements for the use and occupancy by others of
airport lands and personal property for the purposes
specified in Section 4 of this Act upon such terms, for
such rentals, revenues, and payments, and for such
period or periods of years and with such options of
renewal, as shall be approved by the joint board. It
is provided, however, that if any such contract, lease,
or other arrangement shall be for a term, including any
renewal or option terms, in excess of 40 years, the
same shall be subject to the approval of each of the
governing bodies of the constituent public agencies of
the joint board unless the necessity for such approval
is waived by resolution of each such governing body.
Revisor's Note

(1) V.A.C.S. Article 46d-14(d)(2) prohibits a joint board from acquiring "real or personal property" without the approval of the governing bodies of its constituent public agencies. "[R]eal or personal" is omitted from the revised law because Section 311.005(4), Government Code (Code Construction Act), provides that "property" means real and personal property. That definition applies to the revised law.

(2) V.A.C.S. Article 46d-14(d)(4) authorizes a joint board to enter into arrangements for the use and occupancy by others of "airport lands and personal property" for certain purposes. The revised law refers to "airport property" because Section 311.005(4), Government Code (Code Construction Act), provides that "property" means real and personal property. That definition applies to the revised law.

Revised Law

Sec. 22.081. TAXICAB LICENSING. A joint board may license taxicabs transporting passengers to or from the airport and impose fees for issuing the licenses. (V.A.C.S. Art. 46d-14(d)(6).)

Source Law

(6) Taxicab Licensing. A joint airport board established pursuant to this Act shall have power to license taxicabs picking up passengers at or delivering passengers to the airport and to charge and collect fees with respect to the issuance of licenses under this subdivision.

Revised Law

Sec. 22.082. RULES. A resolution, rule, or order of a joint board dealing with a subject authorized by Section 22.014 or 22.081 is effective only on approval of the governing authorities of the constituent agencies. On approval, a resolution, rule, or order of the joint board has the same effect in the territories or jurisdictions involved as an ordinance, resolution, rule, or order...
of the public agency would have in its own territory or jurisdiction. (V.A.C.S. Arts. 46d-14(d)(5), (7).)

Source Law

(5) Police Regulations. Any resolutions, rules, regulations or orders of the joint board dealing with subjects authorized by Section 7 of this Act shall become effective only upon approval of the governing bodies of the constituent public agencies provided that upon such approval, the resolutions, rules, regulations or orders of the joint board shall have the same force and effect in the territories or jurisdictions involved as the ordinances, resolutions, rules, regulations or orders of each public agency would have in its own territory or jurisdiction.

(7) Regulations. Any resolutions, rules, regulations, or orders of the joint board dealing with subjects authorized by Subdivision (6) of this subsection become effective only upon approval of the governing bodies of the constituent public agencies. Upon the approval, the resolutions, rules, regulations, or orders of the joint board have the same force and effect in the territories or jurisdictions involved as the ordinances, resolutions, rules, regulations, or orders of each public agency would have in its own territory or jurisdiction.

Revisor's Note

(1) V.A.C.S. Article 46d-14(d)(5) refers to "Section 7 of this Act," meaning V.A.C.S. Article 46d-7. The relevant portion of that statute is codified in this code as Section 22.014, and the revised law is drafted accordingly.

(2) V.A.C.S. Article 46d-14(d)(7) refers to Subdivision (6) of "this subsection," meaning V.A.C.S. Article 46d-14(d). That statute is codified in this code as Section 22.081, and the revised law is drafted accordingly.

(3) V.A.C.S. Articles 46d-14(d)(5) and (7) refer to "rules" and "regulations." The references to "regulations" are omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.
Sec. 22.083. JOINT FUND. (a) Each constituent agency shall deposit in a joint fund created and maintained to provide the joint board with money for expenditures necessary to carry out this subchapter the agency's share of the fund as provided by the joint agreement.

(b) Federal, state, or other contributions or loans and the revenue obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be deposited to the credit of the joint fund.

(c) Disbursements from the fund shall be made by order of the joint board, subject to the limitations prescribed by Sections 22.079-22.082. (V.A.C.S. Art. 46d-14(e).)

Source Law

(e) Joint Fund. For the purpose of providing a joint board with moneys for the necessary expenditures in carrying out the provisions of this Section, a joint fund shall be created and maintained, into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Each of the constituent public agencies shall provide its share of the fund from sources available to each. Any Federal, State or other contributions or loans, and the revenues obtained from the joint ownership, control and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in Subsection (d) of this Section.

Revisor's Note

V.A.C.S. Article 46d-14(e) refers to Subsection (d) of "this Section," meaning V.A.C.S. Article 46d-14. That statute is codified in this code as Sections 22.079-22.082, and the revised law is drafted accordingly.

Revised Law

Sec. 22.084. AIRPORT REVENUE AND REVENUE BOND PROCEEDS; CONTRACTING OPPORTUNITIES FOR MINORITY- AND WOMEN-OWNED BUSINESSES.

(a) If constituent agencies or a nonprofit corporation created
under Section 22.152 issues revenue bonds to finance the
construction or acquisition of a facility or other improvement at
an airport, the proceeds of the bonds and any other airport income
or revenue may be spent on projects for which the proceeds, income,
or revenue may otherwise be spent. An agreement may be made to
spend all or a portion of the proceeds, income, or revenue for the
planning, construction, or acquisition of facilities authorized by
Sections 22.011(a)-(c) and 22.012 without inviting, advertising
for, or otherwise requiring competitive bids. A contract wholly or
partly funded with proceeds, income, or revenue under this
subsection shall be let in accordance with the joint board’s rules
and policies relating to creation of contracting opportunities for
minority- and women-owned businesses.

(b) This section does not apply to a contract to be paid:

(1) from the proceeds of bonds unless the bonds from
which the particular proceeds derive provide that they may not be
repaid in any circumstances from ad valorem taxes; or

(2) wholly or partly from ad valorem taxes. (V.A.C.S.
Art. 46d-14(g.).)

Source Law

(g) Airport Revenues and Revenue Bond Proceeds,
Minority and Women-Owned Business Opportunities.
(1) If public agencies that are parties to a joint
action agreement executed under Subsection (b) of this
section, or if a nonprofit corporation created pursuant
to Subsection (f) of this section, issues revenue bonds
to finance the construction or acquisition of
buildings, improvements, or facilities at the airport,
the proceeds of such bonds may be spent, and any other
airport income or revenues may be spent, on projects
for which such proceeds, income, or revenues may
otherwise be expended, and an agreement may be made to
spend all or any portion thereof for the planning,
construction, or acquisition of any of the facilities
authorized by Subsection 2(a) of this Act (Article
46d-2, Vernon’s Texas Civil Statutes) without inviting,
advertising for, or otherwise requiring competitive
bids, or complying with the change order requirements
of Chapter 697, Acts of the 70th Legislature, Regular
Session, 1987 (Article 46h-1, Vernon’s Texas Civil
Statutes). Contracts funded in whole or in part with
such bond proceeds or with such income or revenues
shall be let in accordance with the joint board’s
rules, regulations, and policies relating to creation
of minority and women-owned business contracting
opportunities.

(2) This subsection does not apply to any
contracts (A) to be paid from the proceeds of bonds unless the bonds from which the particular proceeds derive provide by their own terms that they may not be repaid in any circumstances from ad valorem taxes, or (B) to be paid in whole or in part from ad valorem taxes.

Revisor's Note

(1) V.A.C.S. Article 46d-14(g)(1) refers to Subsection (f) of "this section," meaning V.A.C.S. Article 46d-14. That statute is codified in this code as Section 22.152, and the revised law is drafted accordingly.

(2) V.A.C.S. Article 46d-14(g)(1) refers to V.A.C.S. Article 46d-2(a). That statute is codified in this code as Sections 22.011(a)-(c) and 22.012, and the revised law is drafted accordingly.

(3) The revised law omits the reference in V.A.C.S. Article 46d-14(g)(1) to Chapter 697, Acts of the 70th Legislature, Regular Session, 1987 (Article 46h-1, Vernon's Texas Civil Statutes), because the statute expired December 31, 1994.

(4) V.A.C.S. Article 46d-14(g)(1) refers to "rules" and "regulations." The reference to "regulations" is omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

Revised Law

Sec. 22.085. INSURANCE. (a) A joint board, through self-insurance, purchased insurance, or both, may insure the joint board and its contractors and subcontractors against liability arising from the acquisition, construction, or operation of the programs and facilities of the joint board for:

(1) damages to the person or property of others;
(2) workers' compensation; and
(3) officers' and employees' liability.

(b) A joint board may use contracts and rating plans and may
implement risk management programs designed to prevent accidents.
In developing its insurance program, a joint board may consider the
peculiar hazards, indemnity standards, and past prospective loss
and expense experience of the joint board and of its contractors
and subcontractors. (V.A.C.S. Art. 46d-14(h).)

Source Law

(h) Self-Insurance, Insurance for Contractors.
The joint board shall have the power to insure, through
self-insurance, purchased insurance programs, or both,
its legal liability and the legal liability of its
contractors and subcontractors for damages to the
person or property of others, for workers' compensation, and for officers' and employees'
liability, in each case arising from the acquisition,
construction, or operation of the programs and
facilities of the joint board. The joint board may
utilize contracts and rating plans and may implement
risk management programs designed to encourage the
prevention of accidents. In developing its insurance
or self-insurance program, a joint board may take into
account the peculiar hazards, indemnity standards, and
past prospective loss and expense experience of the
joint board itself as well as that of its contractors
and subcontractors.

Revised Law

Sec. 22.086. ACCEPTANCE OF CREDIT CARDS. A joint board may:

(1) accept credit cards in payment of fees for all or
certain categories of services provided by or on behalf of the
joint board in connection with its operation of an airport;

(2) collect a fee for processing a payment by credit
card; and

(3) collect a service charge from the person who owes
the fee if the payment by credit card is not honored by the credit
card company on which the funds are drawn. (V.A.C.S.
Art. 46d-14(i).)

Source Law

(i) Acceptance of Credit Cards. A joint board
may elect to accept credit cards in payment of fees for
all or certain categories of services provided by or on
behalf of the joint board in connection with its
operation of the airport. The joint board may collect a fee for processing the payment by credit card and may collect a service charge from the person who owes the fee if the payment by credit card is not honored by the credit card company on which the funds are drawn.

Revised Law

Sec. 22.087. USE OF TERMINAL FACILITIES BY MANUFACTURERS AND CONCESSIONAIRES. A joint board may:

(1) use the property, including terminal buildings, of a jointly owned airport to display, demonstrate, market, and sell aircraft and aircraft-related, airport-related, and aviation-related property, including goods and equipment;

(2) lease to or permit the use of airport property by manufacturers, suppliers, concessionaires, and other providers of aircraft and aircraft-related, airport-related, and aviation-related property, including goods and equipment; and

(3) use the revenue of the airport and the proceeds of bonds authorized by this chapter or by any other law for a purpose described by Subdivision (1) or (2). (V.A.C.S. Art. 46d-14(j).)

Source Law

(j) Use of Terminal Facilities by Manufacturers and Concessionaires. A joint board is authorized to utilize the terminal buildings and other land and properties of the jointly owned airport for the purposes of displaying, demonstrating, and marketing and selling aircraft and aircraft-related, airport-related, and aviation-related goods, properties, merchandise, and equipment, and to lease or rent to, or permit the use of same by, manufacturers, suppliers, concessionaires, and other providers thereof. The revenues of the jointly owned airport and the proceeds of any bonds authorized by this or any other law may be utilized for such purposes.

Revisor's Note

(1) V.A.C.S. Article 46d-14(j) authorizes a joint board to "lease or rent to" or permit the use of certain property by certain persons. The reference to "rent" is omitted from the revised law because "rent" is included within the meaning of "lease."

(2) V.A.C.S. Article 46d-14(j) refers to "goods"
and "merchandise." The reference to "merchandise" is omitted from the revised law because "merchandise" is included within the meaning of "goods."

Revised Law

Sec. 22.088. EXPENDITURE OF BOND REVENUE BY JOINT BOARD WITHOUT COMPETITIVE BIDDING. (a) A joint board may spend or agree to spend the proceeds of revenue bonds under its control to acquire and install furniture, fixtures, and equipment to be used at an airport operated by the joint board without inviting, advertising for, or otherwise requiring competitive bids or requiring or obtaining a payment or performance bond.

(b) This section applies to furniture, fixtures, and equipment purchased by the joint board or a private entity that will lease the furniture, fixtures, and equipment in accordance with this section.

(c) The furniture, fixtures, and equipment must be, before the delivery of the bonds, the subject of a lease from the joint board to a private entity under the terms of which the lessee is:

(1) obligated to maintain the furniture, fixtures, and equipment solely at its expense; and

(2) unconditionally obligated throughout the term of the bonds to make payments of net rent in amounts and at times sufficient to provide for the timely payment of all principal, interest, redemption premiums, and other costs and expenses arising or to arise in connection with the payment of the bonds.

(d) This section does not apply to the expenditure of the proceeds of bonds:

(1) unless the bonds provide by their own terms that:

(A) they are payable solely from the net rents required by Subsection (c)(2); and

(B) they are not payable in any circumstances from tax revenue; or

(2) that provide for the creation of a contractual
mortgage lien against real property owned by the public agencies creating the joint board.

(e) A joint board may adopt rules it finds to be in the public interest to govern the method and installation of the properties to which this section relates. (V.A.C.S. Art. 46h.)

Source Law

Art. 46h
Sec. 1. This Act applies to any joint board created under the provisions of Section 14, Municipal Airports Act (Article 46d-14, Vernon's Texas Civil Statutes).

Sec. 2. (a) A joint board covered by this Act is authorized to spend or agree to spend the proceeds of revenue bonds under its control for the acquisition and installation of furniture, fixtures, and equipment to be used at any airport operated by such joint board, without the necessity of inviting, advertising for, or otherwise requiring competitive bids therefor, or requiring or obtaining payment or performance bonds in connection therewith. The provisions of this Act shall apply to such furniture, fixtures, and equipment hereafter purchased, presently in the process of purchase, or on order by (i) the joint board, or (ii) a private entity which will lease such facilities in accordance with the provisions of this Act. In order to qualify under this Act, such furniture, fixtures, and equipment must be, prior to the delivery of such bonds, the subject of a lease from the joint board to a private entity pursuant to the terms of which the lessee is obligated to maintain such furniture, fixtures, and equipment solely at its expense and is unconditionally obligated throughout the term of the bonds to make payments of net rent in such amounts and at such times as will be sufficient to provide for the timely payment of all principal, interest, redemption premiums, and other costs and expenses arising or to arise in connection with the payment of such bonds.

(b) This Act does not apply to the expenditure of the proceeds of bonds unless the bonds provide by their own terms that:

(1) they are payable solely from the net rents required by Subsection (a) of this section; and

(2) they are not payable in any circumstances from tax revenues.

(c) This Act does not apply to the expenditure of the proceeds of bonds that provide for the creation of a contractual mortgage lien against real property owned by any public agencies creating such joint board.

Sec. 3. This Act is permissive only, and any such joint board may promulgate such rules and regulations as it finds to be in the public interest to govern the method and installation of the properties to which this Act relates.

Revisor's Note

(1) The revised law omits as unnecessary the reference in Section 1, V.A.C.S. Article 46h, to a
(2) The revised law omits as unnecessary the reference in Section 22.071, V.A.C.S. Article 46d, to furniture, fixtures, and equipment "presently in the process of purchase . . . or on order" because any property in the process of purchase or on order on May 20, 1981, the effective date of that statute, would by now have been delivered.

(3) Section 3, V.A.C.S. Article 46h, refers to "rules and regulations." The reference to "regulations" is omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

[Sections 22.089-22.150 reserved for expansion]

SUBCHAPTER E. NONPROFIT AIRPORT FACILITY FINANCING CORPORATIONS

Revised Law

Sec. 22.151. DEFINITIONS. The definitions in Subchapter D apply to this subchapter. (New.)

Revised Law

Sec. 22.152. NONPROFIT AIRPORT FACILITY FINANCING CORPORATIONS. (a) The public agencies, by concurrent order, ordinance, or resolution, may authorize the incorporation of a nonprofit airport facility financing corporation under this chapter to provide financing to pay the costs, including direct and indirect costs, capitalized interest, and reserves for the costs, of an airport facility authorized by Sections 22.011(a)-(c) and 22.012 and for other purposes set forth in the articles of
incorporation.

(b) In fulfilling its purposes and performing its powers, duties, and operations, the corporation shall act on behalf of and as the duly constituted authority and instrumentality of the constituent agencies authorizing its creation for purposes of Section 103 of the Internal Revenue Code of 1986 (26 U.S.C. Section 103). (V.A.C.S. Arts. 46d-14(f)(1), (4).)

Source Law

(f) Nonprofit Airport Facility Financing Corporations; Creation; Powers. (1) The public agencies that are parties to a joint action agreement executed under Subsection (b) of this section may, by concurrent order, ordinance, or resolution, authorize the incorporation of a nonprofit airport facility financing corporation under this Act. The corporation shall be incorporated for the purpose of providing financing to pay the costs, including all direct and indirect costs, capitalized interest, and reserves therefor, of any of the airport facilities authorized by Subsection 2(a) of this Act (Article 46d-2, Vernon's Texas Civil Statutes), and for such other purposes as may be set forth in the articles of incorporation of the corporation.

(4) In the fulfillment of its purposes and in the performance of its powers, duties, and operations, the corporation shall be acting on behalf and as the duly constituted authority and instrumentality of the public agencies authorizing its creation for all of the purposes of Section 103 of the Internal Revenue Code of 1986.

Revisor's Note

V.A.C.S. Article 46d-14(f)(1) refers to V.A.C.S. Article 46d-2(a). That statute is codified in this code as Sections 22.011(a)-(c) and 22.012, and the revised law is drafted accordingly.

Revised Law

Sec. 22.153. APPROVAL OF ARTICLES OF INCORPORATION; APPOINTMENT OF BOARD OF DIRECTORS. (a) The concurrent order, ordinance, or resolution of the constituent agencies authorizing incorporation of the nonprofit airport facility financing corporation must approve the articles of incorporation for the corporation and any amendments to the articles of incorporation.
(b) The board of directors of the corporation may be selected and appointed in any manner specified in the articles of incorporation, including the selection and appointment of the board of directors by the joint board under whose authority the jointly owned airport is operated and supervised under this chapter and the joint agreement. (V.A.C.S. Art. 46d-14(f)(3).)

Source Law

(3) The concurrent order, ordinance, or resolution of the public agencies shall approve the articles of incorporation for the corporation and any amendments thereto. The board of directors of the corporation may be selected and appointed in the manner specified in the articles of incorporation. The articles of incorporation may provide for the appointment and selection of the board of directors by the joint board under whose authority the jointly owned airport is operated and supervised under this Act and the joint agreement.

Revised Law

Sec. 22.154. INCORPORATION. A nonprofit airport facility financing corporation may be incorporated under this chapter by filing its articles of incorporation with the secretary of state in the manner prescribed for the incorporation of nonprofit corporations under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes). On filing of the articles of incorporation, the secretary of state shall issue a certificate of incorporation showing that the corporation is incorporated under this chapter. (V.A.C.S. Art. 46d-14(f)(2)(part).)

Source Law

(2) The corporation shall be incorporated under this Act by filing its articles of incorporation with the secretary of state in the manner prescribed for the incorporation of nonprofit corporations under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes). Upon such filing, the secretary of state shall issue his certificate of incorporation to the effect that the corporation is incorporated under this Act.

Revised Law

Sec. 22.155. BYLAWS. The joint board under whose authority
the jointly owned airport is operated shall approve or prescribe
the bylaws of the corporation. The bylaws may prescribe the
procedures to be followed in fulfilling the purposes of the
 corporation and in exercising its powers and may include any
limitations on exercising those powers the joint board considers
appropriate. (V.A.C.S. Art. 46d-14(f)(5).)

Source Law

(5) The bylaws of the corporation shall be
as approved or prescribed by the joint board and may
 prescribe the procedures to be followed in the
 fulfillment of the purposes of the corporation and in
the exercise of the powers thereof, and the bylaws may
include such limitations on the exercise of such powers
as the joint board shall consider appropriate.

Revised Law

Sec. 22.156. APPLICABLE LAWS. The corporation has the
powers granted by this chapter, the Texas Non-Profit Corporation
Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), and
all other laws applicable to nonprofit corporations. The internal
affairs of the corporation are governed by, the purposes and powers
of the corporation are fulfilled and exercised in accordance with,
and the corporation is subject to, the Texas Non-Profit Corporation
Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes),
except as otherwise provided by this chapter. (V.A.C.S.
Art. 46d-14(f)(2) (part).)

Source Law

(2) ... The corporation shall have all
of the powers granted herein, and shall have all of the
additional powers granted to nonprofit corporations by
the Texas Non-Profit Corporation Act (Article 1396-1.01
et seq., Vernon’s Texas Civil Statutes) and by all
other laws applicable to nonprofit corporations. The
internal affairs of the corporation shall be governed
by, the purposes and powers of the corporation shall be
fulfilled and exercised in accordance with, and the
corporation is subject to the provisions of the Texas
Non-Profit Corporation Act (Article 1396-1.01 et seq.,
Vernon’s Texas Civil Statutes), except as otherwise
provided herein.

Revised Law

Sec. 22.157. BONDS. (a) A nonprofit airport facility
financing corporation may provide financing for the purposes

3 described by Section 22.152(a) by issuing bonds, notes, or other

4 forms of obligations on behalf of the constituent agencies on terms

5 the board of directors considers appropriate, consistent with the

6 procedures and limitations set forth in the bylaws and subject only

7 to the limitations in this subsection. The bonds, notes, or other

8 obligations are payable only from:

9 (1) revenue, rents, income, or payments from one or

10 more users of property of the jointly owned airport under a lease,

11 loan, purchase, lease-purchase, or other agreement between the

12 corporation and the user or users; and

13 (2) revenue of the airport that the joint board

14 commits and pledges to the payment of the obligations under

15 agreements between the joint board and the corporation as

16 authorized by Subsection (b).

17 (b) A lease, loan, purchase, lease-purchase, or other

18 agreement may be on terms the parties to the agreement determine

19 appropriate. The joint board and the corporation may enter into

20 agreements, including lease, lease-purchase, or other agreements,

21 as they determine appropriate to accomplish financing under this

22 section.

23 (c) Bonds, notes, or other obligations of the corporation

24 must be submitted to the attorney general for review and approval.

25 If the attorney general determines that the obligations are issued

26 in accordance with this chapter, the attorney general shall approve

27 them. On approval, the obligations are incontestable for any

28 cause. (V.A.C.S. Arts. 46d-14(f)(6), (7).)

Source Law

(6) The corporation shall have the power
to provide financing for the purposes described in
Subsection (f)(1) of this section by issuing bonds,
notes, or any other form of obligations on behalf of
the public agencies upon any terms considered
appropriate by its board of directors, consistent with
the procedures and limitations set forth in the bylaws
and subject only to the limitations contained in this
subdivision. Such bonds, notes, or other obligations
shall be payable solely (A) from revenues, rents,
income, or payments from one or more users of property
of the jointly owned airport pursuant to a lease, loan, purchase, lease-purchase, or other agreement between the corporation and such user or users, and (B) from such revenues of the airport as the joint board may commit and pledge thereto pursuant to agreements between the joint board and the corporation as authorized below. Any such lease, loan, purchase, lease-purchase, or other agreement may be upon such terms as the parties thereto deem appropriate. The joint board and the corporation are authorized to enter into such agreements, including leases, lease-purchase, or other agreements as may be deemed appropriate in order to accomplish any such financing.

(7) All bonds, notes, or other obligations of the corporation shall be submitted to the attorney general for his review and approval. If he shall determine that the same are issued in accordance with this Act, he shall approve them, and thereafter the same shall be incontestable for any cause.

Reviser's Note
V.A.C.S. Article 46d-14(f)(6) refers to Subsection (f)(1) of "this section," meaning V.A.C.S. Article 46d-14. That statute is codified in this code as Section 22.152(a), and the revised law is drafted accordingly.

Revised Law
Sec. 22.158. EARNINGS. (a) No part of a nonprofit airport facility financing corporation's net earnings remaining after payment of its expenses and other obligations may benefit an individual, private firm, or private corporation.

(b) If the board of directors determines that sufficient provision has been made for the full payment of the expenses, bonds, notes, and other obligations of the corporation, any net earnings of the corporation subsequently accruing shall be paid to the joint board for the benefit of the constituent agencies in their respective ownership shares of the airport in accordance with the joint agreement. (V.A.C.S. Art. 46d-14(f)(8).)

Source Law
(8) The corporation shall be a nonprofit corporation. No part of its net earnings remaining after payment of its expenses and other obligations shall ever inure to the benefit of any individual, private firm, or private corporation. In the event the board of directors shall determine that sufficient provision has been made for the full payment of the
expenses, bonds, notes, and other obligations of the
corporation, then any net earnings of the corporation
thereafter accruing shall be paid to the joint board
for the benefit of the public agencies in their
respective ownership shares of the airport in
accordance with the joint agreement.

Revised Law

Sec. 22.159. ALTERATION OR TERMINATION OF CORPORATION. The
constituent agencies that authorize the incorporation of a
nonprofit airport facility financing corporation may alter the
structure, organization, programs, or activities of the corporation
or may terminate and dissolve the corporation, subject only to any
limitations provided by state law relating to the impairment of
contracts entered into by the corporation. (V.A.C.S.
Art. 46d-14(f)(9).)

Source Law

(9) The public agencies may, in their sole
discretion and at any time, alter the structure,
organization, programs, or activities of the
corporation, or they may terminate and dissolve the
corporation, subject only to any limitations provided
by the constitution and laws of the state relating to
the impairment of contracts entered into by the corporation.

Reviser's Note

(1) V.A.C.S. Article 46d-14(f)(9) provides that
certain agencies may, "in their sole discretion and at
any time," take certain actions. The revised law omits
the reference to the "sole discretion" of the agencies
because that is implied by the reference to "may." The
revised law omits the reference to "at any time"
because the statute does not limit the period of time
in which the actions may be taken.

(2) V.A.C.S. Article 46d-14(f)(9) refers to
limitations "provided by the constitution and laws of
the state." The reference to the constitution is
omitted from the revised law because the Texas
Constitution is included within the meaning of "state
The revised law omits as unnecessary V.A.C.S. Article 46d-10, relating to the validation of prior acquisitions, actions, and bond issues, because, with one exception, that provision is executed. The exception is the authorization given to a local government to issue bonds after the effective date of the source law up to the limit fixed in an authorization given before the effective date of the source law. Because Article 46d-10 took effect April 21, 1947, it is unlikely that a local government would issue bonds under an authorization given before the effective date of the source law. Therefore, this provision may be omitted. V.A.C.S. Article 46d-10 reads:

Art. 46d-10. Any acquisition of property heretofore made, within or without the limits of any municipality of the State, for the purposes authorized by this Act, and any other action heretofore taken by a municipality in the furtherance of such purposes, including but not limited to the making of appropriations, the expenditure of money, the incurring of debts, the acceptance and disbursement of Federal, State or other grants or loans, the issuance of payment and bonds, the execution of leases and contracts, which acquisition or action would have been authorized had this Act been in effect at the time of such acquisition or action, is hereby ratified and made valid. All bonds heretofore issued in furtherance of purposes authorized by this Act and actions ratified by this Section are confirmed as legal obligations of the municipality, and, without prejudice to the general powers granted to the municipality by this Act, such municipality is hereby authorized to issue further bonds for such purposes up to the limit fixed in the original authorization therefor, which bonds shall be legal obligations in accordance with their terms.

CHAPTER 23. AIRPORT SECURITY PERSONNEL

Sec. 23.001. ESTABLISHMENT OF AIRPORT SECURITY FORCE
Sec. 23.001. ESTABLISHMENT OF AIRPORT SECURITY FORCE. The governing body of a political subdivision that operates an airport served by an air carrier certificated by the Civil Aeronautics Board or the United States Department of Transportation may establish an airport security force and employ airport security personnel. (V.A.C.S. Art. 46g(a).)

Source Law
(a) The governing body of any political subdivision of this state that operates an airport served by a Civil Aeronautics Board certificated air carrier may establish an airport security force and employ airport security personnel.

Revisor's Note
V.A.C.S. Article 46g(a) refers to an airport "served by a Civil Aeronautics Board certificated air carrier." All functions, powers, and duties of the Civil Aeronautics Board relating to air transportation were transferred to the United States Department of Transportation effective January 1, 1985, by Section 40(a), Airline Deregulation Act of 1978, 49 U.S.C. Section 1551. Under Section 12, Civil Aeronautics Board Sunset Act of 1984, 49 U.S.C. Section 1556, a certificate issued by the Civil Aeronautics Board continues in effect until modified, terminated, superseded, set aside, or revoked by the secretary of transportation or other authorized official, a court of competent jurisdiction, or operation of law. Therefore, the revised law refers to the certification by either the Civil Aeronautics Board or the United States Department of Transportation.
Sec. 23.002. COMMISSIONING OF EMPLOYEES AS PEACE OFFICERS.

(a) The governing body may commission an employee of an airport security force established under this chapter as a peace officer, subject to Subchapter C, Chapter 415, Government Code, if the employee gives an oath and a bond for the faithful performance of the employee's duties as required by the governing body.

(b) The bond described by Subsection (a) must be:

(1) made payable to the political subdivision;

(2) filed with the governing body; and

(3) approved by the governing body. (V.A.C.S. Arts. 46g(b), (c).)

Source Law

(b) A governing body may commission any employee of an airport security force established under this Act as a peace officer if he is certified as qualified to be a peace officer by the Commission on Law Enforcement Officer Standards and Education.

(c) Any person commissioned as a peace officer under this Act shall give an oath and such bond for the faithful performance of his duties as the governing body may require. The bond shall be approved by the governing body and made payable to the political subdivision that operates the airport. It shall be filed with the governing body.

Revisor's Note

The source law authorizes a governing body to commission an employee of an airport security force as a peace officer if the employee is "certified as qualified to be a peace officer" by the Commission on Law Enforcement Officer Standards and Education. Under Subchapter C, Chapter 415, Government Code, a person may not appoint a peace officer unless the officer is licensed by the commission. Accordingly, the revised law merely makes reference to Subchapter C, Chapter 415, Government Code, rather than setting out licensing as a separate requirement.
Revised Law

Sec. 23.003. AUTHORITY OF EMPLOYEES COMMISSIONED AS PEACE OFFICERS. A peace officer commissioned under this chapter has the rights, privileges, and duties of a peace officer only while on property under the control of the airport or acting in the actual course and scope of the person's employment. (V.A.C.S. Art. 46g(d).)

Source Law

(d) Any peace officer commissioned under this Act shall be vested with all the rights, privileges, obligations, and duties of any other peace officer in this state while he is on the property under the control of the airport, or in the actual course and scope of his employment.

Revisor's Note

(1) V.A.C.S. Article 46g(d) provides that a peace officer commissioned under that section is vested with the rights, privileges, obligations, and duties of a peace officer while the officer is on the property under the control of the airport or in the actual course and scope of the person's employment. Because the intent of this provision is to limit the authority of airport security personnel, the revised law provides that a peace officer commissioned under this chapter has the rights, privileges, and duties of a peace officer "only" under the above-described circumstances. This interpretation is consistent with Perkins v. State, 812 S.W.2d 326 (Tex. Crim. App. 1991), which held that an airport police officer did not have the authority to make a warrantless arrest of a person for a traffic offense while the officer was driving from one airport to another at the time he witnessed the violation. In Perkins, the court cited Preston v. State, 700 S.W.2d 227 (Tex. Crim. App. 1985), which held that a campus peace officer was vested "only" with
the authority of a peace officer when he was on
property under the control of or subject to the
jurisdiction of the university or was otherwise acting
in the performance of his official duties as a campus
peace officer for the university.

(2) V.A.C.S. Article 46g(d) refers to
"obligations" and "duties." The reference to
"obligations" is omitted from the revised law because
"obligations" is included within the meaning of
"duties."

CHAPTER 24. OPERATION OF AIRCRAFT

SUBCHAPTER A. FEDERAL REQUIREMENTS REGARDING
AIRMAN CERTIFICATION

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CHAPTER 24. OPERATION OF AIRCRAFT

SUBCHAPTER A. FEDERAL REQUIREMENTS REGARDING AIRMAN CERTIFICATION

Revised Law

Sec. 24.001. DEFINITIONS. In this subchapter:

(1) "Aircraft" means a device that is invented, used, or designated for air navigation or flight, other than a parachute or other device used primarily as safety equipment.

(2) "Airman" means:

(A) a person, including the person in command of an aircraft or a pilot, mechanic, or member of the crew, who engages in the navigation of an aircraft while under way; or

(B) the person who is in charge of the inspection, overhaul, or repair of an aircraft.

(3) "Airman certificate" means a certificate issued to an airman under 49 U.S.C. Section 1422. (V.A.C.S. Art. 46f-2, Secs. 1 (part), 6 (part).)

Source Law

Art. 46f-2

Sec. 1. In this Act "aircraft" means any contrivance now known or hereafter invented, used or designated for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. ... The term "airman" means any individual (including the person in command and any pilot, mechanic, or member of the crew) who engages in the navigation of aircraft while under way and any individual who is in charge of the inspection, overhauling, or repairing of aircraft.

Sec. 6. ... an airman's license issued in accordance with the provisions of the Air Commerce Act of 1926 and amendments thereto, ... .

Revisor's Note

Section 6, V.A.C.S. Article 46f-2, refers to an airman's license issued under the Air Commerce Act of 1926. The revised law substitutes the modern federal statute authorizing the certification of airmen, 49 U.S.C. Section 1422. The definition of "airman
"certificate" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 24.002. APPLICATION. This subchapter does not apply to an aircraft owned by and used exclusively in the service of the federal or state government. (V.A.C.S. Art. 46f-2, Secs. 1 (part), 5.)

Source Law

Sec. 1. . . . The term "public aircraft" means any aircraft used exclusively in the Federal governmental service or the State governmental service. The term "civil aircraft" means any aircraft other than public aircraft. . . .

Sec. 5. The provisions of this act shall not apply to any public aircraft owned by the Government of the United States or by this State. Any person who navigates or serves as an airman in any civil aircraft which has not been licensed and registered by the Department of Commerce of the United States in the manner prescribed by the lawful rules and regulations of the United States Government in force.

Revisor's Note

(1) Section 1, V.A.C.S. Article 46f-2, defines "public aircraft" as an aircraft used exclusively in the federal governmental service or the state governmental service and defines "civil aircraft" as an aircraft other than a public aircraft. Section 5, V.A.C.S. Article 46f-2, provides that the act does not apply to public aircraft owned by the government of the United States or by this state. The revised law omits as unnecessary the distinction between public aircraft and civil aircraft because the difference between a public aircraft and a civil aircraft is that an airman in a public aircraft is exempt from the requirement of having an airman certificate. Instead, the revised law provides that this subchapter does not apply to an aircraft owned by and used exclusively in the service
of the federal or state government.

(2) The second sentence of Section 5, V.A.C.S. Article 46f-2, is incomplete. Because the meaning of the sentence cannot be determined, it has been omitted.

**Revised Law**

Sec. 24.003. OPERATION OF AIRCRAFT WITHOUT AIRMAN CERTIFICATE; OFFENSE. (a) A person commits an offense if the person:

(1) navigates an aircraft in this state without an airman certificate; or

(2) serves as an airman in connection with an aircraft flown or operated in this state without an airman certificate.

(b) An offense under Subsection (a) is a misdemeanor punishable by:

(1) a fine of not less than $100 and not more than $500;

(2) confinement in county jail for not less than 30 days and not more than six months; or

(3) both the fine and the confinement.

(c) It is a defense to prosecution under this section that the person could be prosecuted under the laws or regulations of the United States for the alleged violation. (V.A.C.S. Art. 46f-2, Sec. 6 (part).)

**Source Law**

Sec. 6. Any person who navigates within this State any civil aircraft without an airman's license, or who serves as an airman in connection with any civil aircraft flown or operated within this State, without an airman's license... shall be guilty of a misdemeanor and punishable by a fine of not more than $500.00 nor less than $100.00 or by imprisonment in the county jail for not more than six months nor less than thirty days, or both; provided, however, that acts or omissions made unlawful by this article shall not be deemed to include any act or omission which violated the law or lawful regulations of the United States; but it shall not be necessary to allege or prove, as part of the case of the State, that the defendant is not amenable, on account of the alleged violation, to prosecution under the laws of the United States. That he is amenable to such prosecution shall be matter of defense, unless it affirmatively appears from the
evidence adduced by the State.

Revisor's Note

Section 6, V.A.C.S. Article 46f-2, provides that a person that is amenable to prosecution by the United States for conduct proscribed by that section may not be prosecuted by the state. The revised law states this circumstance as a defense to prosecution because under Section 2.03(e), Penal Code, a ground of defense in a penal law that is not labeled in conformance with Chapter 2, Penal Code, has the procedural and evidentiary effect of a defense under Section 2.03, Penal Code.

Revised Law

Sec. 24.004. INSPECTION OF AIRMAN CERTIFICATE. A person holding an airman certificate shall keep the certificate in the person's possession when the person is operating an aircraft within this state or serving in connection with an aircraft flown or operated in this state. The person shall present the certificate for inspection on the demand of:

(1) a passenger;
(2) a peace officer of this state; or
(3) an official, manager, or person in charge of an airport or landing field in this state on which the person lands an aircraft or performs a service. (V.A.C.S. Art. 46f-2, Sec. 4.)

Source Law

Sec. 4. The certificate of the license herein required shall be kept in the personal possession of the licensee when he is operating aircraft within this State, or serving in connection with any civil aircraft flown or operated in this State, and must be presented for inspection upon the demand of any passenger, any peace officer of this State, or any official, manager or person in charge of any airport or landing field in this State upon which he shall land or perform any service.
Sec. 24.005. AIRCRAFT LICENSURE AND REGISTRATION. A person may not navigate an aircraft in this state, whether for commercial, pleasure, or noncommercial purposes, unless the aircraft is licensed and registered in the manner provided by the Federal Aviation Administration. (V.A.C.S. Art. 46f-2, Sec. 2 (part).)

Sec. 2. . . . it shall be unlawful for any person to navigate an aircraft within the State, whether for commercial, pleasure or noncommercial purposes, unless it is licensed and registered by the Department of Commerce of the United States in the manner prescribed by the lawful rules and regulations of the United States Government then in force.

Section 2, V.A.C.S. Article 46f-2, prohibits a person from navigating an aircraft unless it is licensed and registered by the Department of Commerce of the United States. Registration of aircraft is now conducted by the Federal Aviation Administration, and the revised law is drafted accordingly.

Sec. 2. The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within this State should conform with respect to design, construction, and airworthiness to the standards prescribed by the United States Government with respect to navigation of aircraft subject to its jurisdiction . . . .

(2) Section 3, V.A.C.S. Article 46f-2, contains a prohibition without a penalty for serving as an airman without an airman's license. Section 6,
V.A.C.S. Article 46f-2, codified in this code as Section 24.003, contains a criminal offense for navigating an aircraft without an airman's license or serving as an airman without a license. The revised law omits the prohibition without the penalty because the type of conduct contained in the prohibition is also contained in the criminal offense. The omitted law reads:

Sec. 3. No person shall serve as an airman in connection with any civil aircraft when such aircraft is flown or operated in this State until he shall have obtained a license under the provisions of the Federal Air Commerce Act of 1926 and amendments thereto and the Air Commerce Regulations and Air Traffic Rules pursuant thereto.

[Sections 24.006-24.010 reserved for expansion]

SUBCHAPTER B. OTHER FEDERAL REQUIREMENTS REGARDING AIRCRAFT

Revised Law

Sec. 24.011. FAILURE TO REGISTER AIRCRAFT; OFFENSE. (a) A person commits an offense if the person operates or navigates an aircraft that the person knows is not properly registered under Federal Aviation Administration aircraft registration regulations, 14 C.F.R. Part 47, as those regulations existed on September 1, 1985.

(b) An offense under Subsection (a) is a felony of the third degree. (V.A.C.S. Art. 46f-6.)

Source Law

Art. 46f-6

Sec. 1. A person commits an offense if the person operates or navigates an aircraft that the person knows is not properly registered under Federal Aviation Administration aircraft registration regulations, 14 C.F.R. Part 47, as those regulations existed on September 1, 1985.

Sec. 2. An offense under this article is a third degree felony.

Revised Law

Sec. 24.012. AIRCRAFT IDENTIFICATION NUMBERS; OFFENSE. (a)
The failure to have the aircraft identification numbers clearly displayed on an aircraft in compliance with federal aviation regulations is probable cause for a peace officer to further inspect the aircraft to determine the identity of the owner of the aircraft.

(b) A peace officer may inspect an aircraft under Subsection (a) if the aircraft is located on public property or on private property if the officer has the consent of the property owner.

(c) A person commits an offense if the person operates an aircraft that the person knows does not have aircraft identification numbers that comply with federal aviation regulations.

(d) An offense under Subsection (c) is a felony of the third degree.

(e) In this section, "federal aviation regulations" means the regulations adopted by the Federal Aviation Administration regarding identification and registration marking, 14 C.F.R. Part 45, as those regulations existed on September 1, 1985, except a regulation in existence on September 1, 1985, that is inconsistent with a regulation adopted after that date. (V.A.C.S. Art. 46f-5.)
has the consent of the property owner.

**Revised Law**

Sec. 24.013. AIRCRAFT FUEL CONTAINERS; OFFENSE. (a) A person commits an offense if the person operates or intends to operate an aircraft equipped with:

(1) a fuel container that the person knows does not conform to federal aviation regulations or that has not been approved by the Federal Aviation Administration by inspection or special permit; or

(2) a pipe, hose, or auxiliary pump that is used or intended for transferring fuel to the primary fuel system of an aircraft from a fuel container that the person knows does not conform to federal aviation regulations or that has not been approved by the Federal Aviation Administration by inspection or special permit.

(b) An offense under Subsection (a) is a felony of the third degree.

(c) A peace officer may seize an aircraft equipped with a fuel container that is the subject of an offense under Subsection (a).

(d) An aircraft seized under Subsection (c) may be forfeited to the Department of Public Safety in the same manner as property subject to forfeiture under Article 18.18, Code of Criminal Procedure.

(e) An aircraft forfeited under Subsection (d) is subject to Chapter 2205, Government Code.

(f) In this section:

(1) "Federal aviation regulations" means the following regulations adopted by the Federal Aviation Administration as those regulations existed on September 1, 1985, except a regulation in existence on September 1, 1985, that is inconsistent with a regulation adopted after that date:

(A) certification procedures for products and
parts, 14 C.F.R. Part 21;

(B) maintenance, preventive maintenance, rebuilding, and alteration regulations, 14 C.F.R. Part 43; and

(C) general operating and flight rules, 14 C.F.R. Part 91.

(2) "Operate" means to use, cause to use, or authorize to use an aircraft for air navigation and includes:

(A) the piloting of an aircraft, with or without the right of legal control;

(B) the taxiing of an aircraft before takeoff or after landing; and

(C) the postflight or preflight inspection or starting of the engine of an aircraft. (V.A.C.S. Art. 46f-7.)

Source Law

Art. 46f-7
Sec. 1. In this article:
(1) "Federal aviation regulations" means regulations adopted by the Federal Aviation Administration regarding certification procedures for products and parts, 14 C.F.R. Part 21, maintenance, preventive maintenance, rebuilding and alteration regulations, 14 C.F.R. Part 43, and general operating and flight rules, 14 C.F.R. Part 91, as those regulations existed on September 1, 1985, except that "federal aviation regulations" shall not include any regulations in existence on September 1, 1985, that are inconsistent with a regulation adopted after that date.

(2) "Operate" means to use, cause to use, or authorize to use aircraft for the purpose of air navigation, including the piloting of aircraft, with or without the right of legal control, the taxiing of aircraft before or after landing, and the postflight or preflight inspection or starting of the engine of the aircraft.

Sec. 2. (a) A person commits an offense if the person operates or intends to operate an aircraft equipped with a fuel tank, bladder, drum, or other container for fuel that the person knows does not conform to federal aviation regulations or that has not been approved by the Federal Aviation Administration by inspection or special permit.

(b) A person commits an offense if the person operates or intends to operate an aircraft equipped with a pipe, hose, or auxiliary pump that is used for or intended for transferring fuel to the primary fuel system of an aircraft from a fuel tank, bladder, drum, or other container for fuel that the person knows does not conform to federal aviation regulations or that has not been approved by the Federal Aviation Administration by inspection or special permit.

(c) An offense under this section is a third degree felony.

Sec. 3. (a) An aircraft equipped with a fuel
tank, bladder, drum, or other container for fuel that
is the subject of an offense under this article is
subject to seizure by a peace officer.

(b) An aircraft seized under Subsection (a) of
this section may be forfeited to the Department of
Public Safety in accordance with Article 18.18, Code of

(c) An aircraft forfeited under Subsection (b)
of this section is subject to the State Aircraft
Pooling Act (Article 4413(34b), Vernon's Texas Civil
Statutes).

Revisor's Note

(1) Sections 2 and 3, V.A.C.S. Article 46f-7,
refer to a "fuel tank, bladder, drum, or other
container for fuel." The references to a "fuel tank,
bladder, [or] drum" are omitted from the revised law
because "fuel tank, bladder, [and] drum" are included
within the meaning of "container for fuel." The
revised law substitutes "fuel container" for "container
for fuel" for brevity.

(2) Section 3(c), V.A.C.S. Article 46f-7, refers
to the State Aircraft Pooling Act (Article 4413(34b),
Vernon's Texas Civil Statutes). That act was codified
in 1993 as Chapter 2205, Government Code. The revised
law is drafted accordingly.

[Sections 24.014-24.020 reserved for expansion]

SUBCHAPTER C. USE OF PUBLIC ROADS BY AIRCRAFT

Revised Law

Sec. 24.021. TAKING OFF, LANDING, OR MANEUVERING AIRCRAFT ON
HIGHWAYS, ROADS, OR STREETS; OFFENSE. (a) A person commits an
offense if the person takes off, lands, or maneuvers an aircraft,
whether heavier or lighter than air, on a public highway, road, or
street except:

(1) when necessary to prevent serious injury to a
person or property;

(2) during or within a reasonable time after an
emergency; or
(3) as provided by Section 25.022.

(b) An offense under Subsection (a) is a misdemeanor punishable by a fine of not less than $25 and not more than $200.

(c) The procedure prescribed by Section 543.003 applies to a violation of this section. (V.A.C.S. Art. 46f-1.)

Source Law

Art. 46f-1
Sec. 1. No person may take off, land, or maneuver an aircraft, including heavier than air and lighter than air, on a public highway, road, or street except when it is necessary to prevent serious injury to a person or property or except as provided by Article 46f-4, Revised Civil Statutes of Texas, 1925. However, nothing herein shall prohibit any operation of said aircraft on a public highway, road or street during or within a reasonable time after an emergency.

Sec. 1b. Any violation shall be subject to the provisions of Article 6701d, Section 148(a), Vernon's Texas Civil Statutes.

Sec. 2. A person who violates Section 1 of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $25 nor more than $200.

Revisor's Note

(1) The source law refers to Article 46f-4, Revised Statutes. That statute is codified in this code as Section 25.022, and the revised law is drafted accordingly.

(2) The source law refers to Section 148(a), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes). The relevant portion of that section is codified in this code as Section 543.003, and the revised law is drafted accordingly.

Revised Law

Sec. 24.022. USE OF AIRCRAFT ON COUNTY ROADS. (a) A commissioners court of a county may enact ordinances to ensure the safe use of county roads by aircraft. An ordinance may:

(1) limit the kinds of aircraft that may use the roads;
(2) establish the procedure that a pilot shall follow before using a road, including requiring the pilot to furnish persons with flags at both ends of the road to be used; or

(3) establish other requirements considered necessary for the safe use of the roads by aircraft.

(b) A pilot who follows the ordinances adopted under Subsection (a):

(1) may land or take off in the aircraft on a county road; and

(2) is not subject to the traffic laws of this state during the landing or takeoff. (V.A.C.S. Art. 46f-4.)

Source Law

Art. 46f-4
Sec. 1. A commissioners court of a county may enact ordinances to ensure the safe use of county roads by aircraft. The ordinances may:

(1) limit the kinds of aircraft that may use the roads;

(2) establish the procedure that a pilot shall follow before using a road, including, but not limited to, requiring the pilot to furnish flagmen at both ends of the road to be used; and

(3) establish other requirements that the commissioners court considers necessary for the safe use of the roads by aircraft.

Sec. 2. If the ordinances relating to the use of an aircraft on a county road are followed, the pilot of the aircraft may land or take off in the aircraft on the county road and is not subject to the traffic laws of this state during the landing or takeoff.

Revisor's Note

Section 1(2), V.A.C.S. Article 46f-4, refers to "flagmen." The revised law substitutes "persons with flags" for "flagmen" to avoid using a gender-specific term.

CHAPTER 25. OBSTRUCTION TO AIR NAVIGATION CONTROL

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CHAPTER 25. OBSTRUCTION TO AIR NAVIGATION CONTROL

Revised Law
Sec. 25.001. SHORT TITLE. This chapter may be cited as the Obstruction to Air Navigation Control Act. (V.A.C.S. Art. 46i-1.)

Source Law
Art. 46i-1. This Act (Articles 46i-1 through 46i-9) may be cited as the Obstruction to Air Navigation Control Act.

Revised Law
Sec. 25.002. DEFINITIONS. In this chapter:

(1) "Airport" includes only an airport that is operated by a branch of the armed forces of the United States or by the Texas National Guard or that has a paved runway, is open to the general public for the use of licensed aircraft, and does not require prior approval of the owner for its use. The term does not include a heliport, balloon port, ultralight aircraft port, or glider port or a facility that is used solely for recreational purposes.

(2) "Department" means the Texas Department of Transportation.

(3) "Obstruction to air navigation" means a structure that, because of its height or location, prevents or hinders safe
and efficient use of airspace and proper air navigation required by
aircraft in the use of an airport, including takeoffs, landings,
and flights between airports. The term does not include a mobile
object that, for a period not to exceed 60 days, operates:

(A) under the control of an airport control
tower;

(B) under the permission of the airport sponsor;

or

(C) outside the takeoff or landing area clear
zones.

(4) "Paved runway" means a hard surface area that has
been prepared for the landing and takeoff of registered aircraft
under all weather conditions. The term does not include a surface
composed of turf, dirt, or noncompacted materials.

(5) "Structure" means a mobile or permanent object
that is constructed or installed. The term includes a building,
tower, smokestack, and overhead transmission line.

(6) "Traverse way" means an avenue for surface
transportation used by vehicles the height of which may create an
obstruction to air navigation. The term includes a railway, road,
street, highway, bridge, river, canal, lake, and channel.

(V.A.C.S. Arts. 46i-2, 46i-5(c); New.)

Source Law

Art. 46i-2. In this Act:

(1) "Airport" means a publicly or
privately owned airport with a paved runway that is
open for use by the general public to licensed aircraft
and that does not require prior approval of the owner
for use or an airport operated by the Armed Forces of
the United States or by the Texas National Guard. The
term does not include a heliport, balloon port,
ultralight aircraft port, glider port, or a facility
that is used solely for recreational activities.

(2) "Obstruction to airport use" means a
structure that, due to its height or location, prevents
or hinders safe and efficient use of airspace and
proper air navigation required by aircraft in the use
of airports in this state, including takeoffs,
landings, and flight between airports.

(3) "Structure" means a mobile or
permanent object, constructed or installed by man,
including but not limited to a building, tower,
smokestack, or overhead transmission line.

(4) "Traverse way" means an avenue for
surface transportation used by vehicles whose height may create an obstruction to air navigation. The term includes without limitation railways, roads, streets, highways, bridges, rivers, canals, lakes, and channels.

(5) "Paved runway" means a hard surface area that has been prepared for the landing and takeoff of registered aircraft under all weather conditions. The term does not include a surface composed of turf, dirt, or noncompacted materials.

[Art. 46i-5]

(c) A mobile object that operates under the control of an airport control tower, under the permission of the airport sponsor, or outside the takeoff or landing area clear zones, for a period not to exceed 60 days, is not an obstruction.

Revisor's Note

The definition of "department" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 25.003. STRUCTURES NOT SUBJECT TO CHAPTER. This chapter does not apply to a structure:

(1) for which a Federal Communications Commission construction permit, license, or authorization is required;

(2) that before September 1, 1984, received a determination of no hazard by the Federal Aviation Administration under 14 C.F.R. Part 77;

(3) in a municipality or county that has enacted airport zoning or other ordinances regulating obstructions to airport use in the municipality or county before the beginning of construction, positioning, replacement, or alteration of the structure;

(4) located on an airport with the airport owner's written consent;

(5) the construction of which began before September 1, 1984; or

(6) in or beneath the terminal control area of an airport that is located in more than one county and is operated by a board composed of municipal officials of two or more
Art. 46i-6. This Act does not apply to:

1. a tower or other structure for which a Federal Communications Commission construction permit, license, or authorization is required;
2. a structure that before September 1, 1984, received a determination of no hazard by the Federal Aviation Administration under Part 77 of the Federal Aviation Regulations, as amended (14 Code of Federal Regulations, Part 77);
3. a structure located within the boundaries of a municipality, city, town, village, or county that has enacted airport zoning or other ordinances regulating obstructions to airport use in any part of the municipality, city, town, village, or county before the beginning of construction, positioning, erection, placement, or alteration of the structure;
4. a structure located on an airport with the airport owner's written consent;
5. a structure the construction of which was commenced before September 1, 1984; or
6. a structure within or beneath the terminal control area of an airport that is located in more than one county and is operated by a board composed of city officials of two or more cities.

Revisor's Note

(1) V.A.C.S. Article 46i-6(1) refers to a "tower or other structure." The reference to "tower" is omitted from the revised law because under V.A.C.S. Article 46i-2(3), codified in this code as Section 25.002(5), "tower" is included within the meaning of "structure."

(2) V.A.C.S. Article 46i-6(3) refers to a "city, town, [or] village." The revised law substitutes the term "municipality" for "city, town, [or] village" because that is the term used in the Local Government Code.

(3) V.A.C.S. Article 46i-6(3) refers to "construction" and "erection." The reference to "erection" is omitted from the revised law because "erection" is included within the meaning of "construction."
Sec. 25.004. APPLICATION FOR PERMIT. (a) A person who plans to construct, position, replace, or alter a structure or increase the height of an existing structure must apply to the department for a permit before beginning the construction, positioning, replacement, or alteration if, as planned, the structure would:

1. exceed 200 feet in height above ground level at its site;
2. be within 20,000 horizontal feet of a paved runway of an airport and would penetrate an imaginary surface extending upward and outward from the nearest point on the runway at a slope of 100 horizontal feet to one vertical foot; or
3. be used as a traverse way for mobile objects of a height that would exceed the sum of the height permitted by Subdivision (1) or (2) and:
   A. 17 feet for an interstate highway where overcrossings are designed for a minimum of 17 feet vertical distance;
   B. 15 feet for all other public roadways;
   C. for a private road, the greater of 10 feet or the height of the highest mobile object that would normally use the road;
   D. 23 feet for a railroad; or
   E. for a waterway or other traverse way, an amount equal to the height of the highest mobile object that would normally use it.

(b) The application filed with the department must be accompanied by a filing fee of $200.

(c) The application must contain:
1. a detailed description and accurate drawing to scale of the proposed structure or alteration;
2. the proposed location of the structure by county and geographical coordinates in degrees, minutes, and seconds as
Art. 46i-4. (a) A person who plans to construct, position, erect, or replace a structure or increase the height of an existing mobile or permanent structure must apply to the Texas Department of Aviation for a permit before beginning the construction, positioning, erection, placement, or alteration if the structure as planned:

(1) will exceed 200 feet in height above ground level at its site;

(2) will penetrate an imaginary surface extending upward and outward from the nearest point of the nearest runway of each airport with at least one paved runway at a slope of 100 horizontal feet to one vertical foot for a distance of 20,000 horizontal feet; or

(3) would be used as a traverse way for mobile objects of a height that would exceed a standard of Subdivisions (1) and (2) of this subsection, if adjusted upward 17 feet for an interstate highway where overcrossings are designed for a minimum of 17 feet vertical distance; 15 feet for all other public roadways; 10 feet or the height of the highest mobile object that would normally use the road, whichever is greater, for a private road; 23 feet for a railroad; and for a waterway or any other traverse way, an amount equal to the height of the highest mobile object that would normally traverse it.

(b) Each permit application must be accompanied by a filing fee of $200.

(c) The permit application must contain:

(1) a detailed description and accurate drawing to scale of the proposed structure or alteration;

(2) the proposed location of the structure by county and geographical coordinates in degrees, minutes, and seconds as accurately located by a United States Geological Survey 7.5 Minute Quadrangle Map or its equivalent;

(3) the height of the structure above ground level at the site and above mean sea level;
(4) the name, business address, and telephone number of the applicant, including the names and addresses of corporate officers if the applicant is a corporation, and the names and addresses of all general partners if a partnership; and
(5) the estimated date of completion of the structure.

Revisor's Note
(1) The reference to "erect" in V.A.C.S. Article 46i-4(a) is omitted from the revised law for the reason stated in Revisor's Note (3) under Section 25.003.
(2) V.A.C.S. Article 46i-4(a) refers to the Texas Department of Aviation. Under Section 1.16, Chapter 7, Acts of the 72nd Legislature, 1st Called Session, 1991 (Article 46c-8B, Vernon's Texas Civil Statutes), a reference in law to the Texas Department of Aviation means the Texas Department of Transportation. Because Section 25.002(2) of this code defines "department" as the Texas Department of Transportation, the revised law refers to the "department."

Revised Law
Sec. 25.005. NOTICE OF APPLICATION AND RECEIPT OF INFORMATION. (a) The department shall notify each owner of an airport or the operator of a military airport of the filing of a permit application for a structure that would affect the airport.
(b) The owner or operator of the airport may submit information and participate as a party in the permitting process.
(c) The department may accept information from a person it considers to have a sufficient interest in the application.

Source Law
Art. 46i-5. (a) ... A political subdivision that owns an airport, the private owner of an airport, or both, if appropriate, and the operator of a military airport that would be affected by a structure for which a permit is required shall be notified of the filing of a permit application and may submit information and participate as a party throughout the permitting process.
process. The department may accept information from other persons it considers to have a sufficient interest in the application.

Revised Law

Sec. 25.006. CRITERIA FOR PERMIT. (a) In determining whether to grant or deny a permit, the department shall consider:

(1) whether the height of the existing terrain and structures in the area might shield the proposed construction or alteration so that the structure would not be an obstruction to air navigation;

(2) the character of flying operations and existing or planned airports in the area;

(3) whether the proposed construction or alteration would cause an increase in the minimum clearance altitude of an established airway or airport maneuvering area or would cause an increase to instrument approach and landing minimums at an airport;

(4) public and private interests and investments in both the proposed structure and the airport or airway that might be affected by the structure;

(5) the safety of persons on the ground and in the air; and

(6) any other relevant factors.

(b) A proposed structure is presumed to be an obstruction to air navigation if the structure would:

(1) exceed a height of 500 feet above ground level at the site of the structure;

(2) have a height that is:

(A) 200 feet above ground level or the established airport elevation, whichever is higher, within three nautical miles of:

   (i) the established reference point of an airport with a paved runway; or

   (ii) an airport approach fix; or

(B) 100 feet higher than the height described in
Paragraph (A) for each nautical mile in excess of three nautical miles of the established reference point of an airport or airport approach fix up to a maximum height of 500 feet;

(3) be in a federally designated terminal control area or a terminal object clearance area, including an initial approach segment, departure area, and circling approach area, that would require an increase in the minimum obstacle clearance altitude for an approach to or the instrument landing minimums for any area airport;

(4) increase the minimum obstacle clearance altitude within an en route obstacle clearance area, including turn and termination areas, or of a federal airway or approved off-airway route; or

(5) penetrate the takeoff and landing area of an airport or an imaginary surface established under 14 C.F.R. Section 77.25, 77.28, or 77.29. (V.A.C.S. Arts. 46i-5(a) (part), (b).)

Source Law

[Art. 46i-5]  
(a) ... In determining whether to grant or deny a permit, the department shall consider:

(1) the height of the existing terrain and structures in the area that might shield the proposed construction or alteration in such a way that the structure would not be an obstruction to air navigation;

(2) the character of flying operations and existing or planned airports in the area;

(3) whether the proposed construction or alteration would cause an increase in the minimum clearance altitude of an established airway or airport maneuvering area or would cause an increase to instrument approach and landing minimums at an airport;

(4) public and private interests and investments in both the proposed structure and in the airport or airway that might be affected by the structure;

(5) the safety of persons on the ground and in the air; and

(6) any other relevant factors.

(b) A presumption that a proposed structure will create an obstruction to airport use arises if the structure:

(1) will exceed a height of 500 feet above ground level at the site of the object;

(2) will be 200 feet above ground level or above the established airport elevation, whichever is higher, within three nautical miles of the established reference point of an airport with a paved runway or within three nautical miles of an airport approach fix, and that height increases in the proportion of 100 feet
for each additional nautical mile of distance from the
airport or approach fix up to a maximum height of 500
feet;
(3) will be within a federally designated
terminal control area or a terminal object clearance
area, including an initial approach segment, a
departure area, and a circling approach area, that
would require an increase in the minimum obstacle
clearance altitude for an approach to or the instrument
landing minimums for any area airport;
(4) would increase the minimum obstacle
clearance altitude within an en route obstacle
clearance area, including turn and termination areas,
or of a federal airway or approved off-airway route; or
(5) would penetrate the takeoff and
landing area of an airport or any imaginary surface
established under Federal Aviation Regulation Part 77,
Sections 77.25, 77.28, and 77.29.

Revised Law
Sec. 25.007. GRANTING OF PERMIT. (a) The department shall
grant a permit for the proposed construction or alteration if the
department determines that the public interest will be served and
that the proposed construction or alteration will not be an
obstruction to air navigation.
(b) In granting a permit, the department may require
lighting or other marking of the structure that it determines to be
reasonably necessary for safe air navigation.
(c) The department shall grant or deny a permit not later
than the 60th day after the date the application is accepted for
filing. (V.A.C.S. Arts. 46i-5(a) (part), 46i-7.)

Source Law
[Art. 46i-5]
(a) Not later than the 60th day after the
application is accepted for filing, the Texas
Department of Aviation shall grant or deny a
permit... Art. 46i-7. If the Texas Department of Aviation
determines that the public interest will be served and
that the proposed construction or alteration will not
be an obstruction to air navigation, the department
shall grant a permit for the proposed construction or
alteration. In granting a permit, the department may
require lighting or other marking of the structure that
it determines to be reasonably necessary for safe air
navigation.
Reviser's Note

The references to the Texas Department of Aviation in V.A.C.S. Articles 46i-5(a) and 46i-7 have been changed to "department" for the reason stated in Reviser's Note (2) under Section 25.004.

Revised Law

Sec. 25.008. NOTIFICATION OF DENIAL. (a) If the department denies a permit application, the department shall notify the applicant of the denial by certified mail, return receipt requested, at the address of the applicant shown in the application not later than the 60th day after the date the application is accepted for filing.

(b) The notice must include the reasons for the denial and a copy of all documentation on file concerning the application. (V.A.C.S. Art. 46i-8(a) (part).)

Source Law

Art. 46i-8. (a) If a permit application is denied by the Texas Department of Aviation, the department shall notify the applicant of the denial by certified mail, return receipt requested, at the address shown in the application not later than the 60th day after the day the application is accepted for filing. . . . The department shall include in the notice of denial the reasons for the denial and a copy of all documentation on file concerning the application. . . .

Reviser's Note

The reference in V.A.C.S. Article 46i-8(a) to the Texas Department of Aviation has been changed to "department" for the reason stated in Reviser's Note (2) under Section 25.004.

Revised Law

Sec. 25.009. FINAL DETERMINATION; HEARING. (a) The determination of the existence of an obstruction to air navigation becomes final at the end of the 30th day after the date the notice is mailed unless the applicant files a written request for a public
(b) On receipt of a request for a hearing, the department shall set a date for a hearing and notify all interested parties of the hearing. (V.A.C.S. Art. 46i-8(a) (part).)

Source Law

[Art. 46i-8]
(a) . . . The determination of existence of an obstruction to air navigation is final 30 days after the notice required under this paragraph is mailed, unless the applicant files a written request for a public hearing not later than the 30th day after the day the notice is mailed. . . . On receipt of a request for a hearing the department shall set a date for hearing and notify all interested parties of the hearing. . . .

Revisor's Note

V.A.C.S. Article 46i-8(a) provides that the hearing on the permit application and any appeal shall be conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The revised law omits the reference to that act (now Chapters 2001 and 2002, Government Code) because the pertinent portions of that act require a state agency in a contested case to conduct a hearing in accordance with its provisions and provide for judicial review of the contested case. It is not necessary to restate those requirements in this chapter. The omitted law reads:

The hearing and any appeal shall be conducted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Revised Law

Sec. 25.010. ENFORCEMENT. (a) If the department has reasonable grounds to believe that a person is constructing, positioning, replacing, or altering a structure subject to this chapter for which an application for a permit has not been filed, it may issue an order to the person to appear before the department...
and show cause why an application need not be filed. The order
must:

(1) require the person to cease constructing, positioning, replacing, or altering the structure pending
determination of the need for a permit by the department; and

(2) set a date for a hearing.

(b) In addition to any other remedy, the department may
institute in a district court in Travis County an action to
restrain or correct a violation of this chapter or of a rule
adopted or an order issued under this chapter. The court may grant
the necessary relief by injunction or other appropriate means.

(c) A person who violates this chapter or a rule adopted
under this chapter is subject to a civil penalty not to exceed $500
for each day of the violation. The penalty may be recovered in a
court in the county in which the violation occurs or in a district
court in Travis County. The attorney general or the district or
county attorney in the county in which the violation occurs may
bring suit for the penalty.

(d) A district court in the county in which a violation of
this chapter, a rule adopted under this chapter, or an order of the
department occurs may issue an injunction to prevent further
violation.

(e) If the department, the attorney general, or a district
or county attorney seeks relief under this chapter, a bond is not
required. (V.A.C.S. Arts. 46i-8(b), (c), (d).)

Source Law

(b) If the department learns or has reasonable
grounds to believe that any person is positioning, erecting, or altering a structure subject to the
provisions of this Act for which an application for a
permit has not been filed, it may on its own motion
issue an order to the person to appear before the
department and show cause why an application for a
permit to position, erect, or alter the structure need
not be obtained. The order must require the person to
cease construction and preparation of the structure
pending determination of the need for a permit by the
department. A date for a hearing shall be set out in
the order.

(c) In addition to any other remedy, the
department may institute in a district court in Travis
County an action to prevent, restrain, correct, or abate a violation of this Act or of a rule adopted or order issued under this Act. The court may grant the necessary relief by way of injunction or otherwise.

(d) A person who violates this Act or a rule adopted under this Act is subject to a civil penalty not to exceed $500 for each day of the violation. The penalty may be recovered in a court of competent jurisdiction in the county in which the violation occurs or in a district court of Travis County. Suit for the penalty may be instituted and conducted by the attorney general or by the county or district attorney in the county in which the violation occurs. On violation of this Act, of any rule adopted under this Act, or of an order of the department, the district court of the county in which the violation occurs may issue an injunction to prevent further violation. Bond is not required if the relief is sought by the department, the attorney general, or a district or county attorney.

Revisor's Note

(1) V.A.C.S. Article 46i-8(b) refers to "learns or has reasonable grounds to believe." The reference to "learns" is omitted from the revised law because "learns" is included within the meaning of "has reasonable grounds to believe."

(2) V.A.C.S. Article 46i-8(c) refers to "prevent, restrain, correct, or abate." The references to "prevent" and "abate" are omitted from the revised law because "prevent" and "abate" are included within the meaning of "restrain."

(3) V.A.C.S. Article 46i-8(b) refers to "erecting." The revised law substitutes "constructing" for "erecting" because "erecting" is included within the meaning of "constructing" and the latter term is used in Sections 25.003 and 25.004.

Revised Law

Sec. 25.011. RULEMAKING AUTHORITY; FORMS. (a) The department shall adopt rules to administer and enforce this chapter.

(b) The department shall prescribe and furnish the forms necessary for the administration of this chapter. (V.A.C.S.)
Art. 46i-9.

(a) The Texas Department of Aviation shall adopt rules for the administration and enforcement of this Act.
(b) The department shall prescribe and furnish the forms necessary for the administration of this Act.

Revisor's Note

The reference in V.A.C.S. Article 46i-9 to the Texas Department of Aviation has been changed to "department" for the reason stated in Revisor's Note (2) under Section 25.004.

Revised Law

Sec. 25.012. PRIVATE DONATIONS; DISPOSITION OF REVENUE. (a) The department may accept donations from private entities. (b) The department may use revenue it receives under this chapter in the payment of administrative expenses and in the performance of its functions related to aviation safety, including the prevention of an obstruction to air navigation. (V.A.C.S. Arts. 46i-3, 46i-4(b) (part).)

Source Law

Art. 46i-3. The aviation trust fund is created as a special fund in the State Treasury. The Texas Department of Aviation shall administer the fund and may accept donations and contributions for deposit in the fund from private sources and entities. The department may use the aviation trust fund in the performance of its functions related to aviation safety, including but not limited to the prevention of obstructions to flight.

[Art. 46i-4]
(b) to be retained by the department to defray administrative expenses. Funds remaining after payment of administrative expenses shall be deposited in the aviation trust fund.

Revisor's Note

(1) The reference in V.A.C.S. Article 46i-3 to the Texas Department of Aviation has been changed to "department" for the reason stated in Revisor's Note...
(2) under Section 25.004.

(2) V.A.C.S. Article 46i-4(b) provides that the department shall use the filing fee accompanying a permit application to defray administrative expenses and shall deposit any money remaining after payment of administrative expenses in the aviation trust fund. Under Section 404.094, Government Code, fees received by a state agency shall be deposited in the treasury, credited to a special fund or funds, and subject to appropriation only for the purposes for which they are otherwise authorized to be expended or disbursed. Therefore, an agency may not apply a fee to administrative expenses before depositing the remainder in the fund. The entire fee must be placed in the fund, to be used by the agency for authorized purposes. Accordingly, the revised law omits the reference to retaining the fee to defray administrative expenses and provides instead that the department may use revenue it receives under this chapter in the payment of administrative expenses and in the performance of its functions related to aviation safety, including the prevention of an obstruction to air navigation.

(3) The revised law omits the reference in V.A.C.S. Article 46i-3 to the state treasury. Section 404.094(a), Government Code, requires all money collected or received by a state agency to be deposited in the state treasury. It is unnecessary to repeat that requirement in this chapter.

(4) V.A.C.S. Articles 46i-3 and 46i-4(b) refer to the "aviation trust fund." Reference to that fund is omitted from the revised law. Acting under authority of Section 403.094(a), Government Code, the comptroller abolished the aviation trust fund effective August 31, 1993. The revised law is drafted
accordingly.

[Chapters 26-50 reserved for expansion]

TITLE 4. NAVIGATION

SUBTITLE A. WATERWAYS AND PORTS

CHAPTER 51. TEXAS COASTAL WATERWAY ACT

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TITLE 4. NAVIGATION

SUBTITLE A. WATERWAYS AND PORTS

CHAPTER 51. TEXAS COASTAL WATERWAY ACT

Revised Law

Sec. 51.001. SHORT TITLE. This chapter may be cited as the Texas Coastal Waterway Act. (V.A.C.S. Art. 5415e-2, Sec. 1.)

Source Law

Art. 5415e-2
Sec. 1. This Act may be cited as the "Texas Coastal Waterway Act of 1975."

Revisor's Note

The revised law omits the reference in Section 1, V.A.C.S. Article 5415e-2, to 1975, the year of the act, because it is clear that the legislature intended the act to apply in the years after 1975.

Revised Law

Sec. 51.002. DEFINITIONS. In this chapter:

(1) "Coastal marshes" means those soft, low-lying watery or wet lands and drainage areas in the coastal areas of the
state that are of ecological significance to the environment and to
the maintenance, preservation, and enhancement of wildlife and
fisheries.

(2) "Coastal public land" means:

(A) the state-owned submerged land and the water
overlying that land; and

(B) state-owned islands or portions of islands
that may be affected by the ebb and flow of the tide.

(3) "Commission" means the Texas Transportation
Commission.

(4) "Gulf Intracoastal Waterway" means the main
channel, not including tributaries or branches, of the shallow
draft navigation channel running from the Sabine River southward to
the Brownsville Ship Channel near Port Isabel that is known as the
Gulf Intracoastal Canal. (V.A.C.S. Art. 5415e-2, Secs. 4(a), (b),
(c), (d).)

Source Law

Sec. 4. As used in this chapter:
(a) "Coastal public lands" means all or
any portion of the state-owned submerged land, the
waters overlying those lands, and all state-owned
islands or portions of islands that may be affected by
the ebb and flow of the tide.
(b) "Coastal marshes and similar areas"
means those soft, low-lying watery or wet lands and
drainage areas in the coastal areas of the state which
may or may not be subject to the ebb and flow of the
tide but which are of ecological significance to the
environment and to the maintenance, preservation, and
enhancement of wildlife and fisheries.
(c) "Commission" means the Texas Highway
Commission.
(d) "Gulf Intracoastal Waterway" means the
main channel, not including tributaries or branches, of
the shallow draft navigation channel running from the
Sabine River southward along the Texas coast to the
Brownsville Ship Channel near Port Isabel that is
generally referred to as the Gulf Intracoastal Canal.

Revisor's Note

(1) Section 4, V.A.C.S. Article 5415e-2, refers
to the "State Highway Commission." The revised law
substitutes "Texas Transportation Commission" for the
reasons stated in the revisor's note to Section
(2) The revised law omits the phrase "which may or may not be subject to the ebb and flow of the tide" in Section 4(b), V.A.C.S. Article 5415e-2, because it is unnecessary and does not add to the clear meaning of the law.

(3) The revised law omits the definition of "person" in Section 4(e), V.A.C.S. Article 5415e-2, because it is substantively identical to the definition provided by Section 311.005, Government Code (Code Construction Act). The omitted law reads:

(e) "Person" means any individual, firm, partnership, association, corporation (public or private, profit or nonprofit), trust, or political subdivision or agency of the state.

Sec. 51.003. PURPOSE. This state shall act as the nonfederal sponsor of the main channel of the Gulf Coast Intracoastal Waterway from the Sabine River to the Brownsville Ship Channel in order to:

(1) support the marine commerce and economy of this state by providing for the shallow draft navigation of the state's coastal waters in an environmentally sound manner;

(2) prevent waste of publicly and privately owned natural resources;

(3) prevent or minimize adverse impacts on the environment; and

(4) maintain, preserve, and enhance wildlife and fisheries. (V.A.C.S. Art. 5415e-2, Sec. 2 (part)).

Sec. 2. It is the policy of the State of Texas (i) to support the marine commerce and economy of this state by providing for the shallow draft navigation of the state's coastal waters in an environmentally sound fashion, and (ii) to prevent waste of both publicly and privately owned natural resources, to prevent or minimize adverse impacts on the environment, and to maintain, preserve, and enhance wildlife and fisheries;
and to accomplish such policy the State of Texas shall act as the nonfederal sponsor of the main channel of the Gulf Coast Intracoastal Waterway from the Sabine River to the Brownsville Ship Channel, . . . .

Revised Law

Sec. 51.004. COOPERATION WITH OTHER ENTITIES. (a) The commission shall cooperate with the Department of the Army, other federal and state agencies, navigation districts, port authorities, counties, and other appropriate persons to determine the state's federal local sponsorship requirements relating to the Gulf Intracoastal Waterway, shall fulfill those requirements, and shall satisfy the responsibilities of the nonfederal sponsor as determined by federal law.

(b) The commission shall coordinate actions taken under this chapter that may have a significant environmental impact or effect on coastal public land, coastal marshes, wildlife, and fisheries with appropriate federal and state agencies that have environmental, wildlife, and fisheries responsibilities.

(c) Within its authority and available resources, an agency or political subdivision of the state shall assist the commission in performing its duties under this chapter. (V.A.C.S. Art. 5415e-2, Secs. 2 (part), 6(a), (b), (d), (e) (part).)

Source Law

Sec. 2. . . . and shall satisfy the responsibilities of the nonfederal sponsor as determined by federal law consistent with the policy of the State of Texas as declared in this section.

Sec. 6. (a) The commission shall cooperate and work with the Department of the Army, all other appropriate federal and state agencies, navigation districts and port authorities, counties, and other appropriate persons to determine specifically what must be done by the State of Texas to satisfy federal local sponsorship requirements relating to the Gulf Intracoastal Waterway in a manner consistent with the policy of the State of Texas as stated in Section 2 of this Act.

(b) The commission shall fulfill, in a manner consistent with the policy of the state as stated in Section 2 of this Act, the local sponsorship requirements of the Gulf Intracoastal Waterway as agent for the state.

(d) Proposed actions and actions of the commission pursuant to this Act which have potential for significant environmental impact or effect upon
coastal public lands, coastal marshes and similar areas, wildlife, and fisheries shall be coordinated with appropriate state and federal agencies having environmental, wildlife, and fisheries responsibilities.

(e) All agencies and political subdivisions of the State of Texas shall, within their legal authority and available resources, assist the commission in carrying out the purposes of this Act...

Revisor's Note

Section 6(a), V.A.C.S. Article 5415e-2, refers to the duty of the commission to "cooperate and work with" specified departments. The reference to "work" is omitted from the revised law because "work" is included within the meaning of "cooperate."

Revised Law

Sec. 51.005. LAND ACQUISITION. (a) The commission may acquire by gift, purchase, or condemnation property or an interest in property that the commission considers necessary to enable it to meet its responsibilities under this chapter, including easements and rights-of-way for dredge material disposal sites or channel alteration.

(b) The commission may not:

(1) acquire oil, gas, sulphur, or other minerals that may be recovered without using the surface of land acquired by the commission for exploration, drilling, or mining purposes; or

(2) condemn any submerged public land under the jurisdiction of the School Land Board.

(c) An agency or political subdivision of the state may convey, without advertisement, title or rights and easements owned by the agency or political subdivision to any property the commission needs to meet its responsibilities under this chapter.

(V.A.C.S. Art. 5415e-2, Secs. 6(c) (part), (e) (part).)

Source Law

(c) . . . the commission is authorized to acquire by gift, purchase, or condemnation any property or interest in property of any kind or character deemed necessary by the commission to fulfill its responsibilities under this Act as the nonfederal
sponsor of the Gulf Intracoastal Waterway, including
but not limited to easements and rights-of-way for
dredge material disposal sites and easements and
rights-of-way for channel expansion, relocation, or
alteration, save and except oil, gas, sulphur, and
other minerals of any kind or character which can be
recovered without utilizing the surface of any such
land for exploration, drilling, or mining
purposes. . . . However, the commission does not have
the authority to condemn any submerged public lands
under the jurisdiction of the School Land Board.

(e) . . . All such agencies and political
subdivisions are hereby authorized without any form of
advertisement to make conveyance of title or rights and
easements, owned by any such body, to any property
needed by the commission to meet its responsibilities
under this Act as the nonfederal sponsor of the Gulf
Intracoastal Waterway.

Revisor's Note
(1) Section 6(c), V.A.C.S. Article 5415e-2,
refers to "property of any kind or character." The
revised law omits the phrase "of any kind or character"
as unnecessary. Section 311.005, Government Code (Code
Construction Act), defines "property" as real and
personal property. That definition applies to the
revised law.

(2) The revised law omits "but not limited to"
in the revised law because under Section 311.005,
Government Code (Code Construction Act), "includes" and
"including" are terms of enlargement and not of
limitation and do not create a presumption that terms
not expressed are excluded.

(3) The revised law omits "expansion" and
"relocation" from the phrase "expansion, relocation, or
alteration" in Section 6(c), V.A.C.S. Article 5415e-2,
because "expansion" and "relocation" are included
within the meaning of "alteration."

(4) The revised law omits as unnecessary that
part of Section 6(c), V.A.C.S. Article 5415e-2,
relating to the commission's exercise of its power of
eminent domain. Section 51.005(a) provides the
commission authority to condemn property under this chapter. Additionally, the hearing provisions of Section 51.006 clearly apply to acquisition of property by condemnation. The omitted law reads as follows:

(c) . . . All other provisions relating to the exercise of the power of eminent domain shall be in accord with the commission's existing powers and authority relating to eminent domain. . . .

Revised Law

Sec. 51.006. HEARING REQUIRED BEFORE ACQUISITION OF PROPERTY. (a) Before the commission approves or implements a plan or project to acquire property or an interest in property under Section 51.005 for a dredge material disposal site or for an alteration of the Gulf Intracoastal Waterway that requires the acquisition of additional property or an interest in property to meet its responsibilities under this chapter, the commission shall hold a public hearing to receive evidence and testimony concerning the desirability of the proposed dredge material disposal site or channel alteration.

(b) The commission shall publish notice of a plan or project and the date, time, and place of a hearing at least once a week for three successive weeks before the hearing in a newspaper of general circulation that is published in the county seat of each county in which any part of a proposed dredge material disposal site or channel alteration is located.

(c) The commission may approve the plan or project and implement it and acquire additional property if the commission determines, after the public hearing, that the proposed plan or project can be accomplished without an unjustifiable waste of publicly or privately owned natural resources or a permanent and substantial adverse impact on the environment, wildlife, or fisheries. (V.A.C.S. Art. 5415e-2, Secs. 6(c) (part), (g).)

Source Law

(c) Subject to the provisions of Subsection (g) of this section, [the commission is authorized to
acquire by gift, purchase, or condemnation any
property] . . . .

(g) Prior to approval or implementation by the
commission of any plan or project for acquisition or
acquisition of any property or interest in property for
any dredge material disposal site, or for the widening,
relocation, or alteration of the main channel of the
Gulf Intracoastal Waterway which requires the
acquisition of any additional property or interest in
property, to satisfy federal local sponsor
requirements, the commission shall hold public hearings
for the purpose of receiving evidence and testimony
concerning the desirability of such proposed dredge
material disposal site and of any such widening,
relocation, or alteration of the main channel of the
Gulf Intracoastal Waterway, prior to which hearing the
commission shall publish notice of such plan, project,
and hearing, at least once a week for three successive
weeks in a newspaper of general circulation published
in the county seat of each county in which any such
proposed dredge material disposal site or part thereof
is located and in which the channel or any portion of
the channel of the Gulf Intracoastal Waterway to be
widened, relocated, or altered is located, of the date,
time, and place of such hearing. If after such public
hearing the commission shall determine that such
proposed dredge material site plan or project or such
proposed plan or project for widening, relocation, or
alteration of the main channel of the Gulf Intracoastal
Waterway, as the case may be, can be accomplished
without unjustifiable waste of publicly or privately
owned natural resources and without permanent
substantial adverse impact on the environment,
wildlife, or fisheries, the commission may then, upon
its approval of such plan or project, proceed to
implement such plan or project and acquire, in such
manner as is provided in Section 6(c) of this Act, such
additional property or interest in property necessary
to satisfy federal local sponsorship requirements for
implementation of such plans for such dredge material
site or for such widening, relocation, or alteration of
the main channel of the Gulf Intracoastal Waterway.

Revisor's Note

(1) The revised law omits "widening" and
"relocation" from the phrase "widening, relocation, or
alteration" in Section 6(g), V.A.C.S. Article 5415e-2,
for the reason stated in Revisor's Note (3) under
Section 51.005.

(2) Section 6(g), V.A.C.S. Article 5415e-2,
refers to Section 6(c) of "this Act." The relevant
portion of that section is codified in this chapter as
Section 51.005, and the revised law is drafted
accordingly.
Sec. 51.007. EVALUATION AND REPORT. (a) In cooperation with appropriate persons, the commission shall continually evaluate the impact of the Gulf Intracoastal Waterway on the state. The evaluation shall include:

(1) an assessment of the importance of the Gulf Intracoastal Waterway that includes identification of its direct and indirect beneficiaries;

(2) identification of principal problems and possible solutions to those problems that includes estimated costs, economic benefits, and environmental effects;

(3) an evaluation of the need for significant modifications to the Gulf Intracoastal Waterway; and

(4) specific recommendations for legislative action that the commission believes are in the best interest of the state in carrying out the state's duties under this chapter.

(b) The commission shall publish a report of its evaluation and present the report to each regular session of the legislature.

(V.A.C.S. Art. 5415e-2, Sec. 6(f).)

Sec. 51.008. SCHOOL LAND BOARD POWER. This chapter does not diminish the duty or power of the School Land Board to manage the coastal public land of the state. (V.A.C.S. Art. 5415e-2, Sec. 74C263 JD-D 179)
(c) Nothing in this Act shall diminish the duties, powers, and authorities of the School Land Board to manage the coastal public lands of the state.

Revisor's Note

Section 5(c), V.A.C.S. Article 5415e-2, refers to the "duties, powers, and authorities of the School Land Board." The reference to "authority" is omitted from the revised law because "authority" is included within the meaning of "power."

Revisor's Note

(End of Chapter)

(1) The revised law omits as unnecessary Section 3 of V.A.C.S. Article 5415e-2 because that section, which describes legislative findings, is nonsubstantive. The omitted section reads:

Sec. 3. The legislature finds and declares that:

(a) Marine commerce is a vital element of the state's economy and the benefits derived therefrom are realized directly or indirectly by the entire state.

(b) The coastal public lands and the coastal marshes and similar coastal areas located on both publicly and privately owned lands are similarly vital elements of the state's economy, and to the maintenance, preservation, and enhancement of the environment, wildlife, and fisheries, the benefits of which are similarly realized directly or indirectly by the entire state.

(c) The coastal public lands and related natural resources constitute a vital asset of the state to be managed for the benefit of all citizens of the State of Texas.

(d) The Gulf Intracoastal Waterway traverses coastal public lands and areas in close proximity to the coastal marshes and similar coastal areas located on both publicly and privately owned lands.

(e) The Gulf Intracoastal Waterway can be maintained, operated, and improved in such a way as to prevent waste of both publicly and privately owned natural resources, that adverse environmental impacts are avoided or minimized, and that in some cases beneficial environmental effects can be
realized.

(f) It is in the best interest of all citizens to accomplish the policy of the State of Texas as stated in Section 2 of this Act for the State of Texas to meet the responsibilities as required by federal law of the nonfederal sponsor of the Gulf Intracoastal Waterway.

(2) The revised law omits as unnecessary Section 5(a) of V.A.C.S. Article 5415e-2 because the administration of the chapter is covered by the substantive provisions of this chapter. The omitted provision reads:

Sec. 5. (a) This Act shall be administered by the State Highway Commission.

(3) The revised law omits as unnecessary Section 5(b) of V.A.C.S. Article 5415e-2, relating to the cumulative effect of the article. An accepted general principle of statutory construction requires a statute to be given cumulative effect with other statutes unless it provides otherwise or unless the statutes are inconsistent. The general principle applies to this provision. The omitted subsection reads:

(b) The provisions of this Act are cumulative of all other Acts relating to the commission.

(4) The revised law omits as unnecessary Section 7 of V.A.C.S. Article 5415e-2, authorizing the legislature to appropriate general revenue funds to administer the Texas Coastal Waterway Act of 1975. The legislature has the power to appropriate money without an express statement to that effect. The omitted provision reads:

Sec. 7. The legislature is hereby authorized to appropriate from the General Revenue Fund funds in the amount necessary to accomplish the purposes of this Act.
CHAPTER 52. TEXAS DEEPWATER PORT PROCEDURES ACT

Revised Law
Sec. 52.001. SHORT TITLE. This chapter may be cited as the Texas Deepwater Port Procedures Act. (V.A.C.S. Art. 5415i, Sec. 1.)

Source Law
Art. 5415i
Sec. 1. This Act shall be entitled the Texas Deepwater Port Procedures Act.

Revised Law
Sec. 52.002. DEFINITIONS. In this chapter:

(1) "Adjacent coastal county" means a county bordering the Gulf of Mexico that has an onshore storage facility for a deepwater port for which an application has been filed.

(2) "Commissioner" means the commissioner of the General Land Office or the commissioner’s designated representative.

(3) "Deepwater port" means a facility defined in Section 3(10), Deepwater Port Act of 1974 (33 U.S.C. Sec. 1502(10)), and includes an onshore storage tank facility and the pipelines located in this state that connect the onshore
storage tank facility with an offshore facility of a deepwater port.

(4) "Person" means an individual, association, organization, trust, partnership, or corporation.

(5) "Secretary" means the United States secretary of transportation.

(6) "State or local agency" means a board, commission, department, office, agency, or political subdivision of the state or of a county or municipality, or another public body created by or under state law. (V.A.C.S. Art. 5415i, Secs. 3(1), (4), (5), (7), (9); New.)

Source Law

Sec. 3. In this Act:

(1) "Adjacent coastal county" means any Texas county, bordering on the Gulf of Mexico, in which are located the onshore storage facilities of a deepwater port, as defined in Subdivision (5) herein.

(4) "Commissioner" means the commissioner of the general land office, or his designated representative.

(5) "Deepwater port" means (A) the facilities defined in Section 3(10) of the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., and also includes (B) the onshore storage tank facilities and the pipelines located within the State of Texas which connect such onshore storage facilities with the offshore facilities of a deepwater port.

(7) "Person" means any individual, association, organization, trust, partnership, or corporation.

(9) "State or local agency" means any board, commission, department, office, agency, or political subdivision of the state or of any county or city in the state, or any other public body created by or pursuant to state law.

Revisor's Note

(1) The revised law omits as unnecessary the definition in V.A.C.S. Article 5415i of "applicant" because it is a common word and the meaning is clear from the context. The omitted law reads:

(2) "Applicant" means a person who has filed an application, as defined in Subdivision (3) below.
(2) The revised law omits as unnecessary the definition in V.A.C.S. Article 5415i of "governor" because it is clear from the context that "governor" means the governor of the State of Texas. The omitted law reads:

(6) "Governor" means the Governor of the State of Texas.

(3) The revised law omits as unnecessary the definition in V.A.C.S. Article 5415i of "state." The omitted law reads:

(8) "State" means the State of Texas.

(4) The definition of "secretary" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

(5) Section 3(9), V.A.C.S. Article 5415i, refers to a "city." The revised law substitutes the term "municipality" for "city" because that is the term used in the Local Government Code.

Revised Law

Sec. 52.003. GENERAL ADMINISTRATION. (a) The governor shall approve or disapprove an application made to the secretary under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.) to own, construct, or operate a deepwater port off the Texas Gulf Coast.

(b) The commissioner shall administer, implement, and coordinate the provisions of this chapter regarding a determination by state and local agencies of the application's compliance with state and local laws regarding environmental protection, land and water use, and coastal zone management. (V.A.C.S. Art. 5415i, Secs. 3(3) (part), 4.)

Source Law

[Sec. 3] (3) "Application" means any application
submitted under the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., (A) for a license for the ownership, construction, and operation of a deepwater port; . . . .

Sec. 4. The governor is hereby designated as the officer of the state to approve or disapprove an application to the secretary of transportation to own, construct, or operate a deepwater port off the Texas Gulf Coast. The commissioner of the general land office is hereby designated the officer of the state charged with the administration, implementation, and coordination of the provisions of this Act relating to the determination by state or local agencies that such an application complies with state and local laws relating to environmental protection, land and water use, and coastal zone management.

Revisor's Note
The revised law omits Sections 3(3)(B) and (C), V.A.C.S. Article 5415i, because federal law requires an application for an initial license only. The omitted law reads:

[(3) "Application" means any application submitted under the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq.,] . . . (B) for transfer of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license.

Revised Law
Sec. 52.004. APPLICATION: GOVERNOR'S DUTIES. (a) On receipt of a copy of an application from the secretary, the governor shall immediately send a copy to the attorney general and the commissioner.

(b) If the governor determines that the application is substantially similar to an application previously reviewed under this chapter, the governor may approve or disapprove the application without further action under this chapter and notify the secretary of the action taken. (V.A.C.S. Art. 5415i, Secs. 5(a), (b).)

Source Law
Sec. 5. (a) Upon receipt of a copy of an application transmitted from the secretary of transportation pursuant to the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., the governor shall immediately transmit a copy of the application to
the commissioner of the general land office and to the
Attorney General of Texas.

(b) If the governor determines that the
application transmitted from the secretary of
transportation is substantially similar to a previous
application already reviewed under the terms of this
Act, the governor may notify the secretary of
transportation whether the governor approves or
disapproves the application, and there shall be no
further proceedings under this Act on such application.

Revised Law

Sec. 52.005. APPLICATION TO BE FILED; FEE FOR DUPLICATION
AND MAILING. (a) A copy of the application shall be filed in the
General Land Office and in the office of the county judge of the
adjacent coastal county.

(b) The public may inspect or duplicate the application
during normal business hours. A reasonable fee may be charged for
duplicating and mailing the application. (V.A.C.S. Art. 5415i,
Sec. 5(i) (part).)

Source Law

(i) One copy of the application shall be filed
in the general land office and in the office of the
county judge of the adjacent coastal county for public
inspection and shall be available to the public for
inspection or duplication during normal business hours.
A person requesting a copy of the application may be
charged a reasonable fee for duplicating and mailing
costs.

Revised Law

Sec. 52.006. DUTIES OF ATTORNEY GENERAL AND COMMISSIONER;
FEE FOR DUPLICATION AND MAILING. (a) Not later than the 30th day
after the date of receiving a copy of the application from the
governor, the attorney general shall send the governor and the
commissioner a list of each state or local agency that the attorney
general determines has jurisdiction to administer laws regarding
environmental protection, land and water use, and coastal zone
management in the area in which the deepwater port is located.

(b) On receipt of the list, the commissioner shall
immediately send a copy of the application to each state and local
agency.
(c) The applicant may be charged a reasonable fee to cover the cost of duplicating and mailing the application to the state and local agencies unless the applicant provides the necessary copies. (V.A.C.S. Art. 5415i, Secs. 5(d), (e) (part), (i) (part).)

Source Law

(d) Within 30 days after the receipt of an application from the governor, the attorney general shall determine and forward to the governor and to the commissioner a list of the state or local agencies which have jurisdiction to administer laws relating to environmental protection, land and water use, and coastal zone management, and also within whose boundaries are located facilities constituting a deepwater port, as defined by Section 3(5) herein. (e) Upon receipt of the list of state or local agencies prepared by the attorney general pursuant to Subsection (d) of this section, the commissioner shall immediately transmit a copy of the application to each such state or local agency . . . .

(i) . . . The applicant may be charged a reasonable fee to cover the costs of reproducing and mailing copies of applications to state and local agencies, unless the applicant provides the number of copies required by such agencies.

Revised Law

Sec. 52.007. PUBLICATION OF NOTICE. Not later than the 15th day after the date of receiving a copy of the application from the governor, the commissioner shall publish notice of the application in:

(1) the Texas Register;

(2) the newspaper having the greatest general circulation in Travis County and in each of the five most populous counties in the state; and

(3) a newspaper in the adjacent coastal county and in each county that adjoins the adjacent coastal county in which notice is not otherwise required to be published under this section. (V.A.C.S. Art. 5415i, Sec. 5(c).)

Source Law

(c) Within 15 days after the receipt of an application from the governor, the commissioner shall publish notice of the application in any official register of the State of Texas, in the newspaper of
greatest general circulation in Travis County and in each of the five most populous counties in Texas, according to the latest United States census, and in a newspaper in the adjacent coastal county and in any county adjoining the adjacent coastal county in which such notice would not have otherwise been published under this subsection.

Revisor's Note

(1) Section 5(c), V.A.C.S. Article 5415i, refers to "any official register of the State of Texas." The Texas Register is the official register of the state, and the revised law makes that change.

(2) Section 5(c), V.A.C.S. Article 5415i, describes a population number that is to be determined according to the most recent United States census. The revised law omits the reference to the United States census because the reference is unnecessary. Section 311.005(3), Government Code (Code Construction Act), and Section 312.011(20), Government Code, define "population" as population according to the most recent federal decennial census. That definition applies to the revised law.

Revised Law

Sec. 52.008. REPORT BY AGENCIES. (a) Not later than the 60th day after the date of receiving a copy of the application from the commissioner, a state or local agency notified under Section 52.006 shall report in writing to the commissioner the agency's determination of whether the application complies with laws, including rules and regulations, administered by the agency.

(b) If an agency determines that the application does not comply with laws administered by that agency, the agency shall include in the report:

(1) a detailed description of the manner in which the application does not comply; and

(2) recommended changes that would enable the
application to comply with those laws.

(c) The commissioner shall send a copy of the agency's report to the applicant.

(d) An applicant is entitled to:

(1) respond in writing to the agency that issued the report; and

(2) request and receive a public hearing before the commissioner on the provisions of the application that an agency has determined do not comply with laws administered by that agency.

(e) If an agency fails to file a report within the period prescribed by Subsection (a), the application is presumed to comply with the laws administered by that agency. (V.A.C.S. Art. 5415i, Secs. 5(e) (part), (f), (g), (h), 6(a).)

Source Law

[Sec. 5]

(e) [Upon receipt of the list of state or local agencies prepared by the attorney general pursuant to Subsection (d) of this section, the commissioner shall immediately transmit a copy of the application to each such state or local agency] for review and determination of whether the application complies with the laws or regulations administered by such state or local agency.

(f) The state or local agency shall report such determination to the commissioner in writing within 60 days after its receipt of a copy of the application from the commissioner.

(g) If any state or local agency reports to the commissioner that the application is not in compliance, such agency shall set forth in detail the manner in which the application does not comply with any law or regulation administered by the agency and shall report to the commissioner how the application can be brought into compliance with the law or regulation involved. A copy of such report shall be forwarded by the commissioner to the applicant, and the applicant shall be entitled to respond in writing to the state or local agency which issued such report and to request that a public hearing be held by the commissioner on the provisions of the application determined by the state or local agency not to comply with state or local law.

(h) The failure of a state or local agency to forward a determination report to the commissioner within the time period established in Subsection (f) of this section shall constitute a presumption that the application complies with the law or regulations administered by that agency.

Sec. 6. (a) As provided in Section 5(f) of this Act, an applicant shall be entitled to a public hearing on the provisions in his application which have been determined by a state or local agency not to be in compliance with the laws which they have jurisdiction
to administer.

Revisor's Note
(1) Sections 5(g) and (h), V.A.C.S. Article 5415i, refer to "regulations." The reference to "regulations" is changed to "rules and regulations" in the revised law because a state or local agency may have authority to enforce federal regulations.
(2) Section 5(h), V.A.C.S. Article 5415i, refers to "Subsection (f) of this section." That subsection is codified in this section as Subsection (a), and the revised law is drafted accordingly.

Revised Law
Sec. 52.009. HEARINGS. (a) The commissioner may hold a public hearing after receiving the reports required under Section 52.008.
(b) If the commissioner decides to hold a public hearing or if the applicant requests a hearing under Section 52.008(d)(2), the commissioner shall publish notice of the hearing in the publications described by Section 52.007.
(c) Notice of the hearing must:
(1) describe the purpose of the hearing; and
(2) provide the date, time, and place of the hearing.
(d) Notice of the hearing must be published and personal notice of the hearing, if any, must be given not later than the 10th day before the date set for the hearing.
(e) The commissioner may consolidate a hearing held under this section with the hearing that is required to be held in this state by the secretary under the Deepwater Port Act of 1974 (33 U.S.C. Sec. 1501 et seq.).
(f) A hearing held under this section must be concluded not later than the 120th day after the date the commissioner receives the application from the governor. The commissioner may hold a hearing after that date if:
(1) the required federal hearing in this state has not
been held; and

(2) the commissioner decides to consolidate the
hearings and gives notice of the decision. (V.A.C.S. Art. 5415i,
Secs. 6(b), (c), (d), (e).)

Source Law

(b) Upon receipt of a request from an applicant
for such a hearing, the commissioner shall publish
notice of such hearing as provided in Section 5(b) of
this Act. The notice shall describe the purpose of the
hearing and the date, time, and place of the hearing.
The date of the publication and of any personal notice
of the hearing shall be not less than 10 days before
the date set for the hearing.
(c) The commissioner may also hold a public
hearing on the determination of compliance reports
submitted to him by the state and local agencies.
Notice of such hearing shall be given as provided by
Subsection (b) of this section.
(d) The commissioner may consolidate any hearing
held under this section with the hearing required by
the federal Deepwater Port Act of 1974, 33 U.S.C.A.
1501 et seq., to be held in Texas by the secretary of
transportation.
(e) All hearings on the application shall be
concluded not later than 120 days after the date on
which the commissioner received the application from
the governor; provided, however, that the commissioner
shall be entitled to hold a hearing after such 120 day
period if the federal hearing required to be held in
Texas has not been held and the commissioner has
determined and given notice that a hearing provided for
in this section will be held in conjunction with the
federal hearing.

Revisor's Note

Section 6(b), V.A.C.S. Article 5415i, refers to
"Section 5(b) of this Act." The source law
cross-reference is incorrect. It is clear from the
context that the correct cross-reference should be
Section 5(c). That subsection is codified in this
chapter as Section 52.007, and the revised law is
drafted accordingly.

Revised Law

Sec. 52.010. REPORT BY COMMISSIONER. (a) Notwithstanding
Section 52.009(f), not later than the 150th day after the date of
receiving a copy of the application from the governor, the
commissioner shall send the governor:

(1) a written report summarizing the reports submitted by state and local agencies under Section 52.008; and

(2) a transcript of the testimony from each public hearing the commissioner held on the application, including each consolidated hearing.

(b) If the commissioner's report contains a determination by a state or local agency that the application does not comply with a law relating to environmental protection, land and water use, or coastal zone management, the commissioner shall include in the report:

(1) the manner in which the application does not comply; and

(2) recommended changes that would enable the application to comply with the law.

(c) If the commissioner fails to report to the governor within the period prescribed by Subsection (a), the application is presumed to comply with state and local law. (V.A.C.S. Art. 5415i, Secs. 6(f), 7.)

Source Law

[Sec. 6]

(f) Notwithstanding Subsection (e) of this section, the commissioner shall be required to comply with the date provided in Section 7(a) for transmitting his report to the governor.

Sec. 7. (a) Within 150 days after the receipt of an application from the governor, the land commissioner shall transmit to the governor a report in the form of a written summary of the determination of compliance reports submitted by any state or local agency, together with the transcript and testimony from any public hearing held by the commissioner or any joint hearing held in the state with the secretary of transportation.

(b) If the commissioner's report contains a determination by a state or local agency that the application does not comply with a law relating to environmental protection, land and water use, or coastal zone management, the commissioner shall include in his report the manner in which the application does not comply and how the application can be brought into compliance.

(c) The failure of the commissioner to transmit his summary report to the governor within the time period established in Subsection (a) of this section shall constitute a presumption that the application complies with state and local law.
Revisor's Note

Section 6(f), V.A.C.S. Article 5415i, refers to "Subsection (e) of this section." That statute is codified in this code as Section 52.009(f), and the revised law is drafted accordingly.

Revised Law

Sec. 52.011. APPROVAL BY GOVERNOR. (a) On receipt of the commissioner's report and not later than 45 days after the last public hearing held by the secretary as required by Section 5(g) of the Deepwater Port Act of 1974 (33 U.S.C. Sec. 1504(g)), the governor shall notify the secretary whether the governor approves or disapproves an application.

(b) The governor may disapprove an application if the governor concludes the application does not comply with state law regarding environmental protection, land and water use, and coastal zone management.

(c) If the governor determines the application can be amended to comply with those state laws, the governor may approve the application and notify the secretary of:

(1) the manner in which the application does not comply; and

(2) recommended changes that would enable the application to comply with those state laws.

(d) The governor shall send a copy of the notification to the secretary, the applicant, the commissioner, and each state and local agency that was notified under Section 52.006. (V.A.C.S. Art. 5415i, Sec. 8.)

Source Law

Sec. 8. (a) Upon receipt of the report from the commissioner, and not later than 45 days after the last public hearing held on the application by the secretary of transportation pursuant to Section 5(g) of the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., the governor shall notify the secretary of transportation whether he approves or disapproves the application.

(b) If the governor concludes that the application does not comply with state laws relating to

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environmental protection, land and water use, and coastal zone management, he may disapprove the application. However, if he concludes that the application can be amended to comply with such laws, he may approve the application and shall notify the secretary of transportation of the manner in which the application does not comply and how the application can be brought into compliance with such laws.

(c) The governor shall transmit copies of his notification to the secretary, the applicant, the commissioner, and to the state and local agencies to whom were transmitted copies of the application by the commissioner pursuant to Section 5(d) herein.

Revisor's Note

The source law refers to "Section 5(d) herein," meaning Section 5(d), V.A.C.S. Article 5415i. The source law cross-reference is incorrectly cited. The correct citation should be Section 5(e). The pertinent part of that statute is codified in this code in Section 52.006, and the revised law is drafted accordingly.

Revised Law

Sec. 52.012. EFFECT ON OTHER LAWS. This chapter does not affect the power or activities of a state or local agency and does not change or repeal the statutes regarding those agencies. (V.A.C.S. Art. 5415i, Sec. 13.)

Source Law

Sec. 13. Nothing herein shall be construed in any way to limit, impair, diminish, change, or curtail the power, authority, and activities of any state or local governmental agency, but all power and authority vested in and exercised by such agencies are hereby specifically reserved as to them; and none of the statutory law pertaining to those existing authorities or districts is amended, changed, or repealed by the provisions hereof.

Revisor's Note

(1) Section 13, V.A.C.S. Article 5415i, refers to "limit, impair, diminish, change, or curtail the power, authority, and activities of any state or local governmental agency." The revised law omits the words "limit, impair, diminish" and "curtail" because they
are included in the meaning of the word "change." The revised law also omits the word "authority" because "authority" is included in the meaning of the word "power."

(2) Section 13, V.A.C.S. Article 5415i, refers to a "state or local governmental" agency. The revised law omits the word "governmental" because the term is included within the meaning of "political subdivision" in the definition of "state or local agency" in Section 52.002.

(3) Section 13, V.A.C.S. Article 5415i, refers to "statutory law . . . amended, changed, or repealed . . . ." The revised law omits "amended" because it is included in the meaning of "changed."

Revisor's Note
(End of Chapter)

The revised law omits as nonsubstantive and unnecessary the source law statement of the purpose of the legislation, Section 2, V.A.C.S. Article 5415i.

The omitted law reads:

Sec. 2. The purpose of this Act is to authorize state and local governmental agencies to perform and fulfill the responsibilities of the State of Texas under the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., and to establish the procedures by which such state and local agencies will determine that applications for deepwater ports off the Texas Gulf Coast are in compliance with applicable state and local laws.

[Chapters 53-60 reserved for expansion]

SUBTITLE B. PILOTS

CHAPTER 61. COMPULSORY PILOTAGE

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Sec. 61.002. DEFINITIONS

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SUBTITLE B. PILOTS

CHAPTER 61. COMPULSORY PILOTAGE

Revised Law
Sec. 61.001. SHORT TITLE. This chapter may be cited as the
Texas Compulsory Pilotage Act. (V.A.C.S. Art. 8278, Sec. 1.)

Source Law
Art. 8278.
Sec. 1. This article may be cited as the Texas
Compulsory Pilotage Act.

Revised Law
Sec. 61.002. DEFINITIONS. In this chapter:
(1) "Board" means the board of pilot commissioners for
a port.
(2) "Consignee" means a person, including a master,
owner, agent, subagent, firm, or corporation or any combination of
those persons, who enters or clears a vessel at the office of the
collector of customs.
(3) "Pilot" means a licensed state pilot or certified
deputy pilot.
(4) "Pilot services" means acts of a pilot in piloting
through navigable water in this state and ports in which the pilot
is licensed or certified as a pilot.
(5) "Pilotage rate" means the remuneration a pilot may
charge a vessel for the pilot's services.
(6) "Port" means a place in this state into which a
vessel enters or from which a vessel departs. If the port connects
to the Gulf of Mexico, "port" includes the waterway leading from
the port to the Gulf of Mexico.

(7) "Vessel" means an oceangoing vessel. (V.A.C.S.
Art. 8278, Sec. 2.)

Source Law

Sec. 2. In this article:
(1) "Board" means the board of pilot
commissioners for each port affected by this article.
(2) "Consignee" means the person,
including the master, owner, agent, subagent, firm, or
corporation or any combination of these, that enters or
dears a vessel at the office of the collector of
customs.
(3) "Pilot" means a licensed state pilot
or certified deputy pilot.
(4) "Pilot services" means acts of a pilot
in piloting through the navigable water within the
boundaries of this state and the ports in which the
pilot is licensed or certified as a pilot.
(5) "Pilotage rate" means the amount of
remuneration a pilot may lawfully charge a vessel for
the pilot's services.
(6) "Port" means a place in this state
into which a vessel enters or from which a vessel
dearts. If the port connects to the Gulf of Mexico,
"port" includes the waterway leading from the port to
the Gulf of Mexico.
(7) "Vessel" means every oceangoing vessel
navigating the water within the board's jurisdiction
except vessels exempt from payment of pilotage rates
under this article.

Revisor's Note

The revised law omits the language in the
definition of "vessel" in Section 2(7), V.A.C.S.
Article 8278, that excepts vessels exempt from payment
of pilotage rates under V.A.C.S. Article 8278. The
reference is unnecessary because Section 3, V.A.C.S.
Article 8278, codified as Section 61.003, contains the
exemptions.

Revised Law

Sec. 61.003. DUTY TO ENGAGE PILOT. (a) A consignee having
control of a vessel shall obtain a pilot to provide pilot services
when the vessel is under way or otherwise moving on a river, bay,
harbor, or port in this state unless the vessel is:

(1) documented as a United States vessel and licensed
(2) a public vessel;

(3) of 20 gross tons or less;

(4) a motorboat registered in this state; or

(5) subject to Subsection (b), in distress or jeopardy.

(b) A consignee having control of a vessel that is in distress or jeopardy shall take on a pilot as soon as the pilot arrives at the vessel. (V.A.C.S. Art. 8278, Secs. 3, 4(a).)

Source Law

Sec. 3. (a) A vessel shall engage a pilot to provide pilot services when underway or otherwise moving on a river, bay, harbor, or port in this state unless the vessel is:

(1) documented as a United States vessel and is licensed for and engaged in coastwise trade;

(2) a public vessel;

(3) of 20 gross tons or less;

(4) a motorboat registered in this state; or

(5) subject to Subsection (b) of this section, in distress or jeopardy.

(b) A vessel that is in distress or jeopardy shall take on a pilot as soon as the pilot arrives at the vessel.

Sec. 4. (a) A consignee of a vessel that is subject to Section 3 of this article and that is under the consignee's control shall obtain a pilot to provide pilot services when the vessel is underway or otherwise moving on a river, bay, harbor, or port in this state.

Revised Law

Sec. 61.004. PAYMENT FOR PILOT. A consignee shall pay a pilot at the applicable pilotage rates. (V.A.C.S. Art. 8278, Sec. 4(b).)

Source Law

(b) The consignee shall pay the pilot for the pilot services at the applicable pilotage rates.

Revised Law

Sec. 61.005. PILOT OPTIONAL. This chapter does not prohibit a consignee not required by Section 61.003 to engage a pilot from applying for, receiving, and paying for pilot services. (V.A.C.S. Art. 8278, Sec. 4(c).)
This section does not prohibit the consignee of a vessel that is not subject to Section 3 of this article from applying for, receiving, and paying for pilot services for the vessel.

Sec. 61.006. BOARD JURISDICTION. A board has exclusive jurisdiction over piloting of vessels in this state between the Gulf of Mexico and the ports in the board's jurisdiction. (V.A.C.S. Art. 8278, Sec. 5.)

Sec. 5. The board has exclusive jurisdiction over piloting of vessels in this state between the Gulf of Mexico and the ports within the board's jurisdiction.

Sec. 6. The office of the attorney general shall assist a board in the enforcement of this chapter. (V.A.C.S. Art. 8278, Sec. 6.)

Sec. 6. The office of the attorney general shall assist the board in the enforcement of this article.

Sec. 61.008. LIABILITY TO PILOT. (a) A person who pilots a vessel in violation of this chapter is liable for an amount equal to the applicable pilotage rate to the pilot who first demands the amount in writing.

(b) A pilot may bring an action to enforce this section in district court in the county in which the violation occurred.

(c) In an action under Subsection (b), the court shall add to the amount of any judgment in favor of a pilot court costs and reasonable attorney's fees incurred by the pilot in obtaining the judgment. (V.A.C.S. Art. 8278, Sec. 7.)

Sec. 7. (a) A person who pilots a vessel in violation of this article is liable for an amount equal
to the applicable pilotage rate to the pilot who first
1 demands the amount in writing.
2  
3 (b) The pilot may bring an action in a district
court in the county in which the violation occurred to
4 enforce this section.
5  
6 (c) A court shall add to the amount of any
7 judgment in favor of a pilot in an action under
8 Subsection (b) of this section court costs and
9 reasonable attorney fees incurred by the pilot in
10 obtaining the judgment.

Revised Law

Sec. 61.009. LIABILITY TO BOARD. (a) A vessel or the owner
1 of a vessel that is piloted in violation of this chapter is liable
2 to a board for $5,000 for each violation.
3  
4 (b) The board may bring an action to enforce this section in
district court in the county in which the violation occurred.
5  
6 (c) In an action under Subsection (b), the court shall add
7 to the amount of any judgment in favor of the board court costs and
8 reasonable attorney’s fees incurred by the board in obtaining the
9 judgment. (V.A.C.S. Art. 8278, Sec. 8.)

Source Law

Sec. 8. (a) A vessel or the owner of a vessel
1 that is piloted in violation of this article is liable
2 to the board for $5,000 for each violation.
3  
4 (b) The board may bring an action in a district
court in the county in which the violation occurred to
5 enforce this section.
6  
7 (c) A court shall add to the amount of any
8 judgment in favor of the board in an action under
9 Subsection (b) of this section court costs and
10 reasonable attorney fees incurred by the board in
11 obtaining the judgment.

Revised Law

Sec. 61.010. COOPERATION. A pilot providing pilot services
1 shall, to the extent possible, cooperate with the master of the
2 vessel. (V.A.C.S. Art. 8278, Sec. 11.)

Source Law

Sec. 11. A state-licensed pilot, while providing
1 pilot services, shall, to the extent possible, cooperate with the master of the vessel.
Reviser's Note

The source law refers to a "state-licensed pilot." The revised law substitutes "pilot" because that term is defined in Section 61.002 to mean a licensed state pilot or certified deputy pilot.

Revised Law

Sec. 61.011. CERTAIN UNITED STATES LICENSE REQUIRED; OFFENSE. (a) A person may not act as a state-commissioned pilot of a vessel in any water in this state unless the person is licensed under Title 46, United States Code. (b) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 8280e.)

Source Law

Art. 8280e. (a) No person may act as a Texas commissioned pilot of a vessel in state waters unless that person is also duly commissioned pursuant to Title 46, United States Code. (b) A person who violates this article is guilty of a Class A misdemeanor.

Reviser's Note

Subsection (a), V.A.C.S. Article 8280e, refers to a person who has been "duly commissioned" under Title 46, United States Code. The revised law omits "duly" as unnecessary. The revised law substitutes "licensed" for "commissioned" because 46 U.S.C. Section 7101 authorizes the issuance of "licenses" to pilots.

Reviser's Note

(End of Chapter)

(1) The revised law omits as unnecessary Section 9, V.A.C.S. Article 8278, relating to the cumulative effect of that article. An accepted general principle of statutory construction requires a statute to be given cumulative effect with other statutes unless it provides otherwise or unless the statutes are in
conflict. The general principle applies to this revision. Section 9 reads:

Sec. 9. The liabilities established by this article are cumulative of the rights and remedies available to a pilot or pilots under any other law.

(2) Section 10, V.A.C.S. Article 8278, states that the article prevails over all laws in conflict with that article. This revision omits this provision as unnecessary because, under general rules of statutory construction, a statute automatically has the effect of repealing prior conflicting enactments. The provision is ineffective to supersede subsequent legislation. Section 10 reads:

Sec. 10. To the extent that this article conflicts with any other law, this article prevails.
CHAPTER 62. NAVIGATION DISTRICT PILOT BOARDS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 62.001. DEFINITION. In this chapter, "navigation district" means a navigation district included in:

(1) Subchapters C, D, E, F, G, and H, Chapter 60, Water Code;

(2) Subchapter E, Chapter 61, Water Code; or


(New.)

Revisor's Note

The definition of "navigation district" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

[Sections 62.002-62.020 reserved for expansion]

SUBCHAPTER B. PILOT BOARDS OF NAVIGATION DISTRICTS

Revised Law

Sec. 62.021. PILOT BOARD; COMMISSIONERS OF PILOTS. (a) The pilot board of a navigation district is composed of the district's navigation and canal commissioners.
(b) A member of the pilot board is a commissioner of pilots.

(V.A.C.S. Art. 8248 (part).)

Source Law

Art. 8248. The navigation and canal commissioners of any navigation district included in Part A of this subdivision, in connection with their other duties as such commissioners, shall constitute a Pilot Board, and be commissioners of pilots . . . .

Revisor's Note

V.A.C.S. Article 8248 refers to "any navigation district included in Part A of this subdivision . . . ." "Part A of this subdivision" refers to V.A.C.S. Articles 8229 through 8247e. Those statutes were codified in 1971 as Subchapters C, D, E, F, G, and H, Chapter 60, Water Code; Subchapter E, Chapter 61, Water Code; and Sections 62.154 through 62.159, Water Code. The revised law is drafted accordingly. See the definition of "navigation district" provided by Section 62.001 of this chapter.

Revised Law

Sec. 62.022. TERM OF OFFICE. The term of office of a commissioner of pilots coincides with the person's term as a navigation and canal commissioner. (V.A.C.S. Art. 8248 (part).)

Source Law

Art. 8248. . . . and their terms of office as such shall be contemporaneous with their terms of office as navigation and canal commissioners. . . .

Revised Law

Sec. 62.023. DISQUALIFICATION. A person who is engaged directly or indirectly in a towing, pilot boat, or other business affected by or connected with the performance of the duties of a commissioner of pilots may not be a commissioner of pilots.

(V.A.C.S. Art. 8248 (part).)
Art. 8248. . . . No person who is engaged directly or indirectly in the towing business or in any pilot boat, or in any other business affected by or connected with the performance of his duties as a commissioner of pilots, shall be a member of such pilot board.

Sec. 62.024. JURISDICTION. The pilot board of a navigation district has exclusive jurisdiction over the pilotage of a vessel between the Gulf of Mexico and a port of the navigation district, including an intermediate stop or landing place on a navigable stream in the district. (V.A.C.S. Art. 8249.)

Art. 8249. Such navigation districts shall have exclusive jurisdiction as hereinafter defined over the pilotage of boats between the Gulf of Mexico and their respective ports, as well as of intermediate stops or landing places for such boats upon navigable streams wholly or partly within such navigation districts.

V.A.C.S. Article 8249 refers to jurisdiction over the "pilotage of boats between the Gulf of Mexico and their respective ports." The revised law substitutes "vessel" for "boat" because in this context "vessel" and "boat" are synonymous and "vessel" is more commonly used.

Sec. 62.025. POWERS OF PILOT BOARDS. The pilot board of a navigation district may:

(1) appoint, suspend, or dismiss a branch or deputy pilot of a port in the district;

(2) establish pilotage rates for service in the board's jurisdiction; or

(3) adopt and enforce rules consistent with this chapter about the appointment, qualification, or regulation of branch or deputy pilots that are needed to govern those pilots and
1 for the proper operation of the district's ports. (V.A.C.S. Arts.
2 8250 (part); 8252.)

Source Law

Art. 8250. The right, power and authority is hereby granted to such commission to appoint, suspend or dismiss from office, branch pilots or deputy pilots of their respective ports, and to examine and determine upon their qualifications. . . .

Art. 8252. The right, power and authority is further granted to such commissioners to fix rates of pilotage between the Gulf of Mexico and their respective ports, as well as intermediate stops or landing places for such boats, upon navigable streams wholly or partly within such districts; and to make, adopt and enforce all rules and regulations which they deem advisable in the matter of appointment, qualification and regulation of pilots and deputy pilots as may be needed for the government of pilots and their deputy pilots and the proper operation of their respective ports, not inconsistent with the Federal regulations thereof, the Constitution of Texas, or the provisions of this law.

Revisor's Note

(1) V.A.C.S. Article 8252 refers to "between the Gulf of Mexico and their respective ports, as well as intermediate stops or landing places for such boats, upon navigable streams wholly or partly within such districts." The revised law substitutes "for service in the board's jurisdiction" for the quoted language because the quoted language duplicates the language referring to a pilot board's jurisdiction contained in Section 62.024 of this code.

(2) V.A.C.S. Article 8252 refers to "rules and regulations." The reference to "regulations" is omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

(3) V.A.C.S. Article 8252 refers to the adoption and enforcement of rules that are "not inconsistent with the Federal regulations thereof, the Constitution
of Texas . . . ." The revised law omits the reference to federal regulations because under federal supremacy principles, which provide that federal law controls over state law, the state is required to comply with any applicable federal regulation. The revised law also omits the reference to the Constitution of Texas as unnecessary because the state cannot modify constitutional requirements by statute.

(4) V.A.C.S. Article 8250 refers to the commissioner's right, power, and authority to "examine and determine upon their [branch or deputy pilot's] qualifications." The revised law omits this phrase as unnecessary because Section 62.041 of this code requires the commissioners to examine and determine the qualifications of a branch or deputy pilot before they are appointed.

[Sections 62.026-62.040 reserved for expansion]

SUBCHAPTER C. REGULATION OF BRANCH AND DEPUTY PILOTS

Revised Law

Sec. 62.041. BRANCH OR DEPUTY PILOT QUALIFICATIONS. (a) The pilot board of a navigation district shall examine and determine the qualifications of each applicant for the position of branch or deputy pilot before appointing a branch or deputy pilot. (b) The pilot board shall specify a period that an applicant must reside in this state immediately before the person's appointment. The period may not exceed two years. (V.A.C.S. Art. 8251.)

Source Law

Art. 8251. Before making any appointments as branch pilot or deputy pilots, the commissioners shall examine and determine upon the qualifications for office of each applicant for the position of branch pilot or deputy pilot; and shall require of each of said applicants such terms of residence in this State preceding such appointment as they may deem advisable, not to exceed two years.
Sec. 62.042. OATH; BOND. (a) A branch pilot appointed under this chapter or the rules of the pilot board of a navigation district must take the official oath. The oath must be endorsed on the bond required by Subsection (b).

(b) The branch pilot must enter into a bond in the amount of $5,000 with one or more good and sufficient sureties. The bond must be:

(1) payable to the governor;

(2) conditioned on the faithful performance of the branch pilot's duties;

(3) approved by the pilot board; and

(4) deposited in the office of the secretary of state.

(V.A.C.S. Art. 8253 (part).)

Art. 8253. All branch pilots appointed under and in accordance with this law or the rules and regulations of such navigation district shall enter into bond with one or more good and sufficient sureties in the sum of five thousand dollars, payable to the Governor, conditioned upon the faithful performance . . . and shall be deposited in the office of the Secretary of State. Each pilot shall also take the official oath, which shall be endorsed on said bond . . .

(1) V.A.C.S. Article 8253 refers to "rules and regulations." The reference to "regulations" is omitted from the revised law for the reason stated in Revisor's Note (2) under Section 62.025 of this chapter.

(2) V.A.C.S. Article 8253 contains requirements for a pilot's bond. The revised law adds the requirement that the bond must be "conditioned on the faithful performance of the branch pilot's duties" and "approved by the commissioners of the pilot board" to convey legislative intent. The printing of V.A.C.S.
Article 8253 introduced erroneous language that reads:

... conditioned upon the faithful performance on any employee which together with any other insurance under commissioners of such district ... .

The intent of the legislature is clear from Chapter 297, Acts of the 64th Legislature, Regular Session, 1975, which reads:

All branch pilots appointed under and in accordance with this law or the rules and regulations of such navigation district shall enter into bond with one or more good and sufficient sureties in the sum of five thousand dollars, payable to the Governor, conditioned upon the faithful performance of the duties of his office. Said bonds shall be approved by the commissioners of such district, and shall be deposited in the office of the Secretary of State.

The erroneous language contained in V.A.C.S. Article 8253 was reenacted by Section 39, Chapter 300, Acts of the 73rd Legislature, Regular Session, 1993. The relevant portion of that Act, relating to the state seal, does not affect the conditions or approval of the bond and does not indicate an intention of the legislature to perpetuate the previous error.

Revised Law

Sec. 62.043. ISSUANCE OF BRANCH PILOT LICENSE. (a) On the filing of the bond and the taking of the oath required by Section 62.042, a commissioner of pilots shall certify to the governor that the branch pilot has qualified.

(b) On receiving the certificate, the governor shall issue to the branch pilot, in the name of the state and under the state seal, a commission to serve as a branch pilot in the jurisdiction of the pilot board of a navigation district. (V.A.C.S. Art. 8253 (part).)

Source Law

Art. 8253. ... Upon the filing of said bond, and the taking of said oath, the commissioners of such district shall certify to the Governor that each branch pilot has duly qualified to act as such, and thereupon the Governor shall issue to said branch pilot, in the
name and under the state seal, a commission to serve as
branch pilot from such ports, across any intermediate
bars, to the open gulf . . . .

Revisor's Note

V.A.C.S. Article 8253 refers to a branch pilot's
commission to serve "from such ports, across any
intermediate bars, to the open gulf." The revised law
substitutes "in the jurisdiction of the pilot board of
the navigation district" for the source law phrase
because that phrase substantially duplicates the
language referring to a pilot board's jurisdiction
contained in Section 62.024 of this code.

Revised Law
Sec. 62.044. TERM OF BRANCH PILOT LICENSE. (a) The term of
a branch pilot commission is four years.
(b) If the pilot board of a navigation district dismisses a
branch pilot from service, the branch pilot's commission expires.
(V.A.C.S. Art. 8253 (part).)

Source Law
Art. 8253. . . . and said commission shall be
for a term of four years, unless such branch pilot
shall be dismissed from service by said navigation and
canal commissioners, in which event such commission
shall expire.

Revised Law
Sec. 62.045. APPOINTMENT OF DEPUTY PILOTS. (a) A branch
pilot may appoint two deputy pilots, subject to the examination by
and approval of the pilot board of a navigation district.
(b) The branch pilot may appoint an additional deputy pilot
if the pilot board considers the appointment advisable.
(c) The branch pilot is responsible for the acts of the
deputy pilots.
(d) The branch pilot's own appointment under this chapter is
forfeited if the branch pilot appoints a deputy pilot without the
pilot board's approval. (V.A.C.S. Art. 8254.)
Art. 8254. Each branch pilot may appoint, subject to examination and approval by the navigation and canal commissioners, two deputies for whose acts such branch pilot shall be responsible, and any branch pilot who shall appoint a deputy without the approval of said commissioners, shall forfeit his own appointment; provided that an additional deputy shall be appointed if such branch pilot and commissioners mutually deem it advisable.

Reviser's Note
V.A.C.S. Article 8254 provides that the appointment of a deputy pilot is contingent on whether the branch pilot and pilot board consider the appointment advisable. The revised law omits as unnecessary the reference to whether the branch pilot considers the appointment advisable because it is within the branch pilot's discretion to appoint the deputy pilot.

Revised Law
Sec. 62.046. SUSPENSION OR DISMISSAL OF PILOTS. The pilot board of a navigation district may suspend or dismiss a branch or deputy pilot only for misconduct, inefficiency, or intoxication on duty and after a hearing on the accusation is held before the pilot board at which there is opportunity for testimony and defense. (V.A.C.S. Art. 8250 (part).)

Source Law
Art. 8250. . . . No branch pilot or deputy pilot shall be suspended or dismissed except for misconduct, inefficiency, or inebriety on duty, and after due hearing of accusation, testimony and defense before said board of navigation and canal commissioners.

Reviser's Note
The revised law substitutes the term "intoxication" for the source law term "inebriety" because the terms are synonymous and the former is more commonly used.
SUBCHAPTER D. PILOTAGE CHARGES AND LIABILITY

Revised Law
Sec. 62.061. DEFINITION. In this subchapter, "pilot" means a branch or deputy pilot appointed under this chapter. (New.)

Revisor's Note
The definition of "pilot" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law
Sec. 62.062. PILOTAGE CHARGES INAPPLICABLE. Pilotage charges under this subchapter do not apply to a vessel of 20 tons or less or to a vessel that is excepted by a federal statute or regulation. (V.A.C.S. Art. 8255 (part).)

Source Law
Art. 8255. . . . (except vessels of twenty tons or under and all vessels excepted by Federal statutes and regulations) . . . .

Revised Law
Sec. 62.063. PILOTAGE CHARGES. (a) A pilotage rate charged by a pilot must be fair and just.
(b) A pilot shall furnish a schedule of pilotage rates that must be on file at all times in the office of the navigation district commissioners.
(c) Each time a change in the rates occurs, the pilot must file a revised schedule.
(d) A pilot shall strictly follow the schedule of rates on file in the commissioners' office. (V.A.C.S. Art. 8255 (part).)

Source Law
Art. 8255. The rates of pilotage charged by the pilots operating under this law shall at all times be
fair and just, and a schedule of such rates shall at all times be on file in the office of the district commissioners, said schedule to be furnished by the pilots and strictly adhered to by them; provided that each time a change in the rate shall be effected, a revised schedule shall be filed as above specified. . . .

Revised Law

Sec. 62.064. CONSIGNEE LIABILITY FOR PILOT SERVICES. The consignee of a vessel is liable to a pilot for the pilotage of the vessel. (V.A.C.S. Art. 8256 (part).)

Source Law

Art. 8256. The consignee of any vessel shall be held responsible to pilots operating under this law for the pilotage of said vessel or . . . .

Revisor's Note

The revised law substitutes "liable" for the source law term "responsible" because the terms are synonymous and the former is more commonly used.

Revised Law

Sec. 62.065. LIABILITY OF CERTAIN VESSELS DECLINING PILOT SERVICES. (a) A vessel that, without the aid of a pilot, enters any channel that is under the jurisdiction of a pilot board of a navigation district and declines pilot services offered by the pilot outside the bar, is liable for the payment of half pilotage to the first pilot whose services the vessel declined.

(b) The consignee of a vessel is responsible for pilot services offered and declined under Subsection (a). (V.A.C.S. Arts. 8255 (part), 8256 (part).)

Source Law

Art. 8255. . . . Whenever a vessel . . . shall decline the services of a pilot operating under this law, offered outside the bar, and shall enter any channel subject to the jurisdiction of such navigation district, without the aid of a pilot operating under this law, such vessel shall be liable to the first pilot operating under this law whose services she had declined, for the payment of half-pilotage . . . . Art. 8256. [The consignee . . . shall be held responsible . . . for . . .] services offered . . . .
Revised Law

Sec. 62.066. LIABILITY OF CERTAIN VESSELS TO OTHER PILOTS.

(a) A vessel that goes out of a channel under the jurisdiction of a pilot board of a navigation district without the aid of a pilot is liable for the payment of half pilotage to:

(1) the pilot who brought the vessel into the channel;

or

(2) the pilot who first offered the vessel services outside the bar, if the vessel did not employ a pilot to come in.

(b) The consignee of a vessel is responsible for pilot services offered under Subsection (a). (V.A.C.S. Arts. 8255 (part), 8256 (part).)

Source Law

Art. 8255. and any vessel which, after being brought in by a pilot operating under this law, shall go without employing one, shall be liable to the payment of half-pilotage to the pilot operating under this law who brought her in; or if she has come in without the aid of such pilot, though offered outside, she shall, on so going out, be liable for the payment of one-half pilotage to the pilot operating under this law who has first offered his services before she came in.

Art. 8256. [The consignee . . . shall be held responsible . . . for . . .] services offered . . . .

Revised Law

Sec. 62.067. UNAUTHORIZED PILOT LIABILITY. A person, other than a pilot, who pilots a vessel for which a pilot is required out of or into a port, channel, or waterway under the exclusive jurisdiction of the pilot board of a navigation district is liable to a pilot authorized to provide pilot services in the port, channel, or waterway who offers to pilot the vessel for a payment of $50. (V.A.C.S. Art. 8257.)

Source Law

Art. 8257. If any person not appointed a branch pilot or deputy pilot under this law shall pilot any ship or vessel out of, or into, the port, channel or waterway of which exclusive jurisdiction is, under this law, given to the navigation and canal commissioners of such navigation district, when a branch pilot or deputy pilot, operating hereunder has offered such services, the person so piloting shall forfeit and pay to such
branch pilot or deputy pilot, the sum of fifty dollars . . . .

Revisor's Note

(1) V.A.C.S. Article 8257 provides for money to be paid to a branch or deputy pilot when an unauthorized pilot pilots a vessel or ship. The revised law adds the phrases "for which a pilot is required" and "authorized to provide pilot services in the port, channel, or waterway" to clarify that the section, in this context, applies only to those vessels and only to those pilots.

(2) V.A.C.S. Article 8257 refers to a "ship or vessel." The revised law omits the reference to ship as unnecessary because all ships are vessels.

Revised Law

Sec. 62.068. RECOVERY OF PILOTAGE CHARGES. (a) A pilot may recover in court compensation for pilotage or services offered.

(b) A pilot may bring suit to recover the payment under Section 62.067. (V.A.C.S. Arts. 8256 (part), 8257 (part).)

Source Law

Art. 8256. . . . such pilots shall be entitled to recover same from the consignee of said vessel in any court of competent jurisdiction.

Art. 8257. . . . [the sum of fifty dollars,] to be recovered by suit.

Revisor's Note

V.A.C.S. Article 8256 refers to a suit brought "in any court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.
CHAPTER 63. PILOT BOARDS

SUBCHAPTER A. PILOT BOARDS AND COMMITTEES

Sec. 63.001. GOVERNOR TO APPOINT BOARDS

(a) The governor, with the consent of the senate, shall appoint a board of commissioners of pilots consisting of five persons of respectable standing for each port having a population and circumstances that warrant a pilot board.

(b) Each member of the board serves a term of two years.

(c) When the legislature is not in legislative session, the governor may:

(1) suspend any commissioner until the next legislative session; and

(2) fill any vacancy on the board until the next
legislative session. (V.A.C.S. Art. 8264 (part).)

Source Law

Art. 8264. The Governor shall appoint, with the consent of the Senate, for each port whose population and circumstances warrant it, for all of the ports in Galveston County and Brazoria County, a board of five persons of respectable standing under the denomination of 'commissioners of pilots' for such port or ports, who shall be commissioned by the Governor for the term of two years; and the Governor shall, during the recess of the Legislature, be authorized to suspend, until the next session of the same, any of said commissioners, and to fill, until the same period, any vacancies in the board caused by death, resignation or otherwise. . . .

Revisor's Note

(1) V.A.C.S. Article 8264 refers to a board "for all of the ports in Galveston County and Brazoria County." The revised law omits the quoted language because it was impliedly repealed by V.A.C.S. Articles 8280b and 8280c, which govern the licensing and regulation of pilots in Galveston County and Brazoria County. Articles 8280b and 8280c are codified in this code as Chapters 67 and 68, respectively.

(2) V.A.C.S. Article 8264 refers to the governor's ability to fill "any vacancies in the board caused by death, resignation or otherwise." The reference to "caused by death, resignation or otherwise" is omitted from the revised law as unnecessary because the article authorizes the governor to fill any vacancy, regardless of the cause of the vacancy.

Revised Law

Sec. 63.002. DISQUALIFICATION OF BOARD MEMBER. A pilot board member may not have a direct or indirect pecuniary interest in a pilot boat or branch pilot in the business of the board's trust. (V.A.C.S. Art. 8264 (part).)
Source Law

Art. 8264. . . No member of the board of commissioners shall be directly or indirectly pecuniarily interested in any pilot boat or branch pilot in the business of their trust.

Revised Law

Sec. 63.003. POWERS AND DUTIES OF BOARD. (a) A pilot board shall:

(1) examine and determine the qualifications of each applicant for branch or deputy pilot;

(2) recommend meritorious applicants to the governor, if new appointments are proper;

(3) examine any cause of alleged or suspected misconduct or inefficiency in a branch or deputy pilot;

(4) keep a record of its proceedings;

(5) hear and determine all disputes that arise regarding pilots and pilotage;

(6) award to pilots compensation for injurious loss of time incurred in waiting on vessels or by being carried to sea on a vessel by default of the master or owner when the pilot might have been landed;

(7) award to pilots extra compensation for extra services to vessels in distress; and

(8) superintend and generally attend to all matters related to pilots and pilotage.

(b) A pilot board, after a hearing, may suspend a pilot for sufficient cause.

(c) A pilot board may examine and determine the qualifications of a branch or deputy pilot already appointed when the board is organized.

(d) A pilot board may restrict all deputy pilots from piloting over the bar vessels that have over a specified draught of water. (V.A.C.S. Arts. 8265 (part); 8267, Subsec. (A) (part); 8268 (part); 8272 (part).)
Art. 8265. Said board of commissioners shall be authorized, if they deem it advisable, to examine and decide on the qualifications of any branch or deputy pilot whom they find already appointed at the time of their organization; and it shall be their duty to examine each new applicant for the office of branch or deputy pilot, and to decide on his qualifications, recommending to the Governor, where new appointments are proper, such as are meritorious; and it shall also be their duty to examine into any cause of alleged or supposed misconduct or inefficiency in branch or deputy pilots; and they shall be authorized, after a due hearing of accusation testimony and defense, to suspend such pilot if sufficient cause appear . . . .

Art. 8267. (A) . . . the proceedings of the board, of which proceedings a record shall be kept . . . .

Art. 8268. The board shall be authorized and required to hear and determine all disputes that may arise respecting pilots and pilotage; to award to pilots extra compensation for extra services to vessels in distress; as also compensation for injurious loss of time incurred by pilots in waiting on vessels or by being carried off to sea on vessels by default of the master or owner when such pilots might have been landed; provided, always that no more than three dollars for each day shall be awarded for mere loss of time; and said board shall superintend and generally attend to all matters appertaining to pilots and pilotage . . . .

Art. 8272. . . . and said board shall have authority to restrict all deputy pilots from piloting over the bar vessels of over a certain draught of water.

Revisor's Note

(1) V.A.C.S. Article 8265 refers to the commissioners' authority to examine pilots already appointed at the time of the organization of the board "if they deem it advisable." The revised law omits the quoted language because the phrase indicates that the board's authority to examine the pilots already appointed is discretionary, which is fully conveyed in the revised law by "may."

(2) V.A.C.S. Article 8268 provides for a maximum daily rate to be paid a pilot for loss of time. The rate is omitted from the revised law as having been impliedly repealed by the provisions of this title.
authorizing the setting of pilotage rates. Loss of
time is a matter included within pilotage rates.
Article 8268 has remained unamended since 1846, other
than for inclusion in the various revised statutes.
The rates for every pilot now authorized for Texas
ports are set under later enacted law. For example,
V.A.C.S. Article 8252, authorizing the pilot board of a
navigation district to set pilotage rates, was last
amended in 1923.

Revised Law
Sec. 63.004. PILOTAGE RATES AND RULES. A pilot board may
adopt:
(1) pilotage rates;
(2) rules regarding the stations and times that pilots
are required to be on duty and provisions for leave of absence;
(3) rules regarding the class, condition, number, and
use of pilot boats; and
(4) other minor rules necessary for the government of
pilots or for board proceedings. (V.A.C.S. Art. 8257, Subsec. (A)
(part).)

Source Law
Art. 8267. (A) The board shall have authority,
within the limits provided in this subdivision, to fix
rates of pilotage, and to establish regulations
respecting the stations whereat and the times wherein
pilots shall be on duty, with provisions for leave of
absence; as also respecting the class, condition,
number and use of pilot boats, and such other minor
regulations, compatible with the provisions of this
subdivision, as may be needed for the government of
pilots and for the order and good effect of the
proceedings of the board . . . provided no regulation
shall be adopted repugnant to the Constitution.

Revisor's Note
(1) Subsection (A), V.A.C.S. Article 8267,
refers to the board's authority "within the limits
provided in this subdivision." The revised law omits
the quoted language as unnecessary. The limits of a
statute are determined by the terms of that statute.

(2) Subsection (A), V.A.C.S. Article 8267, states "no regulation shall be adopted repugnant to the Constitution." The quoted language is omitted from the revised law because, as a matter of law, the statute cannot authorize the adoption of a rule that contradicts the constitution.

Revised Law
Sec. 63.005. APPEAL OF BOARD DECISION. An appeal from any decision of a board may be taken to a court. (V.A.C.S. Art. 8268 (part).)

Source Law
Art. 8268. ... [but] from any decision of said board an appeal may be taken to the court having cognizance of the case.

Revisor's Note
V.A.C.S. Article 8268 refers to appeal of a board decision to a court "having cognizance of the case." The revised law omits the quoted language as unnecessary because a suit may be brought only in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

[Sections 63.006-63.020 reserved for expansion]

SUBCHAPTER B. PROVISIONAL PILOT COMMITTEES

Revised Law
Sec. 63.021. GOVERNOR AUTHORIZES APPOINTMENT. (a) For a port having a population and circumstances that do not warrant the appointment of a pilot board in this chapter the governor may authorize the county judge of the county to appoint a provisional
pilot committee of not less than three and not more than five
persons of good character and maritime experience.

(b) In accordance with this chapter, the committee may:
(1) adopt rates of pilotage and rules for governing
pilots;
(2) examine the qualifications of pilots and pilot
applicants; and
(3) investigate any case of a pilot charged with
misconduct or inefficiency and suspend that pilot if sufficient
cause is found. (V.A.C.S. Art. 8269.)

Source Law

Art. 8269. At any port whose population and
circumstances do not warrant the appointment of a board
of commissioners of pilots in the manner before
provided, the Governor may authorize the county judge
of the county to appoint a provisional committee of
from three to five persons of good character and
maritime experience who shall be authorized under this
chapter to establish the rates of pilotage and the
rules for governing pilots; to examine the
qualifications of pilots and applicants for the office;
to investigate the case of any pilot charged with
misconduct or inefficiency, and to suspend him if
sufficient cause appear.

[Sections 63.022-63.040 reserved for expansion]

SUBCHAPTER C. BRANCH PILOTS AND DEPUTY PILOTS

Revised Law

Sec. 63.041. APPOINTMENT OF BRANCH PILOTS. (a) The
governor shall appoint at each port for which a pilot board or
provisional pilot committee is established the number of branch
pilots necessary from time to time.

(b) A branch pilot serves a term of four years. (V.A.C.S.
Art. 8270.)

Source Law

Art. 8270. The Governor shall appoint at each of
the ports and for all of the ports in Galveston County
such number of branch pilots as may from time to time
be necessary, each of whom shall hold his office for
the term of four (4) years.
Revisor's Note

(1) V.A.C.S. Article 8270 refers to "all of the ports in Galveston County." The revised law omits the reference for the reason stated in Revisor's Note (1) under Section 63.001 of this code.

(2) V.A.C.S. Article 8270 refers to appointment of branch pilots "at each of the ports . . . as may . . . be necessary." The revised law adds the phrase "for which a pilot board or provisional pilot committee is established" to clarify to which ports the legislature intended the source law to apply.

Revised Law

Sec. 63.042. APPOINTMENT OF DEPUTY PILOTS. (a) Each branch pilot may appoint two deputies, subject to examination and approval by the board. (b) A branch pilot is responsible for the actions of the pilot's deputy pilots. (c) A branch pilot who appoints a deputy pilot without the approval of the board forfeits the pilot's appointment as a branch pilot. (V.A.C.S. Art. 8272 (part).)

Source Law

Art. 8272. Each branch pilot may appoint subject to examination and approval by the board of commissioners, two deputies, for whose acts the branch pilot so appointed shall be responsible; and any branch pilot who shall appoint a deputy without the approval of said board shall forfeit his own appointment . . . .

Revised Law

Sec. 63.043. OATH; BOND. (a) Each branch pilot shall give a bond, payable to the governor, with two or more sufficient sureties. (b) The bond must:

(1) be in the amount of $5,000;
(2) be conditioned on the faithful performance of the pilot's duties;
(3) be approved by the board for the port or, if there is not a board for the port, by the county judge of the county in which the port is located; and

(4) be sent to the governor.

(c) A pilot shall take and sign the official oath. The oath shall be endorsed on the bond.

(d) Before the bond is sent to the governor, the bond and oath shall be recorded in the office of the county clerk of the county in which the port is located. (V.A.C.S. Art. 8271 (part).)

Source Law

Art. 8271. Each branch pilot shall give bond, with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the Governor, and conditioned for the faithful performance of the duties of his office. Such bond shall be approved by the board of commissioners of pilots for the port, or if there be no such board, by the county judge of the county in which the port is situated, and forwarded to the Governor. Each pilot shall also take and subscribe the official oath which shall be endorsed on said bond, and together with the bond shall be recorded in the office of the county clerk of the county in which such port is situated before being forwarded to the Governor. . . .

Revisor's Note

(1) V.A.C.S. Article 8271 refers to "two or more good and sufficient sureties." The reference to "good" is omitted from the revised law because "good" is within the meaning of "sufficient."

(2) V.A.C.S. Article 8271 provides in part that a certified copy of a bond given by a pilot conditioned on the faithful performance of the pilot's duties of office may be used as evidence in all courts "with like effect as the originals" if given under the hand and seal of the county clerk with whom the pilot recorded the bond and the pilot's oath of office.

Section 22.004, Government Code, permits the supreme court to adopt rules of practice and procedure in civil actions and provides that a rule adopted by
the court repeals conflicting laws and parts of laws.

Under this authority, the court adopted the Texas Rules of Evidence (now the Texas Rules of Civil Evidence) in 1982. Section 22.109, Government Code, permits the court of criminal appeals to adopt rules of evidence in criminal actions. Under this authority, the court adopted the Texas Rules of Criminal Evidence in 1985. Because Article 8271 was enacted in 1861, to the extent it conflicts with the civil or criminal rules, it is repealed and to the extent it is in accordance with the rules, it is unnecessary.

Rule 803(8), Texas Rules of Civil Evidence, provides that a record of a public agency that sets forth the activities of the agency is not excluded by the hearsay rule, which generally excludes out-of-court statements. Rule 803(8), Texas Rules of Criminal Evidence, contains a similar exception to the hearsay rule. These exceptions permit a public record to be accepted as proof of an act recited in the record.

Rule 902(4), Texas Rules of Civil Evidence, provides that extrinsic evidence of authenticity as a condition for admissibility is not required for a certified copy of an official record. Rule 902(4), Texas Rules of Criminal Evidence, contains a similar provision.

Because the bond is recorded and sent to the governor, the bond is a public record. Accordingly, the source law provision is omitted as unnecessary. The omitted provision reads:

Certified copies of said bonds, under the hand and seal of the county clerk, may be used as evidence in all the courts with like effect as the originals.

Revised Law

Sec. 63.044. RESIDENCE; PROBATIONARY TERM. (a) The board
shall specify a term that a person must reside in this state to qualify the person to become a branch pilot for the ports or bays in the board's jurisdiction. The term may not exceed two years.

(b) The board shall establish a term of probation that a person must serve as a deputy pilot before the person may exercise the functions of a branch pilot. The term may not exceed one year.

(V.A.C.S. Art. 8266.)

Source Law

Art. 8266. The board shall require a certain term of residence in this State, not less than two years, to authorize any person to exercise the functions of branch pilot for their port or said bays; as also to establish a term of probation, not exceeding one year, as a deputy pilot before any person can exercise the functions of branch pilot.

Revised Law

Sec. 63.045. MALFEASANCE; PENALTIES. (a) On proof that a branch or deputy pilot took charge of a vessel while intoxicated, the branch or deputy pilot shall:

(1) for the first offense, be suspended for one month; and

(2) for the second offense, be dismissed and rendered incapable of serving as either a branch or deputy pilot.

(b) A branch or deputy pilot who wilfully or negligently causes the wreck of a vessel shall be dismissed and disqualified from again serving as either a branch or deputy pilot. (V.A.C.S. Art. 8273.)

Source Law

Art. 8273. Any branch or deputy pilot in a state of inebriety who shall take charge of a vessel shall, upon proof of the same, for the first offense be suspended for one month, and for the second offense be dismissed and be rendered incapable of again serving in either capacity. If any branch or deputy pilot shall willfully or by neglect cause the wreck of a vessel, he shall be dismissed and be rendered incapable of again serving in either capacity.

Revised Law

Sec. 63.046. SUSPENDED PILOT. A suspended pilot may not
exercise the duties of the pilot's office. (V.A.C.S. Art. 8265 (part).)

Source Law

Art. 8265. . . . and during such suspension he shall not be allowed to exercise the functions of his office . . . .

Revised Law

Sec. 63.047. REMOVAL OR REINSTATEMENT OF PILOT. The governor may:
(1) remove a branch pilot; or
(2) reinstate a branch pilot who has been suspended by the board. (V.A.C.S. Art. 8265 (part).)

Source Law

Art. 8265. . . . the Governor shall, however, have power at his will and pleasure to remove any branch pilot, or to reinstate any one of the same who has been suspended by the commissioners.

Revisor's Note

(End of Chapter)

Subsection (B), V.A.C.S. Article 8267, regarding the rates of pilotage applicable in Galveston County, is omitted from the revised law for the reason stated in Revisor's Note (1) under Section 63.001 of this code. The omitted provision reads:

(B) The commissioners of pilots in no case shall authorize or fix a rate or rates of pilotage applicable to any port in Galveston County differing from the rate in effect at the time of this enactment unless and until the following procedure has been completed:
(1) An application for the establishment of a new rate of pilotage has been filed with each commissioner by one or more pilots or by the owner, agent, or other person defined as "consignee" of a vessel in Article 8276 of this Title, provided such application for increase or decrease of rates shall contain a brief statement of the circumstances which it is alleged warrant the requested action of the commissioners and shall also contain a certificate that the applicant has submitted copies of the application to all known pilots and such associations of "consignees" as defined in Article 8276 of
this Title, as are operating in Galveston County at the time of the application.

(2) In the event the notice required is in fact given and no written objection on the part of any legitimately interested party is received by any commissioner within 20 days after said notice is sent, the commissioners shall proceed to act upon the application as they see fit without further proceedings, and file their action thereupon with the county clerk as provided in Subparagraph (9), within 20 days after the initial 20-day notice period.

(3) In the event any commissioner receives in writing an objection to the application from any person, firm, or corporation who appears to have a legitimate interest in the application within 20 days after notice of the filing of the application was given, the commissioners shall hold a hearing within 20 days after expiration of the initial 20-day notice period for the filing of and objection to the application and shall notify the applicants, the persons objecting to the application and such other parties as the commissioners may, in their sole discretion, determine to be interested in the proceedings, and shall file their decision with the county clerk as provided in Subparagraph (9), within 20 days after the close of the hearing.

(4) Said hearing shall be held at a convenient and public place in any one of the ports affected and shall be open to the public. At the hearing all parties, upon demonstrating a legitimate interest in the application, shall have the right to be heard, to present evidence and, to the extent deemed practical by the commissioners, cross-examine the witnesses appearing to testify at the hearing.

(5) After the receipt of the evidence offered by the parties and such arguments and briefs as the commissioners may desire to receive, the application shall be granted, denied, or modified by the commissioners.

(6) In determining their action upon any application the commissioners shall consider:

(a) The effect which the granting, refusal, or modification of the application would have upon the port or ports within the jurisdiction of the commissioners and the citizens residing in it;

(b) The assurance of an adequate and reasonable compensation to the pilots and a fair return upon the equipment and vessels which they employ in connection with their duties;

(c) The relationship between the pilotage rates in the ports under the commissioners' jurisdiction and the rates applying in other ports of this state and competitive ports in other
(7) The action of the commissioners in granting, denying, or modifying the application shall be final provided it is supported by substantial evidence.

(8) The commissioners shall have the authority to assess the actual cost of reporting and secretarial services necessarily incurred in connection with any hearing against one or more of the applicants and/or objecting parties as shall appear to the commissioners to be fair and just. The commissioners may further require that any applicant or objecting party deposit a sum against said cost as a condition of presenting its application or objection. The costs authorized by this paragraph shall be strictly limited to the actual and reasonable cost of reporting and stenographic services.

(9) A copy of the commissioners' order with respect to the application shall be filed in the office of the county clerk and said order shall state when it is effective. No pilotage charges in excess of those in existence at the time of the passage of this Act shall be made with respect to the ports of Galveston County except pursuant to such an order so filed by the commissioners. Pilotage rates for the ports of Galveston County properly fixed pursuant to this Article shall not be subject to the maximum limits contained in Article 8274.

CHAPTER 64. RATES OF PILOTAGE

Sec. 64.001. DEFINITION
Sec. 64.002. PILOTAGE RATE
Sec. 64.003. PILOTAGE LIABILITY
Sec. 64.004. SUIT TO RECOVER PILOT FEES
Sec. 64.005. EXEMPTIONS FROM PILOTAGE CHARGES
Sec. 64.006. UNAUTHORIZED PILOT; LIABILITY

CHAPTER 64. RATES OF PILOTAGE

Revised Law

Sec. 64.001. DEFINITION. In this chapter, "consignee" includes:

(1) the master;

(2) the owner;

(3) the agent;
(4) the subagent; and
(5) a person who enters or clears a vessel of the
collector of customs. (V.A.C.S. Art. 8276 (part).)

Source Law

Art. 8276. . . . For the purposes of this
Article, "consignee" shall include (i) the master, (ii)
the owner, (iii) the agent, (iv) the sub-agent, and (v)
any person, firm or corporation who enters or clears
said vessel of the Collector of Customs. . . .

Revisor's Note

V.A.C.S. Article 8276 refers to a "person, firm
or corporation." The revised law omits the references
to "firm" and "corporation" because under Section
311.005(2), Government Code (Code Construction Act),
applicable to this code, "person" includes
"corporation . . . and any other legal entity."

Revised Law

Sec. 64.002. PILOTAGE RATE. The rate of pilotage that may
be adopted under Sections 63.004 and 63.021 on a class of vessel
may not, in a port of this state, exceed $6.50 for each foot of
water that the vessel draws when piloted. This section does not
apply to the rate of pilotage established under:
(1) Section 69.001 for:
    (A) the public ports of Orange, Port Arthur, and
    Beaumont; and
    (B) privately owned docks or terminals in Orange
    County or Jefferson County;
(2) Chapter 62; or
(3) Chapters 66-68. (V.A.C.S. Art. 8274 (part).)

Source Law

Art. 8274. Except for rates fixed pursuant to
Article 8267, as amended, for Galveston County ports
and for the public ports of Orange, Port Arthur and
Beaumont and any privately owned docks or terminals in
Orange or Jefferson Counties, the rate of pilotage
which may be fixed under Articles 8267 and 8269 on any
class of vessel shall not, in any port of this state
(except as hereinafter provided) exceed $6.50 for each
foot of water which the vessel at the time of piloting
draws, and . . . .

Revisor's Note

(1) V.A.C.S. Article 8274 refers to rates
adopted under V.A.C.S. Article 8267 for Galveston
County ports. V.A.C.S. Article 8267, which governs
regulation of pilots and pilotage rates, was enacted in
1846. V.A.C.S. Article 8280b, which governs licensing
and regulation of Galveston County pilots and is
codified in this code as Chapter 67, was enacted in
1985. Therefore, to the extent V.A.C.S. Article 8267
governs Galveston County pilots, it was impliedly
repealed by V.A.C.S. Article 8280b. Accordingly, the
revised law omits the reference to Galveston County
ports.

(2) V.A.C.S. Article 8274 refers to rates
adopted under V.A.C.S. Article 8267 for the public
ports of Orange, Port Arthur, and Beaumont and
privately owned docks or terminals in Orange County or
Jefferson County. The pertinent part of Article 8267
is codified in this code as Section 69.001, and the
revised law is drafted accordingly.

(3) V.A.C.S. Article 8274 refers to the rate of
pilotage adopted under V.A.C.S. Article 8267. The
pertinent part of Article 8267 is codified in this code
as Section 63.004, and the revised law is drafted
accordingly.

(4) V.A.C.S. Article 8274 refers to the rate of
pilotage adopted under V.A.C.S. Article 8269. Article
8269 is codified in this code as Section 63.021, and
the revised law is drafted accordingly.

(5) The revised law adds an exemption to the
maximum pilotage rates for the ports of Harris County
(Chapter 66 of this code), the ports of Galveston
(6) The revised law adds an exemption to the maximum pilotage rates for ports in navigation districts (Chapter 62 of this code) in order to alert the reader that pilotage rates for those districts are set under V.A.C.S. Article 8252 (Section 62.025 of this code) and that this section does not apply to the setting of those rates.

Revised Law

Sec. 64.003. PILOTAGE LIABILITY. (a) A vessel that declines pilot services offered outside the bar and enters the port without the aid of a pilot is liable to the first pilot whose services the vessel declined for half pilotage.

(b) A vessel that, after being brought into port by a pilot, leaves port without employing a pilot is liable to the pilot who brought the vessel into port for the payment of half pilotage.

(c) A vessel that declines pilot services offered outside the bar, comes into port without the aid of a pilot, and leaves port without employing a pilot is liable to the pilot who first offered the pilot's services for the payment of half pilotage.

(d) A vessel that is not offered pilot services outside the bar and both enters and leaves the port without a pilot is not liable for the payment of half pilotage.

(e) At a port where vessels receive or discharge cargo at an anchorage outside the bar, a vessel:

(1) is liable for the payment of pilotage to the anchorage at the rate provided by Section 64.002; and

(2) is not liable for the payment of pilotage from the...
anchorage to the open sea.

(f) A vessel bound from the open sea to an anchorage outside the bar that, while under way, declines an offer of pilot services and afterward receives or discharges cargo at the anchorage is liable to the first pilot whose services the vessel declined for the payment of half pilotage to the anchorage at the rate provided by Section 64.002 but is not liable for pilotage from the anchorage to the open sea.

(g) The consignee of a vessel is responsible for the pilotage of the vessel. The liability of each consignee is joint and several.

(h) A pilot who takes charge of a vessel 20 miles outside the bar and brings the vessel to the bar is entitled to one-fourth pilotage for offshore service, in addition to what the pilot is entitled to recover for bringing the vessel in. If the vessel declines offshore service, the pilot is not entitled to offshore-service compensation. (V.A.C.S. Arts. 8274 (part), 8276 (part)).

Source Law

Art. 8274. . . . Whenever a vessel, except of the classes below excepted, shall decline the services of a pilot offered outside the bar, and shall enter the port without the aid of one, she shall be liable to the first pilot whose services she so declined for the payment of half pilotage; and any vessel which, after being brought in by the pilot, shall go out without employing one, shall be liable to the payment of half pilotage to the pilot who brought her in, or if she has come in without the aid of a pilot, though offered outside, she shall on so going out be liable for the payment of half pilotage to the pilot who had first offered his services before she came in; but if she has come in without the aid of a pilot, or the offer of one outside, she shall not, in case of going out without a pilot, be liable to half pilotage. At any port where vessels shall receive or discharge their cargoes at an anchorage outside of the bar, such vessel shall be liable to pilotage at the above rate to such anchorage, but shall not be liable for or compelled to pay pilotage from such anchorage to the open sea; and if any vessel bound from open sea to such anchorage, while under way, shall decline the services of a pilot, and shall afterward receive or discharge any portion of her cargo at such anchorage on the lighters or otherwise, she shall be liable for the payment of half pilotage, at the above rate, to such anchorage to the first pilot whose services shall have been tendered to and declined by her, but not liable for any pilotage from such
anchorage to the open sea; and when a pilot takes charge of a vessel 20 miles outside of the bar, and brings her to it, he shall be entitled to one-fourth pilotage for such offshore service, in addition to what he is entitled to recover for bringing her in; but if such offshore service be declined, no portion of said compensation shall be recovered.

Art. 8276. The consignee of any vessel shall be held responsible for the pilotage of said vessel. . . . [The pilot who serves said vessel, or who lawfully offers to serve said vessel, shall be entitled to recover lawful pilot fees, in any court of competent jurisdiction,] jointly and severally from any one or more of said persons, firms, or corporations.

Revisor's Note

(1) V.A.C.S. Article 8274 provides that a vessel may "not be liable for or compelled" to pay pilotage. The revised law omits the reference to "compelled" as unnecessary because a vessel may not legally be compelled to pay pilotage for which the vessel is not liable.

(2) V.A.C.S. Article 8274 refers to the receipt or discharge of cargo at an anchorage "on the lighters or otherwise." The revised law omits the reference to "on the lighters or otherwise" because it does not limit the type of vessel that can receive or discharge cargo.

(3) V.A.C.S. Article 8276 refers to "persons, firms, or corporations." The references to "firms" and "corporations" are omitted from the revised law for the reason stated in the revisor's note under Section 64.001 of this code.

Revised Law

Sec. 64.004. SUIT TO RECOVER PILOT FEES. A pilot who serves or offers to serve a vessel may bring suit to recover pilot fees from a consignee. (V.A.C.S. Art. 8276 (part).)

Source Law

Art. 8276. . . . The pilot who serves said vessel, or who lawfully offers to serve said vessel, shall be entitled to recover lawful pilot fees, in any
court of competent jurisdiction, . . . from any one or
more of said persons, firms, or corporations.

Revisor's Note

(1) V.A.C.S. Article 8276 refers to a pilot "lawfully" offering to serve a vessel and to the recovery of "lawful" pilot fees. The revised law omits these references as unnecessary because the lawfulness of the offer or fees is implied.

(2) V.A.C.S. Article 8276 refers to recovery of pilot fees "in any court of competent jurisdiction." The revised law refers to a suit to recover pilot fees. The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 64.005. EXEMPTIONS FROM PILOTAGE CHARGES. Except for actual service provided, a vessel of 20 tons or less is exempt from a charge for pilotage. (V.A.C.S. Art. 8275 (part).)

Source Law

Art. 8275. The following classes of vessels shall be free from any charge for pilotage, unless for actual service, to-wit: All vessels of twenty tons and under . . . .

Revisor's Note

In addition to vessels of 20 tons and under, V.A.C.S. Article 8275 attempts to exempt from pilotage charges certain other vessels. The listing of these vessels is omitted as having been impliedly repealed by Section 3 of the Texas Compulsory Pilotage Act (V.A.C.S. Article 8278) enacted in 1991 and revised by
Section 61.003 of this code. Article 8275 has not been amended since 1879. The omitted provision reads:

... all vessels of whatsoever burthen owned in this State and registered and licensed in the district of Texas, when arriving from or departing to any port of this State; all vessels of seventy-five tons and under owned and licensed for the coasting trade in any part of the United States, when arriving from or departing to any port in the State of Texas; all vessels of seventy-five tons and under owned in this State and licensed for the coasting trade in the district of Texas, when arriving from or departing to any port in the United States.

Revised Law

Sec. 64.006. UNAUTHORIZED PILOT; LIABILITY. (a) In addition to any other applicable remedy provided by law, a person who has not been appointed to be a branch or deputy pilot and who pilots a vessel out of or into a port after a branch or deputy pilot who is licensed to provide pilot services for the port offers to do so is liable to pay $50 to the branch or deputy pilot. (b) The branch or deputy pilot may bring suit to recover the money. (V.A.C.S. Art. 8277.)

Source Law

Art. 8277. If any person not appointed a branch or deputy pilot shall pilot any ship or vessel out of or into any port when a branch or deputy pilot has offered such service, the person so piloting shall forfeit and pay to such branch or deputy pilot the sum of fifty dollars to be recovered by suit.

Revisor's Note

(1) V.A.C.S. Article 8277 requires a person who has not been appointed to be a branch or deputy pilot and who pilots a vessel out of or into a port after a branch or deputy pilot offers to do so to pay money to the branch or deputy pilot. That article is part of Chapter 10, Title 128, Revised Statutes, which pertains generally to pilots. It is clear from the context of that article that this requirement applies only to a
branch or deputy pilot who is licensed to provide pilot services for the port. Accordingly, the revised law refers to a branch or deputy pilot "who is licensed to provide pilot services for the port."

(2) The revised law adds "In addition to any other applicable remedy provided by law," to avoid the implication that this section provides an exclusive remedy.

CHAPTER 65. PILOTS FOR MATAGORDA AND LAVACA BAYS

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CHAPTER 65. PILOTS FOR MATAGORDA AND LAVACA BAYS

Revised Law

Sec. 65.001. PILOTS FOR MATAGORDA AND LAVACA BAYS. (a) The governor shall appoint at least two and not more than four competent pilots for Matagorda and Lavaca bays, from Pass Cavallo to Indianola and Lavaca.

(b) The term of office, method of qualification, powers, and privileges of a pilot appointed under this section are the same as those of a branch pilot, to the extent applicable.

(c) The county judge of Calhoun County must approve the bond of a pilot appointed under this section.

(d) Except to the extent that the rate of pilotage is set under other applicable law, the rate of pilotage for the bays is $2.50 for each foot of water the vessel may draw when piloted.

(e) A vessel that may draw five feet or more is liable to pay one-half the pilotage prescribed by Subsection (d) to a licensed pilot for the bays whose services are tendered and declined. (V.A.C.S. Art. 8259.)

Source Law

Art. 8259. The Governor shall also appoint not
less than two nor more than four competent pilots for Matagorda and Lavaca Bays, from Pass Cavallo to Indianola and Lavaca, who shall hold their offices for the same term as branch pilots, and whose mode of qualification, powers and privileges, insofar as the same are applicable, shall be the same; the bonds of such pilots shall be approved by the county judge of Calhoun County. The rate of pilotage for said bays shall be $2.50 for each foot of water the vessel may draw at the time of piloting; and all vessels that may draw five feet or more shall be subject to pay any licensed pilot for said bays, whose services are tendered and declined, one-half the pilotage herein prescribed.

Revised Law

Sec. 65.002. PROVISIONS FOR BRANCH PILOTS APPLICABLE. The provisions of Chapter 62 relating to branch pilots at ports, to the extent applicable, apply to pilots appointed under this chapter. (V.A.C.S. Art. 8260 (part).)

Source Law

Art. 8260. All the provisions of this chapter relating to branch pilots at ports, insofar as the same are applicable and not expressly qualified, shall apply to and govern pilots appointed for the mouth of the Brazos River and for Matagorda and Lavaca Bays. . . .

Revisor's Note

(1) V.A.C.S. Article 8260 refers to "the provisions of this chapter," meaning Chapter 9, Title 128, Revised Statutes. The pertinent part of that statute is codified in this code as Chapter 62, and the revised law is drafted accordingly.

(2) V.A.C.S. Article 8260 refers to pilots appointed "for the mouth of the Brazos River and for Matagorda and Lavaca Bays." The revised law omits the reference to the Brazos River for the reason stated in the revisor's note at the end of this chapter. The revised law substitutes "under this chapter" for "Matagorda and Lavaca Bays" for purposes of brevity.
Revised Law

Sec. 65.003. LIABILITY OF PERSONS OTHER THAN LICENSED PILOTS OR DEPUTIES FOR PILOTAGE. (a) A person who is not a licensed pilot or deputy who pilots a vessel up or down the channel of Matagorda or Lavaca Bay is liable to a pilot who is licensed or commissioned for the bays for full pilotage for the vessel.

(b) A pilot may bring suit to recover pilotage under this section. (V.A.C.S. Art. 8260 (part).)

Source Law

... If any person not a licensed pilot or deputy shall pilot any vessel into or out of the mouth of said river or through the channel of said bays, up or down, he shall forfeit and pay to any pilot licensed or commissioned for the mouth of said river, or for said bays, full pilotage for such vessel, to be recovered by suit.

Revisor's Note

The references in V.A.C.S. Article 8260 to the mouth of the Brazos River are omitted from the revised law for the reason stated in the revisor's note at the end of this chapter.

Revisor's Note
(End of Chapter)

V.A.C.S. Article 8258 was enacted in 1981 and pertains to pilots for the mouth of the Brazos River. V.A.C.S. Article 8280c, revised in this code as Chapter 68, was enacted in 1989 and took effect January 1, 1990, and pertains to licensing and regulation of Brazoria County pilots. The mouth of the Brazos River is in Brazoria County. Accordingly, the revised law omits V.A.C.S. Article 8258 as impliedly repealed by V.A.C.S. Article 8280c. The omitted law reads:

Art. 8258. The Governor shall also appoint a sufficient number of competent pilots for the mouth of the Brazos River, whose terms of office, mode of qualification, and pilotage shall be the same as prescribed in the preceding articles for branch pilots; and they shall be entitled to all the privileges and shall
exercise all the powers, and discharge all
the duties prescribed for branch pilots,
and be subject to like penalties. The
county judge of Brazoria County shall
approve the bond of any such pilot.

CHAPTER 66. HOUSTON PILOTS LICENSING AND REGULATORY ACT

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CHAPTER 66. HOUSTON PILOTS LICENSING AND REGULATORY ACT

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 66.001. SHORT TITLE. This chapter may be cited as the Houston Pilots Licensing and Regulatory Act. (V.A.C.S. Art. 8280a, Sec. 1.01.)
Art. 8280a
Sec. 1.01. This Act may be cited as the Houston Pilots Licensing and Regulatory Act.

Revised Law
Sec. 66.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of pilot commissioners for Harris County ports.

(2) "Consignee" means a person, including a master, owner, agent, subagent, firm, or corporation or any combination of those persons, who enters or clears a vessel at the office of the collector of customs.

(3) "Harris County port" means a place in Harris County into which a vessel enters or from which a vessel departs and the waterway leading to that place from the Gulf of Mexico.

(4) "Pilot" means a person who is licensed as a branch pilot or certified as a deputy branch pilot under this chapter.

(5) "Pilotage rate" means the remuneration a pilot may lawfully charge a vessel for pilot services.

(6) "Pilot services" means acts of a pilot in conducting a vessel through the navigable water in this state and the ports in which the pilot is licensed or certified as a pilot.

(7) "Vessel" means an oceangoing, self-propelled vessel. (V.A.C.S. Art. 8280a, Sec. 1.02.)

Source Law
Sec. 1.02. In this Act:

(1) "Pilot" means a person who is licensed as a branch pilot or certified as a deputy branch pilot under this Act.

(2) "Board" means the board of pilot commissioners created under this Act.

(3) "Pilotage rates" means the amount of remuneration a pilot may lawfully charge vessels for his services.

(4) "Pilot services" means acts of a pilot in conducting a vessel through the navigable water within the boundaries of the state and the port in which he is licensed or certified as a pilot.

(5) "Vessel" means every oceangoing, self-propelled vessel navigating the water within the board's jurisdiction except vessels exempt from payment of pilotage rates under this Act.

(6) "Port" means a place in this state.
into which vessels enter or from which vessels depart
that is located in Harris County and the waterway
leading to that place from the Gulf of Mexico.

(7) "Consignee" means the master, owner,
agent, subagent, person, firm, or corporation or any
combination of these that enters or clears a vessel at
the office of the collector of customs.

Revisor's Note

The revised law omits the language in the
definition of "vessel" in Section 1.02(5), V.A.C.S.
Article 8280a, that refers to vessels navigating the
water in the board's jurisdiction because Section 1.03,
V.A.C.S. Article 8280a, codified as Section 66.003 of
this code, states that the chapter applies only to
Harris County ports and it is unnecessary to restate
that in the definition. The revised law also omits the
language in the definition of "vessel" that excepts a
vessel exempt from payment of pilotage rates under
V.A.C.S. Article 8280a. The reference is omitted as
unnecessary because Section 1.04, Article 8280a,
codified as Section 66.032 of this code, contains the
exemptions from payment of pilotage rates.

Revised Law
Sec. 66.003. APPLICABILITY OF CHAPTER. This chapter applies
only to a Harris County port. (V.A.C.S. Art. 8280a, Secs. 1.03,
6.05.)

Source Law
Sec. 1.03. This Act applies to all ports located
in Harris County.

Sec. 6.05. This Act does not affect the existing
laws for ports in other counties of this state,
including Articles 8248 through 8257 and 8264 through
8280, Revised Civil Statutes of Texas, 1925, as
amended.

[Sections 66.004-66.010 reserved for expansion]
SUBCHAPTER B. BOARD OF PILOT COMMISSIONERS

Revised Law

Sec. 66.011. BOARD. The board of pilot commissioners for the ports of Harris County is composed of the port commissioners of the Port of Houston Authority of Harris County, Texas. (V.A.C.S. Art. 8280a, Secs. 2.01, 2.02.)

Source Law

Sec. 2.01. A board of pilot commissioners is created for the ports of Harris County.
Sec. 2.02. The board is composed of the port commissioners of the Port of Houston Authority of Harris County, Texas.

Revised Law

Sec. 66.012. PROHIBITED INTEREST. A person may not be a member of the board if the person, directly or indirectly, is engaged in or has an interest in any pilot boat or in any other business affected by or connected with the performance of the person's duties as a pilot commissioner. (V.A.C.S. Art. 8280a, Sec. 2.03.)

Source Law

Sec. 2.03. A person who is engaged or has any interest, directly or indirectly, in any pilot boat or in any other business affected by or connected with the performance of his duties as a pilot commissioner may not be a member of the board.

Revised Law

Sec. 66.013. OATH. Before beginning service as a board member, each board member must take and sign, before a person authorized to administer oaths, an oath to faithfully and impartially discharge the duties of the office. (V.A.C.S. Art. 8280a, Sec. 2.04.)

Source Law

Sec. 2.04. Before beginning to serve as a member of the board, each board member shall take and subscribe, before someone authorized to administer oaths, an oath to discharge faithfully and impartially the duties of the office.
Revisor's Note
Section 2.04, V.A.C.S. Article 8280a, requires a board member to "subscribe . . . an oath." The revised law substitutes "sign" for "subscribe" to reflect modern usage.

Revised Law
Sec. 66.014. TERM OF OFFICE. A board member serves a term of office that coincides with the member's term as a port commissioner. (V.A.C.S. Art. 8280a, Sec. 2.05.)

Source Law
Sec. 2.05. Each person who serves on the board shall hold office as a member of the board for a term that coincides with the member's term as a port commissioner of the Port of Houston Authority of Harris County, Texas.

Revised Law
Sec. 66.015. JURISDICTION. The board has exclusive jurisdiction over the piloting of vessels in Harris County ports, including intermediate stops and landing places for vessels on navigable streams wholly or partially located in the board's jurisdiction. (V.A.C.S. Art. 8280a, Sec. 2.07.)

Source Law
Sec. 2.07. The board shall have exclusive jurisdiction over piloting of vessels between the Gulf of Mexico and the ports within the board's jurisdiction, as well as intermediate stops and landing places for vessels on navigable streams wholly or partially located within the board's jurisdiction.

Revisor's Note
Section 2.07, V.A.C.S. Article 8280a, refers in part to the board's jurisdiction over vessels "between the Gulf of Mexico and the ports within the board's jurisdiction." The revised law substitutes a reference to Harris County ports because the chapter applies only to Harris County ports and the omitted language is included in the definition of "Harris County port."
Sec. 66.016. ADMINISTRATION; RULES. (a) The board shall administer this chapter and may perform any act or function necessary to carry out its powers and duties under this chapter.

(b) The board may adopt rules to carry out this chapter. (V.A.C.S. Art. 8280a, Sec. 2.06.)

Sec. 2.06. The board shall administer this Act in each of the ports within its jurisdiction and may adopt rules to carry out this Act and may perform any acts or functions necessary to carry out those powers and duties under this Act.

Sec. 66.017. DUTIES. The board shall:

(1) establish the number of pilots necessary to provide adequate pilot services for each Harris County port;

(2) accept applications for pilot licenses and certificates and determine whether each applicant meets the qualifications for a pilot;

(3) submit to the governor lists of applicants the board finds to be qualified for appointment as pilots;

(4) establish pilotage rates;

(5) approve the locations for pilot stations;

(6) establish times during which pilot services will be available;

(7) hear and determine complaints relating to the conduct of pilots;

(8) recommend to the governor each pilot whose license or certificate should not be renewed or should be revoked;

(9) adopt rules and issue orders to pilots or vessels when necessary to secure efficient pilot services;

(10) institute investigations or hearings or both to consider casualties, accidents, or other actions that violate this chapter; and

(11) provide penalties to be imposed on a person who
is not a pilot for a Harris County port who pilots a vessel into or out of the port if a pilot offered those services to the vessel.

(V.A.C.S. Art. 8280a, Sec. 2.08.)

Source Law

Sec. 2.08. The board shall:

(1) establish the number of pilots necessary to provide adequate pilot services for each port under the board's jurisdiction;

(2) accept applications for pilot licenses and certificates and determine whether or not each applicant meets the qualifications for a pilot in this Act;

(3) submit to the governor lists of applicants found by the board to be qualified for appointment as pilots;

(4) establish pilotage rates to be charged for piloting vessels within the board's jurisdiction;

(5) approve the locations for pilot stations;

(6) establish times during which pilot services will be available;

(7) hear and determine complaints relating to the conduct of pilots;

(8) recommend to the governor any pilot whose license or certificate should not be renewed or should be revoked;

(9) adopt rules and issue orders to pilots and vessels when necessary to secure efficient pilot services within the board's jurisdiction;

(10) institute investigations or hearings or both to consider casualties, accidents, or any other action that violates this Act;

(11) provide penalties to be imposed on any person who is not appointed a branch pilot for the port who pilots any ship or vessel into or out of the port, channel, or waterway under the jurisdiction of the board if a branch pilot or deputy pilot operating under this Act offered those services to the ship or vessel.

Revised Law

Sec. 66.018. UNFAIR DISCRIMINATION PROHIBITED. (a) In all its duties, including rulemaking, the board may not sanction discriminatory practices or discriminate against a pilot or pilot applicant because of race, religion, sex, ethnic origin, or national origin.

(b) A person seeking a remedy for a violation of this section must bring suit in a district court in Harris County.

(V.A.C.S. Art. 8280a, Sec. 2.09.)

Source Law

Sec. 2.09. (a) In all its duties, including
rule making, the board shall not sanction discriminatory practices nor discriminate against any applicant, licensed pilot, branch pilot, or deputy branch pilot on account of race, religion, sex, ethnic origin, or national origin.

(b) Remedies for a violation of this section shall be sought as provided in Section 3.03 of this Act.

Revisor's Note

The source law refers to bringing suit in the manner provided by Section 3.03, V.A.C.S. Article 8280a (codified as Section 66.022 of this code). The revised law substitutes the substance of the language in that section relating to bringing suit.

Revised Law

Sec. 66.019. OPEN MEETINGS LAW. Chapter 551, Government Code, applies to actions and proceedings under this chapter. (V.A.C.S. Art. 8280a, Sec. 3.01.)

Source Law

Sec. 3.01. Except as specifically provided by this Act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), applies to actions and proceedings under this Act.

Revisor's Note

Section 3.01, V.A.C.S. Article 8280a, states that the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), applies to actions and proceedings under Article 8280a. The open meetings law is codified as Chapter 551, Government Code, and the revised law is drafted accordingly. Section 3.01 also states that the open meetings law applies "[e]xcept as specifically provided by this Act." The revised law omits that language because there are no specific exceptions in this chapter.
Revised Law

Sec. 66.020. RULE OR RATE CHANGE. (a) The board shall give at least 10 days' notice as provided by this section before the board adopts a rule or changes a pilotage rate.

(b) The board shall post the notice and a copy of the proposed rule or change at the board office for public inspection. (V.A.C.S. Art. 8280a, Sec. 3.02(a).)

Source Law

Sec. 3.02. (a) The board shall give at least 10 days' notice of its intention to adopt a rule or to change pilotage rates by posting at the office of the board for public inspection a copy of the proposed rule or change.

Revised Law

Sec. 66.021. CONTESTED CASE NOTICE. The board shall post in its office for public inspection a notice that includes the same information as the notice given to the parties in each contested case. (V.A.C.S. Art. 8280a, Sec. 3.02(b).)

Source Law

(b) The board shall post in its office for public inspection a notice that includes the same information as the notice given to the parties in each contested case.

Revised Law

Sec. 66.022. JUDICIAL REVIEW. Proceedings for judicial review of a board decision shall be brought in a district court in Harris County. (V.A.C.S. Art. 8280a, Sec. 3.03.)

Source Law

Sec. 3.03. Proceedings for judicial review of a board decision shall be brought in a district court in Harris County.

[Sections 66.023-66.030 reserved for expansion]

SUBCHAPTER C. PILOT LICENSES AND CERTIFICATES

Revised Law

Sec. 66.031. LICENSE OR CERTIFICATE REQUIRED. A person may
not provide pilot services unless the person has a license or certificate issued under this chapter for the Harris County ports in which the pilot services are to be provided. (V.A.C.S. Art. 8280a, Sec. 4.01.)

Source Law

Sec. 4.01. It shall be unlawful for a person to provide pilot services as a branch pilot or deputy branch pilot unless that person has a valid license or certificate issued under this Act for the ports within the jurisdiction of the board in which the pilot services are to be provided.

Revisor's Note

Section 4.01, V.A.C.S. Article 8280a, refers to a person providing pilot services without a valid license or certificate. The revised law omits "valid" as unnecessary. A document purporting to be a license or certificate is no longer a license or certificate if it is expired and is not a license or certificate if it is a forgery.

Revised Law

Sec. 66.032. EXEMPTIONS. The requirement to use a pilot does not apply to:

(1) a vessel sailing under enrollment, or licensed or engaged in the coasting trade between Texas ports or between any Texas port and any other port of the United States; or

(2) a vessel exempt under federal law from payment of state pilotage rates. (V.A.C.S. Art. 8280a, Sec. 1.04.)

Source Law

Sec. 1.04. The requirement to use a licensed pilot under this Act does not apply to the following classes of vessels:

(1) a vessel sailing under enrollment, or licensed or engaged in the coasting trade between Texas ports and between any Texas port and any other port of the United States;

(2) a vessel of whatever burthen owned and registered and licensed in this state; and

(3) a vessel exempt from payment of state pilotage rates under federal law.
Reviser's Note

Section 1.04, V.A.C.S. Article 8280a, refers to "a vessel of whatever burthen owned and registered and licensed in this state." The revised law omits the quoted language as impliedly repealed by Section 3 of the Texas Compulsory Pilotage Act (V.A.C.S. Article 8278), adopted in 1991, which specifies the vessels for which pilotage is required and does not exempt these vessels. Section 1.04 was enacted in 1981 and has not been amended.

Revised Law

Sec. 66.033. QUALIFICATIONS FOR LICENSE. To be eligible for a license as a branch pilot, a person must:

(1) be at least 25 years of age;
(2) be a United States citizen;
(3) as of the date the license is issued, have resided continuously in this state for at least one year;
(4) be licensed under federal law to act as a pilot on vessels that navigate water on which the applicant will furnish pilot services;
(5) have at least two years' service as a deputy branch pilot or equivalent service piloting vessels of at least 5,000 gross tons within the board's jurisdiction;
(6) have commanded or controlled the navigation of vessels such as the person would pilot;
(7) have extensive experience in the docking and undocking of vessels;
(8) be in good mental and physical health;
(9) have good moral character; and
(10) possess the requisite skill as a navigator and pilot to perform competently and safely the duties of a branch pilot. (V.A.C.S. Art. 8280a, Sec. 4.02.)
Sec. 4.02. (a) To be eligible for a license as a branch pilot for ports within the jurisdiction of the board, a person must:

(1) be at least 25 years of age;
(2) be a United States citizen;
(3) as of the date that the license is issued, have resided in the state for a continuous period of not less than one year;
(4) be licensed under federal law to act as a pilot on vessels that navigate water on which the applicant will furnish pilot services;
(5) have at least two years' service as a deputy branch pilot or equivalent service piloting vessels of at least 5,000 gross tons within the board's jurisdiction;
(6) have exercised command or have exercised control of navigation of vessels such as he would pilot; and
(7) have extensive experience in the docking and undocking of oceangoing vessels.

(b) In addition to the qualifications stated in Subsection (a) of this section, the applicant must be found by the board to be in good mental and physical health, to have good moral character, and to possess the requisite skill as a navigator and pilot to perform competently and safely the duties of a branch pilot.

Sec. 66.034. QUALIFICATIONS FOR CERTIFICATE. To be eligible for a certificate as a deputy branch pilot, a person must:

(1) be at least 25 years of age;
(2) be a United States citizen;
(3) hold a license under federal law to act as a pilot on vessels that navigate water on which the applicant will furnish pilot services;
(4) be in good mental and physical health;
(5) have good moral character; and
(6) possess the requisite skill to perform competently and safely the duties of a deputy branch pilot. (V.A.C.S. Art. 8280a, Sec. 4.03.)

Sec. 4.03. (a) To be eligible for a certificate as a deputy branch pilot for ports within the board's jurisdiction, a person must:

(1) be at least 25 years of age;
(2) be a United States citizen; and
(3) be licensed under federal law to act as a pilot on vessels that navigate water on which the applicant will furnish pilot services.

(b) In addition to the qualifications stated in
Subsection (a) of this section, the applicant must be found by the board to be in good mental and physical health, to have good moral character, and to possess the requisite skill to perform competently and safely the duties of a deputy branch pilot.

Revised Law
Sec. 66.035. APPLICATION FOR LICENSE OR CERTIFICATE. To apply for a branch pilot's license or a deputy branch pilot's certificate, a person must give to the board a written application in the form and manner required by board rule. (V.A.C.S. Art. 8280a, Sec. 4.04.)

Source Law
Sec. 4.04. (a) An applicant for a branch pilot's license or a deputy branch pilot's certificate shall submit a written application to the board. 
(b) The application shall be submitted to the board in the form and in the manner required by the board in its rules.

Revised Law
Sec. 66.036. CONSIDERATION OF APPLICATION. (a) The board shall carefully consider each application and shall conduct any investigation it considers necessary to determine whether an applicant is qualified for a license or certificate. 
(b) As part of its consideration of applications for licenses and certificates, the board may develop and administer examinations to determine an applicant's knowledge of piloting, management of vessels, and the water in the board's jurisdiction. (V.A.C.S. Art. 8280a, Sec. 4.05.)

Source Law
Sec. 4.05. (a) The board shall carefully consider each application submitted to it and shall conduct any investigation it considers necessary to assist it in determining whether or not an applicant is qualified for a license or certificate. 
(b) As part of its consideration of applications for licenses and certificates, the board may develop and administer examinations to determine each applicant's knowledge of piloting, management of vessels, and the water within the board's jurisdiction.
Sec. 66.037. BRANCH PILOT APPOINTMENT BY GOVERNOR. (a) On filing of the bond and oath required by Section 66.039, the board shall certify to the governor that a person licensed as a branch pilot has qualified.

(b) On receipt of the board's certification, the governor shall issue to the person, in the name of the state and under the state seal, a commission to serve as a branch pilot to and from Harris County ports. (V.A.C.S. Art. 8280a, Sec. 4.06.)

Sec. 66.038. DEPUTY BRANCH PILOT APPOINTMENT BY BRANCH PILOT. (a) Each branch pilot may appoint, subject to examination and approval by the board, two deputy branch pilots for whose acts the branch pilot is responsible.

(b) A branch pilot may appoint an additional deputy branch pilot if the board considers the appointment advisable.

(c) A branch pilot who appoints a deputy branch pilot without the approval of the board forfeits the pilot's appointment as a branch pilot. (V.A.C.S. Art. 8280a, Sec. 4.07.)
Revised Law
Sec. 66.039. OATH; BOND. (a) A person appointed as a pilot must take the official oath before entering service as a pilot. The oath shall be endorsed on the bond required by Subsection (b).
(b) Each pilot must execute a $25,000 bond payable to the governor and conditioned on compliance with the laws, rules, and orders relating to pilots and on the faithful performance of the pilot's duties.
(c) Each bond must be approved by the board. (V.A.C.S. Art. 8280a, Sec. 4.09.)

Source Law
Sec. 4.09. (a) Before entering into service as a pilot, a person appointed to be a branch pilot or deputy branch pilot shall take the official oath which shall be endorsed on the bond required by this section.
(b) Each pilot shall execute a bond for $25,000 conditioned on compliance with the laws, rules, and orders relating to pilots and on the faithful performance of the pilot's duties and payable to the governor.
(c) Each bond must be approved by the board.

Revised Law
Sec. 66.040. TERMS OF LICENSES AND CERTIFICATES. (a) A branch pilot's license expires on the fourth anniversary of the date it is issued or renewed.
(b) A deputy branch pilot's certificate expires on the second anniversary of the date it is issued and may not be renewed. (V.A.C.S. Art. 8280a, Secs. 4.08, 4.11(a).)

Source Law
Sec. 4.08. (a) A license issued under this Act expires four years from the date it is issued or renewed.
(b) A certificate issued under this Act expires two years from the date it is issued and is not renewable.

Sec. 4.11. (a) A deputy branch pilot's certificate expires two years from the date it is issued.

Revised Law
Sec. 66.041. BRANCH PILOT'S LICENSE RENEWAL. (a) The
governor shall renew a branch pilot's expiring license if the board recommends renewal.

(b) If a pilot applies in writing and qualifies, the board shall recommend renewal unless the board determines there is probable cause not to renew the license.

(c) Probable cause not to renew a license exists if the board finds that the license holder:

(1) does not possess a qualification required by this chapter for pilots; or

(2) has a disability that will affect the license holder's ability to serve as a pilot.

(d) If the board determines that it has probable cause not to renew a license, the board shall notify the license holder of that determination not later than the 60th day before the date the license expires. On request, the board shall provide a hearing after proper notice to consider whether the board has cause not to recommend renewal of the license.

(e) If the board finds at the conclusion of the hearing that the board lacks probable cause for nonrenewal of the license, the board shall recommend that the governor renew the license.

(f) The board shall issue a written order recommending that the governor not renew a license and the governor may not renew the license if:

(1) the pilot does not contest the board's decision not to renew the license; or

(2) the board after a hearing finds that it has probable cause not to renew the license.

(g) The denial of renewal of a pilot's license does not prohibit the pilot from applying for a new license and being reappointed. (V.A.C.S. Art. 8280a, Sec. 4.10.)

Source Law

Sec. 4.10. (a) Every four years, on written application and successful qualification, a branch pilot's license shall be renewed by the governor on recommendation of the board for an additional four-year term unless the board determines that probable cause
exists for not renewing the license.

(b) Probable cause exists for not renewing a license if the board finds that the licensee no longer possesses one or more of the qualifications stated in this Act for pilots or suffers from a disability that will affect his ability to serve as a pilot.

(c) If the board determines that it has probable cause for not renewing a license, it shall give notice of this fact to the licensee not less than 60 days before expiration of the license and, on request, shall offer the licensee the opportunity for a hearing after proper notice to consider whether or not cause exists for not renewing the license.

(d) If the board finds at the conclusion of the hearing that no probable cause exists for nonrenewal, the board shall renew the license for another term.

(e) If a pilot does not contest the board's decision not to renew the license or if the board after its hearing finds that there is probable cause for nonrenewal, the board shall issue a written order recommending to the governor that the license not be renewed, and the governor shall refuse renewal of the license.

(f) Denial of renewal of a pilot's license does not prevent the former licensee from applying for a new license and being reappointed by the governor at a later time if the licensee then meets all qualifications for a license under this Act.

Revisor's Note

Section 4.10(f), V.A.C.S. Article 8280a, states that denial of renewal of a pilot's license does not prevent the former licensee from applying for a new license and being reappointed "if the licensee then meets all qualifications for a license under this Act."

The revised law omits as unnecessary the reference to meeting qualifications otherwise required by this chapter.

Revised Law

Sec. 66.042. DEPUTY BRANCH PILOT. A person who has been issued a deputy branch pilot's certificate may not be issued a deputy branch pilot's certificate before the fifth anniversary of the date the person was previously issued a deputy branch pilot's certificate. (V.A.C.S. Art. 8280a, Sec. 4.11(b).)

Source Law

(b) No person may be issued more than one deputy branch pilot's certificate within any period of five consecutive years.
Sec. 66.043. SUSPENSION OR REVOCATION OF BRANCH PILOT'S LICENSE. (a) On complaint or on its own motion, and after notice and hearing, the board may suspend a branch pilot's license for not more than six months or recommend that the governor revoke a branch pilot's license if the board finds that the pilot has:

(1) failed to demonstrate and maintain the qualifications for a license required by this chapter;

(2) used narcotics or other types of drugs, chemicals, or controlled substances as defined by law that impair the pilot's ability to perform the pilot's duties skillfully and efficiently;

(3) used alcohol to an extent that impairs the pilot's ability to perform the pilot's duties skillfully and efficiently;

(4) violated a provision of this chapter or rules adopted by the board under this chapter;

(5) made a material misstatement in the application for a license;

(6) obtained or attempted to obtain a license under this chapter by fraud or misrepresentation;

(7) intentionally failed to comply with an order of the board;

(8) charged a pilotage rate other than that approved by the board;

(9) intentionally refused to pilot or neglected to board promptly a vessel when requested to do so by the master or person responsible for navigation of the vessel except when, in the judgment of the pilot, movement of the vessel constitutes a hazard to life or property or when pilotage charges that are due and owing are unpaid by the person ordering the pilot services;

(10) intentionally caused damage to a vessel;

(11) been absent from duty in violation of board rules and without authorization;

(12) aided or abetted another pilot in failing to perform the other pilot's duties; or
(13) been guilty of carelessness, neglect of duty, intentional unavailability for performance of duties, refusal to perform duties, misconduct, or incompetence while on duty.

(b) If the federal pilot's license of a pilot licensed under this chapter is suspended or revoked, the board, on a finding that it has good cause, shall suspend the license for the same period or revoke the license under this chapter.

(c) On determining that a license should be suspended or revoked, the board shall adopt a written order that states its findings and:

(1) suspends the license for a stated period; or
(2) recommends to the governor revocation of the license.

(d) The governor, on receipt of a board order recommending revocation of a license, shall revoke the license.

(e) A suspension of a license takes effect on adoption of the board's order. A revocation of a branch pilot's license takes effect on issuance of the governor's decision. (V.A.C.S. Art. 8280a, Sec. 4.12.)

Source Law

Sec. 4.12. (a) On complaint or on its own motion and after notice and hearing, the board may suspend a pilot's license for up to six months or may recommend to the governor revocation of a pilot's license if the board finds that the pilot has:

(1) failed to demonstrate and maintain the qualifications for license required by this Act;
(2) used narcotics or other types of drugs, chemicals, or controlled substances as defined by law that impair the pilot's ability to perform his duties skillfully and efficiently;
(3) used alcohol to an extent that impairs the pilot's ability to perform his duties skillfully and efficiently;
(4) violated a provision of this Act or rules adopted by the board under this Act;
(5) made a material misstatement in the application for a license;
(6) obtained or attempted to obtain a license under this Act by fraud or misrepresentation;
(7) intentionally failed to comply with an order of the board;
(8) charged pilotage rates other than those approved by the board;
(9) intentionally refused to pilot or neglected to board promptly a vessel when requested to do so by the master or person responsible for
navigation of the vessel except when, in the judgment
of the pilot, movement of the vessel constitutes a
hazard to life or property or when pilotage charges
that are due and owed remain unpaid by the person
ordering the pilot services;
(10) intentionally caused damage to a
vessel;
(11) been absent from duty in violation of
rules of the board and without authorization;
(12) aided or abetted another pilot in
failing to perform his duties; or
(13) been guilty of carelessness, neglect
of duty, intentional unavailability for performance of
duties, refusal to perform duties, misconduct, or
incompetence while on duty.
(b) The license of a pilot under this Act whose
federal license as a pilot is suspended or revoked, on
a finding by the board that good cause exists, shall be
suspended for the same period or revoked, as the case
may be.
(c) If the board determines that a license
should be suspended or revoked, it shall issue a
written order stating its findings and suspending the
license for a specifically stated period or
recommending to the governor revocation of the license.
(d) On receiving the board's order recommending
revocation of a license, the governor shall revoke the
license.
(e) A suspension takes effect immediately on
issuance of the board's order and revocation takes
effect immediately on issuance of the governor's
decision.

Revised Law
Sec. 66.044. SUSPENSION OR REVOCATION OF DEPUTY BRANCH
PILOT'S CERTIFICATE. A deputy branch pilot's certificate may be
suspended or revoked by the board in the same manner and for the
same reasons as provided for the revocation or suspension of a
branch pilot's license by Section 66.043. (V.A.C.S. Art. 8280a,
Sec. 4.11(c).)

Source Law
(c) A deputy branch pilot's certificate may be
suspended or revoked by the board in the same manner
and for the same reasons provided for branch pilots'
licenses by Section 4.12 of this Act.

Revised Law
Sec. 66.045. LIABILITY TO PILOT. (a) A person who is not a
pilot and who, in violation of this chapter, pilots a vessel and
the consignee of the vessel are liable to a pilot, on written
demand, for the amount of the applicable pilotage rate.
(b) In an action to recover compensation under Subsection
(a), the court may include in a judgment in favor of a pilot an award of court costs and reasonable attorney's fees. (V.A.C.S. Art. 8280a, Sec. 4.13.)

Source Law
Sec. 4.13. (a) If a person who is not licensed or certified under this Act pilots a vessel in violation of this Act, that person and the consignee of the vessel are liable to a state licensed or certified pilot in that jurisdiction, on written demand, for an amount equal to the pilotage rates that would have been applicable.

(b) If suit is filed to collect the compensation owed to a pilot under Subsection (a) of this section, the court may include in any final judgment in favor of the pilot an award to cover court costs and reasonable attorney's fees.

Revisor's Note
(End of Subchapter)

The revised law omits as executed the transition language of Section 6.02, V.A.C.S. Article 8280a, that relates to expiration of licenses and certificates of branch pilots and deputy branch pilots appointed before the effective date of Article 8280a (January 1, 1982).

A branch pilot commissioned under V.A.C.S. Articles 8250-8254 (codified as Section 62.025 and Subchapter C of Chapter 62 of this code), which applied to the ports of Harris County before enactment of Article 8280a, had a term that would expire not later than January 1, 1986. Section 6.02 requires license renewal under Article 8280a after that date. Section 6.02 required deputy branch pilots to be issued certificates that would expire not later than January 1, 1984. The omitted section reads:

Sec. 6.02. (a) Persons who are branch pilots serving a port covered under this Act on the effective date of this Act shall continue to serve as branch pilots until their current commissions expire, at which time each will be eligible for license renewal under the license renewal provisions of this Act, and those branch pilots shall be governed by this Act from its effective date.

(b) Persons who were appointed deputy branch pilots before the effective
date of this Act shall be issued deputy
branch pilot certificates by the board in
whose jurisdiction they are acting as
deputy branch pilots on requesting the
certificate in writing and without having
to comply with other procedural provisions
of this Act. A certificate shall be issued
for a term of two years unless the deputy
branch pilot has less than two years to
serve as a deputy branch pilot in which
case the certificate shall be issued for
the remaining time the deputy is required
to serve. Deputy branch pilots in ports
covered by this Act shall be governed by
this Act from its effective date.

[Sections 66.046-66.060 reserved for expansion]

SUBCHAPTER D. PILOTAGE RATES

Revised Law

Sec. 66.061. PILOTAGE RATE CHANGE. The board may not change
pilotage rates before the first anniversary of the preceding rate
change. (V.A.C.S. Art. 8280a, Sec. 5.03(e).)

Source Law

(e) New pilotage rates may not be established
less than one year after the board has established
pilotage rates for the port.

Revised Law

Sec. 66.062. PILOTAGE RATE CHANGE APPLICATION. (a) An
application for a change in pilotage rates may be submitted to the
board by:

(1) a pilot;
(2) an association of pilots;
(3) a consignee liable under Section 66.070 to pay
pilotage rates; or
(4) an association of consignees.

(b) The application must be written and must state
specifically the changes requested.

(c) The board shall set a hearing date within two weeks of
receipt of an application. The board shall hold the hearing not
earlier than the 20th day and not later than the 40th day after the
date the board sets the hearing date.
An applicant shall give notice of the application and the hearing date, by certified mail to the last known address, to:

1. all pilots licensed or certified in the port;
2. all known pilots' associations; and
3. all steamship agencies and associations in the port. (V.A.C.S. Art. 8280a, Secs. 5.03(a), (b), (c) (part), (d).)

**Source Law**

Sec. 5.03. (a) A pilot licensed or certified by the board, an association of pilots, a consignee liable under Section 6.01 of this Act to pay compensation based on pilotage rates, or an association of consignees may submit an application to the board to establish new pilotage rates for pilot services.

(b) The application must be in writing and must state specifically the changes requested.

(c) Within two weeks of receiving an application, the board shall set a hearing date. The hearing shall be held not less than 20 days nor more than 40 days after the board sets the hearing date.

(d) The applicant shall give notice of the application and the hearing date to all pilots licensed or certified in the port, all known pilots' associations, and all steamship agencies and associations in the port. The notice shall be given by certified mail to their last known addresses.

**Revised Law**

Sec. 66.063. PILOT FINANCIAL REPORT. (a) Not later than the 10th day before the date set for a pilotage rate hearing, the pilots who are licensed or certified to serve the port for which the rates are being considered shall submit in writing to the board and to any party designated by the board complete accounts of:

1. all amounts received from performing pilot services, organized by categories or classifications of rates, if rates are set in that manner;
2. all earnings from capital assets devoted to providing pilot services;
3. all expenses incurred in connection with activities for which amounts described by Subdivisions (1) and (2) were received and earned; and
4. estimates of receipts and expenses anticipated to result from the requested changes in pilotage rates.
(b) The pilots shall provide the information for:

(1) the calendar or fiscal year preceding the date of the pilotage rate change application; and

(2) the subsequent period to within 60 days of the date of the application.

(c) The board may require an independent audit of financial information submitted under Subsection (a) by an accountant selected by the board. The board, as it considers fair and just, shall assess the costs of the audit against one or more of the applicants and objecting parties.

(d) The board may require relevant additional information it considers necessary to determine a proper pilotage rate. (V.A.C.S. Art. 8280a, Sec. 5.04.)

Source Law

Sec. 5.04. (a) At least 10 days before the date set for a pilotage rates hearing, the pilots who are licensed or certified to serve the port for which new pilotage rates are being considered shall submit in writing to the board and to any party designated by the board complete accounts of:

(1) all amounts received from performance of pilot services, organized by categories or classifications of rates, if rates are set in that manner;

(2) all earnings from capital assets devoted to providing pilot services;

(3) all expenses incurred in connection with activities for which these amounts were received and earned; and

(4) estimates of receipts and expenses anticipated to result from the requested changes in pilotage rates.

(b) The information shall be provided for the calendar or fiscal year closest preceding the date of the application, updated to be within 60 days of the date of the application.

(c) The board may require an independent audit of financial information submitted under Subsection (a) of this section by an accountant selected by the board. The cost of the audit shall be assessed against one or more of the applicants and objecting parties as shall appear to the board to be fair and just.

(d) The board may require relevant additional information it considers necessary to determine proper pilotage rates.

Revised Law

Sec. 66.064. FACTORS FOR BOARD CONSIDERATION. In establishing pilotage rates, the board shall consider factors
relevant to determining reasonable and just pilotage rates, including:

(1) characteristics of vessels to be piloted;
(2) the average number of hours spent by a pilot performing:
   (A) pilot services on board vessels; and
   (B) all pilot services;
(3) costs to pilots to provide the required pilot services;
(4) the public interest in maintaining safe, efficient, and reliable pilot services;
(5) the average wages of masters of United States flag vessels that navigate in the board's jurisdiction and for which the pilotage rate is to be established;
(6) economic factors affecting the shipping industry in the area in which the port is located; and
(7) an adequate and reasonable compensation for the pilots and a fair return on the equipment and vessels that the pilots employ in connection with their duties. (V.A.C.S. Art. 8280a, Sec. 5.05.)

Source Law

Sec. 5.05. In establishing pilotage rates, the board shall consider factors relevant to determining reasonable and just pilotage rates, including but not limited to:
(1) characteristics of vessels to be piloted;
(2) the average number of hours spent by a pilot in the actual performance of pilot services on board vessels as well as the average number of hours spent by a pilot to perform pilot services;
(3) costs to pilots to provide the required pilot services;
(4) the public interest in maintaining safe, efficient, and reliable pilotage service;
(5) average wages of masters of United States flag vessels that navigate the water within the jurisdiction of the board by which the pilotage rates are to be established;
(6) economic factors affecting the shipping industry within the area in which the port is located; and
(7) an adequate and reasonable compensation for pilots and a fair return on the equipment and vessels that the pilots employ in connection with performance of their duties.
Revisor's Note

Section 5.05, V.A.C.S. Article 8280a, refers to factors "including but not limited to" certain factors. "[B]ut not limited to" is omitted as unnecessary because Section 311.005(13), Government Code (Code Construction Act), and Section 312.011(19), Government Code, provide that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

Revised Law

Sec. 66.065. RATE DECISION. Not later than the 10th day after the date of the completion of a hearing on an application for a change in pilotage rates, the board shall issue a written decision that:

(1) grants or denies the application in whole or in part;
(2) states the reasons for the decision; and
(3) states each new pilotage rate. (V.A.C.S. Art. 8280a, Sec. 5.06.)

Source Law

Sec. 5.06. Within 10 days after completion of its hearing on the application for new pilotage rates, the board shall issue a written decision granting or denying the application in whole or in part, setting forth its reasons for the decision, and, if new pilotage rates are authorized, stating the new pilotage rates.

Revised Law

Sec. 66.066. COSTS. The board, in a final order under this subchapter, may charge all or part of the costs of processing an application to the parties in the proceedings. (V.A.C.S. Art. 8280a, Sec. 5.03(c) (part).)

Source Law

(c) The board may charge all or part of the costs of processing an application to the parties
in the proceedings as provided in the board's final order.

Revised Law

Sec. 66.067. APPEAL OF BOARD DECISION. Any party aggrieved by a board decision on pilotage rates, after exhausting all administrative remedies, may appeal the order to a court.

(V.A.C.S. Art. 8280a, Sec. 5.07.)

Source Law

Sec. 5.07. Any party aggrieved by the decision may seek judicial review of the board's decision after all administrative remedies have been exhausted.

Revised Law

Sec. 66.068. EMERGENCY PILOTAGE RATES. (a) The board may establish emergency pilotage rates for the period of an emergency, not to exceed 30 days, if the board finds that:

(1) a natural or man-made disaster has created a substantial hazard to piloting vessels into and out of a port; and

(2) the existence of the hazard overrides the necessity to comply with normal pilotage rate-setting procedures.

(b) In adopting emergency pilotage rates, the board is not required to comply with the procedures in this chapter or in its rules relating to adoption of pilotage rates.

(c) Emergency pilotage rates may not be appealed.

(d) The board shall adopt rules to carry out this section.

(V.A.C.S. Art. 8280a, Sec. 5.08.)

Source Law

Sec. 5.08. (a) The board may establish emergency pilotage rates, for periods not to exceed 30 days, to replace existing pilotage rates for the period of the emergency if the board finds that a natural or man-made disaster has created a substantial hazard to piloting vessels into and out of a port and that the existence of this hazard overrides the necessity to comply with normal pilotage rate-setting procedures.

(b) In adopting emergency pilotage rates, the board is not required to comply with procedures in this Act and in its rules relating to adoption of pilotage rates. Emergency pilotage rates may not be appealed.

(c) The board shall adopt rules necessary to carry out this section.
Sec. 66.069. PILOT SERVICES REQUIRED. The consignee of a vessel under the consignee's control shall obtain pilot services for the vessel and shall pay the pilot who pilots the vessel into and out of the port area compensation according to the pilotage rates filed by the board. (V.A.C.S. Art. 8280a, Secs. 5.09(a) (part), 6.01(a).)

Sec. 5.09. (a) Compensation based on lawfully established pilotage rates shall be paid by the consignee liable for its payment for vessels employing pilots.

Sec. 6.01. (a) The consignee for each vessel is responsible for obtaining pilot services for the vessel under the consignee's control and for paying compensation based on pilotage rates adopted under this Act to the pilots who pilot the vessel into and out of the port area.

Sec. 66.070. PILOTAGE RATE LIABILITY. (a) A consignee who declines the services of a pilot offered outside the bar and enters the port without the aid of a pilot is liable for the payment of pilotage to the first pilot whose services were declined.

(b) A consignee is liable for the payment of pilotage to the pilot who brings a vessel in if the vessel goes out without employing a pilot.

(c) A consignee is liable for the payment of pilotage for a vessel that goes out without the aid of a pilot and that came in without the aid of a pilot to the pilot who first offered services before the vessel came in.

(d) A consignee is not liable for the payment of pilotage for a vessel going out without a pilot if the vessel came in without the aid of a pilot or came in without the offer of a pilot outside.

(e) Subsections (a)-(d) do not apply to a consignee exempt under this chapter from payment of pilotage rates.

(f) A pilot who charges a rate for pilot services different
from the pilotage rates established under this chapter for the port
in which the pilot serves is liable to each person who was charged
the different rate for double the amount of pilotage.

(g) A court may include in a judgment in favor of a person
who files suit to collect an amount owed under this chapter an
award to cover court costs and reasonable attorney's fees.
(V.A.C.S. Art. 8280a, Secs. 5.09(a) (part), (b), (c).)

Source Law

(a) ... If the consignee of a vessel not
exempt under this Act from payment of this compensation
declines the services of a pilot offered outside the
bar and enters the port without the aid of a pilot, the
consignee is liable to the first pilot whose services
were declined for the payment of pilotage; for any
vessel that, after being brought in by the pilot, goes
out without employing a pilot, the consignee is liable
for the payment of pilotage to the pilot who brought
the vessel in. If the vessel comes in without the aid
of a pilot, though offered outside, the consignee, on
going out, is liable for the payment of pilotage to the
pilot who first offered his services before the vessel
came in. If a vessel comes in without the aid of a
pilot, or the offer of a pilot outside, the consignee
of the vessel, in case of going out without a pilot, is
not liable for pilotage.

(b) A pilot who charges pilotage rates different
from those established under this Act for the port in
which he serves as a pilot is liable to each person who
was charged a pilotage rate other than the lawfully
authorized pilotage rate for double the amount of
pilotage.

(c) If a person must file suit to collect the
amount owed under this section, the court may include
in any final judgment in favor of that person an award
to cover court costs and reasonable attorney's fees.

Revised Law

Sec. 66.071. RECOVERY OF COMPENSATION. A pilot who offers
pilot services to a vessel required under this chapter to obtain
pilot services and whose services are refused is entitled to
recover from the consignee the pilotage rate for the services.
(V.A.C.S. Art. 8280a, Sec. 6.01(b).)

Source Law

(b) Each pilot who lawfully offers to serve a
vessel but is denied such service is entitled to
recover compensation based on pilotage rates adopted
under this Act from the consignee in any court of
competent jurisdiction.
Revisor's Note

Section 6.01(b), V.A.C.S. Article 8280a, refers to a suit brought "in any court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revisor's Note
(End of Subchapter)

The revised law omits as executed Sections 5.01 and 5.02, V.A.C.S. Article 8280a, which maintained pilotage rates in effect on the effective date of the original enactment of Article 8280a until the board adopted other rates. The board has adopted more recent pilotage rates. The omitted sections read:

Sec. 5.01. Pilotage rates in effect on the effective date of this Act remain in effect until the board adopts other pilotage rates.

Sec. 5.02. Before different pilotage rates are adopted by the board under this Act, notice shall be given and the board shall hold a hearing.

[Sections 66.072-66.080 reserved for expansion]

SUBCHAPTER E. PILOT LIABILITY

Revised Law

Sec. 66.081. PURPOSE. The purpose of this subchapter is to:

(1) in the public interest, stimulate and preserve maritime commerce on the pilotage grounds of this state by limiting and regulating the liability of pilots; and

(2) maintain pilotage fees at reasonable amounts.

(V.A.C.S. Art. 8280a, Sec. 7.01.)
Sec. 7.01. (a) The stimulation and preservation of maritime commerce on the pilotage grounds of this state is declared to be affected with the public interest and the limitation and regulation of liability of pilots is necessary to such stimulation and preservation of maritime commerce and is deemed to be in the public interest.

(b) To accomplish the stimulation and preservation of maritime commerce it is necessary to limit the liability of the pilots.

(c) The legislature hereby declares that this Act is designed to effect the ends and purposes listed in this section and to maintain pilotage fees at reasonable levels.

Sec. 66.082. PILOT LIABILITY. A pilot is not liable directly or as a member of an organization of pilots for any claim that:

(1) arises from an act or omission of another pilot or organization of pilots; and

(2) relates directly or indirectly to pilot services.

(V.A.C.S. Art. 8280a, Sec. 7.02.)

Sec. 7.02. A pilot is not liable either directly or as a member of an organization of pilots for any claims arising from acts or omissions of any other pilot or organization of pilots that relate directly or indirectly to pilot services.

Sec. 66.083. PILOT LIABILITY LIMITED. (a) A pilot providing pilot services is not liable for more than $1,000 for damage or loss caused by the pilot's error, omission, fault, or neglect in the performance of the pilot services, except as provided by Subsection (b).

(b) Subsection (a) does not apply to:

(1) damage or loss that arises because of the wilful misconduct or gross negligence of the pilot;

(2) liability for exemplary damages for gross negligence of the pilot and for which no other person is jointly or severally liable; or
(3) an act or omission relating to the ownership and
operation of a pilot boat unless the pilot boat is directly
involved in pilot services other than the transportation of pilots.

(c) This section does not exempt a vessel or its owner or
operator from liability for damage or loss caused by the vessel to
a person or property on the grounds that:

(1) the vessel was piloted by a pilot; or

(2) the damage or loss was caused by the error,
 omission, fault, or neglect of a pilot.

(d) In an action brought against a pilot for an act or
omission for which liability is limited as provided by this section
and in which other claims are made or anticipated with respect to
the same act or omission, the court shall dismiss the proceedings
as to the pilot to the extent the pleadings allege pilot liability
that exceeds $1,000. (V.A.C.S. Art. 8280a, Sec. 7.03.)

Source Law

Sec. 7.03. (a) A ship's pilot licensed to act
as such by the State of Texas and providing service to
or from ports of Harris County, Texas, is not liable
for damages in excess of the amount of $1,000 for
damages or loss occasioned by the pilot's errors,
omissions, fault, or neglect in the performance of
pilot services, except as may arise by reason of the
wilful misconduct or gross negligence of the pilot.

(b) Nothing in this section exempts the vessel
or its owner or operator from liability for damage or
loss occasioned by that ship to a person or property on
the grounds that:

(1) the ship was piloted by a Texas state
pilot licensed under this Act; or

(2) the damage or loss was occasioned by
the error, omission, fault, or neglect of a Texas state
pilot licensed under this Act.

(c) A pilot is not liable for any injury,
damage, loss, or expense to any legal entity arising
out of or connected with any act or omission that
relates directly or indirectly to the performance of
pilot services in excess of the amount of $1,000.
However, this limitation of liability does not apply to
either:

(1) wilful misconduct on the part of the
pilot;

(2) liability for exemplary damages based
on the gross negligence of the pilot for which no other
person is jointly or severally liable; or

(3) acts or omissions relating to the
ownership and operation of the pilot boats unless the
pilot boat is directly involved in pilot services other
than the transportation of pilots.

(d) When any suit or action is brought in any
court against a pilot for any such act or omission for
which liability is limited as provided by this section
and other claims are made or anticipated in respect of
the same act or omission, the court shall dismiss the
proceedings as to the pilot to the extent the pleadings
allege liability of the pilot exceeding $1,000.

Revisor's Note
(End of Chapter)

(1) The revised law omits Section 6.03, V.A.C.S.
Article 8280a, a saving provision from the original
enactment of that article. The saving provision
continued the law in effect before the adoption of
Article 8280a for purposes of any pending litigation.
Under Section 311.031, Government Code, any remaining
effect of that saving provision is continued
notwithstanding repeal of Article 8280a by the
revision. The omitted section reads:

Sec. 6.03. This Act does not apply
to any matter that on the effective date of
this Act is involved in litigation, and the
law in effect before the adoption of this
Act shall continue to apply to such
litigation and shall continue in effect for
that limited purpose.

(2) The revised law omits as executed Section
6.04, V.A.C.S. Article 8280a, which contains the
effective date of the original enactment of Article
8280a. The omitted section reads:

Sec. 6.04. This Act takes effect on
January 1, 1982.

CHAPTER 67. GALVESTON COUNTY PILOTS LICENSING
AND REGULATORY ACT

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SUBCHAPTER E. PILOT LIABILITY

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CHAPTER 67. GALVESTON COUNTY PILOTS LICENSING AND REGULATORY ACT

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 67.001. SHORT TITLE. This chapter may be cited as the
Galveston County Pilots Licensing and Regulatory Act. (V.A.C.S.
Art. 8280b, Sec. 1.01.)

Source Law

Art. 8280b
Sec. 1.01. This Act may be cited as the
Galveston County Pilots Licensing and Regulatory Act.

Revised Law

Sec. 67.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of pilot commissioners for
Galveston County ports.

(2) "Consignee" means a person, including a master,
owner, agent, subagent, firm, or corporation or any combination of
those persons, who enters or clears a vessel at the office of the
Collector of customs.

(3) "Galveston County port" means a place in Galveston County into which a vessel enters or from which a vessel departs and the waterway leading to that place from the Gulf of Mexico.

(4) "Pilot" means a person who is licensed as a branch pilot or certified as a deputy branch pilot under this chapter.

(5) "Pilotage rate" means the remuneration a pilot may lawfully charge a vessel for pilot services.

(6) "Pilot services" means acts of a pilot in conducting a vessel through the navigable water in this state and the ports in which the pilot is licensed or certified as a pilot.

(7) "Vessel" means an oceangoing vessel. (V.A.C.S. Art. 8280b, Sec. 1.02.)

Source Law

Sec. 1.02. In this Act:
(1) "Pilot" means a person who is licensed as a branch pilot or certified as a deputy branch pilot under this Act.
(2) "Board" means the board of pilot commissioners created under this Act.
(3) "Pilotage rates" means the amount of remuneration a pilot may lawfully charge vessels for his services.
(4) "Pilot services" means acts of a pilot in conducting a vessel through the navigable water within the boundaries of the state and the ports in which he is licensed or certified as a pilot.
(5) "Vessel" means every oceangoing vessel navigating the water within the board's jurisdiction except vessels exempt from payment of pilotage rates under this Act.
(6) "Port" means a place in this state into which vessels enter or from which vessels depart that is located in Galveston County and the waterway leading to that place from the Gulf of Mexico.
(7) "Consignee" means the master, owner, agent, subagent, person, firm, or corporation or any combination of these that enters or clears a vessel at the office of the collector of customs.

Reviser's Note

The revised law omits the language in the definition of "vessel" in Section 1.02(5), V.A.C.S. Article 8280b, that refers to vessels navigating the water in the board's jurisdiction because Section 1.03, V.A.C.S. Article 8280b, codified as Section 67.003 of...
this code, states that the chapter applies only to Galveston County ports and it is unnecessary to restate that in the definition. The revised law also omits the language in the definition of "vessel" that excepts a vessel exempt from payment of pilotage rates under Article 8280b. The reference is unnecessary because Section 1.04, Article 8280b, codified as Section 67.032 of this code, contains the exemptions from payment of pilotage rates.

Revised Law

Sec. 67.003. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a Galveston County port.

(b) This chapter does not affect the existing laws for ports in other counties, and those laws do not apply to ports located in Galveston County. (V.A.C.S. Art. 8280b, Secs. 1.03, 6.05.)

Source Law

Sec. 1.03. This Act applies to all ports located in Galveston County.

Sec. 6.05. This Act does not affect the existing laws for ports in other counties of this state, including Articles 8248 through 8257 and 8264 through 8280, Revised Statutes; and these laws shall have no application to the ports within the provisions of this Act.

[Sections 67.004-67.010 reserved for expansion]

SUBCHAPTER B. BOARD OF PILOT COMMISSIONERS

Revised Law

Sec. 67.011. BOARD. The board of pilot commissioners for the ports of Galveston County is composed of five commissioners from Galveston County appointed by the governor with the advice and consent of the senate. (V.A.C.S. Art. 8280b, Secs. 2.01, 2.02.)

Source Law

Sec. 2.01. A board of pilot commissioners is created for the ports of Galveston County.

Sec. 2.02. The board is composed of five commissioners from Galveston County appointed by the governor with the advice and consent of the senate.

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Sec. 67.012. PROHIBITED INTEREST. A person may not be a member of the board if the person has a conflict of interest or a direct or indirect interest in any business affected by or connected with the performance of the person's duties as a pilot commissioner. (V.A.C.S. Art. 8280b, Sec. 2.04.)

Sec. 2.04. A person who has any conflict of interest or is directly or indirectly interested in any business affected by or connected with the performance of his duties as a pilot commissioner may not be a member of the board.

Sec. 67.013. OATH. Before beginning service as a board member, each board member must take and sign before a person authorized to administer oaths an oath to faithfully and impartially discharge the duties of the office. (V.A.C.S. Art. 8280b, Sec. 2.05.)

Sec. 2.05. Before beginning to serve as a member of the board, each board member shall take and subscribe, before someone authorized to administer oaths, an oath to discharge faithfully and impartially the duties of office.

Section 2.05, V.A.C.S. Article 8280b, requires a board member to "subscribe . . . an oath." The revised law substitutes "sign" for "subscribe" to reflect modern usage.

Sec. 67.014. TERM OF OFFICE. (a) Board members serve staggered four-year terms of office.

(b) A member holds office until the member's successor is appointed and qualified. (V.A.C.S. Art. 8280b, Sec. 2.03(a) (part).)
Source Law

(a) . . . appointed members hold office for staggered terms of four years. A member holds office until that member's successor is appointed and qualified.

Revised Law

Sec. 67.015. JURISDICTION. The board has exclusive jurisdiction over the piloting of vessels in Galveston County, including intermediate stops and landing places for vessels on navigable streams wholly or partially located in the board's jurisdiction. (V.A.C.S. Art. 8280b, Sec. 2.07.)

Source Law

Sec. 2.07. The board shall have exclusive jurisdiction over piloting of vessels in this state between the Gulf of Mexico and the ports within the board's jurisdiction, as well as intermediate stops and landing places for vessels on navigable streams wholly or partially located within the board's jurisdiction.

Revisor's Note

Section 2.07, V.A.C.S. Article 8280b, refers in part to the board's jurisdiction over vessels "between the Gulf of Mexico and the ports within the board's jurisdiction." The revised law substitutes a reference to Galveston County ports because the chapter applies only to Galveston County ports and the omitted language is included in the definition of "Galveston County port."

Revised Law

Sec. 67.016. ADMINISTRATION; RULES. (a) The board shall administer this chapter and may perform any act or function necessary to carry out its powers and duties under this chapter. (b) The board may adopt rules to carry out this chapter. (V.A.C.S. Art. 8280b, Sec. 2.06.)

Source Law

Sec. 2.06. The board shall administer this Act in each of the ports within its jurisdiction and may adopt rules to carry out this Act and may perform any
acts or functions necessary to carry out those powers
and duties under this Act.

Revised Law

Sec. 67.017. DUTIES. The board shall:

(1) recommend to the governor the number of pilots
necessary to provide adequate pilot services for each Galveston
County port;

(2) accept applications for pilot licenses and
certificates and determine whether each applicant meets the
qualifications for a pilot;

(3) provide names of all qualified applicants for
certificates to each pilot association office of Galveston County;

(4) submit to the governor the names of persons who
have qualified under this chapter to be appointed as branch pilots;

(5) establish pilotage rates;

(6) approve any changes of the locations for pilot
stations;

(7) establish times during which pilot services will
be available;

(8) hear and determine complaints relating to the
conduct of pilots;

(9) make recommendations to the governor concerning
any pilot whose license or certificate should not be renewed or
should be revoked;

(10) adopt rules and issue orders to pilots and
vessels when necessary to secure efficient pilot services;

(11) institute investigations or hearings or both to
consider casualties, accidents, or other actions that violate this
chapter;

(12) provide penalties to be imposed on a person who
is not a pilot for a Galveston County port and who pilots a vessel
into or out of the port; and

(13) approve a training program for deputy branch
pilots. (V.A.C.S. Art. 8280b, Sec. 2.08 (part).)
Sec. 2.08. The board shall:

(1) recommend to the governor the number of pilots necessary to provide adequate pilot services for the ports under the board's jurisdiction;

(2) accept applications for pilot licenses and certificates and determine whether or not each applicant meets the qualifications for a pilot or deputy pilot in this Act;

(3) provide names of all qualified applicants for certificates to the pilot association office or offices of Galveston County;

(4) submit to the governor the names of persons who have qualified under this Act to be appointed as branch pilots for the ports of Galveston County;

(5) approve any changes of the locations for pilot stations;

(6) establish pilotage rates to be charged for piloting vessels within the board's jurisdiction;

(7) establish times during which pilot services will be available;

(8) hear and determine complaints relating to the conduct of pilots;

(9) make recommendations to the governor concerning any pilot whose license or certificate should not be renewed or should be revoked;

(10) adopt rules and issue orders to pilots and vessels when necessary to secure efficient pilot services within the board's jurisdiction;

(11) institute investigations or hearings or both to consider casualties, accidents, or any other action that violates this Act;

(12) provide penalties to be imposed on any person who is not appointed a branch pilot for the port who pilots any ship or vessel into or out of the port, channel, or waterway under the jurisdiction of the board;

(13) approve a training program for deputy branch pilots; and . . . .

Sec. 67.018. PILOT REVIEW BOARD. The board shall establish a pilot review board, consisting of two branch pilots and three members of the marine industry who reside in Galveston County, to hear and review complaints against pilots and to make recommendations to the board concerning the complaints. (V.A.C.S. Art. 8280b, Sec. 2.08 (part).)
Sec. 67.019. UNFAIR DISCRIMINATION PROHIBITED. (a) In all its duties, including rulemaking, the board may not sanction discriminatory practices or discriminate against a pilot or pilot applicant because of race, religion, sex, ethnic origin, or national origin.

(b) A person seeking a remedy for a violation of this section must bring suit in a district court in Galveston County.

(V.A.C.S. Art. 8280b, Sec. 2.09.)

Sec. 2.09. (a) In all its duties, including rule making, the board shall not sanction discriminatory practices nor discriminate against any applicant, licensed pilot, branch pilot, or deputy branch pilot on account of race, religion, sex, ethnic origin, or national origin.

(b) Remedies for violation of this section shall be sought as provided in Section 3.03 of this Act.

The source law refers to bringing suit in the manner provided by Section 3.03, V.A.C.S. Article 8280b (codified as Section 67.022 of this code). The revised law substitutes the substance of the language in that section relating to bringing suit.

Sec. 67.020. OPEN MEETINGS LAW. Chapter 551, Government Code, applies to actions and proceedings under this chapter.

(V.A.C.S. Art. 8280b, Sec. 3.01.)

Sec. 3.01. Except as specifically provided by this Act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), applies to actions and proceedings under this Act.

Section 3.01, V.A.C.S. Article 8280b, states that the open meetings law, Chapter 271, Acts of the 60th
Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), applies to actions and proceedings under Article 8280b. The open meetings law is codified as Chapter 551, Government Code, and the revised law is drafted accordingly. Section 3.01 also states that the open meetings law applies "[e]xcept as specifically provided by this Act." The revised law omits that language because there are no specific exceptions in this chapter.

Revised Law
Sec. 67.021. RULE OR RATE CHANGE. (a) The board shall give at least 10 days' notice as provided by this section before the board adopts a rule or changes a pilotage rate.

(b) The board shall mail the notice and a copy of the proposed rule or change by registered mail to:
   (1) each pilot association office for Galveston County; and
   (2) all known consignees and all known associations of consignees operating in Galveston County.

(c) The board shall post a copy of the proposed rule or change at the county courthouse for public inspection. (V.A.C.S. Art. 8280b, Sec. 3.02.)

Source Law
Sec. 3.02. The board shall give at least 10 days' notice of its intention to adopt a rule or to change pilotage rates by mailing by registered mail such notice to the pilot association office or offices for Galveston County and to all known consignees and to all known associations of consignees which are operating in Galveston County at such time. A copy of the proposed rule or change shall be included with such notice. In addition, a copy of the proposed rule or change shall be posted at the county courthouse for public inspection.

Revised Law
Sec. 67.022. JUDICIAL REVIEW. Proceedings for judicial review of a board decision shall be brought in a district court in
Galveston County. (V.A.C.S. Art. 8280b, Sec. 3.03.)

Source Law
Sec. 3.03. Proceedings for judicial review of a board decision shall be brought in a district court in Galveston County.

Revisor's Note
(End of Subchapter)

The revised law omits as executed the language in Section 2.03, V.A.C.S. Article 8280b, providing for the terms of office of the initial appointments to the board of pilot commissioners. The omitted language reads:

Sec. 2.03. (a) Except for the initial appointments . . . .
(b) In making the initial appointments, the governor shall designate two appointed members for terms expiring February 1, 1987, two for terms expiring February 1, 1988, and one for a term expiring February 1, 1990. The governor shall make the initial appointments on or before February 1, 1986.

[Sections 67.023-67.030 reserved for expansion]

SUBCHAPTER C. PILOT LICENSES AND CERTIFICATES

Revised Law
Sec. 67.031. LICENSE OR CERTIFICATE REQUIRED. A person may not provide pilot services unless the person has a license or certificate issued under this chapter for the Galveston County ports in which the pilot services are to be provided. (V.A.C.S. Art. 8280b, Sec. 4.01.)

Source Law
Sec. 4.01. It shall be unlawful for a person to provide pilot services as a branch pilot or deputy branch pilot unless that person has a valid license or certificate issued under this Act for the ports within the jurisdiction of the board in which the pilot services are to be provided.

Revisor's Note
Section 4.01, V.A.C.S. Article 8280b, refers to a
person providing pilot services without a valid license or certificate. The revised law omits "valid" as unnecessary. A document purporting to be a license or certificate is no longer a license or certificate if it is expired and is not a license or certificate if it is a forgery.

**Revised Law**

Sec. 67.032. EXEMPTION. The requirement to use a pilot does not apply to a vessel exempt under federal law from payment of state pilotage rates. (V.A.C.S. Art. 8280b, Sec. 1.04.)

**Source Law**

Sec. 1.04. The requirement to use a licensed pilot under this Act does not apply to a vessel exempt from payment of state pilotage rates under federal law.

**Revised Law**

Sec. 67.033. QUALIFICATIONS FOR LICENSE. To be eligible for a license as a branch pilot, a person must:

1. be at least 25 years of age;
2. be a United States citizen;
3. as of the date the license is issued, have resided continuously in this state for at least two years;
4. have at least two years' service as a deputy branch pilot and successfully complete the board-approved training program;
5. have controlled the navigation of vessels such as the person would pilot;
6. have extensive experience in the docking and undocking of vessels;
7. be in good mental and physical health;
8. have good moral character; and
9. possess the requisite skill as a navigator and pilot to perform competently and safely the duties of a branch pilot. (V.A.C.S. Art. 8280b, Sec. 4.02.)
Sec. 4.02. (a) To be eligible for a license as a branch pilot for the ports within the jurisdiction of the board, a person must:
(1) be at least 25 years of age;
(2) be a United States citizen;
(3) as of the date that the license is issued, have resided in the state for a continuous period of not less than two years;
(4) have at least two years' service as a deputy branch pilot and successfully complete the board approved training program;
(5) have exercised control of navigation of vessels such as he would pilot; and
(6) have extensive experience in the docking and undocking of oceangoing vessels.

(b) In addition to the qualifications stated in Subsection (a) of this section, the applicant must be found by the board to be in good mental and physical health, to have good moral character, and to possess the requisite skill as a navigator and pilot to perform competently and safely the duties of a branch pilot.

Revised Law
Sec. 67.034. QUALIFICATIONS FOR CERTIFICATE. To be eligible for a certificate as a deputy branch pilot, a person must:
(1) be at least 25 years of age;
(2) be a United States citizen;
(3) be appointed by a branch pilot;
(4) be in good mental and physical health;
(5) have good moral character; and
(6) possess the requisite skill as a navigator and pilot to perform competently and safely the duties of a deputy branch pilot. (V.A.C.S. Art. 8280b, Sec. 4.03.)
Revised Law

Sec. 67.035. APPLICATION FOR LICENSE OR CERTIFICATE. To apply for a branch pilot's license or a deputy branch pilot's certificate, a person must give to the board a written application in the form and manner required by board rule. (V.A.C.S. Art. 8280b, Sec. 4.04.)

Source Law

Sec. 4.04. (a) An applicant for a branch pilot's license or a deputy branch pilot's certificate shall submit a written application to the board. (b) The application shall be submitted to the board in the form and in the manner required by the board in its rules.

Revised Law

Sec. 67.036. CONSIDERATION OF APPLICATION. As part of its consideration of applications for licenses and certificates, the board may examine and decide on the qualifications of an applicant for the position of branch pilot or deputy branch pilot. (V.A.C.S. Art. 8280b, Sec. 4.05.)

Source Law

Sec. 4.05. As part of its consideration of applications for licenses and certificates, the board may, if it deems it advisable, examine and decide on the qualifications of the applicant for the position of branch or deputy pilot.

Revised Law

Sec. 67.037. BRANCH PILOT APPOINTMENT BY GOVERNOR. (a) On filing of the bond and oath required by Section 67.039, the board shall certify to the governor that a person licensed as a branch pilot has qualified. (b) On receipt of the board's certification, the governor shall issue to the person, in the name of the state and under the state seal, a commission to serve as a branch pilot to and from Galveston County ports. (c) The governor shall appoint the number of branch pilots necessary to provide adequate pilot services for each Galveston

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County port. (V.A.C.S. Arts. 8270 (part); 8280b, Sec. 4.06.)

Source Law

Art. 8270. The Governor shall appoint . . . and for all of the ports in Galveston County, such number of branch pilots as may from time to time be necessary . . . .

[Art. 8280b]

Sec. 4.06. (a) On filing of the bond and oath provided by Section 4.09 of this Act, the board shall certify to the governor that the branch pilot has duly qualified to act as a branch pilot, and on receiving this certification, the governor shall issue to the branch pilot, in the name and under the state seal, a commission to serve as a branch pilot from the ports within the jurisdiction of the board, across intermediate bars, to and from the open gulf.

(b) The governor shall appoint the number of pilots necessary to provide adequate pilot services for each of the ports in Galveston County under the board's jurisdiction.

Revised Law

Sec. 67.038. DEPUTY BRANCH PILOT APPOINTMENT BY BRANCH PILOT. (a) Each branch pilot, subject to examination and approval of the board, may appoint two deputy branch pilots.

(b) A branch pilot may appoint an additional deputy branch pilot if the board considers the appointment advisable.

(c) A branch pilot who appoints a deputy branch pilot without the approval of the board forfeits the pilot's appointment as a branch pilot. (V.A.C.S. Art. 8280b, Sec. 4.07.)

Source Law

Sec. 4.07. (a) Subject to examination and approval of the board, each branch pilot may appoint two deputy pilots.

(b) A branch pilot who appoints a deputy pilot without the approval of the board shall forfeit his own appointment as a branch pilot.

(c) An additional deputy pilot may be appointed if the branch pilot and the board mutually consider such an appointment advisable.

Revised Law

Sec. 67.039. OATH; BOND. (a) A person appointed as a pilot must take the official oath before entering service as a pilot. The oath shall be endorsed on the bond required by Subsection (b).

(b) Each pilot must execute a $25,000 bond payable to the
governor and conditioned on compliance with the laws, rules, and orders relating to pilots and on the faithful performance of the pilot's duties.

(c) Each bond must be approved by the board. (V.A.C.S. Art. 8280b, Sec. 4.09.)

Source Law

Sec. 4.09. (a) Before entering into service as a pilot, a person appointed to be branch pilot or deputy branch pilot shall take the official oath which shall be endorsed on the bond required by this section.

(b) Each pilot shall execute a bond for $25,000 conditioned on compliance with the laws, rules, and orders relating to pilots and on the faithful performance of the pilot's duties and payable to the governor.

(c) Each bond must be approved by the board.

Revised Law

Sec. 67.040. TERMS OF LICENSES AND CERTIFICATES. (a) A branch pilot's license expires on the fourth anniversary of the date it is issued or renewed.

(b) A deputy branch pilot's certificate expires on the second anniversary of the date it is issued and may not be renewed. (V.A.C.S. Arts. 8270 (part); 8280b, Secs. 4.08, 4.11(a).)

Source Law

Art. 8270. . . . each of whom shall hold his office for the term of four (4) years.

[Art. 8280b] Sec. 4.08. (a) A license issued under this Act expires four years from the date it is issued or renewed.

(b) A certificate issued under this Act expires two years from the date it is issued and is not renewable.

Sec. 4.11. (a) A deputy branch pilot's certificate expires two years from the date it is issued.

Revised Law

Sec. 67.041. BRANCH PILOT'S LICENSE RENEWAL. (a) The governor shall renew a branch pilot's expiring license if the board recommends renewal.

(b) If a pilot applies in writing and qualifies, the board
shall recommend renewal unless the board determines there is
probable cause not to renew the license.

(c) Probable cause not to renew a license exists if the
board finds that the license holder:

(1) does not possess a qualification required by this
chapter for pilots; or

(2) has a disability that will affect the license
holder's ability to serve as a pilot.

(d) If the board determines that it has probable cause not
to renew a license, the board shall notify the license holder not
later than the 60th day before the date the license expires. On
request, the board shall provide a hearing after proper notice to
consider whether the board has cause not to recommend renewal of
the license.

(e) If the board finds at the conclusion of the hearing that
the board lacks probable cause for nonrenewal of the license, the
board shall recommend that the governor renew the license.

(f) The board shall issue a written order recommending that
the governor not renew a license and the governor may not renew the
license if:

(1) the pilot does not contest the board's decision
not to renew the license; or

(2) the board after a hearing finds that it has
probable cause not to renew the license.

(g) The denial of renewal of a pilot's license does not
prohibit the pilot from applying for a new license and being
reappointed. (V.A.C.S. Art. 8280b, Sec. 4.10.)

**Source Law**

Sec. 4.10. (a) Every four years, on written
application and successful qualification, a branch
pilot's license shall be renewed by the governor on
recommendation of the board for an additional four-year
term unless the board determines that probable cause
exists for not renewing the license.

(b) Probable cause exists for not renewing a
license if the board finds that the licensee no longer
possesses one or more of the qualifications stated in
this Act for pilots or suffers from a disability that
will affect his ability to serve as a pilot.
(c) If the board determines that it has probable cause for not renewing a license, it shall give notice of this fact to the licensee not less than 60 days before expiration of the license and, on request, shall offer the licensee the opportunity for a hearing after proper notice to consider whether or not cause exists for not renewing the license.

(d) If the board finds at the conclusion of the hearing that no cause exists for nonrenewal, the board shall make recommendations to the governor for the renewal of such license for another term.

(e) If a pilot does not contest the board's decision not to renew the license or if the board after its hearing finds that there is probable cause for nonrenewal, the board shall issue a written order recommending to the governor that the license not be renewed, and the governor shall refuse renewal of the license.

(f) Denial of renewal of a pilot's license does not prevent the former licensee from applying for a new license and being reappointed by the governor at a later time if the licensee then meets all qualifications for a license under this Act.

Revisor's Note

Section 4.10(f), V.A.C.S. Article 8280b, states that denial of renewal of a pilot's license does not prevent the former licensee from applying for a new license and being reappointed "if the licensee then meets all qualifications for a license under this Act."

The revised law omits as unnecessary the reference to meeting qualifications otherwise required by this chapter.

Revised Law

Sec. 67.042. DEPUTY BRANCH PILOT. A person who has been issued a deputy branch pilot's certificate may not be issued a deputy branch pilot's certificate before the fifth anniversary of the date the person was previously issued a deputy branch pilot's certificate. (V.A.C.S. Art. 8280b, Sec. 4.11(b).)

Source Law

(b) No person may be issued more than one deputy branch pilot's certificate within any period of five consecutive years.
Sec. 67.043. SUSPENSION OR REVOCATION OF BRANCH PILOT'S LICENSE. (a) On complaint or on its own motion, and after notice and hearing, the board may suspend a branch pilot's license for not more than six months or recommend that the governor revoke a branch pilot's license if the board finds that the pilot has:

(1) failed to demonstrate and maintain the qualifications for a license required by this chapter;

(2) used narcotics or other types of drugs, chemicals, or controlled substances as defined by law that impair the pilot's ability to perform the pilot's duties skillfully and efficiently;

(3) used alcohol to an extent that impairs the pilot's ability to perform the pilot's duties skillfully and efficiently;

(4) violated a provision of this chapter or rules adopted by the board under this chapter that were material to the performance of the pilot's duties at the time of the violation;

(5) made a material misstatement in the application for a license;

(6) obtained or attempted to obtain a license under this chapter by fraud or misrepresentation;

(7) charged a pilotage rate other than that approved by the board;

(8) intentionally refused to pilot a vessel when requested to do so by the master or person responsible for navigation of the vessel except when, in the judgment of the pilot, movement of the vessel would have constituted a hazard to life or property or when pilotage charges that are due and owing are unpaid by the person ordering the pilot services;

(9) been absent from duty in violation of board rules and without authorization;

(10) aided or abetted another pilot in failing to perform the other pilot's duties; or

(11) been guilty of carelessness, neglect of duty, intentional unavailability for normal performance of duties,
refusal to perform duties, misconduct, or incompetence while on
duty.

(b) On determining that a license should be suspended or
revoked, the board shall adopt a written order that states its
findings and:

(1) suspends the license for a stated period; or
(2) recommends to the governor revocation of the
license.

(c) The governor, on receipt of a board order recommending
revocation of a license, shall revoke the license. If the board's
order is appealed, the governor may not revoke the license until
the order is upheld on appeal.

(d) A suspension of a license on the recommendation of a
pilot review board takes effect on adoption of the board's order.
A revocation of a branch pilot's license takes effect on issuance
of the governor's decision. (V.A.C.S. Art. 8280b, Sec. 4.12.)

Source Law

Sec. 4.12. (a) On complaint or on its own
motion and after notice and hearing, the board may
suspend a pilot's license for up to six months or may
recommend to the governor revocation of a pilot's
license if the board finds that the pilot has:
(1) failed to demonstrate and maintain the
qualifications for a license required by this Act;
(2) used narcotics or other types of
drugs, chemicals, or controlled substances as defined
by law that impair the pilot's ability to perform his
duties skillfully and efficiently;
(3) used alcohol to an extent that impairs
the pilot's ability to perform his duties skillfully
and efficiently;
(4) violated a provision of this Act or
rules adopted by the board under this Act which were
material to the performance of his duties at the time
of the violation;
(5) made a material misstatement in the
application for a license;
(6) obtained or attempted to obtain a
license under this Act by fraud or misrepresentation;
(7) charged pilotage rates other than
those approved by the board;
(8) intentionally refused to pilot a
vessel when requested to do so by the master or person
responsible for navigation of the vessel except when,
in the judgment of the pilot, movement of the vessel
would have constituted a hazard to life or property or
when pilotage charges due and owed remained unpaid by
the person ordering the pilot services;
(9) been absent from duty in violation of
rules of the board and without authorization;
(10) aided or abetted another pilot in failing to perform his duties; or
(11) been guilty of carelessness, neglect of duty, intentional unavailability for normal performance of duties, refusal to perform duties, misconduct, or incompetence while on duty.
(b) If the board determines that a license should be suspended or revoked, it shall issue a written order stating its findings and suspending the license for a specifically stated period or recommending to the governor revocation of the license.
(c) On receiving the board's order recommending revocation of a license, the governor shall revoke the license except where an appeal has been taken and then the governor shall revoke the license only after the order is upheld.
(d) A suspension based on the recommendation of a pilot review board takes effect immediately on issuance of the board's order. Revocation takes effect immediately on issuance of the governor's decision.

Revised Law
Sec. 67.044. SUSPENSION OR REVOCATION OF DEPUTY BRANCH PILOT'S CERTIFICATE. A deputy branch pilot certificate may be suspended or revoked by the board in the same manner and for the same reasons as provided for the suspension or revocation of a branch pilot's license by Section 67.043. (V.A.C.S. Art. 8280b, Sec. 4.11(c).)

Source Law
Sec. 4.13. (a) If a person who is not licensed or certified under this Act pilots a vessel in...
violation of this Act, that person and the consignee of
the vessel are liable to a state licensed or certified
pilot in that jurisdiction, on written demand, for an
amount equal to the pilotage rates that would have been
applicable.
(b) If suit is filed to collect the compensation
owed to a pilot under Subsection (a) of this section,
the court may include in any final judgment in favor of
the pilot an award to cover court costs and reasonable
attorney's fees.

Revisor's Note
(End of Subchapter)

The revised law omits as executed the transition
language of Section 6.02, V.A.C.S. Article 8280b, that
relates to expiration of licenses and certificates of
branch pilots and deputy branch pilots appointed before
the effective date of Article 8280b (September 1,
1985). A branch pilot commissioned under V.A.C.S.
Article 8270 (codified as Section 63.041 of this code),
which applied to the ports of Galveston County before
enactment of Article 8280b, had a term that would
expire not later than September 1, 1989. Section 6.02
requires license renewal under Article 8280b after that
date. Section 6.02 required deputy branch pilots to be
issued certificates that would expire not later than
September 1, 1987. The omitted section reads:

Sec. 6.02. (a) Persons who are
branch pilots serving a port covered under
this Act on the effective date of this Act
shall continue to serve as branch pilots
until their current commissions expire, at
which time each will be eligible for
license renewal under the license renewal
provisions of this Act, and those branch
pilots shall be governed by this Act from
its effective date.
(b) Persons who were appointed
deputy branch pilots before the effective
date of this Act shall be issued deputy
branch pilot certificates by the board in
whose jurisdiction they are acting as
deputy branch pilots on requesting the
certificate in writing and without having
to comply with other procedural provisions
of this Act. A certificate shall be issued
for a term of two years unless the deputy
branch pilot has less than two years to
serve as a deputy branch pilot in which
case the certificate shall be issued for
the remaining time the deputy is required
to serve. Deputy branch pilots in ports
covered by this Act shall be governed by this Act from its effective date.

[Sections 67.046-67.060 reserved for expansion]

SUBCHAPTER D. PILOTAGE RATES

Revised Law

Sec. 67.061. PILOTAGE RATE CHANGE. The board may not change pilotage rates before the first anniversary of the preceding rate change. (V.A.C.S. Art. 8280b, Sec. 5.03(j).)

Source Law

(j) New pilotage rates may not be established more often than once every 12 months.

Revised Law

Sec. 67.062. PILOTAGE RATE CHANGE APPLICATION. (a) An application for a change in a pilotage rate may be filed with each commissioner of the board by:

(1) one or more pilots; or

(2) the owner, agent, or consignee of a vessel navigating to or from a Galveston County port.

(b) The application must contain:

(1) a brief statement of the circumstances that warrant the change; and

(2) a certification that the applicant has submitted copies of the application to all known pilots, consignees, and associations of consignees operating in Galveston County at the time of the application. (V.A.C.S. Art. 8280b, Sec. 5.03(a).)

Source Law

Sec. 5.03. (a) An application for the establishment of a new rate of pilotage may be filed with each commissioner by one or more pilots or by the owner, agent, or other person defined as consignee of a vessel; provided such application for increase or decrease of rates shall contain a brief statement of the circumstances which, it is alleged, warrant the requested action of the commissioners and shall also contain a certificate that the applicant has submitted copies of the application to all known pilots and to all known consignees and to all known associations of consignees operating in Galveston County at the time of the application.
The revised law adds the qualifying language "navigating to or from a Galveston County port" in Subsection (a)(2) because this chapter applies only to those vessels.

Sec. 67.063. OBJECTION; HEARING.  (a) If, not later than the 20th day after the date notice is sent, a commissioner receives a written objection to the application from any person who appears to have a legitimate interest in the application, the board shall hold a hearing as provided by this section.

(b) The board shall hold the hearing not later than the 20th day after the date the 20-day period provided by Subsection (a) expires.

(c) The board shall give notice of the hearing to:

(1) each applicant;

(2) each person objecting to the application; and

(3) any other person the board determines is interested in the proceedings.

(d) The hearing shall be open to the public and held at a convenient public place in one of the ports that would be affected by the change. Each party who demonstrates a legitimate interest in the application is entitled to be heard, to present evidence, and, to the extent the board considers practical, to cross-examine testifying witnesses. (V.A.C.S. Art. 8280b, Secs. 5.03(c) (part), (d)).

In the event any commissioner receives in writing an objection to the application from any person, firm, or corporation who appears to have a legitimate interest in the application within 20 days after notice of the filing of the application was given, the commissioners shall hold a hearing within 20 days after the expiration of the initial 20-day notice period for the filing of any objection to the application and shall notify the applicants, the persons objecting to the application, and such other parties as the commissioners may in their sole discretion determine.
discretion determine to be interested in the
proceedings . . . .
(d) Said hearing shall be held at a convenient
and public place in any one of the ports affected and
shall be open to the public. At the hearing all
parties, upon demonstrating a legitimate interest in
the application, shall have the right to be heard, to
present evidence and, to the extent deemed practical by
the commissioners, to cross-examine the witnesses
appearing to testify at the hearing.

Revisor's Note
Section 5.03(c), V.A.C.S. Article 8280b, refers
to a "person, firm, or corporation." The reference to
"firm, or corporation" is omitted from the revised law
because under Section 311.005(2), Government Code (Code
Construction Act), "person" is defined to include a
corporation or any other legal entity. That definition
applies to the revised law.

Revised Law
Sec. 67.064. BOARD ACTION ON APPLICATION. (a) If an
objection to an application for a rate change is not received by
any commissioner within the period provided by Section 67.063(a),
the board shall act on the application without further proceedings.
(b) If a hearing is held as provided by Section 67.063, the
board shall grant, deny, or modify the application after receipt of
the evidence offered by the parties and arguments and briefs
requested by the board. (V.A.C.S. Art. 8280b, Secs. 5.03(b)
(part), (e).)

Source Law
(b) In the event the notice required is in fact
given and no written objection on the part of any
legitimately interested party is received by any
commissioner within 20 days after said notice is sent,
the commissioners shall proceed to act upon the
application as they see fit without further
proceedings . . . .
(e) After receipt of the evidence offered by the
parties and such arguments and briefs as the
commissioners may desire to receive, the application
shall be granted, denied, or modified by the
commissioners.
Sec. 67.065. PILOT FINANCIAL REPORT. (a) Not later than the 10th day before the date set for a pilotage rate hearing, the pilots who are licensed or certified to serve the port for which the rates are being considered shall submit in writing to the board and to any party designated by the board complete accounts of:

(1) all amounts received from performing pilot services, organized by categories or classifications of rates, if rates are set in that manner;

(2) all earnings from capital assets devoted to providing pilot services;

(3) all expenses incurred in connection with activities for which amounts described by Subdivisions (1) and (2) were received and earned; and

(4) estimates of receipts and expenses anticipated to result from the requested changes in pilotage rates.

(b) The pilots shall provide the information for:

(1) the calendar or fiscal year preceding the date of the pilotage rate change application; and

(2) the subsequent period to within 60 days of the date of the application.

(c) The board may require relevant additional information it considers necessary to determine a proper pilotage rate. (V.A.C.S. Art. 8280b, Sec. 5.04.)

Sec. 5.04. (a) At least 10 days before the date set for a pilotage rate hearing, the pilots who are licensed or certified to serve the port for which new pilotage rates are being considered shall submit in writing to the board and to any party designated by the board complete accounts of:

(1) all amounts received from performance of pilot services, organized by categories or classifications of rates, if rates are set in that manner;

(2) all earnings from capital assets devoted to providing pilot service;

(3) all expenses incurred in connection with activities for which these amounts were received and earned; and

(4) estimates of receipts and expenses anticipated to result from the requested changes in
pilotage rates.
(b) The information shall be provided for the calendar or fiscal year closest preceding the date of the application, updated to be within 60 days of the date of the application.
(c) The board may require relevant additional information it considers necessary to determine proper pilotage rates.

Revised Law
Sec. 67.066. FACTORS FOR BOARD CONSIDERATION. In acting on a pilotage rate change application, the board shall consider:
(1) characteristics of vessels to be piloted;
(2) the average number of hours spent by a pilot in performing pilot services;
(3) costs to pilots to provide the required pilot services;
(4) the effect, including economic factors affecting the shipping industry in the area, that the granting, refusal, or modification of the application would have on Galveston County ports and the persons residing in the board's jurisdiction;
(5) an adequate and reasonable compensation for the pilots and a fair return on the equipment and vessels that the pilots employ in connection with pilot duties; and
(6) the relationship between the pilotage rates in Galveston County ports and the rates applicable in other ports of this state and in competitive ports in other states. (V.A.C.S. Art. 8280b, Sec. 5.03(f).)

Source Law
(f) In determining their action upon any application, the commissioners shall consider:
(1) characteristics of vessels to be piloted;
(2) the average number of hours spent by a pilot in the performance of pilot services;
(3) costs to pilots to provide the required pilot services;
(4) the effect, including economic factors affecting the shipping industry within the area, which the granting, refusal, or modification of the application would have upon the port or ports within the jurisdiction of the commissioners and the citizens residing in it;
(5) an adequate and reasonable compensation to the pilots and a fair return upon the equipment and vessels which they employ in connection
with their duties;

(6) the relationship between the pilotage
rates in the ports under the commissioners' 
jurisdiction and the rates applying in other ports of 
this state and competitive ports in other states.

Revised Law

Sec. 67.067. BOARD ACTION. (a) A board order granting,
denying, or modifying an application for a rate change must state 
its effective date. The order is final, except as provided by 
Subsection (b).

(b) Any party aggrieved by the board's order may, after 
exhausting all administrative remedies, appeal the order to a 
court. (V.A.C.S. Art. 8280b, Secs. 5.03(g), (i) (part), 5.05.)

Source Law

[Sec. 5.03]

(g) The action of the commissioners in granting, 
denying, or modifying the application shall be final.

(i) ... and said order shall state when it is 
effective. ...

Sec. 5.05. Any party aggrieved by the decision 
may seek judicial review of the board's decision after 
all administrative remedies have been exhausted.

Revised Law

Sec. 67.068. REPORTING AND STENOGRAPHIC COSTS. (a) The 
board may assess the actual costs the board considers fair and just 
for reporting and stenographic services necessarily incurred in 
connection with a hearing against one or more of the applicants and 
objecting parties.

(b) The board may require that an applicant or objecting 
party deposit an amount against those costs as a condition of 
presenting an application or objection. (V.A.C.S. Art. 8280b, Sec. 
5.03(h).)

Source Law

(h) The commissioners shall have the authority 
to assess the actual cost of reporting and secretarial 
services necessarily incurred in connection with any 
hearing against one or more of the applicants and 
objecting parties as shall appear to the commissioners 
to be fair and just. The commissioners may further 
require that any applicant or objecting party deposit a
sum against said costs as a condition of presenting its application or objection. The costs authorized by this subsection shall be strictly limited to the actual and reasonable costs of reporting and stenographic services.

Revisor's Note
Section 5.03(h), V.A.C.S. Article 8280b, limits the costs of reporting and stenographic services to "actual and reasonable" costs. The revised law omits "reasonable" because it is included in the requirement that the costs be limited to those the board considers fair and just.

Revised Law
Sec. 67.069. ORDER FILED. (a) The board shall file a copy of its order with the county clerk. (b) The board shall file the order not later than the 20th day after:

(1) the closing date of a hearing held as provided by Section 67.063(b); or
(2) if the hearing is not held, the expiration of the period provided by Section 67.063(a). (V.A.C.S. Art. 8280b, Secs. 5.03(b) (part), (c) (part), (i) (part).)

Source Law
(b) ... and shall file their action thereupon with the county clerk as provided in Subsection (i) of this section, within 20 days after the initial 20-day notice period.
(c) ... and shall file their decision with the county clerk as provided in Subsection (i) of this section within 20 days after the close of the hearing.

(i) A copy of the commissioners' order with respect to the application shall be filed in the office of the county clerk . . . .

Revised Law
Sec. 67.070. EMERGENCY PILOTAGE RATES. (a) The board may establish emergency pilotage rates for the period of an emergency, not to exceed 30 days, if the board finds that:

(1) a natural or man-made disaster has created a
substantial hazard to piloting vessels into and out of a port; and
(2) the existence of the hazard overrides the necessity to comply with normal pilotage rate-setting procedures.
(b) In adopting emergency pilotage rates, the board is not required to comply with the procedures in this chapter or in its rules relating to adoption of pilotage rates.
(c) Emergency pilotage rates may not be appealed.
(d) The board shall adopt rules to carry out this section.

(V.A.C.S. Art. 8280b, Sec. 5.06.)

Source Law
Sec. 5.06. (a) The board may establish emergency pilotage rates, for periods not to exceed 30 days, to replace existing pilotage rates for the period of the emergency if the board finds that a natural or man-made disaster has created a substantial hazard to piloting vessels into and out of a port and that the existence of this hazard overrides the necessity to comply with normal pilotage rate-setting procedures.
(b) In adopting emergency pilotage rates, the board is not required to comply with the procedures in this Act and in its rules relating to adoption of pilotage rates. Emergency pilotage rates may not be appealed.
(c) The board shall adopt rules to carry out the provisions of this section.

Revised Law
Sec. 67.071. PILOT SERVICES REQUIRED. The consignee of a vessel under the consignee's control shall obtain pilot services for the vessel and shall pay the pilot who pilots the vessel into and out of the port area compensation according to the pilotage rates filed by the board. (V.A.C.S. Art. 8280b, Secs. 5.03(i) (part), 5.07(a), 6.01(a).)

Source Law
[Sec. 5.03]
(i) No pilotage charges . . . shall be made with respect to the ports of Galveston County except pursuant to such an order so filed by the commissioners.

Sec. 5.07. (a) Compensation based on lawfully established pilotage rates shall be paid by the consignee liable for its payment for vessels employing pilots.

Sec. 6.01. (a) The consignee for each vessel is responsible for obtaining pilot services for the vessel
under the consignee's control and for paying compensation based on pilotage rates adopted under this Act to the pilots who pilot the vessel into and out of the port area.

Revisor's Note

Section 5.03(i), V.A.C.S. Article 8280b, refers to pilotage charges in existence at the time the statute was passed. The revised law omits this reference as unnecessary. Pilotage charges may be made in accordance with rates adopted by the board of pilot commissioners. The omitted provision reads:

[No pilotage charges] in excess of those in existence at the time of passage of this Act [shall be made] . . . .

Revised Law

Sec. 67.072. PILOTAGE RATE LIABILITY. (a) A pilot who charges a pilotage rate for pilot services different from the pilotage rates established under this chapter for the port in which the pilot serves is liable to each person who was charged the different rate for double the amount of pilotage.

(b) A court may include in a judgment in favor of a person who files suit to collect an amount owed under this chapter an award to cover court costs and reasonable attorney's fees. (V.A.C.S. Art. 8280b, Secs. 5.07(b), (c).)

Source Law

(b) A pilot who charges pilotage rates different from those established under this Act for the port in which he serves as a pilot is liable to each person who was charged a pilotage rate other than the lawfully authorized pilotage rate for double the amount of pilotage.

(c) If a person must file suit to collect the amount owed under this section, the court may include in any final judgment in favor of that person an award to cover court costs and reasonable attorney's fees.

Revised Law

Sec. 67.073. RECOVERY OF COMPENSATION. A pilot who offers pilot services to a vessel required under this chapter to obtain pilot services and whose services are refused is entitled to
recover from the consignee the pilotage rate for the service.

(V.A.C.S. Art. 8280b, Sec. 6.01(b).)

Source Law

(b) Each pilot who lawfully offers to serve a vessel but is denied such service is entitled to recover compensation based on pilotage rates adopted under this Act from the consignee in any court of competent jurisdiction.

Reviser's Note

Section 6.01(b), V.A.C.S. Article 8280b, refers to a suit brought "in any court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Reviser's Note

(End of Subchapter)

The revised law omits as executed Sections 5.01 and 5.02, V.A.C.S. Article 8280b, which maintained pilotage rates in effect on the effective date of the original enactment of Article 8280b until the board adopted other rates. The board has adopted more recent pilotage rates. The omitted sections read:

Sec. 5.01. Pilotage rates in effect on the effective date of this Act remain in effect until the board adopts other pilotage rates.

Sec. 5.02. Before different pilotage rates are adopted by the board under this Act, notice shall be given and a hearing held.

[Sections 67.074-67.080 reserved for expansion]
SUBCHAPTER E. PILOT LIABILITY

Revised Law

Sec. 67.081. PURPOSE. The purpose of this subchapter is to:
(1) in the public interest, stimulate and preserve maritime commerce on the pilotage grounds of this state by limiting and regulating the liability of pilots; and
(2) maintain pilotage fees at reasonable amounts.
(V.A.C.S. Art. 8280b, Sec. 7.01.)

Source Law

Sec. 7.01. (a) The stimulation and preservation of maritime commerce on the pilotage grounds of this state are declared to be affected with the public interest, and the limitation and regulation of liability of pilots are necessary to such stimulation and preservation of maritime commerce and are considered to be in the public interest.
(b) To accomplish the stimulation and preservation of maritime commerce it is necessary to limit the liability of pilots.
(c) The legislature declares that this article is designed to effect the ends and purposes listed in this section and to maintain pilotage fees at reasonable levels.

Revised Law

Sec. 67.082. PILOT LIABILITY. A pilot is not liable directly or as a member of an organization of pilots for a claim that:
(1) arises from an act or omission of another pilot or organization of pilots; and
(2) relates directly or indirectly to pilot services.
(V.A.C.S. Art. 8280b, Sec. 7.02.)

Source Law

Sec. 7.02. A pilot is not liable either directly or as a member of an organization of pilots for any claims arising from acts or omissions of any other pilot or organization of pilots that relate directly or indirectly to pilot services.

Revised Law

Sec. 67.083. PILOT LIABILITY LIMITED. (a) A pilot providing pilot services is not liable for more than $1,000 for
damage or loss caused by the pilot's error, omission, fault, or neglect in the performance of the pilot services, except as provided by Subsection (b).

(b) Subsection (a) does not apply to:

(1) damage or loss that arises because of the wilful misconduct or gross negligence of the pilot;

(2) liability for exemplary damages for gross negligence of the pilot and for which no other person is jointly or severally liable; or

(3) an act or omission relating to the ownership and operation of a pilot boat unless the pilot boat is directly involved in pilot services other than the transportation of pilots.

(c) This section does not exempt a vessel or its owner or operator from liability for damage or loss caused by the vessel to a person or property on the grounds that:

(1) the vessel was piloted by a pilot; or

(2) the damage or loss was caused by the error, omission, fault, or neglect of a pilot.

(d) In an action brought against a pilot for an act or omission for which liability is limited as provided by this section and in which other claims are made or anticipated with respect to the same act or omission, the court shall dismiss the proceedings as to the pilot to the extent the pleadings allege pilot liability that exceeds $1,000. (V.A.C.S. Art. 8280b, Sec. 7.03.)

Source Law

Sec. 7.03. (a) A ship's pilot licensed to act as a pilot by this state and providing service to or from ports of Galveston County, Texas, is not liable for damages in excess of the amount of $1,000 for damage or loss occasioned by the pilot's errors, omissions, fault, or neglect in the performance of pilot services, except as may arise by reason of the wilful misconduct or gross negligence of the pilot.

(b) This section does not exempt the vessel or its owner or operator from liability for damage or loss occasioned by that ship to a person or property on the grounds that:

(1) the ship was piloted by a pilot licensed under this Act; or

(2) the damage or loss was occasioned by the error, omission, fault, or neglect of a pilot licensed under this Act.
(c) A pilot is not liable in excess of the amount of $1,000 for any injury, damage, loss, or expense to any legal entity arising out of or connected with any act or omission that relates directly or indirectly to the performance of pilot services. However, this limitation of liability does not apply to:

(1) wilful misconduct on the part of the pilot;
(2) liability for exemplary damages based on the gross negligence of the pilot for which no other person is jointly or severally liable; or
(3) acts or omissions relating to the ownership and operation of the pilot boats unless the pilot boat is directly involved in pilot services other than the transportation of pilots.

(d) If a suit or action is brought in a court against a pilot for an act or omission for which liability is limited as provided by this section and other claims are made or anticipated in respect of the same act or omission, the court shall dismiss the proceedings as to the pilot to the extent the pleadings allege liability of the pilot exceeding $1,000.

Reviser's Note
(End of Chapter)

(1) The revised law omits Section 6.03, V.A.C.S. Article 8280b, a saving provision from the original enactment of that article. The saving provision continued the law in effect before the adoption of Article 8280b for purposes of any pending litigation. Under Section 311.031, Government Code, any remaining effect of that saving provision is continued notwithstanding the repeal of Article 8280b by the revision. The omitted section reads:

Sec. 6.03. This Act does not apply to any matter that on the effective date of this Act is involved in litigation, and the law in effect before the adoption of this Act shall continue to apply to such litigation and shall continue in effect for that limited purpose.

(2) The revised law omits as executed the effective date section of the original enactment of V.A.C.S. Article 8280b. The omitted section reads:

Sec. 6.04. This Act takes effect on September 1, 1985.
CHAPTER 68. BRAZORIA COUNTY PILOTS LICENSING AND REGULATORY ACT

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Revised Law

Sec. 68.001. SHORT TITLE. This chapter may be cited as the Brazoria County Pilots Licensing and Regulatory Act. (V.A.C.S. Art. 8280c, Sec. 1.01.)

Source Law

Art. 8280c
Sec. 1.01. This Act may be cited as the Brazoria County Pilots Licensing and Regulatory Act.

Revised Law

Sec. 68.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of pilot commissioners for Brazoria County ports.

(2) "Brazoria County port" means a place in Brazoria County into which a vessel enters or from which a vessel departs and the waterway leading to that place from the Gulf of Mexico.

(3) "Consignee" means a person, including a master,
owner, agent, subagent, firm, or corporation or any combination of those persons, who enters or clears a vessel at the office of the collector of customs.

(4) "Pilot" means a person who is licensed and commissioned as a branch pilot or certified as a deputy branch pilot under this chapter.

(5) "Pilotage rate" means the remuneration a pilot may lawfully charge a vessel for the pilot's services.

(6) "Pilot services" means acts of a pilot in conducting a vessel through the navigable water in this state and the ports in which the pilot is licensed or certified as a pilot.

(7) "Vessel" means an oceangoing vessel. (V.A.C.S. Art. 8280c, Secs. 1.02(1), (2), (3), (4), (5), (6), (7).)

Source Law
Sec. 1.02. In this Act:
(1) "Pilot" means a person who is licensed and commissioned as a branch pilot or certified as a deputy branch pilot under this Act.
(2) "Board" means the board of pilot commissioners created under this Act.
(3) "Pilotage rates" means the amount of remuneration a pilot may lawfully charge vessels for his services.
(4) "Pilot services" means acts of a pilot in conducting a vessel through the navigable water within the boundaries of the state and the ports in which he is licensed or certified as a pilot.
(5) "Vessel" means every oceangoing vessel navigating the water within the board's jurisdiction except vessels exempt from payment of pilotage rates under this Act.
(6) "Port" means a place in this state into which vessels enter or from which vessels depart that is located in Brazoria County and the waterway leading to that place from the Gulf of Mexico.
(7) "Consignee" means the master, owner, agent, subagent, person, firm, or corporation or any combination of these that enters or clears a vessel at the office of the collector of customs.

Revisor's Note
The revised law omits the language in the definition of "vessel" in Section 1.02(5), V.A.C.S. Article 8280c, that refers to vessels navigating the water in the board's jurisdiction because Section 1.03, V.A.C.S. Article 8280c, codified as Section 68.003 of
this code, states that the chapter applies only to Brazoria County ports and it is unnecessary to restate that in the definition. The revised law also omits the language in the definition of "vessel" that excepts a vessel exempt from payment of pilotage rates under V.A.C.S. Article 8280c. The reference is omitted as unnecessary because Article 8280c contains an exemption only from the required use of a licensed pilot for a vessel exempt from payment of state pilotage rates under federal law. See Section 1.04, codified as Section 68.032 of this code.

Revised Law

Sec. 68.003. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a Brazoria County port.

(b) This chapter does not affect laws relating to a port in another county and those laws do not apply to a Brazoria County port. (V.A.C.S. Art. 8280c, Secs. 1.03, 6.04.)

Source Law

Sec. 1.03. This Act applies to all ports located in Brazoria County.

Sec. 6.04. This Act does not affect the existing laws for ports in other counties of this state and those laws have no application to the ports under this Act.

Revised Law

Sec. 68.004. VENUE. A suit to enforce a claim, right, or cause of action provided by this chapter shall be brought in Brazoria County. (V.A.C.S. Art. 8280c, Sec. 6.03(b).)

Source Law

(b) The venue for a suit brought for the enforcement of a claim, right, or cause of action provided by this Act is in Brazoria County.

[Sections 68.005-68.010 reserved for expansion]
SUBCHAPTER B. BOARD OF PILOT COMMISSIONERS

Revised Law

Sec. 68.011. BOARD. The board of pilot commissioners for the ports of Brazoria County is composed of the navigation and canal commissioners of the Brazos River Harbor Navigation District of Brazoria County. (V.A.C.S. Art. 8280c, Secs. 2.01, 2.02.)

Source Law

Sec. 2.01. A board of pilot commissioners is created for the ports of Brazoria County.
Sec. 2.02. The board is composed of the navigation and canal commissioners of the Brazos River Harbor Navigation District of Brazoria County.

Revised Law

Sec. 68.012. PROHIBITED INTEREST. A person may not be a member of the board if the person, directly or indirectly, is engaged in or has any interest in a pilot boat business, towing business, or other business affected by or connected with the performance of the person's duties as a pilot commissioner. (V.A.C.S. Art. 8280c, Sec. 2.03.)

Source Law

Sec. 2.03. A person who is engaged or has any interest, directly or indirectly, in any pilot boat business, towing business, or other business affected by or connected with the performance of the person's duties as a pilot commissioner may not be a member of the board.

Revised Law

Sec. 68.013. OATH. Before beginning service as a board member, each board member must take and sign, before a person authorized to administer oaths, an oath to faithfully and impartially discharge the duties of the office. (V.A.C.S. Art. 8280c, Sec. 2.04.)

Source Law

Sec. 2.04. Before beginning to serve as a member of the board, each board member shall take and subscribe, before someone authorized to administer oaths, an oath to discharge faithfully and impartially the duties of the office.
Revisor's Note

Section 2.04, V.A.C.S. Article 8280c, requires a board member to "subscribe . . . an oath." The revised law substitutes "sign" for "subscribe" to reflect modern usage.

Revised Law

Sec. 68.014. TERM OF OFFICE. A board member serves a term of office that coincides with the member's term as a navigation and canal commissioner. (V.A.C.S. Art. 8280c, Sec. 2.05.)

Source Law

Sec. 2.05. Each person who serves on the board holds office as a member of the board for a term that coincides with the member's term as a navigation and canal commissioner of the Brazos River Harbor Navigation District of Brazoria County.

Revised Law

Sec. 68.015. JURISDICTION. The board has exclusive jurisdiction over the piloting of vessels in Brazoria County ports, including intermediate stops and landing places for vessels on navigable streams wholly or partially located in the board's jurisdiction. (V.A.C.S. Art. 8280c, Sec. 2.07.)

Source Law

Sec. 2.07. The board shall have exclusive jurisdiction over piloting of vessels in this state between the Gulf of Mexico and the ports within the board's jurisdiction, as well as intermediate stops and landing places for vessels on navigable streams wholly or partially located within the board's jurisdiction.

Revisor's Note

Section 2.07, V.A.C.S. Article 8280c, refers in part to the board's jurisdiction over vessels "between the Gulf of Mexico and the ports within the board's jurisdiction." The revised law substitutes a reference to Brazoria County ports because the chapter applies only to Brazoria County ports and the omitted language is included in the definition of "Brazoria County
Sec. 68.016. ADMINISTRATION; RULES. (a) The board shall administer this chapter and may perform any act or function necessary to carry out its powers and duties under this chapter. (b) The board may adopt rules to carry out this chapter. (V.A.C.S. Art. 8280c, Sec. 2.06.)

Sec. 2.06. The board shall administer this Act in each of the ports within its jurisdiction and may adopt rules to carry out this Act and may perform any acts or functions necessary to carry out those powers and duties under this Act.

Sec. 68.017. DUTIES. The board shall:
(1) recommend to the governor the number of pilots necessary to provide adequate pilot services for each Brazoria County port;
(2) accept applications for pilot licenses and certificates and determine whether each applicant meets the qualifications for a pilot;
(3) provide the names of all qualified applicants for certificates to the Brazos Pilots Association;
(4) submit to the governor the names of persons who have qualified under this chapter to be commissioned as branch pilots;
(5) establish pilotage rates;
(6) approve the locations for pilot stations;
(7) establish times during which pilot services will be available;
(8) hear and determine complaints relating to the conduct of pilots;
(9) recommend to the governor each pilot whose license or certificate should not be renewed or should be revoked;
adopt rules and issue orders to pilots or vessels when necessary to secure efficient pilot services;

(11) institute investigations or hearings or both to consider casualties, accidents, or other actions that violate this chapter;

(12) provide penalties to be imposed on a person who is not a pilot for a Brazoria County port who pilots a vessel into or out of the port; and

(13) approve a training program for deputy branch pilots. (V.A.C.S. Art. 8280c, Sec. 2.08 (part).)

Source Law

Sec. 2.08. The board shall:
(1) recommend to the governor the number of pilots necessary to provide adequate pilot services for each port under the board's jurisdiction;
(2) accept applications for pilot licenses and certificates and determine whether each applicant meets the qualifications for a pilot or deputy pilot in this Act;
(3) provide the names of all qualified applicants for certificates to the pilot association;
(4) submit to the governor the names of persons who have qualified under this Act to be commissioned as branch pilots;
(5) establish pilotage rates to be charged for piloting vessels within the board's jurisdiction;
(6) approve the locations for pilot stations;
(7) establish times during which pilot services will be available;
(8) hear and determine complaints relating to the conduct of pilots;
(9) recommend to the governor any pilot whose license or certificate should not be renewed or should be revoked;
(10) adopt rules and issue orders to pilots and vessels when necessary to secure efficient pilot services within the board's jurisdiction;
(11) institute investigations or hearings or both to consider casualties, accidents, or any other action that violates this Act;
(12) provide penalties to be imposed on any person who is not appointed and commissioned a branch pilot for the port who pilots any ship or vessel into or out of the port, channel, or waterway under the jurisdiction of the board;
(13) approve a training program for deputy branch pilots; and . . . .

Revised Law

Sec. 68.018. PILOT REVIEW BOARD. The board shall establish a pilot review board, consisting of two branch pilots and three
members of the marine industry who reside in Brazoria County, to
hear and review complaints against pilots and to make
recommendations to the board concerning the complaints. (V.A.C.S.
Art. 8280c, Sec. 2.08 (part).)

Source Law

Sec. 2.08. The board shall:

(14) establish a pilot review board,
consisting of two branch pilots and three members of
the marine industry who reside in Brazoria County, to
hear and review complaints against pilots and to make
recommendations to the board concerning the complaints.

Revised Law

Sec. 68.019. UNFAIR DISCRIMINATION PROHIBITED. (a) In all
its duties, including rulemaking, the board may not sanction
discriminatory practices or discriminate against a pilot or
applicant because of race, religion, sex, ethnic origin, or
national origin.

(b) A person seeking a remedy for a violation of this
section must bring suit in a district court in Brazoria County.
(V.A.C.S. Art. 8280c, Sec. 2.09.)

Source Law

Sec. 2.09. (a) In all its duties, including
rule making, the board may not sanction discriminatory
practices or discriminate against any applicant,
licensed pilot, branch pilot, or deputy branch pilot on
account of race, religion, sex, ethnic origin, or
national origin.

(b) Remedies for a violation of this section
shall be sought as provided in Section 3.03 of this Act.

Revisor's Note

The source law refers to bringing suit in the
manner provided by Section 3.03, V.A.C.S. Article 8280c
(codified as Section 68.022 of this code). The revised
law substitutes the substance of the language in that
section relating to bringing suit.
Revised Law

Sec. 68.020. OPEN MEETINGS LAW. Chapter 551, Government Code, applies to actions and proceedings under this chapter.

(V.A.C.S. Art. 8280c, Sec. 3.01.)

Source Law

Sec. 3.01. Except as specifically provided by this Act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), applies to actions and proceedings under this Act.

Revisor's Note

Section 3.01, V.A.C.S. Article 8280c, states that the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), applies to actions and proceedings under Article 8280c. The open meetings law is codified as Chapter 551, Government Code, and the revised law is drafted accordingly. Section 3.01 also states the open meetings law applies "[e]xcept as specifically provided by this Act." The revised law omits that language because there are no specific exceptions in this chapter.

Revised Law

Sec. 68.021. RULE OR RATE CHANGE. (a) The board shall give at least 10 days' notice as provided by this section before the board adopts a rule or changes a pilotage rate.

(b) The board shall mail the notice and a copy of the proposed rule or change by registered mail to:

(1) each Brazos Pilots Association office; and

(2) all known consignees and all known associations of consignees operating in Brazoria County.

(c) The board shall post a copy of the proposed rule or change at the county courthouse for public inspection. (V.A.C.S. Art. 8280c, Sec. 3.02.)
Sec. 3.02. The board shall give at least 10 days' notice of its intention to adopt a rule or to change pilotage rates by mailing by registered mail notice to the pilot association office or offices and to all known consignees and to all known associations of consignees operating in Brazoria County at that time. A copy of the proposed rule or change shall be included with the notice. In addition, a copy of the proposed rule or change shall be posted at the county courthouse for public inspection.

Sec. 68.022. JUDICIAL REVIEW. Proceedings for judicial review of a board decision shall be brought in a district court in Brazoria County. (V.A.C.S. Art. 8280c, Sec. 3.03.)

Sec. 3.03. Proceedings for judicial review of a board decision shall be brought in a district court in Brazoria County.

[Sections 68.023-68.030 reserved for expansion]

SUBCHAPTER C. PILOT LICENSES AND CERTIFICATES

Sec. 68.031. LICENSE OR CERTIFICATE REQUIRED. A person may not provide pilot services unless the person has a license or certificate issued under this chapter for the Brazoria County ports in which the pilot services are to be provided. (V.A.C.S. Art. 8280c, Sec. 4.01.)

Sec. 4.01. A person may not provide pilot services as a branch pilot or deputy branch pilot unless that person has a valid license or certificate issued under this Act for the ports within the jurisdiction of the board in which the pilot services are to be provided.

Revisor's Note

Section 4.01, V.A.C.S. Article 8280c, refers to a person providing pilot services without a valid license or certificate. The revised law omits "valid" as unnecessary. A document purporting to be a license or
certificate is no longer a license or certificate if it is expired and is not a license or certificate if it is a forgery.

Revised Law
Sec. 68.032. EXEMPTION. The requirement to use a pilot does not apply to a vessel exempt under federal law from payment of state pilotage rates. (V.A.C.S. Art. 8280c, Sec. 1.04.)

Source Law
Sec. 1.04. The requirement to use a licensed pilot under this Act does not apply to a vessel exempt from payment of state pilotage rates under federal law.

Revised Law
Sec. 68.033. QUALIFICATIONS FOR LICENSE. To be eligible for a license as a branch pilot, a person must:

(1) be at least 25 years of age;

(2) be a United States citizen;

(3) as of the date the license is issued, have resided continuously in this state for at least two years;

(4) have at least two years' service as a deputy branch pilot and have successfully completed the board-approved training program;

(5) have controlled the navigation of vessels such as the person would pilot;

(6) have extensive experience in the docking and undocking of vessels;

(7) be licensed under federal law to act as a pilot on vessels that navigate water on which the applicant will furnish pilot services;

(8) be in good mental and physical health;

(9) have good moral character; and

(10) possess the requisite skill as a navigator and pilot to perform competently and safely the duties of a branch pilot. (V.A.C.S. Art. 8280c, Sec. 4.02.)
Sec. 4.02. (a) To be eligible for a license as a branch pilot for ports within the jurisdiction of the board, a person must:

(1) be at least 25 years of age;
(2) be a United States citizen;
(3) as of the date that the license is issued, have resided in the state for a continuous period of not less than two years;
(4) have at least two years' service as a deputy branch pilot and have successfully completed the board-approved training program;
(5) have exercised control of navigation of vessels such as the person would pilot;
(6) have extensive experience in the docking and undocking of oceangoing vessels; and
(7) be licensed under federal law to act as a pilot on vessels that navigate water on which the applicant will furnish pilot services.

(b) In addition to the qualifications in Subsection (a) of this section, the applicant must be found by the board to be in good mental and physical health, to have good moral character, and to possess the requisite skill as a navigator and pilot to perform competently and safely the duties of a branch pilot.

Sec. 68.034. QUALIFICATIONS FOR CERTIFICATE. To be eligible for a certificate as a deputy branch pilot, a person must:

(1) be at least 25 years of age;
(2) be a United States citizen;
(3) be appointed by a branch pilot;
(4) be in good mental and physical health;
(5) have good moral character; and
(6) possess the requisite skill to perform competently and safely the duties of a deputy branch pilot. (V.A.C.S. Art. 8280c, Sec. 4.03.)
Sec. 68.035. APPLICATION FOR LICENSE OR CERTIFICATE. (a) To apply for a branch pilot's license or a deputy branch pilot's certificate, a person must give the board a written application in the form and manner required by board rule.

(b) The board may require an applicant to include with an application:

(1) a certification by a medical doctor, dated not earlier than the 15th day before the date of the application, stating that in the doctor's opinion the applicant on the date of the certification possesses the mental and physical health necessary to perform competently and safely the duties of a branch pilot or deputy branch pilot, as applicable; or

(2) a certification by a medical doctor, dated not earlier than the 15th day before the date the application is filed, certifying that the applicant's body on the date of the certification is free of evidence of the presence of illegal drugs or chemicals. (V.A.C.S. Art. 8280c, Secs. 4.04, 4.05(d).)

Source Law

Sec. 4.04. (a) An applicant for a branch pilot's license or a deputy branch pilot's certificate shall submit a written application to the board. (b) The application shall be submitted to the board in the form and in the manner required by the board in its rules.

[Sec. 4.05]

(d) The board may require that each application for a license or certificate be accompanied by:

(1) a certification by a medical doctor bearing a date not earlier than 15 days before the date of the application, certifying that in the opinion of the doctor the applicant on the date of the certification possesses the mental and physical health necessary to perform competently and safely the duties of deputy pilot or branch pilot, as applicable; or

(2) a certification of a medical doctor bearing a date not earlier than the 15th day before the day the application is filed, certifying that the applicant's body on the date of the certification is free of evidence of the presence of illicit drugs or chemicals.
Reviser's Note
Section 4.05(d)(2), V.A.C.S. Article 8280c, refers to "illicit drugs or chemicals." The revised law substitutes "illegal" for "illicit" to reflect modern usage.

Revised Law
Sec. 68.036. CONSIDERATION OF APPLICATION. (a) The board shall carefully consider each application and shall conduct any investigation it considers necessary to determine whether an applicant is qualified for a license or certificate.
(b) As part of its consideration of applications for licenses and certificates, the board may develop and administer examinations to determine an applicant's knowledge of piloting, management of vessels, and the water in the board's jurisdiction.
(c) The board may not disapprove an application for certification as a deputy branch pilot made by a person who has a written recommendation for the certification from a branch pilot unless the board, after notice to the applicant, has provided the applicant a hearing on the applicant's qualifications. (V.A.C.S. Art. 8280c, Secs. 4.05(a), (b), (c).)

Source Law
Sec. 4.05. (a) The board shall carefully consider each application submitted to it and shall conduct any investigation it considers necessary to assist it in determining whether or not an applicant is qualified for a license or certificate.
(b) As part of its consideration of applications for licenses and certificates, the board may develop and administer examinations to determine each applicant's knowledge of piloting, management of vessels, and the water within the board's jurisdiction.
(c) In considering an application for the position of deputy pilot, if the applicant has been recommended in writing for the appointment by a branch pilot, the certificate may not be disapproved by the board unless the board, after notice to the applicant, has provided the applicant a hearing on the applicant's qualifications for appointment as a deputy pilot.

Revised Law
Sec. 68.037. BRANCH PILOT APPOINTMENT BY GOVERNOR. (a) On
filing of the bond and oath required by Section 68.039, the board shall certify to the governor that a person licensed as a branch pilot has qualified.

(b) On receipt of the board's certification, the governor shall issue to the person, in the name of the state and under the state seal, a commission to serve as a branch pilot to and from Brazoria County ports.

(c) The governor shall appoint the number of branch pilots necessary to provide adequate pilot services for each Brazoria County port. (V.A.C.S. Art. 8280c, Sec. 4.06.)

Source Law

Sec. 4.06. (a) On filing of the bond and oath provided by Section 4.09 of this Act, the board shall certify to the governor that the branch pilot has qualified to act as a branch pilot, and on receiving this certification, the governor shall issue to the branch pilot, in the name and under the state seal, a commission to serve as a branch pilot from the ports within the jurisdiction of the board, across intermediate bars, to and from the open gulf.

(b) The governor shall appoint the number of branch pilots necessary to provide adequate pilot services for each of the ports under the board's jurisdiction.

Revised Law

Sec. 68.038. DEPUTY BRANCH PILOT APPOINTMENT BY BRANCH PILOT. (a) Each branch pilot may appoint, subject to examination and approval by the board, two deputy branch pilots.

(b) A branch pilot may appoint an additional deputy branch pilot if the board considers the appointment advisable.

(c) The board may not approve an appointment if the appointee is related to the branch pilot within the second degree by affinity or within the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, unless each member of the Brazos Pilots Association recommends the appointment in writing.

(d) A branch pilot who appoints a deputy branch pilot without the approval of the board forfeits the pilot's appointment as a branch pilot. (V.A.C.S. Art. 8280c, Sec. 4.07.)
Sec. 4.07. (a) Subject to examination and approval of the board, each branch pilot may appoint two deputy pilots except that the pilot board may not approve a person appointed by a branch pilot as a deputy if the person is related to the branch pilot within the second degree by affinity or within the third degree by consanguinity, as determined under Article 5996h, Revised Statutes, unless the appointment has the unanimous written recommendation of each member of the pilots association.

(b) A branch pilot forfeits the pilot's appointment as a pilot if the pilot appoints a deputy pilot without the approval of the board.

(c) An additional deputy pilot may be appointed if the branch pilot and the board mutually consider such an appointment advisable.

Reviser's Note

Section 4.07, V.A.C.S. Article 8280c, states that the board may not approve a deputy related to the appointing branch pilot within the second degree by affinity or within the third degree by consanguinity, as determined under Article 5996h, Revised Statutes. Article 5996h is codified as Subchapter B, Chapter 573, Government Code, and the revised law is drafted accordingly.

Revised Law

Sec. 68.039. OATH; BOND. (a) A person appointed as a pilot must take the official oath before entering service as a pilot. The oath shall be endorsed on the bond required by Subsection (b).

(b) Each pilot must execute a $25,000 bond payable to the governor and conditioned on compliance with the laws, rules, and orders relating to pilots and on the faithful performance of the pilot's duties.

(c) Each bond must be approved by the board. (V.A.C.S. Art. 8280c, Sec. 4.09.)

Source Law

Sec. 4.09. (a) Before entering into service as a pilot, a person appointed to be a branch pilot or deputy branch pilot shall take the official oath, which shall be endorsed on the bond required by this section.

(b) Each pilot shall execute a bond for $25,000 conditioned on compliance with the laws, rules, and
orders relating to pilots and on the faithful performance of the pilot's duties and payable to the governor.
(c) Each bond must be approved by the board.

Revised Law
Sec. 68.040. TERMS OF LICENSES AND CERTIFICATES. (a) A branch pilot's license expires on the fourth anniversary of the date it is issued or renewed. (b) A deputy branch pilot's certificate expires on the second anniversary of the date it is issued and may not be renewed. (V.A.C.S. Art. 8280c, Secs. 4.08, 4.11(a).)

Source Law
Sec. 4.08. (a) A license issued under this Act expires four years from the date it is issued or renewed. (b) A certificate issued under this Act expires two years from the date it is issued and is not renewable.

Sec. 4.11. (a) A deputy branch pilot's certificate expires two years from the date it is issued.

Revised Law
Sec. 68.041. BRANCH PILOT'S LICENSE RENEWAL. (a) The governor shall renew a branch pilot's expiring license if the board recommends renewal. (b) If a pilot applies in writing and qualifies, the board shall recommend renewal unless the board determines there is probable cause not to renew the license. (c) Probable cause not to renew a license exists if the board finds that the license holder: (1) does not possess a qualification required by this chapter for pilots; or (2) has a disability that will affect the license holder's ability to serve as a pilot. (d) If the board determines that it has probable cause not to renew a license, the board shall notify the license holder of that determination not later than the 60th day before the date the
license expires. On request, the board shall provide a hearing after proper notice to consider whether the board has cause not to recommend renewal of the license.

(e) If the board finds at the conclusion of the hearing that the board lacks probable cause for nonrenewal of the license, the board shall recommend that the governor renew the license.

(f) The board shall issue a written order recommending that the governor not renew a license and the governor may not renew the license if:

(1) the pilot does not contest the board's decision not to renew the license; or

(2) the board after a hearing finds that it has probable cause not to renew the license.

(g) The denial of renewal of a pilot's license does not prohibit the pilot from applying for a new license and being reappointed. (V.A.C.S. Art. 8280c, Sec. 4.10.)

Source Law

Sec. 4.10. (a) Every four years, on written application and successful qualification, a branch pilot's license shall be renewed by the governor on recommendation of the board for an additional four-year term unless the board determines that probable cause exists for not renewing the license.

(b) Probable cause exists for not renewing a license if the board finds that the licensee no longer possesses a qualification stated in this Act for pilots or suffers from a disability that will affect the licensee's ability to serve as a pilot.

(c) If the board determines that it has probable cause for not renewing a license, it shall notify the licensee not less than 60 days before expiration of the license and, on request, shall offer the licensee the opportunity for a hearing after proper notice to consider whether cause exists for not renewing the license.

(d) If the board finds at the conclusion of the hearing that no probable cause exists for nonrenewal, the board shall make a recommendation to the governor for the renewal of the license for another term.

(e) If a pilot does not contest the board's decision not to renew the license or if the board after its hearing finds that there is probable cause for nonrenewal, the board shall issue a written order recommending to the governor that the license not be renewed, and the governor shall refuse renewal of the license.

(f) Denial of renewal of a pilot's license does not prevent the former licensee from applying for a new license and being reappointed by the governor at a later time if the licensee then meets all
qualifications for a license under this Act.

Revisor's Note

Section 4.10(f), V.A.C.S. Article 8280c, states that denial of renewal of a pilot's license does not prevent the former licensee from applying for a new license and being reappointed "if the licensee then meets all qualifications for a license under this Act."
The revised law omits as unnecessary the reference to meeting qualifications otherwise required by this chapter.

Revised Law

Sec. 68.042. DEPUTY BRANCH PILOT. A person who has been issued a deputy branch pilot's certificate may not be issued a deputy branch pilot's certificate before the fifth anniversary of the date the person was previously issued a deputy branch pilot's certificate. (V.A.C.S. Art. 8280c, Sec. 4.11(b).)

Source Law

(b) A person may not be issued more than one deputy branch pilot's certificate within any period of five consecutive years.

Revised Law

Sec. 68.043. HEALTH AND DRUG CERTIFICATION. (a) The board may require that certification under Section 68.035(b)(1) be executed annually.
(b) The board randomly from time to time may require a branch pilot or deputy branch pilot to provide the board with certification by a medical doctor that on the date of the certification the body of the pilot is free of evidence of the presence of illegal drugs or chemicals. (V.A.C.S. Art. 8280c, Sec. 4.12.)

Source Law

Sec. 4.12. (a) The board may require that certification under Section 4.05(d)(1) of this Act be renewed annually.
(b) The board may, from time to time, require a deputy pilot or branch pilot, on a random basis, to provide the board with certification by a medical doctor that on the date of the certification the body of the pilot or deputy pilot is free of evidence of the presence of illicit drugs or chemicals.

Revisor's Note

Section 4.12, V.A.C.S. Article 8280c, refers to "illicit drugs or chemicals." The revised law substitutes "illegal" for "illicit" for the reason stated in the revisor's note to Section 68.035 of this code.

Revised Law

Sec. 68.044. SUSPENSION OR REVOCATION OF BRANCH PILOT'S LICENSE. (a) On complaint or on its own motion, and after notice and hearing, the board may suspend a branch pilot's license for not more than six months or recommend that the governor revoke a branch pilot's license if the board finds that the pilot has:

(1) failed to demonstrate and maintain the qualifications for a license required by this chapter;

(2) used narcotics or other types of drugs, chemicals, or controlled substances as defined by law that impair the pilot's ability to perform the pilot's duties skillfully and efficiently;

(3) used alcohol to an extent that impairs the pilot's ability to perform the pilot's duties skillfully and efficiently;

(4) violated a provision of this chapter or rules adopted by the board under this chapter that were material to the performance of the pilot's duties at the time of the violation;

(5) made a material misstatement in the application for a license;

(6) obtained or attempted to obtain a license under this chapter by fraud or misrepresentation;

(7) charged a pilotage rate other than that approved by the board;

(8) intentionally refused to pilot a vessel when
requested to do so by the master or person responsible for
navigation of the vessel except when, in the judgment of the pilot,
movement of the vessel constitutes a hazard to life or property or
when pilotage charges that are due and owing are unpaid by the
person ordering the pilot services;

(9) been absent from duty in violation of board rules
and without authorization;

(10) aided or abetted another pilot in failing to
perform the other pilot's duties; or

(11) been guilty of carelessness, neglect of duty,
intentional unavailability for normal performance of duties,
refusal to perform duties, misconduct, or incompetence while on
duty.

(b) On determining that a license should be suspended or
revoked, the board shall adopt a written order that states its
findings and:

(1) suspends the license for a stated period; or

(2) recommends to the governor revocation of the
license.

(c) The governor, on receipt of a board order recommending
revocation of a license, shall revoke the license. If the board's
order is appealed, the governor may not revoke the license until
the order is upheld on appeal.

(d) A suspension of a license on the recommendation of a
pilot review board takes effect on adoption of the board's order.
A revocation of a branch pilot's license takes effect on issuance
of the governor's decision.

(e) The board shall immediately give notice to the Brazos
Pilots Association, by certified mail, of a revocation or
suspension under this section. (V.A.C.S. Art. 8280c, Sec. 4.13.)

Source Law
Sec. 4.13. (a) On complaint or on its own
motion and after notice and hearing, the board may
suspend a pilot's license for up to six months or may
recommend to the governor revocation of a pilot's
license if the board finds that the pilot has:

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(1) failed to demonstrate and maintain the qualifications for a license required by this Act;
(2) used narcotics or other types of drugs, chemicals, or controlled substances as defined by law that impair the pilot's ability to perform the pilot's duties skillfully and efficiently;
(3) used alcohol to an extent that impairs the pilot's ability to perform the pilot's duties skillfully and efficiently;
(4) violated a provision of this Act or rules adopted by the board under this Act that were material to the performance of the pilot's duties at the time of the violation;
(5) made a material misstatement in the application for a license;
(6) obtained or attempted to obtain a license under this Act by fraud or misrepresentation;
(7) charged pilotage rates other than those approved by the board;
(8) intentionally refused to pilot a vessel when requested to do so by the master or person responsible for navigation of the vessel except when, in the judgment of the pilot, movement of the vessel constitutes a hazard to life or property or when pilotage charges that are due and owed remain unpaid by the person ordering the pilot services;
(9) been absent from duty in violation of rules of the board and without authorization;
(10) aided or abetted another pilot in failing to perform the pilot's duties; or
(11) been guilty of carelessness, neglect of duty, intentional unavailability for normal performance of duties, refusal to perform duties, misconduct, or incompetence while on duty.

(b) If the board determines that a license should be suspended or revoked, it shall issue a written order stating its findings and suspending the license for a specifically stated period or recommending to the governor revocation of the license.
(c) On receiving the board's order recommending revocation of a license, the governor shall revoke the license. If the board's order is appealed, the governor may not revoke the license until the order is upheld on appeal.
(d) A suspension based on the recommendation of a pilot review board takes effect immediately on issuance of the board's order. A revocation takes effect immediately on issuance of the governor's decision.
(e) The board shall immediately give notice to the pilots association, by certified mail, of a revocation or suspension under this section.

Revised Law
Sec. 68.045. SUSPENSION OR REVOCATION OF DEPUTY BRANCH PILOT'S CERTIFICATE. A deputy branch pilot's certificate may be suspended or revoked by the board in the same manner and for the same reasons as provided for the suspension or revocation of a branch pilot's license by Section 68.044. (V.A.C.S. Art. 8280c, Sec. 4.11(c).)
(c) A deputy branch pilot's certificate may be suspended or revoked by the board in the same manner and for the same reasons provided for branch pilots' licenses by Section 4.13 of this Act.

Revised Law
Sec. 68.046. LIABILITY TO PILOT. (a) A person who is not a pilot and who, in violation of this chapter, pilots a vessel and the consignee of the vessel are liable to a pilot, on written demand, for the amount of the applicable pilotage rate.

(b) In an action to recover compensation under Subsection (a), the court may include in a judgment in favor of a pilot an award of court costs and reasonable attorney's fees. (V.A.C.S. Art. 8280c, Sec. 4.14.)

Source Law
Sec. 4.14. (a) If a person who is not licensed or certified under this Act pilots a vessel in violation of this Act, that person and the consignee of the vessel are liable to a state licensed or certified pilot in that jurisdiction, on written demand, for an amount equal to the pilotage rates that would have been applicable.

(b) If suit is filed to collect the compensation owed to a pilot under Subsection (a) of this section, the court may include in any final judgment in favor of the pilot an award to cover court costs and reasonable attorney's fees.

Revisor's Note
(End of Subchapter)
The revised law omits as executed the transition language of Section 6.02, V.A.C.S. Article 8280c, that relates to expiration of licenses and certificates of branch pilots and deputy branch pilots appointed before the effective date of Article 8280c (January 1, 1990). A branch pilot commissioned under V.A.C.S. Article 8253 (codified as Sections 62.042-62.044 of this code), which applied to the ports of Brazoria County before enactment of Article 8280c, had a term that would expire not later than January 1, 1994. Section 6.02 requires license renewal under Article 8280c after that
date. Section 6.02 required deputy branch pilots to be
 issued certificates that would expire not later than
 January 1, 1992. The omitted section reads:

Sec. 6.02. (a) Persons who are
branch pilots serving a port covered under
this Act on the effective date of this Act
shall continue to serve as branch pilots
until their current commissions expire, at
which time each will be eligible for
license renewal under this Act, and those
branch pilots shall be governed by this Act
from its effective date.
(b) Persons who were appointed
deputy branch pilots before the effective
date of this Act shall be issued deputy
branch pilot certificates by the board in
whose jurisdiction they are acting as
deputy branch pilots on requesting the
certificate in writing and without having
to comply with other procedural provisions
of this Act. A certificate shall be issued
for a term of two years unless the deputy
branch pilot has less than two years to
serve as a deputy branch pilot, in which
case the certificate shall be issued for
the remaining time the deputy is required
to serve. Deputy branch pilots in ports
covered by this Act are governed by this
Act from its effective date.

[Sections 68.047-68.060 reserved for expansion]

SUBCHAPTER D. PILOTAGE RATES

Revised Law
Sec. 68.061. PILOTAGE RATE CHANGE. The board may not change
pilotage rates before the first anniversary of the preceding rate
change. (V.A.C.S. Art. 8280c, Sec. 5.03(j).)

Source Law
(j) New pilotage rates may not be established
more often than once every 12 months.

Revised Law
Sec. 68.062. PILOTAGE RATES. Each branch pilot member of
the Brazos Pilots Association shall charge the pilotage rates set
by the board for pilot services. (V.A.C.S. Art. 8280c, Sec. 8.08.)

Source Law
Sec. 8.08. Each branch pilot member of the
pilots association shall charge the pilotage rates for
pilot services that are fixed by the board.
Revised Law
Sec. 68.063. PILOTAGE RATE CHANGE APPLICATION. (a) An application for a change in a pilotage rate may be filed with each commissioner of the board by:

(1) one or more pilots; or

(2) an owner, agent, or consignee.

(b) The application must contain:

(1) a brief statement of the circumstances that warrant the change; and

(2) a certification that the applicant has submitted copies of the application to all known pilots, consignees, and associations of consignees operating in Brazoria County at the time of the application. (V.A.C.S. Art. 8280c, Sec. 5.03(a).)

Source Law
Sec. 5.03. (a) An application for the establishment of a new rate of pilotage may be filed with each commissioner by one or more pilots or by the owner, agent, or other person defined by this Act as consignee of a vessel. The application for increase or decrease of rates must contain a brief statement of the circumstances that warrant the requested action of the commissioners and must also contain a certificate that the applicant has submitted copies of the application to all known pilots, consignees, and associations of consignees operating in Brazoria County at the time of the application.

Revised Law
Sec. 68.064. OBJECTION; HEARING. (a) If, not later than the 20th day after the date notice of an application for a rate change is sent, a commissioner receives a written objection to the application from any person who appears to have a legitimate interest in the application, the board shall hold a hearing as provided by this section.

(b) The board shall hold the hearing not later than the 20th day after the date the 20-day period provided by Subsection (a) expires.

(c) The board shall give notice of the hearing to:

(1) each applicant;
(2) each person objecting to the application; and
(3) any other person the board determines is interested in the proceedings.

(d) The hearing shall be open to the public and held at a convenient public place in one of the ports that would be affected by the change. Each party who demonstrates a legitimate interest in the application is entitled to be heard, to present evidence, and, to the extent the board considers practical, to cross-examine testifying witnesses. (V.A.C.S. Art. 8280c, Secs. 5.03(c) (part), (d).)

Source Law

(c) In the event any commissioner receives in writing an objection to the application from any person, firm, or corporation who appears to have a legitimate interest in the application within 20 days after notice of the filing of the application was given, the commissioners shall hold a hearing within 20 days after the expiration of the initial 20-day notice period for the filing of any objection to the application and shall notify the applicants, the persons objecting to the application, and other parties the commissioners may, in their discretion, determine to be interested in the proceedings . . . .

(d) The hearing shall be held at a convenient and public place in any one of the ports affected and shall be open to the public. At the hearing all parties, on demonstrating a legitimate interest in the application, are entitled to be heard, to present evidence, and, to the extent deemed practical by the commissioners, to cross-examine the witnesses appearing to testify at the hearing.

Revisor's Note

Section 5.03(c), V.A.C.S. Article 8280c, refers to a "person, firm, or corporation." The reference to "firm, or corporation" is omitted from the revised law because under Section 311.005(2), Government Code (Code Construction Act), "person" is defined to include a corporation or any other legal entity. That definition applies to the revised law.

Revised Law

Sec. 68.065. BOARD ACTION ON APPLICATION. (a) If an objection to an application for a rate change is not received by
any commissioner within the period provided by Section 68.064(a),
the board shall act on the application without further proceedings.

(b) If a hearing is held as provided by Section 68.064, the
board shall grant, deny, or modify the application after receipt of
the evidence offered by the parties and arguments and briefs
requested by the board. (V.A.C.S. Art. 8280c, Secs. 5.03(b)
(part), (e).)

Source Law

(b) If the notice required is given and a
written objection on the part of any interested party
is not received by any commissioner within 20 days
after the date notice is sent, the commissioners shall
act on the application without further
proceedings . . . .

(e) After receipt of the evidence offered by the
parties and arguments and briefs the commissioners may
desire to receive, the application shall be granted,
denied, or modified by the commissioners.

Revised Law

Sec. 68.066. PILOT FINANCIAL REPORT. (a) Not later than
the 10th day before the date set for a pilotage rate hearing, the
pilots who are licensed or certified to serve the port for which
the rates are being considered shall submit in writing to the board
and to any interested party designated by the board complete
accounts of:

(1) all amounts received from performing pilot
services, organized by categories or classifications of rates, if
rates are set in that manner;

(2) all earnings from capital assets devoted to
providing pilot services;

(3) all expenses incurred in connection with
activities for which amounts described by Subdivisions (1) and (2)
were received and earned; and

(4) estimates of receipts and expenses anticipated to
result from the requested changes in pilotage rates.

(b) The pilots shall provide the information for:

(1) the calendar or fiscal year preceding the date of
the pilotage rate change application; and

(2) the subsequent period to within 60 days of the
date of the application.

(c) The board may require relevant additional information it
considers necessary to determine a proper pilotage rate. (V.A.C.S.
Art. 8280c, Sec. 5.04.)

Source Law
Sec. 5.04. (a) At least 10 days before the date
set for a pilotage rate hearing, the pilots who are
licensed or certified to serve the port for which new
pilotage rates are being considered shall submit in
writing to the board and to any interested party
designated by the board complete accounts of:

(1) all amounts received from performance
of pilot services, organized by categories or
classifications of rates, if rates are set in that
manner;

(2) all earnings from capital assets
devoted to providing pilot service;

(3) all expenses incurred in connection
with activities for which these amounts were received
and earned; and

(4) estimates of receipts and expenses
anticipated to result from the requested changes in
pilotage rates.

(b) The information shall be provided for the
calendar or fiscal year preceding the date of the
application, updated to within 60 days of the date of
the application.

(c) The board may require relevant additional
information it considers necessary to determine proper
pilotage rates.

Revised Law
Sec. 68.067. FACTORS FOR BOARD CONSIDERATION. In acting on
a pilotage rate change application, the board shall consider:

(1) characteristics of vessels to be piloted;

(2) costs to pilots to provide the required pilot
services;

(3) the effect, including economic factors affecting
the shipping industry in the area, that the granting, refusal, or
modification of the application would have on Brazoria County ports
and the persons residing in the board's jurisdiction;

(4) an adequate and reasonable compensation for the
pilots and a fair return on the equipment and vessels that the
pilots employ in connection with pilot duties;
the relationship between the pilotage rates in Brazoria County ports and the rates applicable in other ports of this state;

the average number of hours spent by a pilot performing:

(A) pilot services on board vessels; and

(B) all pilot services; and

the average wages of masters of United States flag vessels that navigate in the board's jurisdiction and for which the pilotage rate is to be established. (V.A.C.S. Art. 8280c, Sec. 5.03(f).)

In determining any action on an application, the commissioners shall consider:

(1) characteristics of vessels to be piloted;

(2) the average number of hours spent by a pilot in the performance of pilot services;

(3) costs to pilots to provide the required pilot services;

(4) the effect, including economic factors affecting the shipping industry in the area, that the grant, refusal, or modification of the application would have on the ports in the jurisdiction of the commissioners and the citizens residing in that jurisdiction;

(5) an adequate and reasonable compensation to the pilots and a fair return upon the equipment and vessels that they employ in connection with their duties;

(6) the relationship between the pilotage rates in the ports under the commissioners' jurisdiction and the rates applicable in other ports of this state;

(7) the average number of hours spent by a pilot in the actual performance of pilot services on board vessels, as well as the average number of hours spent by a pilot to perform pilot services; and

(8) the average wages of masters of United States flag vessels that navigate the waters within the jurisdiction of the board by which the pilots' rates are to be established.

A board order granting, denying, or modifying an application for a rate change must state its effective date. The order is final, except as provided by Subsection (b).
(b) Any party aggrieved by the board's order may, after exhausting all administrative remedies, appeal the order to a court. (V.A.C.S. Art. 8280c, Secs. 5.03(g), (i) (part), 5.05.)

Source Law

[Sec. 5.03]
(g) The action of the commissioners in granting, denying, or modifying the application is final.
(i) ... and the order shall state its effective date.

Sec. 5.05. Any party aggrieved by the board's decision may seek judicial review of the board's decision after all administrative remedies are exhausted.

Revised Law

Sec. 68.069. REPORTING AND STENOGRAPHIC COSTS. (a) The board may assess the actual costs the board considers fair and just for reporting and stenographic services necessarily incurred in connection with a hearing against one or more of the applicants and objecting parties.

(b) The board may require that an applicant or objecting party deposit an amount against those costs as a condition of presenting an application or objection. (V.A.C.S. Art. 8280c, Sec. 5.03(h).)

Source Law

(h) The commissioners may assess the actual cost of reporting and secretarial services necessarily incurred in connection with any hearing against one or more of the applicants and objecting parties that appears to the commissioners to be fair and just. The commissioners may further require that any applicant or objecting party deposit a sum against the costs as a condition of presenting its application or objection. The costs authorized by this subsection are strictly limited to the actual and reasonable costs of reporting and stenographic services.

Revisor's Note

Section 5.03(h), V.A.C.S. Article 8280c, limits the costs of reporting and stenographic services to "actual and reasonable" costs. The revised law omits "reasonable" because it is included in the requirement
that the costs be limited to those the board considers fair and just.

Revised Law
Sec. 68.070. ORDER FILED. (a) The board shall file a copy of its order with the county clerk.

(b) The board shall file the order not later than the 20th day after:

(1) the closing date of a hearing held as provided by Section 68.064(b); or

(2) if a hearing is not held, the expiration of the 20-day period provided by Section 68.064(a). (V.A.C.S. Art. 8280c, Secs. 5.03(b) (part), (c) (part), (i) (part).)

Source Law
(b) ... and shall file their action with the county clerk as provided by Subsection (i) of this section, within 20 days after the initial 20-day notice period.

(c) ... and shall file their decision with the county clerk as provided by Subsection (i) of this section within 20 days after the close of the hearing.

(i) A copy of the commissioners' order shall be filed in the office of the county clerk . . .

Revised Law
Sec. 68.071. EMERGENCY PILOTAGE RATES. (a) The board may establish emergency pilotage rates for the period of an emergency, not to exceed 30 days, if the board finds that:

(1) a natural or man-made disaster has created a substantial hazard to piloting vessels into and out of a port; and

(2) the existence of the hazard overrides the necessity to comply with normal pilotage rate-setting procedures.

(b) In adopting emergency pilotage rates, the board is not required to comply with the procedures in this chapter or in its rules relating to adoption of pilotage rates.

(c) Emergency pilotage rates may not be appealed.

(d) The board shall adopt rules to carry out this section.
Sec. 5.06. (a) The board may establish emergency pilotage rates, for a period not to exceed 30 days, to replace existing pilotage rates for the period of the emergency, if the board finds that a natural or man-made disaster has created a substantial hazard to piloting vessels into and out of a port and that the existence of the hazard overrides the necessity to comply with normal pilotage rate-setting procedures.

(b) In adopting emergency pilotage rates, the board is not required to comply with the procedures in this Act and its rules relating to adoption of pilotage rates. Emergency pilotage rates may not be appealed.

(c) The board shall adopt rules to carry out this section.

Sec. 68.072. PILOT SERVICES REQUIRED. The consignee of a vessel under the consignee's control shall obtain pilot services for the vessel and shall pay the pilots who pilot the vessel into and out of the port area compensation according to the pilotage rates filed by the board. (V.A.C.S. Art. 8280c, Secs. 5.03(i) (part), 5.07(a), 6.01(a).)

[Sec. 5.03]

(i) . . . Pilotage charges . . . may not be made with respect to the ports of Brazoria County except pursuant to an order filed by the commissioners.

Sec. 5.07. (a) Compensation based on lawfully authorized pilotage rates shall be paid by the consignee liable for its payment for vessels employing pilots.

Sec. 6.01. (a) The consignee for each vessel is responsible for obtaining pilot services for the vessel under the consignee's control and for paying to the pilots who pilot the vessel into and out of the port area compensation based on pilotage rates adopted under this Act.

Reviser's Note

Section 5.03(i), V.A.C.S. Article 8280c, refers to pilotage charges in existence at the time the statute was passed. The revised law omits this reference as unnecessary. Pilotage charges may be made in accordance with rates adopted by the board of pilot
commissioners. The omitted provision reads:

[Pilotage charges] in excess of those in existence at the time of passage of this Act [may not be made] . . . .

Revised Law

Sec. 68.073. PILOTAGE RATE LIABILITY. (a) A pilot who charges a rate for pilot services different from the pilotage rates established under this chapter for the port in which the pilot serves is liable to each person who was charged the different rate for double the amount of pilotage.

(b) A court may include in a judgment in favor of a person who files suit to collect an amount owed under this chapter an award to cover court costs and reasonable attorney's fees.

(V.A.C.S. Art. 8280c, Secs. 5.07(b), (c).)

Source Law

(b) A pilot who charges pilotage rates different from those established under this Act for the port in which the pilot serves as a pilot is liable to each person who was charged a pilotage rate other than the lawfully authorized pilotage rate for double the amount of pilotage.

(c) If a person must file suit to collect the amount owed under this section, the court may include in any final judgment in favor of that person an award to cover court costs and reasonable attorney's fees.

Revised Law

Sec. 68.074. RECOVERY OF COMPENSATION. A pilot who offers pilot services to a vessel required under this chapter to obtain pilot services and whose services are refused is entitled to recover from the consignee the pilotage rate for the service.

(V.A.C.S. Art. 8280c, Sec. 6.01(b).)

Source Law

(b) Each pilot who offers to serve a vessel but is denied service is entitled to recover compensation based on pilotage rates adopted under this Act from the consignee in any court of competent jurisdiction.

Revisor's Note

Section 6.01(b), V.A.C.S. Article 8280c, refers
to a suit brought "in any court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.0011, Government Code, for the general jurisdiction of district courts.

Revisor's Note
(End of Subchapter)

The revised law omits as executed Sections 5.01 and 5.02, V.A.C.S. Article 8280c, which maintained pilotage rates in effect on the effective date of the original enactment of Article 8280c until the board adopted other rates. The board has adopted more recent pilotage rates. The omitted sections read:

Sec. 5.01. Pilotage rates in effect on the effective date of this Act remain in effect until the board adopts other pilotage rates.

Sec. 5.02. Before different pilotage rates are adopted by the board under this Act, notice shall be given and a hearing held.

[Sections 68.075-68.080 reserved for expansion]

SUBCHAPTER E. PILOT LIABILITY

Revised Law
Sec. 68.081. PURPOSE. The purpose of this subchapter is to:

(1) in the public interest, stimulate and preserve maritime commerce on the pilotage grounds of this state by limiting and regulating the liability of pilots; and

(2) maintain pilotage fees at reasonable amounts.

(V.A.C.S. Art. 8280c, Sec. 7.01.)

Source Law
Sec. 7.01. (a) The stimulation and preservation of maritime commerce on the pilotage grounds of this state are declared to be affected with the public interest.
interest and the limitation and regulation of liability
of pilots is necessary to the stimulation and
preservation of maritime commerce and is considered to
be in the public interest.
(b) To accomplish the stimulation and
preservation of maritime commerce, it is necessary to
limit the liability of the pilots.
(c) The legislature declares that this Act is
designed to effect the ends and purposes listed in this
section and to maintain pilotage fees at reasonable
levels.

Revised Law

Sec. 68.082. PILOT LIABILITY. A pilot is not liable
directly or as a member of an organization of pilots for a claim
that:
(1) arises from an act or omission of another pilot or
organization of pilots; and
(2) relates directly or indirectly to pilot services.
(V.A.C.S. Art. 8280c, Sec. 7.02.)

Source Law

Sec. 7.02. A pilot is not liable either directly
or as a member of an organization of pilots for any
claims arising from acts or omissions of any other
pilot or organization of pilots that relate directly or
indirectly to pilot services.

Revised Law

Sec. 68.083. PILOT LIABILITY LIMITED. (a) A pilot
providing pilot services is not liable for more than $1,000 for
damage or loss caused by the pilot's error, omission, fault, or
neglect in the performance of the pilot services, except as
provided by Subsection (b).
(b) Subsection (a) does not apply to:
(1) damage or loss that arises because of the wilful
misconduct or gross negligence of the pilot;
(2) liability for exemplary damages for gross
negligence of the pilot and for which no other person is jointly or
severally liable; or
(3) an act or omission relating to the ownership and
operation of a pilot boat unless the pilot boat is directly
involved in pilot services other than the transportation of pilots.

(c) This section does not exempt a vessel or its owner or operator from liability for damage or loss caused by the vessel to a person or property on the grounds that:

(1) the vessel was piloted by a pilot; or

(2) the damage or loss was caused by the error, omission, fault, or neglect of a pilot.

(d) In an action brought against a pilot for an act or omission for which liability is limited as provided by this section and in which other claims are made or anticipated with respect to the same act or omission, the court shall dismiss the proceedings as to the pilot to the extent the pleadings allege pilot liability that exceeds $1,000. (V.A.C.S. Art. 8280c, Sec. 7.03.)

Source Law

Sec. 7.03. (a) A ship's pilot licensed by this state and providing service to or from ports of Brazoria County is not liable for damages in excess of the amount of $1,000 for damages or loss occasioned by the pilot's errors, omissions, fault, or neglect in the performance of pilot services, except damages or loss that may arise by reason of the wilful misconduct or gross negligence of the pilot.

(b) This section does not exempt the vessel or its owner or operator from liability for damage or loss occasioned by that ship to a person or property on the grounds that:

(1) the ship was piloted by a pilot licensed under this Act; or

(2) the damage or loss was occasioned by the error, omission, fault, or neglect of a pilot licensed under this Act.

(c) A pilot is not liable for any injury, damage, loss, or expense to any legal entity arising out of or connected with any act or omission that relates directly or indirectly to the performance of pilot services in excess of the amount of $1,000, except that this limitation does not apply to:

(1) wilful misconduct on the part of the pilot;

(2) liability for exemplary damages based on the gross negligence of the pilot for which no other person is jointly or severally liable; or

(3) acts or omissions relating to the ownership and operation of the pilot boats unless the pilot boat is directly involved in pilot services other than the transportation of pilots.

(d) If a suit or action is brought in court against a pilot for an act or omission for which liability is limited as provided by this section, and other claims are made or anticipated in respect of the same act or omission, the court shall dismiss the proceedings as to the pilot to the extent the pleadings allege liability of the pilot exceeding $1,000.
SUBCHAPTER P. BRAZOS PILOTS ASSOCIATION

Revised Law

Sec. 68.091. PILOTS ASSOCIATION. The Brazos Pilots Association is a nonprofit association that may be composed only of the licensed branch pilots for the Brazoria County ports.

(V.A.C.S. Art. 8280c, Secs. 1.02(8), 8.01.)

Source Law

[Sec. 1.02]
(8) "Pilots association" means the organization created by Section 8.01 of this Act.

Sec. 8.01. There is created the Brazos Pilots Association, a nonprofit association, whose membership shall include and be limited to each person who holds a valid license as a branch pilot for the ports of Brazoria County.

Revised Law

Sec. 68.092. ASSOCIATION PURPOSES. The purposes of the Brazos Pilots Association are:

(1) the leasing, ownership, management, and operation of equipment and facilities suitable for use by member pilots individually and collectively in performing their individual and collective duties as branch pilots, including pilot boats, communication equipment, and pilot stations;

(2) administering the business of providing an efficient and safe pilot service in accordance with bylaws adopted by a majority vote of the members of the association;

(3) providing a pilots' retirement fund through membership participation; and

(4) maintaining continuous liaison with the board through its elected representatives. (V.A.C.S. Art. 8280c, Sec. 8.02.)

Source Law

Sec. 8.02. The purposes of the Brazos Pilots Association are:

(1) the leasing, ownership, management,
and operation of facilities, including pilot boats, communication equipment, pilot stations, and other equipment and facilities suitable for use by member pilots individually and collectively in performing their individual and collective duties as branch pilots;
(2) administering the business of providing an efficient and safe pilot service in accordance with bylaws adopted by a majority vote of the members of the association;
(3) providing through membership participation a pilots' retirement fund; and
(4) through its elected representatives, maintaining continuous liaison with the board.

Revised Law
Sec. 68.093. OFFICERS. (a) The membership of the Brazos Pilots Association shall elect members to serve as officers. The association's officers must include a president, vice president, and secretary-treasurer.
(b) The officers are elected by secret ballot and by a majority vote of those members casting ballots. Each member is entitled to one vote for each officer. (V.A.C.S. Art. 8280c, Secs. 8.03, 8.05.)

Source Law
Sec. 8.03. Officers of the pilots association shall be elected from and among its membership and shall include a president, vice-president, and secretary-treasurer.
Sec. 8.05. Election of officers shall be by secret ballot, with each member of the pilots association being entitled to cast one vote for each officer to be elected, election to be by majority vote of those members casting ballots at the election.

Revised Law
Sec. 68.094. TERM OF OFFICE. Each association officer serves a one-year term, beginning on January 1, and continues to serve until a successor has been elected and qualified. (V.A.C.S. Art. 8280c, Sec. 8.04.)

Source Law
Sec. 8.04. Each officer shall be elected for a term of one year, beginning on the date this Act takes effect and continuing for a period of one year or until a successor has been elected and qualified.
Revisor's Note

Section 8.04, V.A.C.S. Article 8280c, refers to "the date this Act takes effect." The revised law substitutes "January 1" for the quoted language because the effective date of Article 8280c is January 1, 1990, and because it is not necessary to restate the year of the effective date because the term an officer serves begins each January 1.

Revised Law

Sec. 68.095. PROPERTY. (a) The association may rent or own property, acquire property by gift, purchase, or exchange, and hold title to property that is appropriate for its use in carrying out the purposes of the association under this chapter.

(b) The acquisition, sale, or disposal of permanent assets, as distinguished from consumable assets, must be authorized by resolution of the association. The resolution must be adopted in open meeting by a two-thirds vote of the membership after notice of the date, time, place, and purpose of the meeting. (V.A.C.S. Art. 8280c, Sec. 8.06.)

Source Law

Sec. 8.06. The pilots association is vested with authority to rent or acquire and own property by gift, purchase, or exchange and hold title to property that is appropriate for its use in carrying out the purposes of the association as stated in this Act. Acquisition and sale or disposal of permanent assets, as distinguished from consumables, must be authorized by resolution of the association adopted in open meeting, after notice of the date, time, place, and purpose of the meeting and by two-thirds vote of all members.

Revised Law

Sec. 68.096. INDEPENDENT CONTRACTOR. Although each branch pilot is a member of the association, a branch pilot acts as an independent contractor in performing specific pilot services for a vessel owner or consignee. A branch pilot is solely responsible to each vessel owner or consignee for the manner in which the pilot services are performed. (V.A.C.S. Art. 8280c, Sec. 8.07.)
Sec. 8.07. Notwithstanding that each branch pilot is by provision of this Act a member of the pilots association, each branch pilot acts as to each vessel owner or consignee as an independent contractor in performing specific pilot services, as defined in this Act, and each branch pilot shall be solely responsible to each vessel owner or consignee, for the manner in which the pilot service is performed.

Sec. 68.097. FEE COLLECTION. (a) The association is delegated the authority to collect in its name on behalf of each branch pilot fees earned by the pilot for pilot services. (b) The association shall issue appropriate receipts for the fees and make a full accounting for the fees in the manner provided by association bylaws. (V.A.C.S. Art. 8280c, Sec. 8.09.)

Sec. 8.09. There is delegated to the pilots association the authority to collect in its name for and on behalf of each branch pilot all fees earned by each branch pilot for performance of pilot services and for which the association shall issue appropriate receipts and make full accounting in accordance with bylaws adopted by the association.

Sec. 68.098. OPERATING BUDGET. In December of each year, the association shall adopt, by majority vote, a budget for its operations for the next calendar year. The operating budget may be amended at any regular or special meeting of the association. (V.A.C.S. Art. 8280c, Sec. 8.10.)

Sec. 8.10. In December of each year, the pilots association, acting on majority vote of its members, shall adopt a budget for its operations for the ensuing calendar year that may be amended at any regular or special meeting of the association.

Sec. 68.099. SERVICE FEES. Monthly, the association may retain from fees collected on behalf of each branch pilot, as consideration for services rendered, a pro rata share of 1/12th of...
the association's necessary operating expenses according to its budget. (V.A.C.S. Art. 8280c, Sec. 8.11.)

Sec. 8.11. The pilots association is authorized to retain out of fees collected for and on behalf of each branch pilot, on a monthly basis and as consideration for services rendered, a pro rata share of one-twelfth of its necessary operating expenses as reflected by its budget.

Sec. 68.100. FEE DISTRIBUTION. Not later than the 25th day of each month, the association shall distribute to each branch pilot, as provided by association bylaws, a share of the fees collected in the preceding calendar month after deducting:

(1) the pilot's share of expenses as provided by Section 68.099; and

(2) an amount the pilot has authorized deducted and contributed to the pilot's share of an employee welfare benefit plan or employees' pension benefit plan established and maintained by the association. (V.A.C.S. Art. 8280c, Sec. 8.12.)

Sec. 8.12. Not later than the 25th day of each month, the pilots association shall distribute to each branch pilot, in accordance with bylaws of the association, a share of the fees collected in the preceding calendar month after deducting each pilot's pro rata share of the association's budgeted operating expenses as provided by Section 8.11 of this Act, and the amount each branch pilot may authorize deducted and contributed to the pilot's share of an employee welfare benefit plan or employees' pension benefit plan as may be established and maintained by the pilots association.

Sec. 68.101. ASSOCIATION SERVICES. The association shall provide for the use and benefit of each branch pilot member:

(1) real property and buildings suitable for use as a pilot station;

(2) appropriate communications facilities;

(3) pilot boats for transportation to and from
vessels; and

(4) other equipment and facilities authorized by majority vote of the members of the association. (V.A.C.S. Art. 8280c, Sec. 8.13.)

Source Law

Sec. 8.13. The pilots association shall provide for the use and benefit of each branch pilot member:

(1) land and buildings suitable for use as a pilot station;

(2) appropriate communication facilities;

(3) pilot boats for transportation to and from vessels; and

(4) other equipment and facilities as may be authorized by majority vote of the members of the association.

Revised Law

Sec. 8.13. The pilots association shall provide for the use and benefit of each branch pilot member:

(1) land and buildings suitable for use as a pilot station;

(2) appropriate communication facilities;

(3) pilot boats for transportation to and from vessels; and

(4) other equipment and facilities as may be authorized by majority vote of the members of the association.

Sec. 8.14. The pilots association may receive from Brazos Pilot Service, Inc., a conveyance of all real and personal property owned and held by that company if all shareholders of the company consent in writing to the transfer. (V.A.C.S. Art. 8280c, Sec. 8.14.)

Source Law

Sec. 8.14. The pilots association may receive from Brazos Pilot Service, Inc., a conveyance of all real and personal property owned and held by Brazos Pilot Service, Inc., provided that consent to the transfer shall be evidenced by a document signed by all shareholders of Brazos Pilot Service, Inc.

Revised Law

Sec. 8.14. The pilots association may receive from Brazos Pilot Service, Inc., a conveyance of all real and personal property owned and held by Brazos Pilot Service, Inc., provided that consent to the transfer shall be evidenced by a document signed by all shareholders of Brazos Pilot Service, Inc.

Sec. 68.103. SHARE VALUATION. The value of all assets of the association shall be determined by an appraisal made by one or more qualified appraisers designated by the association president. The value of each share is determined by dividing the total value of all assets of the association by the number of shares outstanding. The value of each share shall be used in a transaction that involves:

(1) the purchase of a share by a newly commissioned branch pilot;

(2) the sale of a share on retirement by a branch
pilot; or

(3) the purchase of a share by the association from the legal heirs of a deceased branch pilot. (V.A.C.S. Art. 8280c, Sec. 8.15.)

Source Law

Sec. 8.15. The value of all assets of the pilots association shall be determined by an appraisal to be made by one or more qualified appraisers as designated by the president of the association. The total valuation of all assets of the association divided by the number of shares currently outstanding shall determine the value of each share. The value of each share, determined in the manner provided by this section shall be used in all transactions dealing with the transfer of shares of the association whether involving:

(1) the purchase of a share by a newly commissioned branch pilot;
(2) the sale of a share on retirement by a branch pilot; or
(3) the purchase of a share by the association from the legal heirs of a deceased branch pilot.

Revisor's Note

Section 8.15, V.A.C.S. Article 8280c, refers to the value of association shares used in transactions:

... dealing with the transfer of shares of the association whether involving:

(1) the purchase of a share by a newly commissioned branch pilot;
(2) the sale of a share on retirement by a branch pilot; or
(3) the purchase of a share by the association from the legal heirs of a deceased branch pilot.

The revised law omits "dealing with the transfer of shares of the association" because each of the enumerated transactions concerns a transfer of shares of the association.

Revised Law

Sec. 68.104. TRANSFER OF SHARES. (a) The association shall issue one share to a branch pilot on the pilot's initial commissioning if the pilot pays the association a sum equal to the value of the share determined in the manner provided by this
(b) The association shall purchase the share of a branch pilot who for any reason other than death ceases to render pilot services. The association shall purchase the share not later than the 30th day after the date of a request by the withdrawing pilot and on surrender of the share.

(c) Not later than the 30th day after providing the association with proof of identity of the legal representative of the estate of a deceased branch pilot, the legal representative shall tender and transfer to the association the deceased pilot's share. The association shall pay the estate the value of the share determined as provided by this subchapter. (V.A.C.S. Art. 8280c, Sec. 8.16 (part).)

Source Law

Sec. 8.16. Membership shares shall be transferred on the occurrence of any one of the following events:

(1) On a person being commissioned for the first time as a branch pilot for the ports of Brazoria County and tendering to the pilots association full payment of a sum equal to the current value of one share, determined in the manner provided by this Act, the branch pilot shall be issued one share by the association.

(2) If a branch pilot, for any reason other than death, ceases to render pilot service, whether by reason of retirement, expiration or nonrenewal of commission, or otherwise, the pilots association shall purchase the share of the withdrawing branch pilot within 30 days after a request by the withdrawing pilot and on surrender of the share.

(3) Within 30 days after providing the association with proof of identity of the legal representative of the estate of a deceased branch pilot, the legal representative shall tender and transfer to the association the share of the deceased branch pilot, for which the estate of the deceased branch pilot shall be paid the full value of the share, determined as provided by this Act.

Revisor's Note

Section 8.16, V.A.C.S. Article 8280c, refers to reasons a pilot may cease to provide pilot services. The revised law omits "whether by reason of retirement, expiration or nonrenewal of commission, or otherwise" because the quoted language is included within the
meaning of "any reason."

Revised Law
Sec. 68.105. FACILITIES FEE. (a) The association may charge a monthly fee for the use of its facilities to a newly commissioned branch pilot who does not tender payment for a share as required by Section 68.104(a) before rendering service as a branch pilot. The fee may be charged until the pilot pays for the share.

(b) The fee must be reasonable, uniform, and adequate to provide the association the pro rata portion of a reasonable return on investment in the assets of the association.

(c) The association may deduct the fee from collections made by the association for pilot services rendered by the branch pilot.

(V.A.C.S. Art. 8280c, Sec. 8.16 (part).)

Source Law
Sec. 8.16. ... If a newly commissioned branch pilot does not tender and make full payment for such share before rendering service as a branch pilot, the association may, until payment for the share is made, charge the branch pilot, on a monthly basis, a fee for the use of its facilities. The fee shall be reasonable and uniform but adequate to provide the association the pro rata portion of a reasonable return on investment in the assets of the association. The fee may be withheld by the association from collections made by the association for pilot services rendered by the branch pilot.

Revised Law
Sec. 68.106. LIMITATION ON SHARE OWNERSHIP. (a) Shares of the association may be issued to and owned only by a branch pilot licensed under this chapter, except as provided by Subsection (b).

(b) On the death of a branch pilot licensed under this chapter, the ownership of the deceased pilot's share in the association may pass by will to the pilot's devisees or, if the pilot dies intestate, the interest passes under the laws of descent and distribution of this state for the purpose of liquidation, as provided by Section 68.104(c). (V.A.C.S. Art. 8280c, Sec. 8.17.)
Sec. 8.17. On the death of a branch pilot for the ports of Brazoria County, the ownership of the deceased pilot's share in the pilots association may pass by will to the pilot's devisees or, if the pilot dies intestate, the interest shall pass under the laws of descent and distribution of this state for the purpose of liquidation, as provided in Section 8.16(3) of this Act. Otherwise, shares of the pilots association may be issued to and owned only by a person licensed as a branch pilot for the ports of Brazoria County.

Sec. 68.107. RETIREMENT BENEFITS. (a) The association may act as an employer for the purpose of maintaining an employee welfare benefit plan or an employee pension benefit plan, as defined by 29 U.S.C. Section 1002, for the benefit of branch pilots licensed under this chapter.

(b) A benefit plan must be established and maintained in accordance with applicable law pertaining to benefit plans.

Sec. 8.18. (a) The pilots association may act as an employer in relation to the maintenance of an employee welfare benefit plan or an employee pension benefit plan for the benefit of branch pilots for the ports of Brazoria County, as those plans are defined by 29 U.S.C.A. Section 1002.

(b) A benefit plan shall be established and maintained in accordance with applicable laws pertaining to benefit plans.

The revised law omits Section 6.03(a), V.A.C.S. Article 8280c, a saving provision from the original enactment of that article. The saving provision continued the law in effect before the adoption of Article 8280c for purposes of any pending litigation. Under Section 311.031, Government Code, any remaining effect of that saving provision is continued notwithstanding repeal of Article 8280c by the revision. The omitted section reads:
Sec. 6.03. (a) This Act does not apply to any matter that on the effective date of this Act is involved in litigation, and the law in effect before the adoption of this Act continues to apply to that litigation and continues in effect for that limited purpose.

CHAPTER 69. JEFFERSON AND ORANGE COUNTY PILOTS

SUBCHAPTER A. PILOT RATES

Sec. 69.001. PILOTAGE RATE PROCEDURES

(Secions 69.002-69.050 reserved for expansion)

SUBCHAPTER B. PILOT LIABILITY

Sec. 69.051. PURPOSE

Sec. 69.052. APPLICABILITY

Sec. 69.053. PILOT LIABILITY LIMITED

Sec. 69.054. LIABILITY FOR ACTS OF OTHER PILOTS

CHAPTER 69. JEFFERSON AND ORANGE COUNTY PILOTS

SUBCHAPTER A. PILOT RATES

Revised Law

Sec. 69.001. PILOTAGE RATE PROCEDURES. (a) A pilot board for a public port of Beaumont, Orange, or Port Arthur or a privately owned dock or terminal in Orange County or Jefferson County may not adopt a pilotage rate applicable to any of these ports, docks, or terminals except as provided by this section.

(b) An application for a new pilotage rate in Orange County or Jefferson County must be filed with each commissioner of pilots by:

(1) a pilot association;

(2) a consignee of a vessel who maintains an office in the county in which the application is filed; or

(3) the Port of Port Arthur Navigation District, Orange County Navigation and Port District, or Port of Beaumont Navigation District of Jefferson County.

(c) The application must contain:

(1) a brief statement of the circumstances that warrant the change; and
(2) a certificate that the applicant has submitted copies of the application to all known pilot associations, navigation districts, and associations of consignees operating in the county at the time of the application.

(d) The board shall hold a hearing not later than the 40th day after the date notice of the application is sent if, not later than the 20th day after the date notice of the application is sent, a commissioner receives a written objection to the application from any person who appears to have a legitimate interest in the application.

(e) The board shall give notice of the hearing to:

(1) each applicant;

(2) each person who objects to the application; and

(3) any other party the board determines to be interested in the proceedings.

(f) The hearing shall be open to the public and held at a convenient public place in one of the ports that would be affected by the rate change. Each party who demonstrates a legitimate interest in the application is entitled to be heard, to present evidence, and, to the extent the board considers practical, to cross-examine testifying witnesses.

(g) The board shall grant, deny, or modify the application after receiving the evidence offered by the parties and the arguments and briefs the board desires to receive. The board order shall state its effective date. The board shall file a copy of its order in the offices of the appropriate county clerks before the 21st day after the close of the hearing.

(h) If an objection to an application is not received by any commissioner within the period for objections to the application provided by Subsection (d), the board shall act on the application without further proceedings and file a copy of its order with the appropriate county clerks before the 41st day after the date notice of the application is sent.

(i) In acting on an application, the board shall consider:
the effect that granting, denying, or modifying
the application would have on:

(A) residents within the board's jurisdiction;
and

(B) the ports within the board's jurisdiction;

(2) the assurance of an adequate and reasonable
compensation to the pilots and a fair return on the equipment and
vessels that the pilots employ in connection with pilot duties; and

(3) the relationship between the pilotage rates in the
ports under the board's jurisdiction and the rates applied in other
ports of this state and competitive ports in other states.

(j) The board may assess the actual costs the board
considers fair and just of reporting and stenographic services
necessarily incurred in connection with a hearing against any
applicant or objecting party. The board may require that an
applicant or objecting party deposit an amount against those costs
as a condition of presenting an application or objection.

(k) The board may not increase pilotage rates for the public
ports of Beaumont, Port Arthur, or Orange unless the affected board
of commissioners of the Port of Beaumont Navigation District of
Jefferson County, Port of Port Arthur Navigation District, or
Orange County Navigation and Port District approves the increase.

(l) Pilotage rates for the public ports of Orange, Beaumont,
or Port Arthur or for a privately owned dock or terminal in Orange
County or Jefferson County set under this section are not subject
to the limit provided by Section 64.002.

(m) In this section, "consignee" has the meaning provided by
Section 64.001. (V.A.C.S. Art. 8267, Subsec. (C.).)

Source Law

(C) The commissioners of pilots in no case shall
authorize or fix a rate or rates of pilotage applicable
to the public ports of Beaumont, Orange or Port Arthur,
Texas, or of the privately owned docks or terminals in
Orange or Jefferson Counties, Texas, differing from the
rate in effect at the time of this enactment unless and
until the following procedure has been completed:

(1) An application for the establishment
of a new rate of pilotage in one of the counties has
been filed with each commissioner by pilot associations or by the owner, agent, or other person defined as "consignee" of a vessel in Article 8276 of this Title, provided such "consignee" maintains an office in the county in which the application is filed, or by the Port of Port Arthur Navigation District or the Orange County Navigation and Port District or the Port of Beaumont Navigation District, which application for increase or decrease of rates shall contain a brief statement of the circumstances which are alleged to warrant the requested action of the commissioners and shall also contain a certificate that the applicant has submitted copies of the application to all known pilot associations and navigational districts and associations of "consignees" as defined in Article 8276 of this Title, as are operating in the counties at the time of the application.

(2) In the event the notice required is in fact given and no written objection on the part of any legitimately interested party is received by any commissioner within 20 days after said notice is sent, the commissioners shall proceed to act upon the application as they see fit without further proceedings, and file their action thereupon with the appropriate county clerks as provided in Subparagraph (8), within 20 days after the initial 20-day notice period.

(3) In the event any commissioner receives in writing an objection to the application from any person, firm, or corporation who appears to have a legitimate interest in the application within 20 days after notice of the filing of the application was given, the commissioners shall hold a hearing within 20 days after expiration of the initial 20-day notice period for the filing of an objection to the application and shall notify the applicants, the persons objecting to the application and such other parties as the commissioners may, in their sole discretion, determine to be interested in the proceedings, and shall file their decision with the appropriate county clerks as provided in Subparagraph (8), within 20 days after the close of the hearing.

(4) Said hearing shall be held at a convenient and public place in any one of the ports affected and shall be open to the public. At the hearing all parties, upon demonstrating a legitimate interest in the application, shall have the right to be heard, to present evidence and, to the extent deemed practical by the commissioners, cross-examine the witnesses appearing to testify at the hearing.

(5) After the receipt of the evidence offered by the parties and such arguments and briefs as the commissioners may desire to receive, the application shall be granted, denied, or modified by the commissioners. However, it is expressly provided that no increase of rates to either the public ports of Beaumont, Port Arthur or Orange, Texas, shall ever be set, established or granted unless the Board of Commissioners of the Port of Beaumont Navigation District, Port of Port Arthur Navigation District or Orange County Navigation and Port District so affected shall approve same.

(6) In determining their action upon any application the commissioners shall consider:

(a) The effect which the granting, refusal, or modification of the application would have upon the port or ports within the jurisdiction of the commissioners and the citizens residing in it;
reasonable compensation to the pilots and a fair return upon the equipment and vessels which they employ in connection with their duties;

(c) The relationship between the pilotage rates in the ports under the commissioners' jurisdiction and the rates applying in other ports of this state and competitive ports in other states.

(7) The commissioners shall have the authority to assess the actual cost of reporting and secretarial services necessarily incurred in connection with any hearing against one or more of the applicants and/or objecting parties as shall appear to the commissioners to be fair and just. The commissioners may further require that any applicant or objecting party deposit a sum against said cost as a condition of presenting its application or objection. The costs authorized by this paragraph shall be strictly limited to the actual and reasonable cost of reporting and stenographic services.

(8) A copy of the commissioners' order with respect to the application shall be filed in the offices of the appropriate county clerks and said order shall state when it becomes effective. No pilotage charges in excess of those in existence at the time of the passage of this Act shall be made with respect to the public ports of Orange, Beaumont, Port Arthur or any privately owned docks or terminals in Orange or Jefferson Counties, Texas, except pursuant to such an order so filed by the commissioners. Pilotage rates for the public ports of Orange, Beaumont, Port Arthur or any privately owned docks or terminals in Orange or Jefferson Counties, Texas, fixed pursuant to this Article shall not be subject to the maximum limits contained in Article 8274.

Revisor's Note

(1) Subsections (C) and (C)(8), V.A.C.S. Article 8267, refer to the "rate in effect at the time of this enactment" and "those [rates] in existence at the time of passage of this Act." The revised law omits the quoted language as executed because the rate has been changed.

(2) Subsections (C)(1) and (5), V.A.C.S. Article 8267, refer to the "Port of Beaumont Navigation District." The revised law substitutes for the quoted language the correct name of the district, "Port of Beaumont Navigation District of Jefferson County," as stated in V.A.C.S. Article 1446.15.

(3) Subsection (C)(1), V.A.C.S. Article 8267, refers to "the owner, agent, or other person defined as
'consignee' of a vessel in Article 8276 of this Title.'" The definition cited is codified in this code as Section 64.001, and the revised law is drafted accordingly. The definition of "consignee" is added to the revised law for drafting convenience and to eliminate frequent and unnecessary repetition of the substance of the definition. The revised law also omits the references to "owner" and "agent" because they are included within the meaning of "consignee."

(4) Subsections (C) and (C)(1), V.A.C.S. Article 8267, refer to the board's authority to "authorize or fix" a rate and to the "establishment" of a rate. The revised law omits the references to "authorize," "fix," and "establishment" and substitutes the more commonly used term "adopt."

(5) Subsection (C)(6)(a), V.A.C.S. Article 8267, refers to "citizens residing" in the commissioners' jurisdiction. The revised law substitutes "residents" for the quoted language because, in the context of this section, "citizen" and "resident" are synonymous and "resident" is more commonly used.

(6) Subsection (C)(7), V.A.C.S. Article 8267, refers to the assessment of the cost of certain services in an application hearing as the commissioners consider "fair and just." That subsection also limits the cost to the "actual and reasonable" cost of the services. The revised law omits the reference to the reasonability of the cost because "reasonable" is included within the meaning of "fair and just."

(7) Subsection (C)(8), V.A.C.S. Article 8267, refers to the "maximum limits contained in Article 8274." V.A.C.S. Article 8274 is codified in this code in Sections 64.002 and 64.003 with the maximum pilotage rate revised by Section 64.002, and the revised law is
drafted accordingly.

[Sections 69.002-69.050 reserved for expansion]

SUBCHAPTER B. PILOT LIABILITY

Revised Law

Sec. 69.051. PURPOSE. The purpose of this subchapter is to:

(1) in the public interest, stimulate and preserve
maritime commerce on the pilotage grounds of this state by limiting
and regulating the liability of pilots; and

(2) maintain pilotage fees at reasonable levels.

(V.A.C.S. Art. 8280d, Sec. 1.)

Source Law

Art. 8280d
Sec. 1. (a) The stimulation and preservation of
maritime commerce on the pilotage grounds of this state
are declared to be affected with the public interest,
and the limitation and regulation of liability of
pilots are necessary to the stimulation and
preservation of maritime commerce and are considered to
be in the public interest.
(b) To accomplish the stimulation and
preservation of maritime commerce, it is necessary to
limit the liability of the pilots.
(c) The legislature declares that this Act is
designed to effect the ends and purposes listed in this
section and to maintain pilotage fees at reasonable
levels.

Revised Law

Sec. 69.052. APPLICABILITY. This subchapter applies to a
pilot licensed or certified to render pilotage services to or from
a port in Jefferson or Orange County. (V.A.C.S. Art. 8280d, Sec.
4.)

Source Law

Sec. 4. This Act applies to pilots licensed or
certified to render pilotage services to or from ports
in Jefferson County or Orange County.

Revised Law

Sec. 69.053. PILOT LIABILITY LIMITED. (a) A pilot
providing a pilot service is not liable for more than $1,000 for
damages or loss caused by the pilot’s error, omission, fault, or
neglect in the performance of the pilot service.

(b) Subsection (a) does not apply to:

(1) damage or loss that arises because of the wilful misconduct or gross negligence of the pilot;

(2) liability for exemplary damages for gross negligence of the pilot and for which no other person is jointly or severally liable; or

(3) an act or omission related to the ownership and operation of a pilot boat unless the pilot boat is directly involved in pilot services other than the transportation of pilots.

(c) This section does not exempt the vessel or its owner or operator from liability for damage or loss caused by the ship to a person or property on the ground that:

(1) the ship was piloted by a pilot; or

(2) the damage or loss was caused by the error, omission, fault, or neglect of a pilot.

(d) In an action brought against a pilot for an act or omission for which liability is limited as provided by this section and in which other claims are made or anticipated with respect to the same act or omission, the court shall dismiss the proceedings as to the pilot to the extent the pleadings allege pilot liability that exceeds $1,000. (V.A.C.S. Art. 8280d, Sec. 3.)

Source Law

Sec. 3. (a) A ship's pilot licensed by this state and providing service to or from ports in Jefferson County or Orange County is not liable for damages in excess of the amount of $1,000 for damages or loss occasioned by the pilot's errors, omissions, fault, or neglect in the performance of pilot services, except damages or loss that may arise by reason of the wilful misconduct or gross negligence of the pilot.

(b) This section does not exempt the vessel or its owner or operator from liability for damage or loss occasioned by that ship to a person or property on the ground that:

(1) the ship was piloted by a pilot licensed under this Act; or

(2) the damage or loss was occasioned by the error, omission, fault, or neglect of a pilot licensed under this Act.

(c) A pilot is not liable for any injury, damage, loss, or expense to any legal entity arising out of or connected with any act or omission that relates directly or indirectly to the performance of
pilot services in excess of the amount of $1,000, except that this limitation does not apply to:
   (1) wilful misconduct on the part of the pilot;
   (2) liability for exemplary damages based on the gross negligence of the pilot for which no other person is jointly or severally liable; or
   (3) acts or omissions relating to the ownership and operation of the pilot boats unless the pilot boat is directly involved in pilot services other than the transportation of pilots.

(d) If a suit or action is brought in court against a pilot for an act or omission for which liability is limited as provided by this section and other claims are made or anticipated in respect of the same act or omission, the court shall dismiss the proceedings as to the pilot to the extent the pleadings allege liability of the pilot exceeding $1,000.

Revisor's Note

(1) Section 3(a), V.A.C.S. Article 8280d, refers to ship pilots "providing service to or from ports in Jefferson County or Orange County." The revision omits the quoted language as unnecessary and redundant because Section 69.052 of this code provides that this chapter applies only to pilots licensed or certified to render pilotage services to or from ports in Jefferson or Orange County.

(2) Section 3(c), V.A.C.S. Article 8280d, refers to "any injury, damage, loss, or expense ...." The revision omits the word "expense" as unnecessary because "expense" is included within the meaning of damages or loss.

(3) Section 3(b), V.A.C.S. Article 8280d, refers to a pilot "licensed under this Act." The revision substitutes "to whom this chapter applies" for the quoted language because V.A.C.S. Article 8280d does not issue or provide for the issuance of a license to any pilots and Sections 3(a) and 4, V.A.C.S. Article 8280d, which contain the only references in Article 8280d to pilots' licenses, address pilots licensed by the state for ports located in Jefferson County or Orange County.
Revised Law

Sec. 69.054. LIABILITY FOR ACTS OF OTHER PILOTS. A pilot is not liable directly or as a member of an organization of pilots for a claim arising from an act or omission of any other pilot or organization of pilots that relates directly or indirectly to pilot services. (V.A.C.S. Art. 8280d, Sec. 2.)

Source Law

Sec. 2. A pilot rendering pilotage services to or from ports located in Jefferson County or Orange County is not liable either directly or as a member of an organization of pilots for any claims arising from acts or omissions of any other pilot or organization of pilots that relate directly or indirectly to pilot services.

Revisor's Note

Section 2, V.A.C.S. Article 8280d, refers to pilots "rendering pilotage services to or from ports located in Jefferson County or Orange County." The revision omits the quoted language for the reason stated in Revisor's Note (1) to Section 69.053 of this code.

[Chapters 70-90 reserved for expansion]

TITLE 5. RAILROADS

[Chapters 91-200 reserved for expansion]

TITLE 6. ROADWAYS

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