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
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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logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law if practicable—all toward promoting the stated purpose of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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TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

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

Sec. 5.002. RATES ESTABLISHED BY RAILROAD COMMISSION

Sec. 5.003. LIABILITY OF CARRIER TRANSPORTING HOUSEHOLD GOODS, PERSONAL EFFECTS, OR USED OFFICE FURNITURE

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TITLE 2. GENERAL PROVISIONS RELATING TO CARRIERS

CHAPTER 5. DUTIES AND LIABILITIES OF COMMON CARRIERS

Revised Law

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
liability.

(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.
(2) 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.
(V.A.C.S. Art. 884.)

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.

Revisor'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).)

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.

Reviser'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.

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

(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
bill of lading, waybill, receipt, check or other
instrument issued by either of such carriers, or other
proof showing that either of them has received such
freight, baggage or other property for shipment or
transportation, shall constitute prima facie evidence
of the subsistence of the relations, duties and
liabilities of such carrier as herein provided, . . . .

Revisor's Note

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

Revised Law

Sec. 7.005. APPLICATION OF CHAPTER. (a) 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.
(V.A.C.S. Art. 905 (part).)

Source Law

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.

Revisor's Note

(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.)

Revised Law

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 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.

(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."

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.

[Chapters 9-19 reserved for expansion]
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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."

TITLE 3. AVIATION
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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. . . .

Reviser'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.
Reviser'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 . . . .
Revisor'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 . . . .

Revisor'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
1 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.)

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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."
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. . . .

**Reviser'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
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.
Reviser'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 Reviser'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.
(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.

Reviser'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).)

Source Law

(d) ... No loan shall be made without a
majority vote of the entire commission in favor
thereof. No grant contract shall be made without a
two-thirds vote of the entire commission in favor
thereof.

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).)

Source Law

(3) ... the principal and interest
derived from the loans shall be placed in the
department revolving loan fund administered by the
department for the purpose of future loans and the
administration of the loans . . . .

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).)
(e) 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.

Revised Law
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:

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

Revised Law
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 Reviser'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.

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).

Reviser'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.)

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.

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.

(Sources 21.115-21.150 reserved for expansion)

SUBCHAPTER D. 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).)

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,
(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.

Revisor'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 Revisor'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.

Revisor'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 Revisor'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 Department of Transportation.
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 . . . .
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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.
1 (3) "Airport hazard" means a structure, object of natural growth, or use of land that:
2 (A) obstructs the airspace required for the flight of aircraft in landing at or taking off from an airport; or
3 (B) is hazardous to the landing or takeoff of aircraft at an airport.
4
5 (4) "Airport hazard area" means an area on which an airport hazard could exist.
6
7 (5) "Area" includes land or water.
8
9 (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, obstruction—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 Airport 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 Airport, 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." "[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.

(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." "[R]emoval" is omitted from the revised law because it is included within the meaning of "elimination." "[L]ighting" 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:

... 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).)

Source Law

(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.

Revised Law

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).)

Source Law

[Art. 46d-7]

(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. ... 

Revisor'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."
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 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.

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**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; or

(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 . . . .]

Revisor'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."
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).)

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. 2. 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:

(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 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.

Revisor'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]
SUBCHAPTER C. AIRPORT FINANCING

Revised Law

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).)

Source Law

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 . . . .

[Art. 1269h]

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. . . .

Revisor's Note

(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...
22.074.

(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

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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 alleys, without a showing
of paramount importance, if the portions to be
re aligned, 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
(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.

Revisor'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.
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).)

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;
(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

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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.

Reviser'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).

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

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).)

(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.

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).)

(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.

Reviser'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.

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
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.

Reviser's Note

(1) The revised law omits as unnecessary the
reference in Section 1, V.A.C.S. Article 46h, to a
joint board created under V.A.C.S. Article 46d-14 because Section 22.071 defines "joint board" to mean a board created under Section 22.074.

(2) The revised law omits as unnecessary the reference in Section 22(a), V.A.C.S. Article 46h, 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.

Reviser'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
described by Section 22.152(a) by issuing bonds, notes, or other
forms of obligations on behalf of the constituent agencies on terms
the board of directors considers appropriate, consistent with the
procedures and limitations set forth in the bylaws and subject only
to the limitations in this subsection. The bonds, notes, or other
obligations are payable only from:

(1) revenue, rents, income, or payments from one or
more users of property of the jointly owned airport under a lease,
loan, purchase, lease-purchase, or other agreement between the
corporation and the user or users; and

(2) revenue of the airport that the joint board
commits and pledges to the payment of the obligations under
agreements between the joint board and the corporation as
authorized by Subsection (b).

(b) A lease, loan, purchase, lease-purchase, or other
agreement may be on terms the parties to the agreement determine
appropriate. The joint board and the corporation may enter into
agreements, including lease, lease-purchase, or other agreements,
as they determine appropriate to accomplish financing under this
section.

(c) Bonds, notes, or other obligations of the corporation
must be submitted to the attorney general for review and approval.
If the attorney general determines that the obligations are issued
in accordance with this chapter, the attorney general shall approve
them. On approval, the obligations are incontestable for any
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.

Revisor'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.

Revisor'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

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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).)

Revised Law

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

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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.
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).)

(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.

Reviser'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 police 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

Sec. 24.001. DEFINITIONS

Sec. 24.002. APPLICATION

Sec. 24.003. OPERATION OF AIRCRAFT WITHOUT AIRMAN CERTIFICATE; OFFENSE

Sec. 24.004. INSPECTION OF AIRMAN CERTIFICATE

Sec. 24.005. AIRCRAFT LICENSURE AND REGISTRATION

[Sections 24.006-24.010 reserved for expansion]

SUBCHAPTER B. OTHER FEDERAL REQUIREMENTS REGARDING AIRCRAFT

Sec. 24.011. FAILURE TO REGISTER AIRCRAFT; OFFENSE

Sec. 24.012. AIRCRAFT IDENTIFICATION NUMBERS; OFFENSE

Sec. 24.013. AIRCRAFT FUEL CONTAINERS; OFFENSE

[Sections 24.014-24.020 reserved for expansion]

SUBCHAPTER C. USE OF PUBLIC ROADS BY AIRCRAFT

Sec. 24.021. TAKING OFF, LANDING, OR MANEUVERING AIRCRAFT ON HIGHWAYS, ROADS, OR STREETS; OFFENSE

Sec. 24.022. USE OF AIRCRAFT ON COUNTY ROADS
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.
Revised Law

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).)

Source Law

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.

Revisor's Note

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.

Revisor's Note

(End of Subchapter)

(1) The revised law omits as unnecessary that portion of Section 2, V.A.C.S. Article 46f-2, that states the purpose of the section because that provision is nonsubstantive. The omitted law reads:

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.)

Source Law

Art. 46f-5
Sec. 1. In this article, "federal aviation regulations" means identification and registration marking regulations adopted by the Federal Aviation Administration, 14 C.F.R. Part 45, 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.

Sec. 2. (a) 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.

(b) An offense under this section is a third degree felony.

Sec. 3. (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 inspect the aircraft further to determine the identity of the owner of the aircraft.

(b) A peace officer may inspect an aircraft under this section if the aircraft is located:
   (1) on public property; or
   (2) on private property, if the officer
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
(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 taxiling 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.)

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 taxiling 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

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
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 name and address of:

(A) each corporate officer if the applicant is a corporation; or

(B) each general partner if the applicant is a partnership; and

(5) the estimated date of completion of the structure or alteration. (V.A.C.S. Arts. 46i-4(a), (b) (part), (c).)

Source Law

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 filed with the department 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.

(V.A.C.S. Art. 46i-5(a) (part).)

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. 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 shown in the application not later than the 60th day after the day 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
1 hearing during the 30-day period.

2 (b) On receipt of a request for a hearing, the department
3 shall set a date for a hearing and notify all interested parties of
4 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 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.
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.)

Source Law

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."

Reviser'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