REVISOR'S REPORT

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

VOLUME II

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
Revised Law

Sec. 69.054. LIABILITY FOR ACTS OF OTHER PILOTS. A pilot is not liable directly or as a member of an organization of pilots for a claim arising from an act or omission of any other pilot or organization of pilots that relates directly or indirectly to pilot services. (V.A.C.S. Art. 8280d, Sec. 2.)

Source Law

Sec. 2. A pilot rendering pilotage services to or from ports located in Jefferson County or Orange County is not liable either directly or as a member of an organization of pilots for any claims arising from acts or omissions of any other pilot or organization of pilots that relate directly or indirectly to pilot services.

Revisor's Note

Section 2, V.A.C.S. Article 8280d, refers to pilots "rendering pilotage services to or from ports located in Jefferson County or Orange County." The revision omits the quoted language for the reason stated in Revisor's Note (1) to Section 69.053 of this code.
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SUBTITLE A. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 201. GENERAL PROVISIONS AND ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 201.001. DEFINITIONS. In this title:

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

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

(3) "Director" means the executive director of the Texas Department of Transportation. (V.A.C.S. Art. 6664, Subsecs. (q)(1), (2), (3).)

Source Law

(q) In this title:

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

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

(3) "Director" means the executive director of the Texas Department of Transportation.

Revised Law

Sec. 201.002. OPERATING EXPENSES; USE OF STATE HIGHWAY FUND.

(a) The legislature has the responsibility to:

(1) appropriate money for the maintenance and operational expenses of the department;

(2) determine the number of employees of the department; and

(3) set the amount of compensation of all employees of the department, including the director, and the members of the commission.

(b) The General Services Commission shall contract for equipment and supplies, including seals and number plates, required by law in the administration of the registration of vehicles and in the operation of the department.

(c) All money authorized to be appropriated in accordance with this section for the operation of the department and the purchase of equipment shall be appropriated from the state highway fund. The commission shall use the amount remaining in the fund for public road construction and for establishing a system of state highways. (V.A.C.S. Art. 6674.)

Source Law

Art. 6674. The legislature shall make appropriations for the maintenance and running expenses of the Department, fix the compensation of the State Engineer-Director for Highways and Public Transportation and all other employees of the Department, and determine the number of such employees; and shall fix the compensation of the members of the Commission. The State Purchasing and General Services Commission shall make contracts for equipment and supplies (including seals and number plates) required by law in the administration of the registration of licensed vehicles, and in the operation of said Department. All money herein authorized to be appropriated for the operation of the Department and the purchase of equipment shall be paid from the State Highway Fund, and the remainder of said fund shall be expended by the Commission for the furtherance of
public road construction and the establishment of a
system of State highways as herein provided.

Revisor's Note

V.A.C.S. Article 6674 refers to the "State Purchasing and General Services Commission." In 1991 the name of the agency was changed by Chapter 8, Acts of the 72nd Legislature, 2nd Called Session, to the "General Services Commission." The revised law is drafted accordingly.

Revised Law

Sec. 201.003. TITLE CHANGES. (a) A reference in law to the State Highway Department, Texas Highway Department, or State Department of Highways and Public Transportation means the Texas Department of Transportation.

(b) A reference in law to the State Highway Commission or State Highway and Public Transportation Commission means the Texas Transportation Commission.

(c) A reference in law to the State Highway Engineer or State Engineer-Director for Highways and Public Transportation means the director of the Texas Department of Transportation.

(V.A.C.S. Art. 6663, Subsec. (b).)

Source Law

(b) Any reference in law to the State Highway Department, Texas Highway Department, or State Department of Highways and Public Transportation means the Texas Department of Transportation. A reference in law to the State Highway Commission or State Highway and Public Transportation Commission means the Texas Transportation Commission. A reference in law to the State Highway Engineer or State Engineer-Director for Highways and Public Transportation means the director of the Texas Department of Transportation.

Revisor's Note

The names of the State Highway Department, the State Highway Commission, and the State Highway Engineer were changed to the State Department of Highways and Public Transportation, the State Highway...
and Public Transportation Commission, and the State
Engineer-Director for Highways and Public
Transportation, respectively, by Section 3, Chapter
678, Acts of the 64th Legislature, Regular Session,
1975, amending V.A.C.S. Article 6663. That article was
subsequently amended by Section 1.01, Chapter 7, Acts
of the 72nd Legislature, 1st Called Session, 1991, and
the names of the State Department of Highways and
Public Transportation, the State Highway and Public
Transportation Commission, and the State
Engineer-Director for Highways and Public
Transportation were changed to the Texas Department of
Transportation, the Texas Transportation Commission, and the director of the Texas Department of
Transportation, respectively.

[Sections 201.004-201.050 reserved for expansion]

SUBCHAPTER B. TEXAS TRANSPORTATION COMMISSION

Revised Law

Sec. 201.051. COMMISSION. (a) The Texas Transportation
Commission consists of three members appointed by the governor with
the advice and consent of the senate.

(b) One member must reside in a rural area.

(c) Each member of the commission must represent the general
public.

(d) Except as provided by Subsection (e), a person is not
eligible for appointment as a member of the commission if the
person or the person's spouse:

(1) is employed by or participates in the management
of a business entity or other organization that is regulated by or
receives funds from the department;

(2) directly or indirectly owns or controls more than
10 percent interest in a business entity or other organization that
is regulated by or receives funds from the department; or
(3) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(e) A person is not ineligible under this section for appointment to or service on the commission because the person receives or has received funds from the department as compensation for acquisition of highway right-of-way.

(f) An officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, aviation, or outdoor advertising or a Texas trade association of automobile dealers may not be a member of the commission.

(g) The spouse of an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, aviation, or outdoor advertising or a Texas association of automobile dealers may not be a member of the commission.

(h) A person required to register as a lobbyist under Chapter 305, Government Code, because of the person’s activities for compensation on behalf of a profession related to the operation of the department may not serve as a member of the commission.

(i) Appointments to the commission shall be made without regard to race, color, disability, sex, religion, age, or national origin of the appointees and shall reflect the diversity of the population of the state as a whole.

(j) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. (V.A.C.S. Art. 6664, Subsecs. (a), (b), (j), (k), (l), (m), (n), (o), (q)(4).)
Commission is created and consists of three members appointed by the governor with the advice and consent of the senate.

(b) One member must reside in a rural area.

(j) All members must be representatives of the general public and citizens of the State. Except as provided by Subsection (k) of this article, a person is not eligible for appointment as a member of the Commission if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by the Department or receiving funds from the Department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the Department or receiving funds from the Department; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the Department, other than compensation or reimbursement authorized by law for Commission membership, attendance, or expenses.

(k) A person is not disqualified under this article from appointment to or service on the Commission because the person receives or has received funds from the Department if the funds are or were received as compensation for the acquisition of highway right-of-way.

(l) An officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, automobile dealers, aviation, or outdoor advertising may not be a member of the Commission.

(m) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, automobile dealers, aviation, or outdoor advertising may not be a member of the Commission.

(n) A person may not serve as a member of the Commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the Department.

(o) Appointments to the Commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees and shall reflect the diversity of the population of the State as a whole.

(q) In this title:

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

Revisor's Note

Subsection (j), V.A.C.S. Article 6664, requires members of the commission to be citizens of this state.
That provision is omitted from the revision because it is substantively identical to Section 14, Article XVI, Texas Constitution. The policy of the legislative council's statutory revision program is to omit from the revised codes the duplicating statutory provisions, because a statute that tracks the language of the constitution is not only superfluous but may foster the erroneous belief that a constitutional requirement is merely statutory and subject to amendment through the ordinary legislative process.

*Revised Law*

Sec. 201.052. TERMS. Members of the commission serve staggered six-year terms, with one member's term expiring February 1 of each odd-numbered year. (V.A.C.S. Art. 6664, Subsec. (c).)

*Source Law*

(c) Members of the commission hold office for staggered terms of six years, with one member's term expiring February 1 of each odd-numbered year.

*Revised Law*

Sec. 201.053. COMMISSIONER OF TRANSPORTATION. (a) The governor periodically shall designate one member of the commission as the commissioner of transportation, who shall serve as presiding officer of the commission.

(b) The commissioner shall:

(1) represent the department in dealing with the governor;

(2) report to the governor on the state of affairs of the department at least quarterly;

(3) report to the commission the governor's suggestions for department operations;

(4) report to the governor on efforts, including legislative requirements, to maximize the efficiency of department operations through the use of private enterprise;
(5) periodically review the department's organizational structure and submit recommendations for structural changes to the governor, the commission, and the Legislative Budget Board;

(6) designate one or more employees of the department as a civil rights division of the department and receive regular reports from the division on the department's efforts to comply with civil rights legislation and administrative rules; and

(7) serve as the departmental liaison with the governor and the Office of State-Federal Relations to maximize federal funding for highway, public transportation, and aviation purposes. (V.A.C.S. Art. 6664, Subsecs. (d), (e).)

Source Law
(d) The governor shall periodically designate one member of the commission to serve as the chair who shall be known as the commissioner of transportation.
(e) In addition to any other duties assigned by this Act, the commissioner of transportation shall:
(1) represent the department in dealings with the governor;
(2) report at least quarterly to the governor on the state of affairs at the department.
(3) report suggestions made by the governor for departmental operations to the board;
(4) report to the governor regarding privatization efforts, including any legislative mandates, in order to maximize the efficiency of departmental operations;
(5) develop recommendations for the organization of the department to be submitted to the commission and to the governor and the Legislative Budget Board prior to the convening of the 73rd Legislature;
(6) periodically review the department's organizational structure and submit recommendations for revisions to that structure to the governor, the commission, and the Legislative Budget Board;
(7) designate an employee or employees of the department as a civil rights division of the department and receive regular reports from that division on the department's efforts to comply with civil rights legislation and administrative rules; and
(8) serve as the departmental liaison with the governor and the Office of State-Federal Relations in order to maximize federal funding for highway, public transportation, and aviation purposes.

Revisor's Note
The revised law omits as executed Subsection (e)(5), V.A.C.S. Article 6664, requiring the
development of recommendations for submission before
the 73rd Legislature convened.

Revised Law
Sec. 201.054. COMMISSION MEETINGS. The commission shall
hold regular meetings at least once a month and special meetings at
the call of the commissioner of transportation or as provided by
commission rule. Commission members shall attend the meetings of
the commission. (V.A.C.S. Arts. 6664, Subsec. (f); 6665, Subsec.
(a).)

Source Law
[Art. 6664]
(f) The commission shall meet at least once each
month. The commission may meet at other times at the
call of the commissioner of transportation.

Art. 6665. (a) The Commission shall hold
regular meetings once each month. They shall attend
the same and such special or called meetings as they
may provide by rule or the chairman may call.

Revised Law
Sec. 201.055. PERFORMANCE BOND. Each member of the
commission shall execute a bond payable to the state in the amount
of $5,000, to be approved by the governor and conditioned on the
faithful performance of the member's duties. The department shall
pay the premium for the bond from the state highway fund.
(V.A.C.S. Art. 6664, Subsec. (g).)

Source Law
(g) Each member shall execute a bond payable to
the state in the sum of $5,000, to be approved by the
governor and conditioned on the faithful performance of
his or her duties. The premium on such bonds shall be
paid out of the State Highway Fund.

Revised Law
Sec. 201.056. COMPENSATION. A member of the commission is
entitled to compensation as provided by the General Appropriations
Act. If compensation for members is not provided by that Act, each
member is entitled to reimbursement for actual and necessary
expenses incurred in performing functions as a member of the commission. (V.A.C.S. Art. 6664, Subsec. (h).)

Source Law

(h) A member of the commission is entitled to compensation as provided by the legislature in the general appropriations act; provided that, should the legislature not provide for compensation for members of the commission, a member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the board.

Revised Law

Sec. 201.057. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment or maintain during service on the commission the qualifications required by Section 201.051;

(2) violates a prohibition provided by Section 201.051;

(3) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(4) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year, unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the director knows that a potential ground for removal exists, the director shall notify the commissioner of transportation of the ground, and the commissioner shall notify the governor that a potential ground for removal exists. (V.A.C.S. Art. 6664a.)

Source Law

Art. 6664a. (a) It is a ground for removal from the Commission if a member:

(1) does not have at the time of
appointment the qualifications required by Article 6664, Revised Statutes;
(2) does not maintain during service on the Commission the qualifications required by Article 6664, Revised Statutes;
(3) violates a prohibition established by Article 6664, Revised Statutes;
(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or
(5) is absent from more than half of the regularly scheduled Commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the Commission.
(b) The validity of an action of the Commission is not affected by the fact that it is taken when a ground for removal of a Commission member exists.
(c) If the director has knowledge that a potential ground for removal exists, the director shall notify the chair of the Commission of the ground. The chair shall then notify the governor that a potential ground for removal exists.

Revised Law
Sec. 201.058. INFORMATION ON QUALIFICATIONS AND CONDUCT.
The department shall provide to the members of the commission, as often as necessary, information concerning the members' qualifications for office under Subchapter B and their responsibilities under applicable laws relating to standards of conduct for state officers. (V.A.C.S. Art. 6664, Subsec. (p).)

Source Law
(p) The Department shall provide to Commission members as often as necessary, information regarding the members' qualifications for office under this article and their responsibilities under applicable laws relating to standards of conduct for state officers.

[Sections 201.059-201.100 reserved for expansion]

SUBCHAPTER C. COMMISSION'S POWERS AND DUTIES

Revised Law
Sec. 201.101. RULES; RECORDS. The commission shall:
(1) adopt rules for the operation of the department;
(2) maintain a record of all proceedings and official orders; and
(3) keep on file copies of all road plans, specifications, and estimates prepared by the department or under
its direction. (V.A.C.S. Art. 6666.)

Source Law

Art. 6666. The Commission shall establish and make public proclamation of all rules and regulations for the conduct of the work of the Department as may be deemed necessary, not inconsistent with the provisions of law. They shall maintain a record of all proceedings and official orders and keep on file copies of all road plans, specifications and estimates prepared by the Department or under its direction.

Revisor's Note

(1) V.A.C.S. Article 6666 requires the commission to "make public proclamation" of rules adopted under that article. Chapter 2001, Government Code (the administrative procedure law), prescribes the procedure each state agency must follow in adopting rules, and the quoted phrase is therefore omitted from the revised law as unnecessary.

(2) V.A.C.S. Article 6666 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. 201.102. DEFINITION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the department. (V.A.C.S. Art. 6665 (part).)

Source Law

(c) The Commission shall develop and implement policies that clearly define the respective responsibilities of the Commission and the staff of the Department.

Revised Law

Sec. 201.103. COMPREHENSIVE SYSTEM OF HIGHWAYS AND ROADS.
The commission shall plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads. In planning and making policies, the commission shall consider, for incorporation into the state highway system, turnpikes that other governmental or private entities are authorized to construct. The commission biennially shall submit a report of its work to the governor and the legislature. The report must include the recommendations of the commission and of the director.

(b) The director, under the direction and with the approval of the commission, shall prepare a comprehensive plan providing a system of state highways. (V.A.C.S. Arts. 6665 (part), 6670 (part).)

Source Law
[Art. 6665]  
(b) The Commission shall formulate plans and policies for the location, construction and maintenance of a comprehensive system of State highways and public roads. In formulating those plans and policies, the Commission shall consider, for incorporation into the state highway system, turnpikes that other governmental or private entities are authorized to construct. They shall biennially submit a report of their work to the Governor and the legislature, with their recommendations and those of the State Engineer-Director for Highways and Public Transportation.

Art. 6670. . . . He shall also prepare, under the direction and with the approval of the Commission, a comprehensive plan providing a system of State highways.

Revised Law
Sec. 201.104. DESIGNATION OF FARM-TO-MARKET ROADS. (a) The commission may designate any county road as a farm-to-market road for the purposes of construction, reconstruction, and maintenance only, if the commissioners court of the county in which the county road is located by order entered in its minutes waives any rights the county may have for state participation in any indebtedness incurred by the county in the construction of the road.

(b) The commission and the county commissioners court by
contract may set forth the duties of the state in the construction, reconstruction, and maintenance of the county road in consideration for the county's, road district's, or defined road district's relinquishing all claims for state participation in any outstanding county or road district bond, warrant, or other evidence of indebtedness that is for the construction or improvement of the road and that was created before the road was designated by the commission.

(c) The assumption by the state of the obligation to construct and maintain a road designated under this section as a farm-to-market road is full and complete compensation for funds that were spent by the county, road district, or defined road district for the construction and maintenance of the road before its designation. (V.A.C.S. Art. 6673c, Secs. 1, 2.)

Source Law

Art. 6673c
Sec. 1. The State Highway Commission is authorized to designate any county road in the state as a farm-to-market road for purposes of construction, reconstruction, and maintenance only, provided that the Commissioners Court of the county in which any such county road is located shall pass and enter in its minutes an order waiving any rights such county may have for participation by the state in any indebtedness incurred by the county in the construction of such county road; and provided further that the State Highway Commission and the Commissioners Court of the county in which any such road is located may enter into a contract that shall set forth the duties of the state in the construction, reconstruction, and maintenance of the county road in consideration of the county and/or road district relinquishing any and all claims for state participation in any county, road district, or defined road district bonds, warrants, or other evidences of indebtedness outstanding against such road for the construction or improvement of the road before being designated by the State Highway Commission.

Sec. 2. It is hereby declared to be the policy of the state that the assumption by the state of the obligation to construct and maintain such roads designated by the State Highway Commission as farm-to-market roads under the provisions of this Act constitutes full and complete compensation for any and all funds that might have been expended by any county, road district, or defined road district in the construction and maintenance of said road prior to its designation by the State Highway Commission as a farm-to-market road.
Revisor's Note

The revised law omits as unnecessary Section 3, V.A.C.S. Article 6673c, relating to the cumulative effect of that article. An accepted general principle of statutory construction requires a statute to be given cumulative effect with other statutes unless it provides otherwise or unless the statutes are in conflict. The general principle applies to this revision. Section 3 reads:

Sec. 3. This Act shall be cumulative of all other laws on this subject, but in the event of a conflict between the provisions of this Act and any other Act on this subject, the provisions of this Act shall prevail.

Revised Law

Sec. 201.105. DEPARTMENT DISTRICTS. (a) The commission shall divide the state into not more than 25 districts for the purpose of the performance of the department's duties.

(b) In determining a district's boundaries, the commission shall consider all costs and benefits, including highway activity in and the number of employees required for the proposed district.

(c) Not more than one district office may be in a district.

(d) The commission shall determine the number of department offices necessary for maintenance and construction personnel in a district.

(e) The commission periodically shall review the necessity for the number of maintenance, construction, and support operations in each district. The commission shall include the findings of its review as a part of the department's budget request submitted to the Legislative Budget Board.

(f) The department is exempt from any law purporting to require the department to conform the provision of its services to service regions other than the districts established under this section. (V.A.C.S. Art. 6663h.)

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Art. 6663h. (a) For the purposes of performing the department's duties, the commission shall divide the state into not more than 25 districts. A district may not have more than one district office. The department may have as many offices for maintenance and construction personnel in a district as the commission determines necessary. The department is exempt from any law purporting to require the department to conform the provision of its services to service regions other than the districts established under this article.

(b) In determining the boundaries of a district, the commission shall consider all cost and benefit factors including the highway activity and the number of employees required to staff a proposed district.

(c) The commission shall periodically review the necessity for the number of maintenance, construction, and support operations in each district and shall submit the findings of this review to the Legislative Budget Board as part of any budget request the department shall be required to file with that commission.

Sec. 201.106. PURCHASE OF LIABILITY INSURANCE. (a) The commission may insure the officers and employees of the department from liability arising from the use, operation, or maintenance of equipment that is used or may be used in connection with the laying out, construction, or maintenance of the roads, highways, rest areas, or other public grounds in this state.

(b) Coverage under this section must be provided by the purchase of a policy of liability insurance from a reliable insurance company authorized to do business in this state. The form of the policy must be approved by the commissioner of insurance, and the coverage must be approved by the attorney general.

(c) This section is not a waiver of immunity of the state from liability for the torts or negligence of an officer or employee of this state.

(d) In this section, "equipment" includes an automobile, motor truck, trailer, aircraft, motor grader, roller, tractor, tractor power mower, and other power equipment. (V.A.C.S. Art. 6674s-1.)
Source Law

Art. 6674s-1
Sec. 1. The State Highway Commission shall have the power and authority to insure the officers and employees of the Texas Highway Department from liability arising out of the use, operation, and maintenance of equipment, including but not limited to, automobiles, motor trucks, trailers, aircraft, motor graders, rollers, tractors, tractor power mowers, and other power equipment used or which may be used in connection with the laying out, construction, or maintenance of the roads, highways, rest areas, and other public grounds in the State of Texas. Such insurance shall be provided by the purchase of a policy or policies for that purpose from some reliable insurance company or companies authorized to transact such business in this state. All liability insurance so purchased shall be provided on a policy form or forms approved by the State Board of Insurance as to form and by the attorney general as to liability.

Sec. 2. Nothing herein shall be construed as a waiver of the immunity of the state from liability for the torts or negligence of the officers or employees of the state.

Revisor's Note
Section 1, V.A.C.S. Article 6674s-1, requires that the form of the liability insurance policy must be approved by the State Board of Insurance, the name of which was changed to the Texas Department of Insurance under Chapter 242, Acts of the 72nd Legislature, Regular Session, 1991. Section 6.09, Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, amended Section 8, Article 5.13-2, Insurance Code, to require that an insurance policy or printed endorsement form used to write general liability or commercial casualty insurance be approved by the commissioner of insurance rather than the board. The revised law is drafted accordingly.

Revised Law
Sec. 201.107. FINANCIAL REPORTS OF THE DEPARTMENT. (a) The commission shall prepare a quarterly statement containing an itemized list of all money received by the department and the source of the money and of all money paid by the department and the purpose of the payment. The statement shall be filed in the
records of the department, and a copy shall be sent to the
governor.

(b) The commission shall file annually with the governor and
the presiding officer of each house of the legislature a complete
and detailed written report accounting for all funds received and
disbursed by the department during the preceding fiscal year. The
report must be in the form and filed in the time provided by the
General Appropriations Act. (V.A.C.S. Art. 6665 (part).)

Source Law

(a) ... A quarterly statement containing an
itemized list of all moneys received and from what
source and of all money paid out and for what purpose
shall be prepared and filed in the records of the
Department and a copy sent to the Governor. These
records shall be open to public inspection.

(b) In addition to the reporting requirements of
Subsection (a) of this article, the Commission shall
file annually with the Governor and the presiding
officer of each house of the legislature a complete and
detailed written report accounting for all funds
received and disbursed by the Department during the
preceding fiscal year. The annual report must be in
the form and reported in the time provided by the
General Appropriations Act.

Revisor's Note

V.A.C.S. Article 6665 states that a quarterly
statement of the department's receipts and expenditures
is open to public inspection. The revised law omits
that provision of Article 6665 as unnecessary because
Section 552.022(1), Government Code, states that a
report prepared by a governmental body is public
information. As such, the statement is subject to the
open records law without an express statement to that
effect.

Revised Law

Sec. 201.108. INTERNAL AUDITOR. (a) The commission shall
appoint an internal auditor for the department.

(b) The auditor shall report directly to the commission on
the conduct of department affairs. (V.A.C.S. Art. 6664, Subsec.
(i.)

Source Law

(i) The commission shall appoint an internal auditor for the department who shall report directly to the board on the conduct of departmental affairs.

Revised Law

Sec. 201.109. REVENUE ENHANCEMENT. (a) The commission shall:

(1) enhance existing sources of revenue; and
(2) create alternate sources of revenue.

(b) In carrying out this section, the commission shall provide for:

(1) maximizing the generation of revenue from existing assets of the department, including real estate;
(2) increasing the role of the private sector and public-private projects in the leasing of real estate and other assets in the development of highway projects;
(3) setting and attempting to meet annual revenue enhancement goals;
(4) reporting on the progress in meeting revenue enhancement goals in the department's annual report; and
(5) contracting for an independent audit of the department's management and business operations in 2001 and each 12th year after 2001. (V.A.C.S. Art. 6663f.)

Source Law

Art. 6663f. The Commission shall adopt a program to enhance existing sources of revenue and to generate alternate sources of revenue. The Commission shall include provisions for:

(1) maximizing revenue generation from existing department real estate and other assets;
(2) increasing the role of the private sector and public-private projects in the leasing of real estate and other assets in the development of highway projects;
(3) setting and attempting to meet annual revenue enhancement goals for this program;
(4) reporting on the progress toward the revenue enhancement goals in the Department's annual report; and
(5) contracting for an independent audit of the Department's management and business operations.
in the year 2001 and every 12 years after that year.

Revised Law

Sec. 201.110. CONTRACT WITH ADJOINING STATE FOR IMPROVEMENT OF ROAD CROSSING STATES' BOUNDARY. (a) The commission, by the authority of the governor, may contract with an adjoining state to:

(1) provide for the improvement of a public road or highway that crosses the states' boundary; and

(2) establish respective responsibilities for the improvement.

(b) In a contract for an improvement of the state highway system that is subject to a contract under Subsection (a), the commission may provide for the improvement of a segment of a public road or highway located in the adjoining state if:

(1) the improvement of that segment is necessary for the health, safety, and welfare of the people of this state and for the effective improvement and operation of the state highway system;

(2) that segment is an extension or continuation of a segment of the state highway system;

(3) the contract under Subsection (a) is authorized and executed under the law of the adjoining state; and

(4) all costs associated with the improvement of that segment are the responsibility of the adjoining state.

(c) In this section, "improvement" includes construction, reconstruction, and maintenance. (V.A.C.S. Art. 6673b-1, Secs. 1 (part), 2, 3.)

Source Law

Sec. 1. . . . As used in this article, "improvement" includes construction, reconstruction, and maintenance.

Sec. 2. (a) The State Highway and Public Transportation Commission is hereby authorized, by the authority of the governor, to enter into contracts with adjoining states providing for the improvement of public roads and highways traversing state boundaries and establishing respective responsibilities for such improvement.

(b) Pursuant to Subsection (a) of this section, the State Highway and Public Transportation Commission,
in a contract to be awarded for the improvement of the
Texas State Highway System, may provide for the
improvement of a segment of a public road or highway
located in an adjoining state.

Sec. 3. The authority granted under Section 2 of
this article may be exercised only if:

(1) the improvement to the segment of
public road or highway in the adjoining state is
necessary for the health, safety, and welfare of the
people of this state and for the effective improvement
and operation of the Texas State Highway System;

(2) the segment of public road or highway
within the adjoining state is an extension or
continuation of a segment of the Texas State Highway
System;

(3) the contract entered into pursuant to
Subsection (a) of Section 2 of this article is
authorized and duly executed under the law of the
adjoining state; and

(4) all costs associated with the
improvement of the segment of the public road or
highway situated within the adjoining state are the
responsibility of the adjoining state.

Revisor's Note

(1) Section 3(3), V.A.C.S. Article 6673b-1,
refers to a contract that is "duly" executed. The
revised law omits "duly" as unnecessary because the
word does not add to the clear meaning of the law.

(2) The first sentence of Section 1 of V.A.C.S.
Article 6673b-1 states the purpose of the article. The
revised law omits that sentence as nonsubstantive and
unnecessary. The omitted sentence reads:

Art. 6673b-1
Sec. 1. It is the purpose and intent
of this article to provide for the
effective and economical improvement of
public roads and highways that traverse
boundaries between Texas and adjoining
states and to encourage cooperation between
Texas and adjoining states in the
improvement of such public roads and
highways...

Revised Law

Sec. 201.111. RECOMMENDATION OF ENGINEER. On formal
application by a county, road district of a county, or
municipality, the commission may recommend for appointment a
competent civil engineer who is a graduate of a first-class school
of civil engineering and who is skilled in highway construction and
Art. 6668. . . . Upon the formal application of any county or organized road district thereof, or of any municipality, the Commission may recommend for appointment a competent civil engineer, and graduate of some first class school of civil engineering, skilled in the knowledge of highway construction and maintenance.

[Sections 201.112-201.200 reserved for expansion]

SUBCHAPTER D. TEXAS DEPARTMENT OF TRANSPORTATION

Sec. 201.201. GOVERNANCE OF DEPARTMENT. The commission governs the Texas Department of Transportation. (V.A.C.S. Art. 6663, Subsec. (a).)

Sec. 201.202. DIVISIONS; DIVISION PERSONNEL. (a) The commission shall organize the department into divisions to accomplish the department's functions and the duties assigned to it, including divisions for:

(1) aviation;
(2) highways and roads;
(3) public transportation; and
(4) motor vehicle titles and registration.

(b) The person designated by the director to supervise the division responsible for highways and roads must be a registered...
professional engineer experienced and skilled in highway
construction and maintenance.

(c) In appointing a person to supervise a function
previously performed by the former State Department of Highways and
Public Transportation, Texas Department of Aviation, or Texas
Turnpike Authority, preference shall be given to a person employed
in a similar position in that former agency. (V.A.C.S. Art. 6663,
Subsecs. (g), (h).)

Source Law

(g) Effective January 1, 1992, the Texas
Department of Transportation shall be organized into
divisions reflecting the different functions and duties
assigned to the department. It is the specific intent
of the legislature that separate divisions be
established to accomplish the department's duties in
the following areas:

(1) aviation;
(2) highways and roads;
(3) public transportation;
(4) motor vehicle titles and registration;
and
(5) any other divisions the board deems
necessary to accomplish the duties assigned to the
department.

(h) It is the specific intent of the legislature
that:

(1) the person designated by the executive
director to supervise the division responsible for
highways and roads shall be a registered professional
engineer experienced and skilled in highway
construction and maintenance;
(2) preference be given to the person or
persons employed in similar positions in the former
State Department of Highways and Public Transportation,
the Texas Department of Aviation, and the Texas
Turnpike Authority in appointing persons to supervise
those functions within the Texas Department of
Transportation.

Revised Law

Sec. 201.203. DEPARTMENT OFFICE; RECORDS. The department
shall have its office in Austin. The department shall keep all of
its records in that office. (V.A.C.S. Art. 6663, Subsec. (c).)

Source Law

(c) The Department shall have its office at
Austin where all its records shall be kept.
Sec. 201.204. SUNSET PROVISION. The Texas Department of Transportation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 1997. (V.A.C.S. Art. 6663, Subsec. (d).)

(d) The Texas Department of Transportation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 1997.

Revisor's Note
(End of Subchapter)

Subsection (e), V.A.C.S. Article 6663, provides that the department is subject to Article 13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). The revised law omits the substance of Subsection (e) because Article 13 was repealed by Section 68(3), Chapter 684, Acts of the 73rd Legislature, 1993. Subsection (e) reads:

(e) The Texas Department of Transportation is subject to the requirements of Article 13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

[Sections 201.205-201.300 reserved for expansion]

SUBCHAPTER E. DIRECTOR

Sec. 201.301. EXECUTIVE DIRECTOR. (a) The commission shall elect an executive director for the department. The director must be a registered professional engineer in this state and experienced and skilled in transportation planning, development, construction, and maintenance.

(b) The director serves at the will of the commission.

(c) Before assuming duties, the director shall execute a bond that is:
(1) payable to the state in an amount determined by the commission;
(2) approved by the commission; and
(3) conditioned on the faithful performance of the director's duties.

(d) The director shall:

(1) serve the commission in an advisory capacity, without vote; and
(2) submit to the commission, quarterly, annually, and biennially, detailed reports of the progress of public road construction, detailed reports of public and mass transportation development, and detailed statements of expenditures.

(e) The director is entitled to actual expenses for and related to travel away from Austin in performance of the director's duties under the direction of the commission. (V.A.C.S. Art. 6669.)

Source Law

Art. 6669. (a) The Commission shall elect an executive director for the Texas Department of Transportation who shall be a Registered Professional Engineer in the State of Texas experienced and skilled in transportation planning, development, construction, and maintenance.

(b) He or she shall hold his or her position until removed by the Commission. He or she shall first execute a bond payable to the state in such sum as the Commission may deem necessary, to be approved by the Commission, and conditioned upon the faithful performance of his or her duties. He or she shall act with the Commission in an advisory capacity, without vote, and shall quarterly, annually and biennially submit to it detailed reports of the progress of public road construction, public and mass transportation development, and statement of expenditures. He or she shall be allowed all actual traveling and other expenses therefor, under the direction of the Department, while absent from Austin in the performance of duty under the direction of the Commission.

Revised Law

Sec. 201.302. STATE ROAD MAP. The director shall make, regularly revise, and keep in a form convenient for examination in the office of the department a complete road map of the state that shows road construction in the counties. (V.A.C.S. Art. 6670
1 (part).

Source Law

Art. 6670. The Highway Engineer shall cause to be made and kept in form convenient for examination in the office of the Department, a complete road map of the State as represented in the road construction of the various counties, and such map shall be regularly revised as construction proceeds in the different counties.

Revised Law

Sec. 201.303. USE OF UNIVERSITY LABORATORIES FOR ANALYZING MATERIALS. The director may use laboratories maintained at Texas A&M University and The University of Texas to test and analyze road and bridge material. Persons in charge of the laboratories shall cooperate with and assist the director with those tests and analyses. (V.A.C.S. Art. 6671.)

Source Law

Art. 6671. The laboratories maintained at the Agricultural and Mechanical College of Texas and at the University of Texas shall be at the disposal and direction of the Highway Engineer for the purpose of testing and analyzing road and bridge material, and those in charge of said laboratories shall cooperate with and assist said Engineer to that end.

Reviser's Note

V.A.C.S. Article 6671 refers to the "Agricultural and Mechanical College of Texas." The institution's name was changed by Section 1, Chapter 166, Acts of the 58th Legislature, 1963, to "Texas A&M University." The revised law is drafted accordingly.

[Sections 201.304-201.400 reserved for expansion]

SUBCHAPTER F. DEPARTMENT EMPLOYEES

Revised Law

Sec. 201.401. EMPLOYEE QUALIFICATIONS. (a) A person may not be an employee of the department who is exempt from the state's position classification plan or compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary
group 17, of the position classification salary schedule if the
person is:

(1) an officer, employee, or paid consultant of a
Texas trade association:

(A) in the field of road construction or
maintenance or outdoor advertising; or

(B) of automobile dealers; or

(2) the spouse of an officer, manager, or paid
consultant described by Subdivision (1).

(b) A person may not act as general counsel to the
department if the person is required to register as a lobbyist
under Chapter 305, Government Code, because of the person's
activities for compensation on behalf of a profession related to
the operation of the department.

(c) In this section, "Texas trade association" has the
meaning assigned by Section 201.051. (V.A.C.S. Art. 6668a,
Subsecs. (a), (b), (c).)

Source Law

Art. 6668a. (a) An officer, employee, or paid
consultant of a Texas trade association in the field of
road construction or maintenance, automobile dealers,
or outdoor advertising may not be an employee of the
Department who is exempt from the state's position
classification plan or is compensated at or above the
amount prescribed by the General Appropriations Act for
step 1, salary group 17, of the position classification
salary schedule.

(b) A person who is the spouse of an officer,
manager, or paid consultant of a Texas trade
association in the field of road construction or
maintenance, automobile dealers, or outdoor advertising
may not be a Department employee who is exempt from the
state's position classification plan or is compensated
at or above the amount prescribed by the General
Appropriations Act for step 1, salary group 17, of the
position classification salary schedule.

(c) A person may not act as general counsel to
the Department if the person is required to register as
a lobbyist under Chapter 305, Government Code, because
of the person's activities for compensation on behalf
of a profession related to the operation of the Department.

Revised Law

Sec. 201.402. EQUAL EMPLOYMENT OPPORTUNITY. (a) The
director or the director's designee shall prepare and maintain a
written policy statement to ensure implementation of a program of
equal employment opportunity under which all personnel transactions
are made without regard to race, color, disability, sex, religion,
age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to
recruitment, evaluation, selection, appointment, training, and
promotion of personnel;

(2) a comprehensive analysis of the department work
force that meets federal and state guidelines;

(3) procedures by which a determination can be made of
significant underuse in the department work force of all persons
for whom federal or state guidelines encourage a more equitable
balance; and

(4) reasonable methods to appropriately address the
areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must
cover an annual period, be updated at least annually, and be filed
with the governor's office.

(c) The governor's office shall deliver a biennial report to
the legislature based on the information received under Subsection
(b). The report may be made separately or as a part of other
biennial reports made to the legislature.

(d) The department's designated equal employment opportunity
officer shall report directly to the director. (V.A.C.S. Art. 6668b.)

Source Law

Art. 6668b. (a) The engineer-director or the
engineer-director's designee shall prepare and maintain
a written policy statement to assure implementation of
a program of equal employment opportunity under which
all personnel transactions are made without regard to
race, color, handicap, sex, religion, age, or national
origin. The policy statement must include:

(1) personnel policies, including policies
relating to recruitment, evaluation, selection,
appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the
Department work force that meets federal and state
guidelines;
(3) procedures by which a determination can be made of significant underutilization in the Department work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underutilization.

(b) A policy statement prepared under Subsection (a) of this article must cover an annual period, be updated at least annually, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b) of this article. The report may be made separately or as a part of other biennial reports made to the legislature.

(d) The Department's designated equal employment opportunity officer shall report directly to the engineer-director.

Revised Law
Sec. 201.403. HIRING WOMEN AND MINORITIES. (a) To provide adequate numbers of women and minority applicants for all positions in the department, the department shall:

(1) open all positions compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 21, of the position classification salary schedule to applicants from inside and outside the department;

(2) seek applicants from this state and, if sufficient numbers are not available from this state, from other states;

(3) coordinate recruiting efforts with college placement officers and college student organizations;

(4) develop an extensive cooperative education program with colleges; and

(5) ensure that employees are aware of continuing educational opportunities and encourage employee participation in the programs.

(b) The department shall designate a central authority to set and monitor women and minority hiring goals. After consultation with appropriate persons in each division and regional office, the central authority shall set annual women and minority hiring goals in each division and regional office of the department and shall monitor progress toward those goals. The central
authority shall provide recruiting and technical assistance to each division and regional office.

(c) Not later than February 1 of each year, the director shall report to the commission, each house of the legislature, and the Sunset Advisory Commission on the department's progress in the recruitment and hiring of women and minority applicants.

(d) In this section, "minority" includes African Americans, Hispanic Americans, Asian Americans, American Indians, Alaska natives, and Pacific Islanders. (V.A.C.S. Art. 6669a.)

Source Law

Art. 6669a
Sec. 1. In this article, "minority" includes African Americans, Hispanic Americans, Asian Americans, American Indians, Alaska natives, and Pacific islanders.

Sec. 2. For the purpose of providing adequate numbers of women and minority applicants for all job positions in the Department, the Department shall:

(1) open all positions compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 21, of the position classification salary schedule to applicants both from within and outside the Department;

(2) seek applicants both from this state and, when sufficient numbers are not available from this state, from the rest of the United States;

(3) coordinate recruiting efforts with college placement officers and college student organizations;

(4) develop an extensive cooperative education program with colleges; and

(5) ensure that employees are aware of continuing educational opportunities and encourage employee participation in the programs.

Sec. 3. The Department shall designate a central authority to set and monitor women and minority hiring goals. The central authority shall:

(1) set, after consultation with appropriate persons in each division and regional office, and monitor progress toward annual women and minority hiring goals in each division and regional office of the Department; and

(2) provide recruiting and technical assistance to the divisions and regional offices of the Department as needed.

Sec. 4. The State Engineer-Director for Highways and Public Transportation shall report not later than February 1 of each year to the Commission, each house of the state legislature, and the Sunset Advisory Commission on the progress of the Department in the recruitment and hiring of women and minority job applicants.
Revised Law

Sec. 201.404. EMPLOYEE PROGRAMS. (a) The director or the director's designee shall develop an intra-agency career ladder program covering all full-time classified and exempt positions. The program shall require intra-agency posting of all nonentry positions concurrently with any public posting.

(b) The director or the director's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be based on the system established under this subsection.

(c) The department shall provide to its employees, as often as necessary, information concerning the employees' qualifications for employment under this subchapter and their responsibilities under applicable laws relating to standards of conduct for state employees. (V.A.C.S. Art. 6668a, Subsecs. (d), (e), (f).)

Source Law

(d) The engineer-director or the engineer-director's designee shall develop an intraagency career ladder program covering all full-time classified and exempt positions. The program shall require intraagency postings of all nonentry positions concurrently with any public posting.

(e) The engineer-director or the engineer-director's designee shall develop a system of annual performance evaluations. All merit pay for Department employees must be based on the system established under this subsection.

(f) The Department shall provide to its employees, as often as necessary, information regarding their qualifications for employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state employees.

Revised Law

Sec. 201.405. DETERMINATION OF FITNESS OF ENGINEER FOR HIGHWAY CONSTRUCTION. The commission shall adopt rules necessary to determine the qualifications of engineers who apply to the department for highway construction work. (V.A.C.S. Art. 6668 (part).)

Source Law

Art. 6668. The Department shall adopt such rules as are found necessary to determine the fitness of...
engineers making application for highway construction
work. . . .

Revisor's Note

The revised law changes "department" to "commission" because V.A.C.S. Article 6666, revised in
this code as Section 201.101, provides that the
commission adopts rules for the operation of the
department.

Revised Law

Sec. 201.406. EXCHANGE OF ENGINEERS WITH MEXICO. (a) The
commission may employ not more than five citizens of the United
Mexican States who are student engineers or graduate engineers for
a period of not more than six months and pay those employees for
their services from the state highway fund if the United Mexican
States employs an equal number of engineers of the department in
similar work in the United Mexican States for similar periods and
pays them for their services.

(b) The commission may grant leaves of absence to not more
than five engineers of the department to accept employment with the
United Mexican States as provided under Subsection (a). (V.A.C.S.
Art. 6669b, Secs. 1, 2.)

Source Law

Art. 6669b
Sec. 1. The Texas Highway Commission is hereby
authorized to employ not to exceed five (5) citizens of
the Republic of Mexico who are either student or
graduate engineers, for a period of not more than six
(6) months, and to pay such employees for their
services out of the State Highway Fund, provided the
Republic of Mexico will employ an equal number of the
engineers of the Texas Highway Department in similar
work in the Republic of Mexico and pay them for their
services for similar periods of time.

Sec. 2. The Texas Highway Commission is further
authorized to grant leaves of absence to not to exceed
five (5) of its engineering employees for the purpose
of accepting employment with the Republic of Mexico as
provided in Section 1.

Revisor's Note

(1) The revised law substitutes "United Mexican
States" for "Republic of Mexico" because the former is
the correct name of the nation.

(2) The revised law omits as unnecessary Section
3, V.A.C.S. Article 6669b, relating to the cumulative
effect of that article. An accepted general principle
of statutory construction requires a statute to be
given cumulative effect with other statutes unless it
provides otherwise or unless the statutes are in
conflict. The general principle applies to this
revision. Section 3 reads:

Sec. 3. The provisions of this Law
shall be cumulative of all laws on the
subject not in actual conflict herewith and
all laws or parts of laws in conflict
herewith are repealed only in so far as
such laws are in actual conflict with the
provisions of this Act, and in case of such
conflict the provisions of this Act shall
control and be effective.

[Sections 201.407-201.500 reserved for expansion]

SUBCHAPTER G. RECORDS

Revised Law

Sec. 201.501. REPRODUCTION OF RECORDS. (a) The department
may photograph, microphotograph, or film any record that pertains
to department operations.

(b) The department may create original records in
micrographic form on media, such as computer output microfilm.

(c) The department shall provide an adequate number of
microfilm readers and printers to allow the public convenient and
inexpensive access to records created under Subsection (a). The
department shall index the records alphabetically, by number, by
subject matter, or by other appropriate references and shall
provide the index to the public to promote convenient access.

(d) A photograph, microphotograph, or film of a record
reproduced under Subsection (a) is equivalent to the original
record for all purposes, including introduction as evidence in all
courts and administrative agency proceedings. A certified or
1 authenticated copy of such a photograph, microphotograph, or film
2 is admissible as evidence equally with the original photograph,
3 microphotograph, or film.

(e) The director or an authorized representative may certify
the authenticity of a photograph, microphotograph, or film of a
record reproduced under this section and shall charge a fee for the
certified photograph, microphotograph, or film as provided by law.

(f) Certified records shall be furnished to any person who
is authorized by law to receive them. (V.A.C.S. Art. 6663a, Secs.
1(a), (c) (part), 2, 2a (part).)

Source Law

Art. 6663a
Sec. 1. (a) The State Department of Highways
and Public Transportation is hereby authorized to
photograph, microphotograph, or film all records of any
kind or character pertaining to departmental
operations.

(c) The authority granted by Subsections
(a) . . . of this section includes the authority to
create original records in micrographic form on media
such as computer output microfilm. The State
Department of Highways and Public
Transportation . . . shall provide microfilm readers
and printers in adequate numbers to allow the public
convenient and inexpensive access to records as
provided by this section. The departments shall index
the records alphabetically, by number, by subject
matter, or by other appropriate referents and shall
provide an index to the public to promote convenient
access.

Sec. 2. Photographs or microphotographs or films
of any record photographed, microphotographed or
filmed, as herein provided, shall have the same force
and effect as the originals thereof would have had, and
shall be deemed to be an original record for all
purposes, including introduction in evidence in all
courts or administrative agencies. Duly certified or
authenticated copies of such photographs or
microphotographs or films shall be admitted in evidence
equally with the original photographs or
microphotographs or films.

Sec. 2a. The State Engineer-Director of the
State Department of Highways and Public
Transportation . . . or their duly authorized
representatives are hereby authorized to certify to the
authenticity of any photograph or microphotograph
herein authorized and shall make such charges therefor
as may be authorized by law. Such certified records
shall be furnished to any person who is entitled to
receive the same under the law.
Revisor's Note

(1) Section 2a, V.A.C.S. Article 6663a, refers to a "duly" authorized representative of the director. The revised law omits "duly" as unnecessary because the word does not add to the clear meaning of the law.

(2) Section 2a, V.A.C.S. Article 6663a, does not explicitly authorize the certification of the authenticity of a film. That appears to be an oversight, and "film" has been added in the revised law.

(3) The revision omits as unnecessary Section 1(g), V.A.C.S. Article 6663a, providing that Section 1 of that article does affect the public disclosure of information under V.A.C.S. Article 6252-17a. Article 6252-17a provides that all information held by a governmental body is public information unless the information falls into a specific exception, and Section 1, V.A.C.S. Article 6663a, does not contain a specific exception to the application of Article 6252-17a. Section 1(g) reads:

(g) This section does not affect the availability of information under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(4) The revision omits Section 3, V.A.C.S. Article 6663a, providing that the article is severable, because that provision duplicates Section 311.032, Government Code (Code Construction Act), applicable to the revised law, 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. Section 3 reads:

Sec. 3. If any section, subsection, sentence, clause or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature
hereby declares that it would have passed
this Act and each section, subsection,
sentence, clause, and phrase thereof,
irrespective of the fact that one or more
of the sections, subsections, sentences,
clauses or phrases be declared
unconstitutional.

Revised Law
Sec. 201.502. RETENTION OF DEED. A deed that conveys any
interest in real property to the state for a highway purpose shall
be deposited and retained in the Austin office of the department.
(V.A.C.S. Art. 6663a, Sec. 1(d).)

Source Law
(d) All deeds conveying land or interests in
land to the State of Texas for highway purposes shall
be retained and deposited in the offices of the State
Department of Highways and Public Transportation at
Austin, Texas.

Revised Law
Sec. 201.503. DISPOSAL OF RECORDS. Unless otherwise
required by law, and subject to Chapter 441, Government Code, the
department may dispose of or destroy a record that the department
determines is not required for the performance of the department's
duties and functions. (V.A.C.S. Art. 6663a, Sec. 1(e) (part).)

Source Law
(e) Unless otherwise required by law, and
subject to Chapter 441, Government Code, the State
Department of Highways and Public
Transportation . . . may dispose of or destroy records
that each agency determines are not required for the
performance of the agency's duties and functions.

[Sections 201.504-201.600 reserved for expansion]
(2) aviation;
(3) mass transportation;
(4) railroads and high-speed railroads; and
(5) water traffic.

(b) In developing the plan, the department shall seek opinions and assistance from other state agencies and political subdivisions that have responsibility for the modes of transportation listed by Subsection (a). As appropriate, the department and such an agency or political subdivision shall enter into a memorandum of understanding relating to the planning of transportation services. (V.A.C.S. Art. 6663, Subsec. (f)).

Source Law

(f)(l) The Texas Department of Transportation shall develop a statewide transportation plan containing all modes of transportation, including:
(A) highways and turnpikes;
(B) aviation;
(C) mass transportation;
(D) railroads and high-speed railroads; and
(E) water traffic.

(2) The department shall seek opinions and assistance from other state agencies and political subdivisions of the state with responsibility for the modes of transportation listed in Subdivision (1) of this subsection when developing its transportation plan. The department shall, when appropriate, enter into a memorandum of understanding with other state agencies or political subdivisions regarding the planning of transportation services.

Revised Law

Sec. 201.602. PROJECT SELECTION HEARINGS. The commission annually shall hold hearings on its highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. (V.A.C.S. Art. 6673k.)

Source Law

Art. 6673k. The Commission shall hold annual hearings on its highway project selection process and the relative importance of the various criteria on which the Commission bases its project selection decisions.
Sec. 201.603. AGREEMENT WITH OTHER AGENCIES FOR ROADS. (a) On request of the Texas Department of Mental Health and Mental Retardation or the Texas Youth Commission, the department may enter into agreements with that department or commission for the construction, maintenance, or repair of roads in an institution, hospital, or school under the control, management, or supervision of that department or commission.

(b) The Texas Department of Mental Health and Mental Retardation or the Texas Youth Commission may reimburse the appropriate fund of the department for the cost of construction or maintenance performed under Subsection (a). Before a transfer of an amount under this subsection, the reimbursing agency shall notify in writing the comptroller of the amount to be transferred and the fund from which the amount is to be taken. (V.A.C.S. Art. 6674t, Secs. 1, 2.)

Source Law

Art. 6674t
Sec. 1. The Texas State Highway Department is hereby authorized and empowered, upon request of the Board for Texas State Hospitals and Special Schools or the State Youth Development Council, to enter into agreements or contracts with the Board or with the Council for the construction, maintenance and repair of roads within any of the institutions, hospitals and schools under the control, management or supervision of the Board or the Council.

Sec. 2. The Board for Texas State Hospitals and Special Schools and the State Youth Development Council are hereby authorized to reimburse the appropriate funds of the Texas State Highway Department for the cost of construction and/or maintenance performed under Section 1. Prior to the transfer of any funds, the Board and/or the Council shall notify the Comptroller in writing what funds and what amounts are to be transferred and direct the Comptroller to make the appropriate transfer.

Revisor's Note

(1) Section 1, V.A.C.S. Article 6674t, provides for "agreements or contracts" between the department and certain other state agencies. The reference to "contracts" is omitted from the revised law because
"contract" is included within the meaning of "agreement."

(2) Section 2, V.A.C.S. Article 6674t, refers to the "Board for Texas State Hospitals and Special Schools." In 1965, that board was abolished and its responsibilities transferred to the Texas Department of Mental Health and Mental Retardation (Chapter 67, Acts of the 59th Legislature, Regular Session, 1965). The revised law is drafted accordingly.

(3) Section 2, V.A.C.S. Article 6674t, refers to the "State Youth Development Council." In 1957 that agency was succeeded by the Texas Youth Council (Chapter 281, Acts of the 55th Legislature, Regular Session, 1957). In 1983 the name of the agency was changed to the Texas Youth Commission (Chapter 44, Acts of the 68th Legislature, Regular Session, 1983). The revised law is drafted accordingly.

(4) Section 2, V.A.C.S. Article 6674t, requires that before the transfer of funds, the board or council shall notify the comptroller what funds and what amounts are to be transferred and direct the comptroller to make the transfer. The revised law omits "direct the Comptroller to make the appropriate transfer" because that direction is implied in the notification.

(5) The revision omits Section 3, V.A.C.S. Article 6674t, providing that the article is severable, because that provision duplicates Section 311.032, Government Code (Code Construction Act), applicable to the revised law, 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. Section 3 reads:

Sec. 3. If any section, subsection, sentence, clause or phrase of this Act is
for any reason held unconstitutional, the
unconstitutionality thereof shall not
affect the validity of the remaining
portion of this Act. The Legislature
hereby declares it would have passed the
Act and each section, subsection, sentence,
clause and phrase thereof, irrespective of
the fact that one or more of the sections,
subsections, sentences, clauses or phrases
be declared unconstitutional.

Revised Law

Sec. 201.604. ENVIRONMENTAL REVIEW. (a) The commission by
rule shall provide for the commission's environmental review of the
department's transportation projects that are not subject to review
under the National Environmental Policy Act (42 U.S.C. Section 4321
et seq.). The rules must provide for:

(1) public comment on the department's environmental
reviews, including the types of projects for which public hearings
are required, and a procedure for requesting a public hearing on an
environmental review for which a public hearing is not required;

(2) the department's evaluation of direct and indirect
effects of its projects;

(3) analysis of project alternatives; and

(4) a written report that briefly explains the
department's decision on a project and that specifies the
mitigation measures on environmental harm on which the project is
conditioned.

(b) An environmental review of a project must be conducted
before the location or alignment of the project has been adopted.

(c) The commission shall consider the results of its reviews
in executing its duties.

(d) The department shall coordinate with the Texas Natural
Resource Conservation Commission and the Parks and Wildlife
Department in preparing an environmental review. To give those
agencies time to respond, the department shall submit the review of
a project and the department's mitigation proposals on the project
to them for comment before the 30th day preceding the date on which
the department issues the written report explaining its decision on
that project.

(e) At least once during each five-year period, the commission, after a public hearing, shall review the rules relating to environmental reviews and make appropriate changes. (V.A.C.S. Art. 6673g, Sec. 1, as added by Ch. 551, 72nd Leg., R.S., 1991.)

Source Law

Art. 6673g
Sec. 1. (a) The Commission shall adopt rules providing for environmental reviews of Department transportation projects that are not subject to review under the National Environmental Policy Act (Chapter 55, Title 42, U.S.C.). The Commission shall consider the results of its reviews in executing its duties. The rules must contain provisions for:

1. (1) public comment, including the types of projects for which public hearings are required, on the Department's environmental reviews;

2. (2) the Department's evaluation of direct and indirect effects of its projects;

3. (3) analysis of project alternatives; and

4. (4) a written report that briefly explains the Department's decision regarding a project and that specifies the mitigation measures to environmental harm on which the project is conditioned.

(b) A rule adopted under Subsection (a)(1) of this section also must provide a procedure for a public hearing to be requested on an environmental review for which a public hearing is not required. An environmental review provided by a rule adopted under this section must be conducted before the location or alignment of the project has been adopted.

(c) The Department shall coordinate with the Texas Natural Resource Conservation Commission and Texas Parks and Wildlife Department in preparing environmental reviews under this section and shall submit environmental reviews and mitigation proposals prepared by the Department to those agencies for comment before the written report explaining the Department's decision regarding a project is issued. The Texas Natural Resource Conservation Commission and Texas Parks and Wildlife Department shall have at least 30 days to respond prior to issuance of the written report.

(d) At least once every five years, the Commission shall, after a public hearing, review the existing environmental review rules and make appropriate changes.

Revised Law
Sec. 201.605. ADVISORY COMMITTEE ON RULES AFFECTING THE ENVIRONMENT. (a) The governor, the lieutenant governor, and the speaker of the house of representatives each shall appoint two members of a committee to advise the commission on rules that may affect the environment.
(b) A member serves at the will of the officer who appointed the member.

(c) The commission may adopt rules to govern the operations of the advisory committee. (V.A.C.S. Art. 6673g, Sec. 2, as added by Ch. 551, 72nd Leg., R.S., 1991.)

Source Law

Sec. 2. (a) The governor, the lieutenant governor, and the speaker of the house of representatives each shall appoint two members to a committee to advise the Commission on rules of the Department that may affect the environment.

(b) The advisory committee consists of six members, each of whom represents the general public. A member serves at the pleasure of the officer appointing the member. A member of the 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.

(c) The Commission may adopt rules to govern the operations of the advisory committee.

Reviser's Note

The revised law omits the provision of Section 2(b), V.A.C.S. Article 6673g, relating to the requirement that each member of the advisory committee represent the general public and the provision of that section relating to the compensation and reimbursement of advisory committee members as impliedly repealed by Sections 2(a) and 4(a), V.A.C.S. Article 6252-33, respectively. V.A.C.S. Article 6252-33 was enacted in 1993.

Revised Law

Sec. 201.606. PROPERTY IN ENDANGERED SPECIES HABITAT. If the department acquires for a transportation project property that is a habitat of one or more species listed as endangered under the Endangered Species Act (16 U.S.C. Section 1531 et seq.) and that is within the boundaries of a regional habitat conservation plan, the department may participate in the regional habitat conservation plan. If the department does not comply with the regional habitat
conservation plan, it shall comply with the Endangered Species Act and the applicable requirements of the United States Fish and Wildlife Service. (V.A.C.S. Art. 6673g, Sec. 4, as added by Ch. 551, 72nd Leg., R.S., 1991.)

Source Law

Sec. 4. If the Department acquires for a transportation project a habitat of one or more species declared endangered under the federal Endangered Species Act (Chapter 35, Title 16, U.S.C.), and within the boundaries of a regional habitat conservation plan, the Department may participate in the regional habitat conservation plan. If the Department does not comply with the regional habitat conservation plan, it shall comply with the federal Endangered Species Act and the applicable requirements of the United States Fish and Wildlife Service.

Revised Law

Sec. 201.607. ENVIRONMENTAL, HISTORICAL, OR ARCHEOLOGICAL MEMORANDUM OF UNDERSTANDING. (a) Not later than January 1, 1997, and every fifth year after that date, the department and each state agency that is responsible for the protection of the natural environment or for the preservation of historical or archeological resources shall examine and revise their memorandum of understanding that:

(1) describes the responsibilities of each agency entering into the memorandum relating to the review of the potential environmental, historical, or archeological effect of a highway project;

(2) specifies the responsibilities of each agency entering into the memorandum relating to the review of a highway project;

(3) specifies the types of information the department must provide to the reviewing agency and the period during which the department must provide the information;

(4) specifies the period during which the reviewing agency must review the highway project and provide comments to the department; and

(5) includes any other agreement necessary for the
1 effective coordination of the review of the environmental,
2 historical, or archeological effect of a highway project.
3
4 (b) The department and each agency by rule shall adopt all
5 revisions to the memorandum. (V.A.C.S. Art. 6673g, Secs. 3(a),
6 (d), as added by Ch. 551, 72nd Leg., R.S., 1991.)

Source Law

Sec. 3. (a) The Department shall adopt a
1 memorandum of understanding with each state agency that
2 has responsibilities for the protection of the natural
3 environment or for the preservation of historical or
4 archeological resources. Each memorandum of
5 understanding must:
6 (1) describe each agency's
7 responsibilities regarding the review of the potential
8 environmental, historical, or archeological impacts of
9 highway projects;
10 (2) specify the responsibilities of each
11 agency entering into the memorandum regarding the
12 review of highway projects;
13 (3) specify the types of information the
14 Department must provide to the reviewing agency and the
15 period of time in which the Department must provide the
16 information;
17 (4) specify the length of time in which
18 the reviewing agency must review the highway project
19 and provide comments to the Department; and
20 (5) include any other agreements necessary
21 for the effective coordination of the review of the
22 environmental, historical, and archeological impacts of
23 highway projects.

(d) Not later than January 1, 1997, and every
1 fifth year after that date, the Department and each
2 agency that has entered into a memorandum of
3 understanding with the Department shall review and
4 update the memorandum of understanding required by
5 Subsection (a) of this section. The Department and
6 each of the agencies by rule shall adopt the memorandum
7 and all revisions to the memorandum.

Revisor's Note

The revised law omits as executed Sections 3(b)
1 and (c), V.A.C.S. Article 6673g, as added by Chapter
2 551, Acts of the 72nd Legislature, Regular Session,
3 1991, relating to the adoption of the original
4 memoranda of understanding. The omitted provisions
5 read:

(b) The Department shall coordinate
1 the development of each memorandum of
2 understanding.

(c) If the Department and an agency
3 are unable to agree on a memorandum of
4 understanding, they shall each submit a
proposed memorandum of understanding to the
attorney general not later than February 1, 1992. Not later than April 1, 1992, the
attorney general shall issue a memorandum of understanding that is binding between
the Department and the other state agency. In preparing the memorandum of understanding the attorney general may receive written and oral remarks from the Department and the agency. The agency and the Department may, on agreement, amend a memorandum of understanding issued by the attorney general.

Revised Law
Sec. 201.608. PROJECTS FOR TRAFFIC FROM INTERNATIONAL TRADE.
(a) The department annually shall review its proposed road projects to determine whether the projects are adequate to allow for the projected volume of highway traffic resulting from international trade over the five-year period following the date of the review.
(b) The department may reassign priorities to its projects in accordance with the results of its review.
(c) Not later than February 1 of each odd-numbered year, the department shall report to the legislature on the ability of the state highway system to allow for the projected volume of highway traffic resulting from international trade over the five-year period following the date of the report. (V.A.C.S. Art. 6673j-1.)

Source Law
Art. 6673j-1. (a) The department shall review its proposed road projects annually to determine whether they are adequate to handle the projected volume of highway traffic resulting from international trade over the next five years. The department may reassign priorities to its projects in accordance with the review.
(b) Not later than February 1 of each odd-numbered year, the department shall report to the legislature on the ability of the state highway system to handle the projected volume of highway traffic resulting from international trade over the next five years.

Revised Law
Sec. 201.609. NOTICE TO LEGISLATORS OF COMPLETED PROJECTS.
(a) Not later than the 10th day before the date on which a major
A road project is scheduled for completion, the department shall provide notice of the location and completion date of the road project to each member of the legislature who represents the county in which the road project is located and who wants to receive the notice.

(b) The department shall ask each legislator whether the legislator wants to receive notices under this section. (V.A.C.S. Art. 6673j.)

Source Law

Art. 6673j. Not later than the 10th day before the date a major road project is scheduled for completion, the department shall inform each member of the legislature who represents the county in which the road project is located and who desires notice of the location of and the completion date of the road project. The department shall contact each legislator to determine whether the legislator desires to receive notices under this article.

[Sections 201.610-201.700 reserved for expansion]

SUBCHAPTER I. FUNDS AND EXPENDITURES

Revised Law

Sec. 201.701. FUNDS FOR EMERGENCY MEDICAL SERVICES. (a) If the department receives state or federal highway safety funds that may be used for emergency medical services, the department shall:

(1) contract with the Texas Department of Health for the administration of the funds by the department of health; and

(2) designate a part of the funds to be used for improvement of emergency medical services.

(b) If an agency of the federal government formally notifies the department that a contract described by Subsection (a) violates federal law or would cause the loss of any federal highway safety funds, the department may not execute the contract or, if the contract has been executed, the contract is void.

(c) This section does not affect any responsibility of the department for oversight of state or federal highway safety funds. (V.A.C.S. Art. 6663e.)
Art. 663e. (a) Except as provided by Subsection (b) of this article, if the State Department of Highways and Public Transportation receives state or federal highway safety funds that may be used for emergency medical services, it shall:

(1) contract with the Texas Department of Health for the administration of the funds for emergency medical services by the Texas Department of Health; and

(2) designate a portion of the funds to be used for improvements of emergency medical services.

(b) If an agency of the federal government formally notifies the State Department of Highways and Public Transportation that a contract described by Subsection (a) of this article would cause the loss of any federal highway safety funds or would violate federal law, the department may not execute the contract or, if the contract has been executed, the contract is void.

(c) Any responsibility of the State Department of Highways and Public Transportation for oversight of state or federal highway safety funds is not affected by this article.

Sec. 201.702. DISADVANTAGED BUSINESS PROGRAM. (a) The department shall:

(1) set annual goals for the awarding of state or federally funded contracts, including construction, maintenance, supply, and service contracts, to disadvantaged businesses and shall attempt to meet the goals;

(2) assess the availability of disadvantaged businesses in this state;

(3) attempt to identify disadvantaged businesses in this state that provide or have the potential to provide supplies, materials, equipment, or services to the department;

(4) give disadvantaged businesses full access to the department's contract bidding process, inform the businesses about the process, offer the businesses assistance concerning the process, and identify barriers to the businesses' participation in the process; and

(5) allocate the responsibility for performing the duties prescribed by this section among persons in the department's headquarters and regional offices.
(b) The goals under Subsection (a)(1) must approximate the federal requirement for federal money used for highway construction and maintenance consistent with other applicable state and federal law.

(c) The department's equal opportunity office shall participate in the development of requests for proposals and other departmental documents relating to the bidding process.

(d) This section does not exempt the department from competitive bidding requirements provided by other law. (V.A.C.S. Art. 6669c.)

Source Law

Art. 6669c
Sec. 1. The Department shall establish a disadvantaged business program.

Sec. 2. (a) The Department shall set and strive to meet annual goals for the awarding of all state or federally funded contracts including construction, maintenance, supply, and service contracts to disadvantaged businesses. Contract goals shall approximate the federal requirement on federal money used in highway construction and maintenance, consistent with applicable state and federal laws.

(b) The Department shall perform a capacity study to assess the availability of disadvantaged businesses in the state.

(c) The Department shall attempt to identify disadvantaged businesses in the state that provide or have the potential to provide supplies, materials, equipment, or services to the Department. The Department shall give disadvantaged businesses full access to the contract bidding process. The Department shall inform and offer assistance to disadvantaged businesses regarding the Department's contract bidding process and identify barriers to participation by disadvantaged businesses in the Department's bidding process.

(d) The Department shall allocate responsibility for performing the duties provided by this article among persons in the Department's headquarters and regional offices.

(e) This article does not exempt the Department from competitive bidding requirements provided by law.

Sec. 3. The Department's equal opportunity office shall participate in the development of requests for proposals and other departmental documents relating to the bidding process.

Revised Law

Sec. 201.703. EXPENDITURES FOR ROADS NOT ON THE HIGHWAY SYSTEM. (a) The department in conjunction with the Federal Highway Administration may spend for the improvement of a road not
in the state highway system money appropriated by the United States Congress and allocated by the United States secretary of agriculture to the department for expenditure on the road. That federal money may be matched or supplemented by an amount of state money necessary for proper construction and performance of the work.

(b) State money may not be used exclusively for the construction of a road not in the state highway system.

(c) The expenditure of state money is limited to the cost of construction and engineering, overhead, and other costs on which the application of federal money is prohibited or impractical.

(V.A.C.S. Art. 6674d-1.)

Source Law

Art. 6674d-1. From and after the effective date of this Act, all moneys appropriated by the Congress of the United States and allocated by the Secretary of Agriculture of the United States to the State Highway Department for expenditure on roads not on the system of State Highways, may be expended, by and through the State Highway Department in conjunction with the Bureau of Public Roads, for the improvement of such roads and said Federal Funds may be matched, or supplemented by such amounts of State funds as may be necessary for proper construction and prosecution of the work. State funds shall not be used exclusively for the construction of roads not on the System of State Highways, the expenditure of State funds on said roads being limited to cost of construction and engineering, overhead and other costs on which the application of Federal Funds is prohibited or impractical.

Revisor's Note

V.A.C.S. Article 6674d-1 refers to the "Bureau of Public Roads." The functions of the bureau were transferred to the Federal Highway Administration August 13, 1973. The revised law reflects that transfer.

Revised Law

Sec. 201.704. CONTRACT FOR REPAIR OR MAINTENANCE OF EQUIPMENT. (a) The department shall contract with a private entity for the repair or maintenance of highway equipment and
passenger cars used by the department if the department determines that the private entity can:

(1) provide maintenance and repair services that are of sufficient quality and in sufficient quantity; and

(2) perform those services for a charge that is less than 90 percent of the total cost for the department to provide equivalent services.

(b) During a fiscal year the department shall spend for all contracts under this section not less than 25 percent of the total amount it spends for vehicle repair and maintenance in that year.

(c) In determining the total cost of providing maintenance and repair services for the purpose of Subsection (a)(2), the department shall consider direct and indirect costs of providing those services.

(d) In this section:

(1) "Highway equipment" means machinery or equipment, other than a passenger car, that is used by the department for the construction, reconstruction, maintenance, or repair of a road or highway.

(2) "Passenger car" has the meaning assigned by Section 502.001. (V.A.C.S. Art. 6674h-3.)

Source Law

Art. 6674h-3. (a) In this article:

(1) "Highway equipment" means machinery or equipment, other than a passenger car, that is used by the department for the construction, reconstruction, maintenance, or repair of a road or highway.

(2) "Passenger car" has the meaning assigned by Section 1(j), Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-1, Vernon's Texas Civil Statutes).

(b) The department shall contract with a private entity for the repair or maintenance of highway equipment and passenger cars used by the department and expend under all contracts under this subsection during a fiscal year not less than 25 percent of the total amount the department expends for vehicle repair and maintenance in that year, if the department determines that the private entity can:

(1) provide maintenance and repair services of sufficient quality and in sufficient quantity; and

(2) perform maintenance and repair services at less than 90 percent of the total cost for the department to provide these services.
(c) In determining the total cost of providing services, the department shall consider both direct and indirect costs of providing maintenance and repair services.

Revisor's Note

Subsection (a)(2), V.A.C.S. Article 6674h-3, contains a reference to Section 1(j), Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-1, Vernon's Texas Civil Statutes). Section 1(j) is codified in Section 502.001 of this code, and the revised law reflects that citation change.

[Sections 201.705-201.800 reserved for expansion]

SUBCHAPTER J. INFORMATION FURNISHED BY DEPARTMENT

Revised Law

Sec. 201.801. INFORMATION ABOUT DEPARTMENT; COMPLAINTS.

(a) The department shall prepare information of public interest describing the functions of the department and the department's procedures by which a complaint is filed with the department and resolved by the department. The department shall make the information available to the public and appropriate state agencies.

(b) The commission by rule shall establish methods by which consumers and service recipients are notified of the department's name, mailing address, and telephone number for directing complaints to the department. The commission may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated by the department;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated by the department; or

(3) in a bill for service provided by an individual or entity regulated by the department.
(c) The department shall keep an information file about each written complaint filed with the department that the department has the authority to resolve.

(d) The department, at least quarterly and until final disposition of a written complaint that is filed with the department and that the department has the authority to resolve, shall notify the parties to the complaint of its status unless the notice would jeopardize an undercover investigation. (V.A.C.S. Art. 6665a, Subsecs. (a), (b), (c), (d).)

Source Law

Art. 6665a. (a) The Department shall prepare information of public interest describing the functions of the Department and the Department's procedures by which complaints are filed with and resolved by the Department. The Department shall make the information available to the public and appropriate state agencies.

(b) The Commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Department for the purpose of directing complaints to the Department. The Commission may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated by the Department;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated by the Department; or

(3) in a bill for service provided by an individual or entity regulated by the Department.

(c) The Department shall keep an information file about each written complaint filed with the Department that the Department has authority to resolve.

(d) If a written complaint is filed with the Department that the Department has authority to resolve, the Department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Revised Law

Sec. 201.802. PUBLIC ACCESS TO COMMISSION AND TO DEPARTMENT PROGRAMS. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and speak on any issue under the jurisdiction of the commission.

(b) The department shall prepare and maintain a written plan
that describes the manner in which a person who does not speak
English or who has a physical, mental, or developmental disability
is provided reasonable access to the department's programs.
(V.A.C.S. Art. 6665a, Subsecs. (e), (f).)

Source Law

Sec. 201.803. INFORMATION FOR ROAD CONSTRUCTION AND
MAINTENANCE. (a) The department shall collect information and
compile statistics about the mileage, character, and condition of
public roads in each county and the cost of construction of the
classes of roads in the county.

(b) The department shall investigate and determine the
methods of road construction best adapted to different sections of
the state.

(c) The department shall establish standards for the
construction and maintenance of highways, bridges, and ferries,
considering natural conditions and the character and adaptability
of road building material in the counties of the state.

(d) The department may be consulted, at all reasonable
times, by county and municipal officials for any information or
assistance the department can give concerning the highways in the
county or municipality. The department shall provide the requested
information.

(e) The department may request from county and municipal
officials any information necessary for the performance of the
department's duties under this section.

(f) Before any proceeds from the sale of bonds or other
legal obligations issued by a county or a subdivision or defined district of a county are spent for road construction by the commissioners court of the county or under its direction, the commissioners court shall obtain from the department information and advice on the general plans and specifications for the road construction to be undertaken. On request of a county commissioners court, the department shall consider and advise the commissioners court on those plans and specifications. (V.A.C.S. Art. 6667.)

Source Law

Art. 6667. The Department shall collect information and compile statistics relative to the mileage, character and condition of the public roads in the different counties, and the cost of construction of the different classes of roads in the various counties. It shall investigate and determine the methods of road construction best adapted to the different sections of the State, and shall establish standards for the construction and maintenance of highways, bridges and ferries, giving due regard to all natural conditions and to the character and adaptability of road building material in the different counties. The Department may, at all reasonable times, be consulted by county and city officials for any information or assistance it can render with reference to the highways within such counties or cities, and it shall supply such information when called for by city or county officials; and it may in turn call upon all such officials for any information necessary for the performance of its duties hereunder. Upon request of the commissioners court of any county, the Department shall consider and advise concerning general plans and specifications for all road construction to be undertaken from the proceeds of the sale of bonds or other legal obligations issued by a county, or by any subdivision or defined district of a county; and such information and advice shall be so obtained before any of the proceeds from such bond issues are expended by or under the direction of the commissioners court.

Reviser's Note

V.A.C.S. Article 6667 refers to a "city." The revised law substitutes "municipal" or "municipality" for "city" because that is the term used in the Local Government Code.

[Sections 201.804-201.900 reserved for expansion]
SUBCHAPTER K. ROAD AND HIGHWAY USE; SIGNS

Revised Law

Sec. 201.901. PROHIBITING USE OF HIGHWAY OR ROAD. (a) The commission may prohibit the use of any part of a highway or road under the control of the department by any vehicle that will unduly damage the highway or road when:

(1) because of wet weather or recent construction or repairs, the highway or road cannot be safely used without probable serious damage to it; or

(2) a bridge or culvert on the highway or road is unsafe.

(b) Before prohibiting the use of a highway or road under this section, the commission shall post notices that state the maximum load permitted and the time the use of the highway or road is prohibited. The notices must be posted at locations that enable drivers to detour to avoid the restricted highway or road.

(c) The commission may not prohibit the use of a highway or road under this section until a detour has been provided.

(d) If the owner or operator of a vehicle that is prohibited from using a highway or road under this section is aggrieved by the prohibition, the person may file with the county judge of the county in which the restricted highway or road is located a written complaint that sets forth the nature of the grievance. On the filing of the complaint the county judge immediately shall set the issue for a hearing to be held not later than the third day after the date on which the complaint is filed. The county judge shall give to the commission written notice of the day and purpose of each hearing.

(e) The county judge shall hear testimony offered by the parties. On conclusion of the hearing, the county judge shall sustain, revoke, or modify the commission's decision on the restriction. The county judge's judgment is final as to the issues raised.
(f) A person who violates a prohibition established under this section before or after it is approved by the county judge under Subsection (e) commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed $200.

(V.A.C.S. Art. 6674o-1 (part).)

Source Law

Art. 6674o-1. The State Highway Commission, may have the authority by posting notices on the highways or roads under their respective control when from wet weather or recent construction or repairs such cannot be safely used without probable serious damage to same, or when the bridge or culverts on same are unsafe, to forbid the use of such highway or section thereof by any vehicle or loads of such weight or tires of such character as will unduly damage such highway. The notices provided for herein shall state the maximum load permitted and the time such use is prohibited and shall be posted upon the highway in such place as will enable the drivers to make detours to avoid the restricted highways or portions thereof; provided no road shall be closed until detours have been provided.

If the owner or operator of any such vehicle feels himself aggrieved by such action, he may complain in writing to the County Judge of such county, setting forth the nature of his grievance. Upon the filing of such complaint the County Judge shall forthwith set down for hearing the issue thus raised for a day certain, not more than three days later, and shall give notice in writing to such official of the day and purpose of each hearing, and at such hearing the County Judge shall hear testimony offered by the parties respectively, and upon conclusion thereof, shall render judgment sustaining, revoking or modifying such order heretofore made by the . . . State Highway Commission, and the judgment of the County Judge shall be final as to the issues raised. . . .

Any party guilty of violating the provisions and directions of any such order or notice of the . . . State Highway Commission, before or after it has been so approved by such judgment of the County Judge shall be fined not exceeding Two Hundred Dollars.

Revisor's Note

The part of V.A.C.S. Article 6674o-1 that is not set out as source law for this section is revised in Chapter 251 of this code.

Revised Law

Sec. 201.902. ROAD USE BY BICYCLISTS. (a) The department shall designate:

(1) a statewide bicycle coordinator; and
(2) a bicycle coordinator in each regional office.

(b) A bicycle coordinator shall assist the department in developing rules and plans to enhance the use of the state highway system by bicyclists.

(c) The commission shall adopt rules relating to use of roads in the state highway system by bicyclists, including provisions for:

(1) the specific duties of the statewide bicycle coordinator and the regional bicycle coordinators;

(2) obtaining comments from bicyclists on:

(A) a highway project that might affect bicycle use;

(B) the use of a highway for bicycling events;

and

(C) department policies affecting bicycle use of state highways;

(3) the consideration of acceptable national bicycle design, construction, and maintenance standards on a project in an area with significant bicycle use; and

(4) any other matter the commission determines necessary to enhance the use of the state highway system by bicyclists.

(d) A rule adopted under this section may not be inconsistent with Chapter 551. (V.A.C.S. Art. 6673h, Secs. 1, 2.)

Source Law

Art. 6673h
Sec. 1. The Department shall designate a statewide bicycle coordinator and a bicycle coordinator within each regional office. The general duty of a bicycle coordinator is to assist the department in developing rules and plans to enhance the use of the state highway system by bicyclists.

Sec. 2. (a) The Commission shall adopt rules regarding bicycle road use on the state highway system, including provisions for:

(1) the specific duties of the statewide bicycle coordinator and the regional bicycle coordinators;

(2) obtaining comment from bicyclists on highway projects that might affect bicycle use, on use of highways for bicycling events, and on departmental policies affecting bicycle use of state highways;
(3) the consideration of acceptable national bicycle design, construction, and maintenance standards on projects in areas with significant bicycle use; and

(4) other matters the Commission determines necessary to enhance the use of the state highway system by bicyclists.

(b) A rule adopted under this section may not be inconsistent with Article XXI, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

Revisor's Note

Section 2(b), V.A.C.S. Article 6673h, contains a reference to Article XXI, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes). Article XXI is codified as Chapter 551 of this code, and the revised law reflects that citation change.

Revised Law

Sec. 201.903. ADVISORY COMMITTEE ON RULES ABOUT ROAD USE BY BICYCLISTS. (a) The commission shall appoint a five-member committee to advise the commission on the adoption of rules relating to bicyclists' use of roads in the state highway system.

(b) At least three of the members of the committee must represent bicyclists in the state.

(c) Members of the committee serve at the will of the commission.

(d) The commission may adopt rules to govern the operation of the committee.

(e) The committee is abolished on the commission's passage of initial rules relating to bicyclists' use of roads. (V.A.C.S. Art. 6673h, Sec. 3.)

Source Law

Sec. 3. (a) The Commission shall appoint a rules advisory committee to advise the Commission on the adoption of rules regarding bicycle road use on the state highway system.

(b) The advisory committee consists of five members, at least three of whom represent bicyclists in the state. The members serve at the pleasure of the Commission. A member of the 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.

(c) On passage of initial rules regarding bicycle road use, the advisory committee is abolished.

(d) The Commission may adopt rules to govern the operations of the advisory committee.

Revisor's Note

The revised law omits the provision of Section 3(b), V.A.C.S. Article 6673h, relating to the compensation and reimbursement of advisory committee members as impliedly repealed by Section 4(a), V.A.C.S. Article 6252-33. V.A.C.S. Article 6252-33 was enacted in 1993, two years after the enactment of V.A.C.S. Article 6673h.

Revised Law

Sec. 201.904. CLASSIFICATION, DESIGNATION, AND MARKING OF HIGHWAYS. (a) The department may classify, designate, and mark state highways in this state.

(b) The department may provide a uniform system of marking state highways under the control of the state. The system must correlate with and, to the extent possible, conform to the system adopted in other states. (V.A.C.S. Art. 6701d-11, Sec. 11.)

Source Law

Sec. 11. The Department is hereby authorized to classify, designate and mark both intrastate and interstate State Highways lying within the boundaries of this State and to provide a uniform system of marking and signing such highways under the jurisdiction of this State, and such system of marking and signing shall correlate with and so far as possible conform to the system adopted in other states.

Revised Law

Sec. 201.905. SPEED SIGNS. The department shall erect and maintain on the highways and roads of this state appropriate signs that show the maximum lawful speed for commercial motor vehicles, truck tractors, truck trailers, truck semitrailers, and motor vehicles engaged in the business of transporting passengers for
compensation or hire (buses). (V.A.C.S. Art. 6701f.)

Source Law

Art. 6701f. It shall be the duty of the State Highway Department and said Department is hereby directed to erect and maintain on the highways and roads of Texas appropriate signs showing the maximum lawful speed for commercial motor vehicles, truck tractors, trailers and semi-trailers (trucks) and motor vehicles engaged in the business of transporting passengers for compensation or hire (buses).

Revisor's Note
(End of Chapter)

(1) V.A.C.S. Article 6674q-13 applies to expenditure of money appropriated by the federal government under the Hayden-Cartwright Act passed in 1936 and to state money supplementing those funds. The Hayden-Cartwright Act was repealed by congress August 27, 1958. Article 6674q-13 is omitted from the revised law because the statute has been executed and no funds to which the article applies remain unspent. The omitted law reads:

Art. 6674q-13. From and after July 1, 1937, all moneys appropriated under the Hayden-Cartwright Act, passed by the 74th Congress, June 16, 1936, (H.R. 11687), for expenditure on roads not on the System of the State Highways, may be expended, by and through the State Highway Department in conjunction with the Bureau of Public Roads, for the improvement of such roads and said Federal funds may be matched or supplemented by such amounts of State funds as may be necessary for proper construction and prosecution of the work. State funds shall not be used exclusively for the construction of roads not on the System of State Highways; the expenditure of State funds on said roads being limited to cost of construction and engineering, overhead and other costs, on which the application of Federal funds is prohibited or impractical.

(2) V.A.C.S. Articles 6674q-14 and 6674r extended the application of V.A.C.S. Article 6674q-7, relating to the eligibility of certain types of indebtedness to participate in the distribution of funds in the County and Road District Highway Fund, to

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the specific bonds described by Articles 6674q-14 and 6674r. Articles 6674q-14 and 6674r are omitted from the revised law because the bonds they describe were issued before 1937 and would have been retired by this time and because Article 6674q-7 expired September 1, 1979. The omitted law reads:

Art. 6674q-14. All bonds which have been heretofore issued and sold by road districts in counties with a population of not less than nineteen thousand (19,000) and not more than nineteen thousand five hundred (19,500), according to the next preceding Federal Census, where the proceeds of the sale of the bonds have been expended in whole or in part upon a highway which was then a part of the designated system of State Highways in Texas, and a part of the proceeds of which has been expended, in whole or in part, upon a highway which has, since the issuance and sale of said bonds, been designated as a part of the State Highway System of Texas, and where such designated parts of the State Highway System bear different highway numbers, or where one designation is numbered and the other un-numbered, shall be entitled to participate in the State Highway Fund, under the provisions and restrictions of Chapter 136, Acts of the Forty-third Legislature of Texas, 1933, and any amendments thereto, including the re-enactment and extension thereof under and by virtue of the terms and provisions of House Bill No. 463, enacted by the Legislature of Texas, Forty-fifth Regular Session, 1937.

The Board of County and Road District Indebtedness is directed to audit all expenditures of the aforementioned district, and the assumption herein provided for shall extend only to such bonds, the proceeds of which were expended in the construction of the road which has subsequently been designated a State Highway.

Art. 6674r. All bonds which have been heretofore issued and sold by all road districts in counties with a population of not less than twenty-five thousand three hundred forty-four (25,344) and not more than twenty-five thousand four hundred forty-four (25,444) people, according to the last preceding Federal Census, where the proceeds of the sale of the bonds has been expended, in whole or in part, upon a highway which has, since the issuance and sale of said bonds, been temporarily or permanently designated as a part of the State Highway System, shall be entitled to participate in the State Highway Fund, under the provisions and restrictions of
Chapter 136, Acts of the Forty-third Legislative of Texas, 1933, and any amendments thereto.

(3) V.A.C.S. Article 6674t-1 directed the Texas Youth Commission to convey an easement in land to the Texas Transportation Commission for the reconstruction and maintenance of a highway. That article was enacted in 1957 and is omitted from the revised law as executed. The omitted law reads:

Art. 6674t-1. In consideration of the benefits accruing to the state from the reconstruction and maintenance of a state highway extending along or across certain state property known as the Gainesville State School for Girls, the State Youth Development Council, acting by its Executive Secretary, is hereby authorized and directed to execute and deliver to the State Highway Commission of the State of Texas a proper instrument conveying thereto a right-of-way easement to the following described tracts of land in Cooke County, Texas, for the reconstruction and maintenance of a highway, the form of such conveyance to be approved by the Attorney General:

Tract I: Being a part of and out of the A. C. C. Bailey Survey, Abstract 44, Cooke County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at the Northwest corner of a 94.87 acre tract conveyed by P. L. Dickerman and Minnie Dickerman to the State of Texas on May 1, 1915, as recorded in Volume 116, page 185, of the Cooke County Deed Records, said point being in the center of the Gainesville-Woodbine Road;

Thence North 89 degrees 59' East 683 feet along the North line of said 94.87 acre tract to a point for corner, said point being the Southwest corner of a 33 2/3 acre tract conveyed by J. M. Lee and wife, and C. H. Lee and wife, to the State of Texas on April 14, 1915, as recorded in Volume 116, page 147, of the Cooke County Deed Records, said point being also on the centerline of Farm Highway 678 at Survey Station 130 + 30;

Thence North 50.0 feet along the West line of said 33 2/3 acre tract to a point for corner, said point being in the North right-of-way line of Farm Highway 678;

Thence North 89 degrees 59' East 1667.0 feet along said North right-of-way line to a point in the East line of above mentioned 33 2/3 acre tract;

Thence South 100 feet, crossing the Southeast corner of said 33 2/3 acre tract and the Northeast corner of said 94.87 acre tract at 50 feet, to a point in the South
right-of-way line of said Farm Highway No. 678;

Thence South 89 degrees 59' West 2350 feet along said South right-of-way line to a point in the West line of the above mentioned 94.87 acre tract;

Thence North 50 feet to the place of beginning and containing 4.61 acres of land more or less, of which 1.39 acres is new right-of-way and the balance is in an existing road.

Tract II: Being a strip of land out of the A. C. C. Bailey Survey, Abstract 44, 200 feet long and 30 feet wide on the South side of the proposed location of FM Highway 678, the centerline of said strip being more particularly described as follows:

Beginning at a point in the South line of said highway 50 feet South of Survey Station 144 + 00;

Thence South 0 degrees 01' East 200 feet;

Containing 0.138 acres of land, more or less.

(4) V.A.C.S. Article 6694a authorizes the payment of premiums on bonds required by the federal government to secure funds advanced by the federal government under the National Industrial Recovery Act. That act was repealed by congress September 6, 1966. Article 6694a is omitted from the revised law because it has no application and is meaningless. The omitted law reads:

Art. 6694a. The State Highway Commission is hereby authorized and empowered to pay out of any available funds to the credit of the State Highway Fund the premium or premiums on surety or assurance bonds that the Federal Government may require to be given by the State Treasurer to secure a fund or funds advanced by the Federal Government to the State of Texas under the recent National Industrial Recovery Act for expenditure by the State Highway Department in the construction and improvement of state highways.

CHAPTER 202. CONTROL OF HIGHWAY ASSETS

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Sec. 202.001. ADMINISTRATION. (a) The commission may maintain state highways.

(b) A county is:

(1) not liable for expenses associated with the maintenance of a state highway; and

(2) not responsible for the supervision of a state highway. (V.A.C.S. Art. 6673 (part).)

Source Law
Art. 6673. The Commission is authorized to take over and maintain the various State Highways in Texas, and the counties through which said highways pass shall be free from any cost, expense or supervision of such highways.

Revisor's Note
(1) V.A.C.S. Article 6673 authorizes the commission to "take over and maintain the various State Highways in Texas." The revised law omits the reference to "take over" because that provision is executed.

(2) V.A.C.S. Article 6673 refers to "any cost, expense" of the highways. The revised law omits "cost" because it is included in the meaning of "expense."

Revised Law
Sec. 202.002. FUNDS. (a) The commission shall use automobile registration fees in the state highway fund to maintain state highways and may not divert funds from automobile registration fees for another use.

(b) Notwithstanding Subsection (a), if the commission is
without sufficient funds from other sources to match the federal aid for roads in the state, the commission may by resolution transfer a sufficient amount from the state highway fund to match the federal aid. (V.A.C.S. Art. 6673 (part)).

Source Law

Art. 6673. . . . The Commission shall use the automobile registration fees in the State Highway Fund for the maintenance of such highways, and shall divert the same to no other use unless the Commission shall be without sufficient funds from other sources to meet Federal aid to roads in Texas, and in such case the Commission is authorized by resolution to transfer a sufficient amount from such fund to match said Federal aid.

Revisor's Note
(End of Subchapter)

Section 1(1) of V.A.C.S. Article 6673a-3, Section 1(3) of V.A.C.S. Article 6673i, and Section 1(3) of V.A.C.S. Article 6674i-2 provide a definition for the term "department." The revised law omits those definitions because "department" is defined in Section 201.001 of this code, a general definitions section that applies to this chapter. Additionally, Section 1(3), V.A.C.S. Article 6673i, and Section 1(3), Article 6674i-2, refer to the "State Department of Highways and Public Transportation." The revised law changes the reference to the Texas Department of Transportation for the reason stated in the reviser's note to Section 201.003. The omitted law reads as follows:

Art. 6673a-3
Sec. 1. In this Act:
(1) "Department" means the Texas Department of Transportation.

Art. 6673i
Sec. 1. [In this article:]
(3) "Department" means the State Department of Highways and Public Transportation.

Art. 6674i-2
Sec. 1. [In this article:]
(3) "Department" means the State Department of Highways and Public
Transportation.

[Sections 202.003-202.020 reserved for expansion]

SUBCHAPTER B. SALE, EXCHANGE, OR RETURN OF HIGHWAY PROPERTY

Revised Law

Sec. 202.021. REAL PROPERTY NO LONGER NEEDED. (a) The commission may recommend to the governor the sale of any interest in real property, including a highway right-of-way, that:

(1) was acquired for a highway purpose; and

(2) as determined by the commission, is no longer needed for that purpose.

(b) A highway right-of-way that is sold shall be sold with the following priorities:

(1) to abutting or adjoining landowners; or

(2) to the general public.

(c) The commission shall determine the fair value of the state's interest in the real property and advise the governor of the value.

(d) Revenue from the sale of property under this subchapter shall be deposited to the credit of the state highway fund.

(e) The governor may execute a deed conveying the state's interest in the property. (V.A.C.S. Art. 6673a, Sec. 1(a).)

Source Law

Art. 6673a

Sec. 1. (a) Whenever the State Highway and Public Transportation Commission determines that any real property, or interest therein, heretofore or hereafter acquired by the State for highway purposes, is no longer needed for such purposes, and in the case of highway right-of-way it has further determined that such right-of-way is no longer needed for use of citizens as a road, the State Highway and Public Transportation Commission may recommend to the Governor that such land or interest therein be sold, and the Governor may execute a proper deed conveying all the State's rights, title and interest in such land. It shall be the duty of the Commission to determine the fair and reasonable value of the State's interest in such land and to advise the Governor thereof. All money derived from such sales shall be deposited in the State Treasury to the credit of the State Highway Fund. Provided further, that where right-of-way property is owned by the State and the State Highway and Public...
Transportation Commission determines that said right-of-way property should be sold, such property shall be sold with the following priorities:

(1) To abutting or adjoining landowners; or

(2) To the general public.

Revisor's Note

(1) Section 1(a), V.A.C.S. Article 6673a, refers to the "State Highway and Public Transportation Commission." The revised law changes the reference to the Texas Transportation Commission for the reason stated in the revisor's note to Section 201.003.

(2) Section 1(a), V.A.C.S. Article 6673a, refers to the "fair and reasonable value of the State's interest in such land." The reference to "reasonable" is omitted from the revised law because "reasonable" is included within the meaning of "fair."

(3) The revised law omits the reference in Section 1(a), V.A.C.S. Article 6673a, to the state treasury. Section 404.094(a), Government Code (State Funds Reform Act), 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) Section 1(a), V.A.C.S. Article 6673a, refers to a "proper deed." The revised law omits "proper" as unnecessary because the word does not add to the clear meaning of the law.

(5) Section 1(a), V.A.C.S. Article 6673a, refers to the "State's rights, title and interest in" land. Throughout this chapter, the references to "rights" and "title" are omitted from the revised law because they are included within the meaning of "interest in real property."
Revised Law

Sec. 202.022. NOTICE OF SALE. Notice of a sale to the general public must be published in the English language:

(1) once a week for three consecutive weeks, with the final publication occurring not later than the 20th day before the date of the sale; and

(2) in a newspaper in the county where the property is located. (V.A.C.S. Art. 6673a, Sec. 1(b) (part).)

Source Law

(b) Notice of sale to the general public shall be advertised at least twenty days before the day of sale by having notice thereof published in the English language once a week for three consecutive weeks preceding such sale in a newspaper in the county in which the real estate is located.

Revised Law

Sec. 202.023. SALE OF REAL PROPERTY BY BID. (a) A sale to the general public of an interest in real property under this subchapter is by sealed bid and may not be for less than the value determined by the commission under Section 202.021.

(b) The commission may require that each bidder pay to the commission a bid deposit in an amount and form determined by the commission.

(c) The commission shall apply the bid deposit to the purchase price of the property for the bid accepted by the commission.

(d) If for any reason the bidder fails to complete the purchase before the 61st day after the date on which the bidder receives written notice that the state is ready to complete the sale, the bid deposit is forfeited.

(e) The state shall refund the bid deposit if the state is unable to complete the sale. (V.A.C.S. Art. 6673a, Sec. 1(b) (part).)

Source Law

(b) ... Such sale shall be made on a sealed bid basis, and said land shall not be sold for less
than the value recommended by the State Highway and Public Transportation Commission as provided above. The State Highway and Public Transportation Commission may require all bidders to pay to the Commission a bid deposit in an amount and form determined by the Commission. The deposit for the bid accepted by the Commission shall be applied to the purchase price of the property and shall be forfeited if the bidder, for any reason, fails to complete the purchase before the 61st day after the date the bidder receives written notice that the State is ready to complete the sale. The State shall refund the deposit if the State is unable to complete the sale.

Revised Law
Sec. 202.024. EXCHANGE OF REAL PROPERTY. The governor, on the recommendation of the commission, may execute a deed exchanging an interest in real property acquired but not needed for a highway purpose as whole or partial consideration for another interest in real property needed for a state highway purpose. (V.A.C.S. Art. 6673a, Sec. 1(c).)

Source Law
(c) Upon recommendation of the State Highway and Public Transportation Commission, the Governor may execute a proper deed exchanging any such real property, or interest therein, either as a whole or part consideration, for any other real property, or interest therein, needed by the State for highway purposes.

Revised Law
Sec. 202.025. EXECUTION OF DEED: METHOD. The governor, on the recommendation of the commission, may execute a deed relinquishing and conveying under this subchapter the state’s interest in real property as follows:

(1) if the state's title was acquired by donation, convey to the grantor or the grantor's heirs or assigns;

(2) if the state's title was acquired by purchase by a county or municipality, convey to the county or municipality, or to the grantor or the grantor's heirs or assigns at the request of the county or municipality;

(3) if the interest conveyed to the state is only the right to use the property, convey to the owner of the fee in the

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property;

(4) if the interest in the property was acquired and held by a county or municipality in its own name for use by the state, quitclaim to the county or municipality any interest that might have accrued to the state by use of the property;

(5) if there is no record title to the property, quitclaim any interest that might have accrued to the state by use of the property to the county or municipality where the property is located or to abutting property owners at the request of the county or municipality; or

(6) if necessary to comply with a reversionary clause contained in the instrument that originally conveyed the interest to the state, quitclaim the state's interest. (V.A.C.S. Art. 6673a, Secs. 1(d)(1), (2), (3), (4).)

Source Law

(d) Provided further, that upon recommendation of the State Highway and Public Transportation Commission the Governor may execute a proper deed relinquishing and conveying the State's right, title and interest in such real property as follows:

(1) If title to the State was acquired by donation, convey to the grantor, his heirs or assigns; or if acquired by purchase by a county or city, convey to the county or city, or to the grantor, his heirs or assigns at the request of the county or city.

(2) If the rights and interests conveyed to the State consist only of the right to use such property, and title is not held by the State, convey the State's rights and interests to the owner of the fee in said property.

(3) If title or any interest in such property was acquired and held by a county or city in its own name for use by the State, quitclaim to the county or city any interest of the State which might accrue from the State's use of the property; or if there is no record title to such property, quitclaim the State's interests, which might accrue from its use of the property, to the county or city wherein such land is located, or to abutting property owners at the request of the county or city.

(4) Quitclaim the State's title, rights and interest as necessary to comply with reversionary clauses contained in instruments by which the State's title, rights or interests were acquired.

Revisor's Note

Section 1(d), V.A.C.S. Article 6673a, refers to a "city." The revised law substitutes the term
"municipality" for "city" because that is the term used in the Local Government Code.

Revised Law

Sec. 202.026. RECONVEYANCE OF PROPERTY ACQUIRED FOR FREEWAY.

(a) The governor, on recommendation of the commission, may execute a deed reconveying the property to the grantor or the grantor's heirs or assigns, if, not later than 12 months after the date the property is acquired for use as an approach-way to an urban freeway, the commission determines that the property is not needed for a highway purpose because of relocation of the approach-way.

(b) The sale price for the property must be the same as the purchase price paid by or for the state plus six percent annual interest from the date the original purchase price was paid.

(c) When the commission determines that the property is not needed for a highway purpose, it shall send written notice to the grantor, at the grantor's address at the time of acquisition.

(d) Not later than the second anniversary of the date the notice is mailed, the grantor or the grantor's heirs or assigns may request in writing that the state reconvey the property to them.

(e) If the commission does not receive a request to reconvey the property before the expiration of the period, the commission may dispose of the property at a public sale. (V.A.C.S. Art. 6673a, Sec. 1(d)(5).)

Source Law

(d) [Provided further, that upon recommendation of the State Highway and Public Transportation Commission the Governor may execute a proper deed relinquishing and conveying the State's right, title and interest in such real property as follows:]

. . .

(5) If property has been acquired by or for the State for use as an approach-way to an urban freeway, but, within 12 months after acquisition, the Commission has determined that, due to relocation of the approach-way, the property is not needed for highway purposes, reconvey the property to the grantor from whom it was acquired by or for the State, or to his heirs, successors, or assigns. The sale price shall be the same as the purchase price paid by or for the State, plus six percent interest per annum from the date of that payment by or for the State. When the Commission determines that the property is not needed
for highway purposes, it shall give written notice of that determination to the grantor. The notice shall be mailed to the grantor at his address as of the time of acquisition. Within two years after the notice is mailed, the grantor, his heirs, successors, or assigns may request in writing that the State reconvey the property to them. If at the expiration of the two-year period, no such request has been received by the Commission, the State may then dispose of the property at public sale.

Revisor's Note

(1) Section 1(d)(5), V.A.C.S. Article 6673a, refers to reconveying property to "the grantor from whom it was acquired." The revised law omits this phrase because it is unnecessary.

(2) Section 1(d)(5), V.A.C.S. Article 6673a, refers to reconveying property to a grantor's "heirs, successors, or assigns." The reference to "successors" is omitted from the revised law because "successors" is included within the meaning of "heirs or assigns."

Revised Law

Sec. 202.027. REIMBURSEMENT TO COUNTY OR MUNICIPALITY. (a) If real property owned by the state and sold under this subchapter was acquired by a county or municipality and if a part of that acquisition cost was reimbursed to the county or municipality by the state, the department may pay the county or municipality a percentage of the proceeds of the sale that is equal to the percentage of the value or cost not reimbursed to the county or municipality at the time of the initial acquisition.

(b) Reimbursement under this section applies only to real property that the commission determines was never used for the purpose for which it was acquired. (V.A.C.S. Art. 6673a, Sec. 1A.)

Source Law

Sec. 1A. If any real property owned by the state and sold under Section 1 of this article was acquired by a city or county with a part of the cost reimbursed to the city or county by the state, and it is determined by the State Highway and Public Transportation Commission that the real property was never used for the purpose for which it was acquired, the State Department of Highways and Public
Transportation may pay to the city or county a percentage of the proceeds received from the sale, such percentage being equal to the percentage of the value or cost not reimbursed to the city or county at the time of the initial acquisition.

Revisor's Note

Section 1A, V.A.C.S. Article 6673a, refers to a "city." The revised law substitutes the term "municipality" for "city" for the reason stated in the reviser's note to Section 202.025.

Revised Law

Sec. 202.028. CORRECTION OF ERROR OR AMBIGUITY IN INSTRUMENT. (a) The governor, on the recommendation of the commission, shall execute and deliver a quitclaim deed, correction deed, or other conveyance necessary to resolve an ambiguity or error in an instrument that conveyed an interest in real property to the state for a highway right-of-way.

(b) The ambiguity or error may be for any reason, including a metes and bounds description that is incomplete or incorrect.

(c) The ambiguity or error must be of sufficient consequence to raise doubt as to the location or extent of the interest conveyed, or must have resulted in the acquisition of real property or an interest in real property not intended to be included and not needed for a highway purpose. (V.A.C.S. Art. 6673a, Sec. 2.)

Source Law

Sec. 2. In all cases where there is an ambiguity or an error in any instrument by which title to, or any right or interest in, any real property is or has been conveyed to the State of Texas for highway right-of-way purposes because the metes and bounds description of said property is incomplete or incorrect, or for any other reason, and such ambiguity or error is of sufficient consequence to raise doubt as to the location or extent of the property conveyed thereby, or results in the acquisition of land or an interest in land not intended to be included therein and not needed for highway purposes, the Governor of this State, upon receipt of a recommendation from the State Highway and Public Transportation Commission that he so do, shall execute and deliver, in the name of the State of Texas, a quit claim deed, correction deed, or other conveyance deemed necessary to rectify and resolve any such ambiguity or error.
Reviser's Note

(1) Section 2, V.A.C.S. Article 6673a, directs the governor to "execute and deliver, in the name of the State of Texas, a quit claim deed." The revised law omits as unnecessary the phrase "in the name of the State of Texas" because the governor always acts in the name of the state when performing official duties.

(2) Section 2, V.A.C.S. Article 6673a, refers to "rectify and resolve" an ambiguity or error. The reference to "rectify" is omitted from the revised law because "rectify" is included within the meaning of "resolve."

Revised Law
Sec. 202.029. RIGHTS OF PUBLIC UTILITY OR COMMON CARRIER.
Under this subchapter, if the state sells, conveys, or surrenders possession of real property that is being used by a public utility or common carrier having a right of eminent domain for right-of-way and easement purposes, the sale, conveyance, or surrender of possession of the real property is subject to the right and continued use of the public utility or common carrier. (V.A.C.S. Art. 6673a, Sec. 4.)

Source Law
Sec. 4. Whenever any real property owned by the State and sold and conveyed hereunder is being used by a public utility or common carrier having right of eminent domain for right-of-way and easement purposes the sale, conveyance and surrender of possession herein provided for shall be and remain in all things subject to the right and continued use of such public utility or common carrier.

Revised Law
Sec. 202.030. APPROVAL OF TRANSFERS. (a) The attorney general must approve a transfer or conveyance that is made under this subchapter.
(b) The state's right to full and exclusive right of possession of all retained rights-of-way may not be infringed or
lessened in any way by a transfer or conveyance made under this subchapter. (V.A.C.S. Art. 6673a, Sec. 5 (part).)

Source Law

Sec. 5. The Attorney General shall approve all transfers and conveyances under this Act, and in no event shall the right of the State of Texas to full and exclusive right of possession of all retained rights-of-way be infringed or lessened in any manner thereby.

Revised Law

Sec. 202.031. EXPENSES. (a) The person requesting the sale of an interest in property or the grantee in a deed issued under this subchapter shall pay expenses incurred by the department, including handling, appraising, or advertising the sale.

(b) The department may not process a request or deliver a deed until the expenses under Subsection (a) are paid. (V.A.C.S. Art. 6673a, Sec. 5 (part).)

Source Law

Sec. 5. ... All expenses of the State Department of Highways and Public Transportation incurred under any of these provisions, including the cost of handling, appraising, or advertising all sales made hereunder, shall be borne by the requestor or grantee in the deeds issued hereunder and payment of such expenses shall be a condition precedent to the handling of the request or the delivery of such deeds.

Revised Law

Sec. 202.032. RULES. The commission may adopt rules to implement this subchapter and to provide requestor refunds. (V.A.C.S. Art. 6673a, Sec. 5 (part).)

Source Law

Sec. 5. ... The State Highway and Public Transportation Commission may adopt rules as reasonably necessary to implement this Act and to provide requestor refunds.

Reviser's Note

Section 5, V.A.C.S. Article 6673a, refers to "rules as reasonably necessary to implement this Act."
The revised law omits "as reasonably necessary" because an agency is presumed to act reasonably when adopting rules and to adopt only those rules that are necessary.

Revisor's Note
(End of Subchapter)

The revised law omits Section 6, V.A.C.S. Article 6673a, providing an ad valorem tax exemption for property used for road purposes. That section of the source law was enacted in 1953 and has never been amended. It is omitted from the revision because it was impliedly repealed by Title 1, Tax Code, which was intended as a comprehensive, substantive recodification of all property tax law and its administration. Title 1, Tax Code, was enacted by Chapter 841, Acts of the 66th Legislature, 1979. The Tax Code prevails in this situation because it was enacted after Section 6, V.A.C.S. Article 6673a. The omitted section reads:

Sec. 6. In the event any public road or State highway is located on land in which the fee simple title is not vested in the State or the county wherein such road is located, such land so dedicated and used for such road purpose shall not be assessed for ad valorem taxation, or the fee simple owner required to pay ad valorem taxes thereon for any purpose so long as same is used for such road purpose. It shall be the duty of the Tax Assessor whenever his attention is called thereto by the fee simple owner of lands so used for public road or State highway purposes to note on the assessment sheet the amount of land so used.

[Sections 202.033-202.050 reserved for expansion]

SUBCHAPTER C. LEASES, EASEMENTS, AND AGREEMENTS CONCERNING HIGHWAY PROPERTY

Revised Law
Sec. 202.051. DEFINITIONS. In this subchapter:

(1) "Highway asset" means an interest in real property that is held or controlled by the department for a highway or
(2) "Rest area" means an area of public land designated by the department as a rest area, comfort station, picnic area, or roadside park. (V.A.C.S. Art. 6673a-3, Secs. 1(2), (3).)

Source Law

Art. 6673a-3
Sec. 1. [In this Act:]

(2) "Highway assets" means all interests in real property held or controlled by the department for highway or department purposes.

(3) "Rest area" means an area of public land designated by the department as a rest area, comfort station, picnic area, or roadside park.

Revised Law

Sec. 202.052. LEASE AUTHORITY. (a) The department may lease a highway asset, part of a right-of-way, or airspace above or underground space below a highway that is a part of the state highway system if the department determines that the interest to be leased will not be needed for a highway purpose during the term of the lease.

(b) The lease may be for any purpose that is not inconsistent with applicable highway use.

(c) The department shall charge not less than fair market value for the highway asset.

(d) The department may authorize exceptions to the charges under Subsection (c) for the lease of a highway asset to a public utility provider and for a social, environmental, or economic mitigation purpose. (V.A.C.S. Art. 6673a-3, Sec. 2.)

Source Law

Sec. 2. The department may lease for any purpose not inconsistent with applicable highway uses any highway asset, part of the right-of-way for, or the airspace above or underground space below, a highway that is a part of the state highway system if the department has determined that the area to be leased will not be needed for highway purposes during the period of the lease. The department shall charge, as a minimum, fair market value, with certain exceptions to be determined by the department for leases of highway assets to public utility providers and for social,
environmental, and economic mitigation purposes.

Revised Law

Sec. 202.053. LEASE OF HIGHWAY ASSETS: TERMS. (a) The department may determine all terms of the lease except:

(1) a tenant may not be required to post a bond or security for a lease in an amount in excess of six months' rental under the lease; and

(2) the lease must allow the tenant to mortgage or otherwise pledge or grant a security interest in the leasehold to secure financing for the acquisition of the leasehold and for the construction and operation of an improvement permitted under the lease.

(b) The department may not convey title to, or sever from the real property, any permanent improvement constructed on the area leased under this subchapter.

(c) The lease may:

(1) contain a provision for early termination, at the option of either party, with or without cause; and

(2) provide that the right of one party to terminate without cause before the stated termination date may be conditioned on the payment of an amount negotiated by the parties and specified in the lease.

(d) In evaluating the consideration proposed by a tenant, the department may consider the value of any real property the tenant proposes to donate or convey for a highway purpose.

(e) Subject to rules of the commission to preserve safety and scenic beauty, a tenant may erect and maintain signs and other advertising displays relating to a business conducted on the leasehold. (V.A.C.S. Art. 6673a-3, Sec. 3.)

Source Law

Sec. 3. (a) The duration of the lease and all other terms of the lease may be determined by the department, except that:

(1) a tenant may not be required to post a bond or other security for a lease in an amount in excess of six months' rental under the lease; and
(2) the lease must allow the tenant to mortgage or otherwise pledge or grant security
interests in the leasehold for the purposes of securing financing for the acquisition of the leasehold and the construction and operation of improvements permitted under the lease.

(b) The department may not convey title to, or sever from the real property, any permanent improvements constructed on the area leased under this Act.

(c) The lease may contain provisions for early termination at the option of either party, with or without cause, and may provide that the right of one party to terminate the lease without cause before its stated termination date may be conditioned on payment of an amount negotiated by the parties and set forth in the lease. The department may consider, in evaluating the consideration proposed by the lessee, the value of any land proposed to be donated or conveyed for highway purposes by the lessee. Tenants of highway assets leased from the department are entitled to erect and maintain on the leasehold property signs and other advertising displays relating to the business conducted on the leasehold property, subject to rules adopted by the commission for the preservation of safety and scenic beauty.

Revisor's Note

Section 3(a), V.A.C.S. Article 6673a-3, refers to the "duration of the lease and all other terms of the lease." The revised law omits as unnecessary "duration of the lease" because it is included in the meaning of "terms of the lease."

Revised Law

Sec. 202.054. REVENUE FROM LEASES. The department shall deposit payments received under a lease under this subchapter to the credit of the state highway fund. (V.A.C.S. Art. 6673a-3, Sec. 4.)

Source Law

Sec. 4. The department shall remit all payments received under a lease made under this Act to the state treasurer for deposit in the state treasury to the credit of the state highway fund.

Revisor's Note

The revised law omits the reference in Section 4, V.A.C.S. Article 6673a, to the state treasury for the reason stated in Revisor's Note (3) to Section 202.021.
Revised Law

Sec. 202.055. LEASE OF REST AREAS. (a) The department may lease a rest area to a person engaging in sales, services, or other commercial activities that serve the needs of the traveling public.

(b) The department shall require the person to maintain the rest area in a proper manner and repair promptly any damage to the rest area caused by the person or a customer of the person, or pay to the state all expenses incurred by the department in repairing the damage.

(c) The department shall adopt rules to implement this section.

(d) Section 94.002, Human Resources Code, does not apply to a lease authorized under this section. (V.A.C.S. Art. 6673a-3, Sec. 4A.)

Source Law

Sec. 4A. (a) The department may lease a rest area to a person who will engage in sales, services, or other commercial activities that will serve the needs of the traveling public.

(b) Section 94.002, Human Resources Code, does not apply to the granting of a lease authorized under this section.

(c) The department shall require a person who leases a rest area under this section to maintain the rest area in a proper manner and repair promptly all damage to the rest area caused by the lessee or a customer of the lessee, or pay to the state all expenses incurred by the department in repairing the damage.

(d) The department shall adopt any rules necessary to implement this section.

Revisor's Note

Section 4A(d), V.A.C.S. Article 6673a-3, refers to "necessary" rules of the department. The revised law omits "necessary" because an agency is presumed to adopt only those rules that are necessary.

Revised Law

Sec. 202.056. CERTAIN OIL AND GAS LEASES PROHIBITED. The commission may not enter into an oil and gas lease for real property owned by the state that was acquired to construct or
maintain a highway, road, street, or alley. (V.A.C.S. Art. 6673a-1.)

Source Law

Art. 6673a-1. The State Highway and Public Transportation Commission may not lease oil and gas owned by the state underlying land that was acquired to construct or maintain a highway, road, street, or alley.

Revised Law

Sec. 202.057. CONVEYANCE OF EASEMENT OR INTEREST FOR FLOOD CONTROL. (a) The commission may, on request of an officer of the United States or the county judge of an affected county, convey without monetary consideration to the United States, or to a county that has agreed to convey real property or an interest in real property to the United States under an Act of Congress, an easement or interest in that property if:

1. the state acquired the property for use as a right-of-way for a state highway in a county that borders on the United Mexican States, or in a county adjacent to such a county; and

2. the property is used or is proposed to be used by that county or the United States for the construction, operation, and maintenance of a system to control flood waters of a navigable stream of the state.

(b) If the state does not own fee simple title to the property, the commission may join and consent to an easement to be used for a flood control purpose if the owner of the fee has executed an easement.

(c) The commission may execute a necessary deed, conveyance, or agreement, to be signed by the commissioner of transportation as provided by commission order, for flood control purposes under this section.

(d) In lieu of the monetary consideration waived by Subsection (a), the commission may make a reservation or agreement for the construction, reconstruction, alteration, operation, or
maintenance of a structure or facility used or projected to be used
for a highway purpose on real property that is needed for a flood
control purpose. (V.A.C.S. Art. 5244a-1.)

Source Law

Art. 5244a-1. Whenever the State of Texas shall
be the owner of any land, or interest in land, acquired
for use as a right-of-way for any State highway in any
County, one or more of the boundaries of which is
coincident with any part of the International Boundary
between the United States and Mexico, or in any county
contiguous to any county of such described class, which
is used or proposed to be used as a part of the site
for flood control works, constructed or to be
constructed by any such county or by the United States
of America, for the purpose of controlling the flood
waters of any navigable stream of this State, the State
Highway Commission is hereby authorized and empowered,
upon request by the United States through its proper
officers, or upon the request of the County Judge of
any such County, to convey to the United States of
America, or to any such County, (which has agreed to
convey said lands or interest therein to the United
States pursuant to an Act of Congress), without
monetary consideration therefor, an easement or
interest in such land which may be necessary for the
construction, operation, and maintenance of such works;
and in the event the fee simple title to such lands is
not vested in the State and the owner of the fee has
executed an easement to such lands for flood control
purposes, the Highway Commission is authorized and
empowered to join in and assent to such easement. The
State Highway Commission is authorized at its
discretion to execute the necessary deeds, conveyances,
or agreements for the purposes stated, to be signed by
the Chairman pursuant to the order of the Commission,
and all such conveyances and agreements heretofore made
are hereby ratified and confirmed. The Commission may
in lieu of the monetary consideration waived herein
above, make such reservations and agreements as it
deems necessary for the best interests of the State and
its highway system, with reference to the alteration,
construction, reconstruction, operation and maintenance
of such structures and facilities now used, or
hereafter to be used, for highway purposes in, upon, or
across the lands, or interest therein, desired for
flood control purposes.

Revisor's Note

(1) V.A.C.S. Article 5244a-1 refers to Mexico.
The revised law substitutes "United Mexican States" for
"Mexico" because the former is the correct name of the
nation.

(2) V.A.C.S. Article 5244a-1 refers to the
"Chairman" of the "State Highway Commission." In 1991,
the title of "Chairman" of the agency was changed by amendment to V.A.C.S. Article 6664 (Section 1.04, Chapter 7, Acts of the 72nd Legislature, 1st Called Session, 1991) to "the commissioner of transportation." The revised law is drafted accordingly.

(3) V.A.C.S. Article 5244a-1 provides that "all such conveyances and agreements heretofore made are hereby ratified and confirmed." The revised law omits this provision because it is executed.

(4) V.A.C.S. Article 5244a-1 provides that the commission may "make such reservations and agreements it deems necessary for the best interests of the State and its highway system." The revised law omits the phrase "it deems necessary for the best interests of the State and its highway system" because it is presumed that the commission will act only in the best interests of the state and the highway system it manages.

Revised Law
Sec. 202.058. AGREEMENT TO USE OR CULTIVATE RIGHT-OF-WAY.
(a) The department may agree with the owner of real property abutting or adjoining property acquired by the department for the right-of-way of a road in the state highway system, allowing the owner to use or cultivate a portion of the right-of-way not required for immediate use by the department.
(b) An agreement must be in writing and may provide for:
   (1) use or cultivation of the property;
   (2) construction of improvements on the property;
   (3) placement of fences on the property; and
   (4) other matters.
(c) The director or the director's authorized representative and the owner of the property shall execute the agreement.
(d) The department may not execute an agreement that would
impair or relinquish the state's right to use the property for a right-of-way purpose when the property is needed to construct or reconstruct the road for which it was acquired.

(e) Use by the owner of adjoining or abutting property under this section is not abandonment of the property by the department.

(V.A.C.S. Art. 6674n-1.)

Source Law

Art. 6674n-1. The Texas Highway Department may enter into written agreements with owners of the lands abutting or adjoining the lands acquired by the Department for right of way for any highway, farm-to-market road, or other roadway in the State Highway System, under the terms of which such owners of abutting or adjoining lands may be authorized to use and cultivate such portions of the right of way as may not be required for immediate use of the Department. The agreements may contain provisions regarding the use, cultivation, construction of improvements, the placement of fences and such other matters as may be mutually agreed to by the Department and the respective owners of the abutting or adjoining lands. Such agreements shall be executed by the owners of the adjoining or abutting lands and the State Highway Engineer or his authorized representative; provided, however, that the Department, by such agreements, may not impair or relinquish the State's right to use such land for right-of-way purposes when it is required for the construction or reconstruction of the road for which it was acquired, nor shall use by adjoining or abutting land owners under such agreement ever be construed as abandonment by the Department of such lands acquired for right-of-way purposes.

Revisor's Note

V.A.C.S. Article 6674n-1 refers to the "State Highway Engineer." In 1991, the title "State Highway Engineer" was changed by amendment to V.A.C.S. Article 6663 (Section 1.01, Chapter 7, Acts of the 72nd Legislature, 1st Called Session, 1991) to "the director of the Texas Department of Transportation." The revised law is drafted accordingly.

Revised Law

Sec. 202.059. MOWING, BALING, SHREDDING, AND HOEING MATERIAL ON RIGHT-OF-WAY. (a) A department district engineer, on request of a person, may, but is not required to, permit the person to mow,
(a) A district engineer of the State Department of Highways and Public Transportation may grant permission to a person, at his request, to mow, bale, shred, or hoe the right-of-way of any designated portion of a highway that is in the state highway system and is within the district supervised by the engineer.

Sec. 2. If a person requesting permission to mow, bale, shred, or hoe a highway right-of-way is not an owner of land adjacent to the right-of-way that is the subject of the request, the district engineer, before granting permission, must provide a person owning land adjacent to the right-of-way the option of mowing, baling, shredding, or hoeing the right-of-way. A district engineer may deny any request authorized by this Act.

Sec. 3. A person granted permission to mow, bale, shred, or hoe a highway right-of-way under this Act may not receive compensation for the mowing, baling, shredding, or hoeing but is entitled to use or dispose of the hay or other materials produced by the mowing, baling, shredding, or hoeing.

Sec. 4. The state, the State Department of Highways and Public Transportation, and the district engineer are not liable for any personal injuries, property damage, or death resulting from the performance of services or agreements as provided in this Act.

Source Law

Art. 6673f
Sec. 1. A district engineer of the State Department of Highways and Public Transportation may grant permission to a person, at his request, to mow, bale, shred, or hoe the right-of-way of any designated portion of a highway that is in the state highway system and is within the district supervised by the engineer.

Sec. 2. If a person requesting permission to mow, bale, shred, or hoe a highway right-of-way is not an owner of land adjacent to the right-of-way that is the subject of the request, the district engineer, before granting permission, must provide a person owning land adjacent to the right-of-way the option of mowing, baling, shredding, or hoeing the right-of-way. A district engineer may deny any request authorized by this Act.

Sec. 3. A person granted permission to mow, bale, shred, or hoe a highway right-of-way under this Act may not receive compensation for the mowing, baling, shredding, or hoeing but is entitled to use or dispose of the hay or other materials produced by the mowing, baling, shredding, or hoeing.

Sec. 4. The state, the State Department of Highways and Public Transportation, and the district engineer are not liable for any personal injuries, property damage, or death resulting from the performance of services or agreements as provided in this Act.

[Sections 202.060-202.080 reserved for expansion]
SUBCHAPTER D. RECLAIMED ASPHALT PAVEMENT

Revised Law

Sec. 202.081. DEFINITION. In this subchapter "reclaimed asphalt pavement" means hot mix asphalt pavement and any accompanying tack coat, seal coat, or chip seal removed as millings or broken pavement pieces from a road during construction, reconstruction, or repavement under the authority of the department. (V.A.C.S. Art. 6673i, Sec. 1(1); Art. 6674i-2, Sec. 1(1).)

Source Law

Art. 6673i
Sec. 1. In this article:
(1) "Reclaimed asphalt pavement" means hot mix asphalt pavement and any accompanying tack coat, seal coat, or chip seal removed as millings or broken pavement pieces from a road during construction, reconstruction, or repavement under the authority of the department.

Art. 6674i-2
Sec. 1. In this article:
(1) "Reclaimed asphalt pavement" means hot mix asphalt pavement and any accompanying tack coat, seal coat, or chip seal removed as millings or broken pavement pieces from a road during construction, reconstruction, or repavement under the authority of the department.

Revised Law

Sec. 202.082. OWNERSHIP AND USE OF ASPHALT. (a) The department owns and shall retain ownership of all reclaimed asphalt pavement from a road in the state highway system.
(b) The department shall maximize the use of the reclaimed asphalt pavement.
(c) The department shall, when feasible, remove and recycle hot mix asphalt from any road in the state highway system being repaved.
(d) The department may transfer ownership of reclaimed asphalt pavement to another governmental entity for use on a road. (V.A.C.S. Art. 6673i, Sec. 2(a); Art. 6674i-2, Sec. 2(a).)

Source Law

Art. 6673i

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Sec. 2. (a) The Department has title and shall retain title to all reclaimed asphalt pavement from roads in the state highway system, except as otherwise provided by this subsection. The department shall maximize the use of reclaimed asphalt pavement. The department shall, when feasible, remove and recycle hot mix asphalt from any road being repaved. The department may transfer title to reclaimed asphalt pavement to another governmental entity for use on roads.

Art. 6674i-2

Sec. 2. (a) The department has title and shall retain title to all reclaimed asphalt pavement from roads in the state highway system, except as otherwise provided by this subsection. The department shall maximize the use of reclaimed asphalt pavement. The department shall, when feasible, remove and recycle hot mix asphalt from any road being repaved. The department may transfer title to reclaimed asphalt pavement to another governmental entity for use on roads.

Revised Law

Sec. 202.083. CONTAMINATION. The department shall ensure that the reclaimed asphalt pavement is kept as free as possible from contamination by nonasphaltic materials during its removal, transportation, and storage. (V.A.C.S. Art. 6673i, Sec. 2(b); Art. 6674i-2, Sec. 2(b).)

Source Law

Art. 6673i

(b) The department shall ensure that the reclaimed asphalt pavement be kept as free as possible from contamination by nonasphaltic materials during its removal, transportation, and storage.

Art. 6674i-2

(b) The department shall ensure that the reclaimed asphalt pavement be kept as free as possible from contamination by nonasphaltic materials during its removal, transportation, and storage.

Revised Law

Sec. 202.084. STORAGE OF RECLAIMED ASPHALT; RECORDS. (a) A state agency, department, or commission shall give precedence for the use of real property under its control for the storage of reclaimed asphalt products if environmental and economic constraints permit.

(b) The department shall keep a record of the location and amount of state-owned reclaimed asphalt products. (V.A.C.S. 74C263 JD-D 456
Art. 6673i, Secs. 2(c), (d); Art. 6674i-2, Secs. 2(c), (d).

Source Law

Art. 6673i
   (c) All state agencies, departments, and commissions shall give precedence for the use of lands under their control for the storage of reclaimed asphalt products when environmental and economic constraints permit.
   (d) The Department shall keep a public record of the location and amount of state-owned reclaimed asphalt products.

Art. 6674i-2
   (c) All state agencies, departments, and commissions shall give precedence for the use of lands under their control for the storage of reclaimed asphalt products when environmental and economic constraints permit.
   (d) The department shall keep a public record of the location and amount of state-owned reclaimed asphalt products.

Revisor's Note

Section 2(d), V.A.C.S. Article 6673i, and Section 2(d), V.A.C.S. Article 6674i-2, state that the department "shall keep a public record of the location and amount of" reclaimed asphalt products. The revised law omits the requirement to keep a public record because Section 552.022(1), Government Code, states that a report prepared by a governmental body is public information, and therefore an express statement to that effect is unnecessary.

Revised Law

Sec. 202.085. ANNUAL REPORT. Not later than January 1 of each year, the department shall report to the legislative audit committee on the department's use of recycled asphalt pavement. (V.A.C.S. Art. 6673i, Sec. 2(e); Art. 6674i-2, Sec. 2(e.).)

Source Law

Art. 6673i
   (e) The Department shall, not later than January 1, report annually to the legislative audit committee on the department's use of recycled asphalt pavement.

Art. 6674i-2
   (e) The department shall, not later than January 1, report annually to the legislative audit committee
on the department's use of recycled asphalt pavement.

Revisor's Note
(End of Chapter)

(1) The revised law omits Article 6674q because all of the land covered by the law has been exchanged.

The omitted law reads:

Art. 6674q. The State Highway Commission is hereby authorized and empowered at its discretion to exchange any lands or interests therein heretofore donated to the State of Texas, either for right of way purposes, or for the use of the people of Texas for camping accommodations and for park purposes, under and pursuant to the provisions of Chapter 37 of the General and Special Laws of the First Called Session of the Fortieth Legislature, page 110, for other lands or interests therein, located adjacent to or accessible from the state highway provided for in said Act and deemed by the Commission, in its discretion, to be more desirable for said purposes than said lands or interests heretofore donated; the State Highway Commission is authorized to execute the necessary deeds or conveyances for the purposes stated to be signed by the chairman pursuant to the order of the Commission.

(2) Section 1(4), V.A.C.S. Article 6673a-3, defines "road authority." The revised law omits this definition because the defined term is not used in V.A.C.S. Article 6673a-3 or in the revision. The omitted definition reads:

(4) "Road authority" means any political subdivision, agency, or quasi-governmental entity of the state with the authority to construct or maintain roads, bridges, or highways.

(3) Section 1(2), V.A.C.S. Article 6673i, and Section 1(2), V.A.C.S. Article 6674i-2, define "road." The revised law omits this definition as unnecessary because reference to the state highway system is included where necessary in the substantive provisions of this chapter. The omitted definitions read:

Art. 6673i
Sec. 1. (In this article:

(2) "Road" means a paved road
in the state highway system.

Art. 6674i-2
Sec. 1. [In this article:]...

(2) "Road" means a paved road in the state highway system.

CHAPTER 203. MODERNIZATION OF STATE HIGHWAYS;
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CHAPTER 203. MODERNIZATION OF STATE HIGHWAYS;

CONTROLLED ACCESS HIGHWAYS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 203.001. DEFINITIONS. In this chapter:

(1) "Controlled access highway" means a designated
state highway to or from which access is denied or controlled, in whole or in part, from or to adjoining real property or an intersecting public or private way, without regard to whether the designated state highway is located in or outside a municipality.

(2) "Person" includes an individual, corporation, association, or firm.

(3) "Public or private way" includes a street, road, highway, or alley.

(4) "State agency" includes a department or agency of this state. (V.A.C.S. Art. 6674w (part); New.)

Source Law

Art. 6674w. ... Definitions. Wherever used in this Act, "Controlled Access Highway" means any designated State Highway within or without the limits of any incorporated city, town or village, whether under the General Laws or by special charter, including Home Rule Charter Cities, to or from which access is denied or controlled, in whole or in part, from or to abutting land or intersecting streets, roads, highways, alleys or other public or private ways. Wherever used in this Act, "Person" means any person, individual, individuals, corporation, association, and/or firm.

Revisor's Note

(1) V.A.C.S. Article 6674w refers to "any incorporated city, town or village, whether under the General Laws or by special charter, including Home Rule Charter Cities." The revised law substitutes the term "municipality" for the quoted phrase because that is the term used in the Local Government Code.

(2) The definition of "public or private way" is added for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

(3) The definition of "state agency" is added for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.
Sec. 203.002. MODERN STATE HIGHWAY SYSTEM. (a) To accomplish the purposes of this chapter, the commission may:

(1) locate, construct, maintain, and operate a modern state highway system;
(2) plan for future highways; and
(3) convert an existing street, road, or highway into a controlled access highway in accordance with modern standards of speed and safety.

(b) The commission shall emphasize the construction of controlled access highways. (V.A.C.S. Arts. 1085a, Sec. 1 (part); 6674w-1, Sec. 1 (part).)

Art. 1085a
Sec. 1. The State Highway Commission... within their respective jurisdictions may do any and all things necessary to lay out, acquire, construct, maintain and operate any section or portion of any State highway... as a freeway, and to make any highway... within their respective jurisdictions a freeway,...

Art. 6674w-1
1. Authorization for Modernization of Highway Facilities. To effectuate the purposes of this Act, the State Highway Commission is empowered to lay out, construct, maintain, and operate a modern State Highway System, with emphasis on the construction of controlled access facilities and to convert, wherever necessary, existing streets, roads and highways into controlled access facilities to modern standards of speed and safety; and to plan for future highways. ...

Revisor's Note
(1) Section 1, V.A.C.S. Article 1085a, applies to the powers of the State Highway Commission to operate a state highway as a freeway. Section 3, V.A.C.S. Article 1085a, revised in this chapter in Section 203.065, defines "freeway." This definition of freeway overlaps with the subject matter of V.A.C.S. Article 6674w et seq., revised in this code as this chapter. Note that, to the extent of any perceived conflict between V.A.C.S. Article 1085a and V.A.C.S.
Article 6674 et seq., the later-enacted V.A.C.S. Article 6674w et seq. take precedence, both under accepted principles of statutory construction and under V.A.C.S. Article 6674w-5. (See Revisor's Note (3) of the end-of-chapter note.)

(2) The revised law substitutes "locate" for "lay out" in Section 1, V.A.C.S. Article 6674w-1, to conform to modern usage.

(3) Section 1, V.A.C.S. Article 6674w-1, refers to "controlled access facilities." The revised law substitutes the defined phrase "controlled access highway."

(4) The revised law omits as redundant the portion of Section 1, V.A.C.S. Article 6674w-1, that states that the commission may exercise all its powers and procedures to accomplish the purposes of the law because more specific provisions in this chapter grant the powers and specify the procedures. The omitted provision reads:

[The State Highway Commission is further empowered to] ... exercise all of the powers and procedures to it granted by existing laws and this Act for the accomplishment of such purposes and the exercise of such powers and duties; ... .

Revised Law

Sec. 203.003. JURISDICTION. (a) Subject to Section 203.021, the commission may locate, construct, maintain, and operate a designated state highway, with control of access as necessary to facilitate the flow of traffic and promote the public safety and welfare, in any area of this state, whether in or outside a municipality.

(b) Subject to Section 203.021, the department and the commission may exercise any power granted by this chapter in a county or municipality without the consent of the county or municipality.
(c) The department's or the commission's exercise of a power under this chapter in a county or municipality removes the county's or municipality's exclusive jurisdiction over the specific public way affected by the exercise of power, to the extent the exercise of power affects the public way and its use. (V.A.C.S. Arts. 6674w-1, Sec. 1 (part); 6674w-5 (part).)

Source Law

Art. 6674w-1

1.

The State Highway Commission is further empowered to lay out, construct, maintain and operate any designated State Highway, now or hereafter constructed, with such control of access thereto as is necessary to facilitate the flow of traffic, and promote the Public Safety and Welfare, in any area of the State, whether in or outside of the limits of any incorporated city, town or village, including Home Rule Cities . . . .

Art. 6674w-5

. . .

The powers granted to the State Highway Department and State Highway Commission by this Act to perform acts and exercise powers within the limits of counties, incorporated cities, towns and villages, including Home Rule Cities, may be exercised without the consent or agreement of any such county, city, town or village, including Home Rule Cities, after complying with Subsection 1 of Section 2 hereof, and whenever the State Highway Department or the State Highway Commission performs any act or exercises any power within the limits of any county, incorporated city, town or village, including Home Rule Cities, as authorized in this Act, such act or exercise of power shall qualify and render inexclusive the dominion of such counties, cities, towns or villages, including Home Rule Cities, with respect to the specific streets, alleys, and other public ways affected by such act or exercises of power, but only to the specific extent to which such act or the exercise of such power affects such streets, alleys and other public ways and their use.

Revisor's Note

(1) The revised law substitutes "locate" for "lay out" in Section 1, V.A.C.S. Article 6674w-1, for the reason stated in Revisor's Note (2) to Section 203.002.

(2) The revised law adds a cross-reference to Section 203.021 of the revised law, which provides for a public hearing and requires the department to file
certain information with the county or municipality.

(3) V.A.C.S. Article 6674w-5 refers to "streets, alleys, and other public ways." The references to "street" and "alley" are omitted from the revised law because "street" and "alley" are contained within the meaning of "public way."

(4) V.A.C.S. Article 6674w-5 refers to an "incorporated city, town or village, including Home Rule Cities." The revised law substitutes "municipality" for the reason stated in Revisor's Note (1) to Section 203.001 of this code.

(5) V.A.C.S. Article 6674w-5 refers to power to "perform acts and exercise powers." The revised law omits the reference to "perform acts" because the meaning of that phrase is contained within the meaning of "exercise powers."

(6) V.A.C.S. Article 6674w-5 references "Subsection 1 of Section 2 hereof," meaning the portion of V.A.C.S. Article 6674w-1 revised in this chapter as Section 203.021. The revised law is drafted accordingly.

Revised Law
Sec. 203.004. CONTRACTS FOR ADMINISTRATION OF PROPERTY ACQUIRED FOR MITIGATION OF ADVERSE ENVIRONMENTAL EFFECTS. (a) The department may contract with the Parks and Wildlife Department for the administration, control, or maintenance of property acquired under Subchapter D for the mitigation of an adverse environmental effect directly resulting from the construction or maintenance of a state highway.

(b) A contract under this section is not subject to Chapter 771, Government Code. (V.A.C.S. Art. 6674w-3(c).)

Source Law
(c) The State Department of Highways and Public Transportation may make contracts with the Parks and
Wildlife Department relating to the administration, control, or maintenance of interests in property acquired for the mitigation of adverse environmental impacts directly resulting from the construction or maintenance of State Highways. A contract entered into under this subsection is not subject to The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes).

Revisor's Note

(1) V.A.C.S. Article 6674w-3(c) refers to property acquired for the mitigation of adverse environmental effects. The acquisition of this property is governed by the portion of the source law revised as Subchapter D of this chapter and the revised law adds a cross-reference to that subchapter for the convenience of the reader.

(2) V.A.C.S. Article 6674w-3(c) refers to "The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes)." That statute was codified in 1991 as Chapter 771, Government Code, and the revised law is drafted accordingly.

[Sections 203.005-203.020 reserved for expansion]

SUBCHAPTER B. PUBLIC HEARINGS AND COMMENT

Revised Law

Sec. 203.021. PUBLIC HEARINGS. (a) For a highway project that bypasses or goes through a county or municipality, the commission shall hold at least one public hearing in the locality before an authorized representative of the commission.

(b) Notice of the hearing shall be by publication in the locality. The hearing shall be held not less than three or more than 10 days after the date of publication.

(c) At least seven days before the date of the public hearing, the department shall file with the governing body of the county or municipality the design and schematic layout of the project.

(d) A person interested in the development of the project is
entitled to attend the hearing and discuss and inspect the design
and schematic layout filed with the governing body. (V.A.C.S.
Art. 6674w-1, Sec. 1 (part).)

Source Law

1. . . . provided, however, that in the case of
any project involving the bypassing of or going through
any county, city, town, or village, including Home Rule
Cities, the State Highway Commission shall afford the
opportunity for not less than one (1) public hearing in
the locality before an authorized representative of the
State Highway Commission, at which persons interested
in the development of the project shall have the
opportunity for attendance, discussion and inspection
of the design and schematic layout presented and filed
with the governing body of such county, city, town or
village, including Home Rule Cities, at least seven (7)
days before the public hearing, by the State Highway
Department. Such hearing shall be held not less than
three (3) days nor not more than ten (10) days after
the publication in the locality of notice of such
hearing.

Revisor's Note

Section 1, V.A.C.S. Article 6674w-1, refers to an
"incorporated city, town, or village, including Home
Rule Cities." The revised law substitutes
"municipality" for the reason stated in Revisor's Note
(1) to Section 203.001 of this code.

Revised Law

Sec. 203.022. RULES GOVERNING NOTICE AND COMMENT. (a) The
department shall by rule provide owners of adjoining property and
affected local governments and public officials with notice and an
opportunity for comment on a state highway project that involves:
(1) the addition of one or more vehicular lanes to an
existing highway; or
(2) the construction of a highway at a new location.
(b) The department shall give additional notice and
opportunity for comment on a project described by Subsection (a) if
conditions relating to land use, traffic volumes, and traffic
patterns have changed significantly since the project was
originally subject to public review and comment.
(c) The department shall by rule provide procedures for informing adjoining property owners and affected local governments and public officials of impending construction. (V.A.C.S. Art. 6674w-1, Sec. 1A.)

Source Law

1A. The State Department of Highways and Public Transportation shall promulgate reasonable rules: (a) providing abutting landowners and affected local governments and public officials notice and an opportunity for comment on a state highway project for the addition of one or more vehicular lanes to an existing highway or for the construction of a highway at a new location; (b) providing those persons additional notice and opportunity for comment on such projects when conditions relating to land-use, traffic volumes, and traffic patterns have changed significantly from the time the project originally underwent public review and comment; and (c) providing procedures for informing such persons of impending construction.

[Sections 203.023-203.030 reserved for expansion]

SUBCHAPTER C. CONTROL OF ACCESS

Revised Law

Sec. 203.031. CONTROL OF ACCESS. (a) The commission, by order entered in its minutes, may:

(1) designate a state highway of the designated state highway system as a controlled access highway;

(2) deny access to or from a controlled access highway from or to adjoining public or private real property and from or to a public or private way intersecting the highway, except at specific locations designated by the commission;

(3) close a public or private way at or near its intersection with a controlled access highway;

(4) designate locations on a controlled access highway at which access to or from the highway is permitted and determine the type and extent of access permitted at each location;

(5) erect protective devices to preserve the integrity, usefulness, and use of the controlled access highway; and
(6) repeal an order entered under this section.

(b) This section does not alter the rights of a person under another law of this state to compensation for damages caused by the exercise of the commission's powers. (V.A.C.S. Arts. 1085a, Sec. 4 (part); 6674w-1, Sec. 2 (part).)

Source Law

[Art. 1085a]
Sec. 4. The State Highway Commission ... is authorized to close any highway ... within their respective jurisdictions at or near the point of its intersection with any freeway or to make provisions for carrying any highway ... over or under or to a connection with the freeway and may do any and all things on such highway ... as may be necessary therefor.

[Art. 6674w-1]
2. Control of Access. The State Highway Commission, by proper order entered in its minutes, is hereby authorized and empowered:

(a) To designate any existing or proposed State Highway, of the Designated State Highway System, or any part thereof, as a Controlled Access Highway;

(b) To deny access to or from any State Highway, presently or hereafter designated as such, whether existing, presently being constructed, or hereafter constructed, which may be hereafter duly designated as a Controlled Access Highway, from or to any lands, public, or private, adjacent thereto, and from or to any streets, roads, alleys, highways or any other public or private ways intersecting any such Controlled Access Highway, except at specific points designated by the State Highway Commission; and to close any such public or private way at or near its point of intersection with any such Controlled Access Highway;

(c) To designate points upon any designated Controlled Access Highway, or any part of any such highway, at which access to or from such Controlled Access Highway shall be permitted, whether such Controlled Access Highway includes any existing State Highway or one hereafter constructed and so designated;

(d) To control, restrict, and determine the type and extent of access to be permitted at any such designated point of access;

(e) To erect appropriate protective devices to preserve the utility, integrity, and use of such designated Controlled Access Highway; and,

(f) To modify or repeal any order entered pursuant to the powers herein granted.

Provided, however, that nothing in the foregoing subparagraphs (a) through (f), inclusive, shall be construed to alter the existing rights of any person to compensation for damages suffered as a result of the exercise of such powers by the State Highway Commission under the Constitution and laws of the State of Texas....
Revisor's Note

(1) Section 4, V.A.C.S. Article 1085a, refers to closing a highway at the highway's intersection with a freeway. See Revisor's Note (1) to Section 203.002 of this code.

(2) Section 2, V.A.C.S. Article 6674w-1, refers to a "proper" order. The revised law omits "proper" as unnecessary because the word does not add to the clear meaning of the law.

(3) The revised law omits as unnecessary the references in Section 2, V.A.C.S. Article 6674w-1, to the time of construction of a state highway. The term "state highway" includes a state highway constructed or designated as a state highway before or after the effective date of the source law or constructed before or after the date of designation.

(4) Section 2, V.A.C.S. Article 6674w-1, refers to "streets, roads, alleys, highways or any other public or private ways." The revised law substitutes "public or private way" for the reason stated in Revisor's Note (2) to Section 203.001 of this code.

(5) Section 2(c), V.A.C.S. Article 6674w-1, authorizes the commission to designate access points on a controlled access highway "whether such Controlled Access Highway includes any existing State Highway or one hereafter constructed and so designated." The revised law omits the quoted phrase as unnecessary. As noted in Revisor's Note (3), the commission may designate a state highway as a controlled access highway without regard to whether the highway was in existence on the effective date of the source law or is in existence on the date of the designation. Section 2(c), V.A.C.S. Article 6674w-1, authorizes the commission to designate access locations on any
controlled access highway without regard to that highway's individual history.

(6) Section 2(d), V.A.C.S. Article 6674w-1, authorizes the commission to "control, restrict, and determine the type and extent of access . . . ." The revised law omits "control" and "restrict" because the meaning of those terms is included within the meaning of "determine the type and extent of."

(7) The revised law omits the express authorization in V.A.C.S. Article 6674w-1, Section 2(f), for the commission to modify an order entered into under this portion of the statute because the power to adopt an order implies the power to modify it.

(8) Section 2, V.A.C.S. Article 6674w-1, states that portions of that section may not be construed to alter certain existing rights of a person under the constitution. The revised law omits this reference to the constitution as unnecessary because provisions of the constitution always prevail over general law.

Revised Law
Sec. 203.032. PRECEDENCE OF COMMISSION ORDER. An order of the commission under Section 203.031 supersedes a conflicting rule or ordinance of a state agency or other political subdivision of this state or any county or municipality. (V.A.C.S. Art. 6674w-1, Sec. 2 (part).)

Source Law
2. . . . Subject to the foregoing limitations any order issued by the State Highway Commission pursuant to such powers shall supersede and be superior to any rule, regulation or ordinance of any department, agency or subdivision of the State or any county, incorporated city, town or village, including Home Rule Cities, in conflict therewith.

Reviser's Note
(1) Section 2, V.A.C.S. Article 6674w-1, states
that a commission order "shall supersede and be superior to." The revised law omits "be superior to" because the meaning of that phrase is included within the meaning of "supersede."

(2) Section 2, V.A.C.S. Article 6674w-1, refers to "rules and regulations." The revised law omits the reference to "regulations" because under Section 311.005, Government Code, a "rule" includes a "regulation."

(3) Section 2, V.A.C.S. Article 6674w-1, refers to a "department, agency . . . of the State." The revised law substitutes "state agency" because "state agency" is defined by Section 203.001 of this code to include a department or agency of the state.

(4) Section 2, V.A.C.S. Article 6674w-1, refers to an "incorporated city, town or village, including Home Rule Cities." The revised law substitutes "municipality" for the reason stated in Reviser's Note (1) to Section 203.001 of this code.

Revised Law
Sec. 203.033. INJUNCTION AGAINST DENIAL OF ACCESS. A court may not grant an injunction to prevent or stay a commission order of denial of previously existing access to a state highway unless an owner or lessee of real property that adjoins the part of the highway to which access is denied under the commission's order:

(1) brings the suit at which the injunction is sought; and

(2) has not released any claim for damages resulting from the denial of access or a condemnation suit has not been commenced to ascertain the damages. (V.A.C.S. Art. 6674w-1, Sec. 2 (part).)

Source Law

2. . . .
No injunction shall be granted to stay or prevent
the denial of previously existing access to any State
Highway upon the order of the Commission except at the
suit of the owner or lessee of real property actually
physically abutting on that part of such State Highway
to which such access is to be denied pursuant to the
Commission's order, and then only in the event that
said abutting owner or lessee shall not have released
his claim for damages resulting from such denial of
access or a condemnation suit shall not have been
commenced to ascertain such damages, if any. . . .

Revisor's Note

(1) Section 2, V.A.C.S. Article 6674w-1, states
that "[n]o injunction shall be granted . . . ." The
revised law makes clear that this is a limitation on
the power of a court.

(2) Section 2, V.A.C.S. Article 6674w-1, refers
to an injunction granted to "stay or prevent the denial
of." The revised law omits the reference to "prevent"
because the meaning of that term is included within the
meaning of "stay."

(3) Section 2, V.A.C.S. Article 6674w-1, refers
to real property "actually physically abutting" a state
highway. The revised law omits "actually physically"
as unnecessary; to abut or adjoin the highway, property
must touch, or be in actual physical contact.

Revised Law

Sec. 203.034. RIGHT TO ACCESS; DAMAGES FOR DENIAL OF ACCESS.

(a) An owner of real property adjoining a controlled access
highway is not entitled to access to the highway as a matter of
right.

(b) Denial of access to or from a controlled access highway
is not a ground for special or exemplary damages unless:

(1) in connection with the purchase or condemnation of
the real property adjoining the controlled access highway and to be
used in the location of the highway, the commission specifically
authorizes access to or from particular real property adjoining the
highway; and
(2) the commission denies highway access to or from the particular land where the real property adjoins the highway. (V.A.C.S. Art. 6674w-1, Sec. 2 (part).)

Source Law

2. . .
Along new Controlled Access State Highway locations, abutting property owners shall not be entitled to access to such new Controlled Access State Highway locations as a matter of right, and any denial of such access shall not be deemed as grounds for special or exemplary damages, except where access to such new Controlled Access State Highway shall have been specifically authorized by the State Highway Commission to or from particular lands abutting upon such new Controlled Access State Highway in connection with the purchase or condemnation of lands or property rights from such abutting owners to be used in such new Controlled Access State Highway location, and the State Highway Commission thereafter denies access to or from such particular abutting lands to such State Highway at the point where such lands actually abut upon such State Highway.

Revisor's Note
Section 2, V.A.C.S. Article 6674w-1, refers to "new" controlled access highways. The meaning of "new" is ambiguous: it could refer either to controlled access highways constructed or designated as controlled access after the effective date of the article or to constructed controlled access highways that are "new" at the time a suit for damage is brought. In either event, "new" is omitted as unnecessary. Statutes of limitations govern the time in which a suit may be brought for damages, and any suit relating to access to controlled access highways constructed before the 1957 effective date of the article is barred.

[Sections 203.035-203.050 reserved for expansion]

SUBCHAPTER D. ACQUISITION OF PROPERTY

Revised Law
Sec. 203.051. ACQUISITION OF PROPERTY AUTHORIZED. (a) The commission may acquire by purchase, on terms and conditions the
commission considers proper or by the exercise of eminent domain, in the name of the state:

(1) an interest in real property;

(2) any property rights, including:

   (A) a right of ingress or egress; and

   (B) a reservation right in real property that restricts or prohibits the:

   (i) addition of a new improvement on the real property;

   (ii) addition to or modification of an existing improvement on the real property; or

   (iii) subdivision of the real property;

and

(3) timber, earth, stone, gravel, or other material.

(b) Chapter 21, Property Code, applies to an acquisition by eminent domain.

(c) Subsection (a) does not authorize the commission to condemn property that is used and dedicated for cemetery purposes under Subtitle C, Title 8, Health and Safety Code. (V.A.C.S. Arts. 1085a, Sec. 2 (part); 6674w-3(a)(1) (part), (2) (part), (5) (part).)

Source Law

[Art. 1085a]
Sec. 2. For the purposes of this Act, the State Highway Commission . . . may acquire the necessary property and property rights by . . . purchase, or condemnation, in the same manner as such governmental agencies are now or hereafter may be authorized by law to acquire such property for State highways . . . .

Art. 6674w-3. (a)(1) Any land in fee simple or any lesser estate or interest therein; any property rights of any kind or character including, but not limited to, rights of ingress and egress and reservation rights in land which restrict or prohibit the adding of new, or addition to or modification of existing improvements on such land, or subdividing the same; and any timber, earth, stone, gravel, or other material . . . may be purchased by the State Highway and Public Transportation Commission in the name of the State of Texas, on such terms and conditions and in such manner as the Commission may deem proper.

(2) Any land or any estate or interest therein; any property rights of any kind or character including, but not limited to, rights of ingress and
egress, and reservation rights in land which restrict or prohibit for any period of time not to exceed seven (7) years the adding of new, or addition to or modification of existing improvements on such land, or subdividing or resubdividing same; and any timber, earth, stone, gravel, or other material . . . may be acquired by the exercise of the power of Eminent Domain by the State Department of Highways and Public Transportation in the name of the State of Texas in the manner hereinafter provided.

(5) In the exercise of the powers of Eminent Domain herein conferred, the State Department of Highways and Public Transportation shall be subject to the laws and procedures prescribed by Chapter 21, Property Code . . . and further provided, that none of the powers granted herein shall be a grant to the State Highway and Public Transportation Commission for the purpose of condemning property which is used and dedicated for cemetery purposes pursuant to Subtitle C, Title 8, Health and Safety Code.

Reviser's Note

(1) Section 2, V.A.C.S. Article 1085a, refers to the article's purposes, which include operating a state highway as a freeway. As in Section 203.002, Articles 1085a and 6674w-3 are combined in a single revised section. See Reviser's Note (1) to Section 203.002 of this code.

(2) V.A.C.S. Article 6674w-3(a)(1) refers to "land in fee simple or any lesser estate or interest therein." The reference to "land in fee simple or any lesser estate" is omitted from the revised law because "land in fee simple" and "an estate in land" are contained within the meaning of "an estate or interest in real property."

(3) V.A.C.S. Article 6674w-3(a)(5) refers to the "exercise of the powers of Eminent Domain herein conferred" and the "powers granted herein . . . for the purpose of condemning property," meaning the condemnation power granted under Chapter 300, Acts of the 55th Legislature, Regular Session, 1957. The portion of that act granting condemnation power is revised in Subsection (a) of this section and the
revised law is drafted accordingly.

Revised Law

Sec. 203.052. COMMISSION DETERMINATION REQUIRED. (a) The commission may acquire an interest in real property, a property right, or a material under Section 203.051 only if the commission determines that the acquisition is necessary or convenient to a state highway to be constructed, reconstructed, maintained, widened, straightened, or extended.

(b) Property necessary or convenient to a state highway for purposes of Subsection (a) includes an interest in real property, a property right, or a material that the commission determines is necessary or convenient to:

(1) protect a state highway;
(2) drain a state highway;
(3) divert a stream, river, or other watercourse from the right-of-way of a state highway;
(4) store materials or equipment used in the construction or maintenance of a state highway;
(5) construct or operate a warehouse or other facility used in connection with the construction, maintenance, or operation of a state highway;
(6) locate, construct, or maintain a roadside park;
(7) locate, construct, or maintain a parking lot that will contribute to maximum use of a state highway with the least possible congestion;
(8) mitigate an adverse environmental effect that directly results from construction or maintenance of a state highway; or
(9) accomplish any other purpose related to the location, construction, improvement, maintenance, beautification, preservation, or operation of a state highway. (V.A.C.S. Arts. 6674w-3(a)(1) (part), (2) (part).)
Art. 6674w-3. (a)(1) [Any land in fee simple or any lesser estate or interest therein; any property rights] . . . which the State Highway and Public Transportation Commission may in its judgment determine to be necessary or convenient to any State Highway to be constructed, reconstructed, maintained, widened, straightened or lengthened including, but not limited to, any land, property rights or materials deemed by the Commission necessary or convenient for the purpose of protecting any State Highway; draining any State Highway; diverting streams or rivers or any other watercourse from the right of way of any State Highway; storing materials and equipment used in the construction and maintenance of State Highways; constructing and operating warehouses and other buildings and facilities used in connection with the construction, maintenance, and operation of State Highways; laying out, construction, and maintenance of roadside parks; laying out, construction, and maintenance of vehicular parking lots that will contribute to maximum utilization of State Highways with the least possible congestion; mitigating adverse environmental impacts directly resulting from construction or maintenance of State Highways; and any other purpose related to the laying out, construction, improvement, maintenance, beautification, preservation and operation of State Highways, [may be purchased] . . . .

(2) Any land or any estate or interest therein; any property rights] . . . which the State Highway and Public Transportation Commission may in its judgment determine to be necessary or convenient to any State Highway to be constructed, reconstructed, maintained, widened, straightened or lengthened including, but not limited to, any land, property rights or materials deemed by the Commission necessary or convenient for the purpose of protecting any State Highway; draining any State Highway; diverting streams or rivers or any other watercourse from the right of way of any State Highway; laying out, construction, and maintenance of roadside parks; laying out, construction, and maintenance of vehicular parking lots that will contribute to maximum utilization of State Highways with the least possible congestion; mitigating adverse environmental impacts directly resulting from construction or maintenance of State Highways; and any other purpose related to the laying out, construction, improvement, maintenance, and operation of State Highways, [may be acquired] . . . .

Revisor's Note

(1) The revised law combines portions of V.A.C.S. Articles 6674w-3(a)(1) and (2). V.A.C.S. Article 6674w-3(a)(1) refers to land, property rights, or materials necessary or convenient for the purpose of "storing materials . . ." and "constructing and operating warehouses and other buildings and
V.A.C.S. Article 6674w-3(a)(2) does not expressly identify these purposes. However, both subdivisions include broad, catchall language authorizing the acquisition of land, property rights, or materials for "any other purpose related to the laying out, construction, improvement, maintenance, and operation of State Highways." Because the purposes described by Subdivision (a)(1) but omitted from (a)(2) clearly would fall within the authorization of the catchall language, it is appropriate to combine these portions of the source law and to retain in the revised law the purposes specified by Subdivision (a)(1) as examples of appropriate purposes.

(2) The revised law substitutes "locate" for "lay out" in V.A.C.S. Articles 6674w-3(a)(1) and (2) for the reason stated in Reviser's Note (2) to Section 203.002 of this code.

(3) The revised law substitutes "parking lot" for "vehicular parking lots" in V.A.C.S. Articles 6674w-1(a)(1) and (2) because the terms are synonymous and the former is more concise and more frequently used.

Revised Law

Sec. 203.053. LOCATION OF PROPERTY ACQUIRED; PUBLIC PROPERTY. (a) The authorization under this subchapter to purchase or exercise the power of eminent domain is not affected by the location of the real property, the location of the real property to which the property right refers, or the location of the material. This subsection applies without regard to whether the location is in or outside a municipality.

(b) Under this subchapter, the commission may purchase or condemn real property, property rights, and materials that belong to the public, whether under the jurisdiction of the state, a state
agency, a county, a municipality, or an entity or subdivision of a county or municipality. (V.A.C.S. Arts. 6674w-3(a)(3), (b)(2).)

Source Law

(a) . . .

(3) The purchase or power of Eminent Domain being hereby authorized is granted regardless of the location of any such land, property rights, or materials to be acquired, whether within or without the confines of any incorporated city, town or village, whether same are incorporated under general or special laws, including Home Rule Cities.

(b) . . .

(2) Whether purchased or condemned by the Commission, the lands, property rights and materials which are purchased or condemned may also include those belonging to the public, whether under the jurisdiction of the State or any department or agency thereof, county, city, town, village, including Home Rule Cities, or other entity or subdivision thereof.

Revisor's Note

(1) V.A.C.S. Article 6674w-3(a)(3) refers to "[t]he purchase or power of Eminent Domain being hereby authorized," meaning that these powers are authorized under Chapter 300, Acts of the 55th Legislature, Regular Session, 1957. The portions of that act authorizing the acquisition of property by purchase or condemnation are revised in this chapter as this subchapter and the revised law is drafted accordingly.

(2) V.A.C.S. Articles 6674w-3(a)(3) and (b)(2) refer to the location of "property rights." The revised law clarifies this reference by referring to the location of the land affected by the property rights to be acquired.

(3) V.A.C.S. Articles 6674w-3(a)(3) and (b)(2) refer to a "city, town or village . . . including Home Rule Cities." The revised law substitutes "municipality" for the reason stated in Revisor's Note (1) to Section 203.001 of this code.

Revised Law

Sec. 203.054. ATTORNEY GENERAL SHALL BRING SUIT. (a)
Except as provided by Subsection (b), the attorney general, at the request of the commission, shall bring and prosecute a condemnation suit of the commission under this subchapter.

(b) At the request of the attorney general, the appropriate county or district attorney or criminal district attorney shall prosecute the suit.

(c) The suit shall be brought in the name of this state.

(V.A.C.S. Art. 6674w-3(a)(4) (part).)

Source Law

(4) In the prosecution of any condemnation suit brought by the State Highway and Public Transportation Commission in the name of the State of Texas for the acquisition of property pursuant to the powers granted in this Act, the Attorney General, at the request of the Commission, or, at the Attorney General's direction, the applicable County or District Attorney or Criminal District Attorney, shall bring and prosecute the suit in the name of the State of Texas . . . .

Revisor's Note

The portion of V.A.C.S. Article 6674w-3(a)(4) regarding venue for condemnation suits brought by the commission has been superseded by Sections 15.001 and 15.011, Civil Practice and Remedies Code, and Section 21.013, Property Code. Those statutes establish uniform rules regarding venue of lawsuits generally, certain actions involving title to real property, and condemnation proceedings. The omitted law reads:

(4) . . . and the venue of any such suit shall be in the county in which the property or a part thereof is situated.

Revised Law

Sec. 203.055. SCOPE OF ESTATE CONDEMNED; INTEREST IN OIL, GAS, OR SULPHUR. (a) The department may condemn the fee or a lesser interest in the property.

(b) The department shall, in a statement or petition in condemnation, exclude from the interest to be condemned all the oil, gas, and sulphur that can be removed from beneath the real
property. This exclusion shall be made without providing the owner of the oil, gas, or sulphur any right of ingress or egress to or from the surface of the land to explore, develop, drill, or mine the real property. (V.A.C.S. Art. 6674w-3(a)(5) (part).)

Source Law

(5) [In the exercise of the powers of Eminent Domain herein conferred, the State Department of Highways and Public Transportation] . . . shall be entitled to condemn the fee or such lesser estate or interest . . . provided however, that any statement or petition in condemnation brought by the Department pursuant hereto shall exclude from the estate sought to be condemned all the oil, gas and sulphur which can be removed from beneath the land condemned without any right whatever remaining to the owners of such oil, gas and sulphur of ingress or egress to or from the surface of the land condemned for the purpose of exploring, developing, drilling or mining of the same . . . .

Reviser's Note

V.A.C.S. Article 6674w-3(a)(5) refers to matters that must be specified in the statement or petition for the condemnation proceeding. This reference is omitted from the revised law because it duplicates Section 21.012, Property Code. The omitted law reads:

[(5)] . . . as it may specify in any statement or petition in any condemnation proceeding filed by it pursuant to such powers . . . .

Revised Law

Sec. 203.056. CONVEYANCE OF PROPERTY BELONGING TO POLITICAL SUBDIVISION OR PUBLIC AGENCY. (a) The governing body of a political subdivision or public agency may, without advertisement, convey the title to or a right in property that:

(1) is owned by the political subdivision or public agency; and

(2) may be acquired by the commission under this subchapter for highway purposes.

(b) In this section, "political subdivision" includes a county or municipality. (V.A.C.S. Art. 6674w-3(b)(1); New.)
Source Law

(b)(1) The governing body of every county, city, town, village, political subdivision or public agency is hereby authorized without any form of advertisement to make conveyance of title or rights and easements, owned by any such body, to any property needed by the State Highway and Public Transportation Commission to effect its purposes in connection with the construction or operation of the State Highway System or the mitigation of adverse environmental impacts directly resulting from the construction or maintenance of State Highways.

Reviser's Note

(1) V.A.C.S. Article 6674w-3(b)(1) refers to property "owned by any such [governing] body." Property within the jurisdiction of the governing body of a political subdivision or public agency is owned by the entity, not its governing body. The revised law makes this clear.

(2) The revised law uses the term "municipality" to refer to "city, town, village" in the added definition of "political subdivision." See Reviser's Note (3) below and Reviser's Note (1) to Section 203.001 of this code.

(3) The revised law adds a definition of "political subdivision" for conciseness.

(4) V.A.C.S. Article 6674w-3(b)(1) refers to property "needed by the State Highway and Public Transportation Commission to effect its purposes in connection with the construction or operation of the State Highway System or the mitigation of adverse environmental impacts directly resulting from the construction or maintenance of State Highways." The quoted language is omitted as unnecessary because as revised in this section "property" may be acquired only if the commission may acquire the property, and under Sections 203.051 and 203.052 of this code the commission may acquire property for these purposes.
Revised Law

Sec. 203.057. CONSENT TO USE OF STATE PROPERTY. (a) The commission may use real property owned by the state, including submerged real property, that the commission could acquire under this subchapter for highway purposes.

(b) This section does not deprive the School Land Board of authority to execute a lease authorized by law for the development of oil, gas, or another mineral on state-owned real property adjoining a state highway or in a tidewater limit and for that purpose a lease executed by the School Land Board may provide for directional drilling from real property adjoining a state highway or from a tidewater area. (V.A.C.S. Art. 6674w-3(b)(3) (part).)

Source Law

(3) The State of Texas hereby consents to the use of all lands owned by it, including lands lying underwater, which are deemed by the Commission to be necessary for the construction or operation of any State Highway or for the mitigation of adverse environmental impacts directly resulting from the construction or maintenance of State Highways; provided, however, that nothing herein shall be construed as depriving the School Land Board of authority to execute leases in the manner authorized by law for the development of oil, gas and other minerals on State-owned lands adjoining any such State Highway, or in tidewater limits, and to this end such leases may provide for directional drilling from such adjoining land and tidewater area. . . .

Revisor's Note

V.A.C.S. Article 6674w-3(b)(3) refers to land deemed by the commission to be necessary "for the construction or operation of any State Highway or for the mitigation of adverse environmental impacts directly resulting from the construction or maintenance of State Highways . . . ." The revised law omits the quoted language for the reason stated in Revisor's Note (4) to Section 203.056 of this code.

Revised Law

Sec. 203.058. COOPERATION OF STATE AGENCY. (a) The
commission shall advise and make arrangements with the state agency
that has jurisdiction over the state-owned real property to
accomplish the purpose of Section 203.057.

(b) The state agency shall cooperate with the department in
connection with the use of real property under Section 203.059. If
the agency is not expressly authorized to act through a designated
representative, the agency may do whatever act is necessary under
Section 203.057 by and through the presiding officer of its board,
or its department head or executive director, as appropriate.

(V.A.C.S. Art. 6674w-3(b)(3) (part).)

Source Law

(3) . . . The Commission shall advise,
and make arrangements with, the State Department or
agency having jurisdiction over such lands to
accomplish such necessary purposes. Any such State
Department or agency is hereby directed to cooperate
with the State Department of Highways and Public
Transportation in this connection, and as to any such
department or agency not expressly authorized to act
through some designated representatives, express
authority is hereby granted to such department or
agency to do whatever acts are necessary hereunder by
and through the Chairman of its Board, Department Head,
or Executive Director, whether appointed or elected,
whichever may be appropriate.

Reviser's Note

(1) V.A.C.S. Article 6674w-3(b)(3) refers to a
"State Department or agency." The revised law
substitutes "state agency." See Reviser's Note (3) to
Section 203.001.

(2) The revised law adds cross-references to
Section 203.059 of the revised law. Section 203.059
and this section are both revisions of V.A.C.S. Article
6674w-3(b)(3), and the references are necessary to show
interconnections of the two sections.

(3) V.A.C.S. Article 6674w-3(b)(3) refers to
"the Chairman of [the commission's] Board, Department
Head, or Executive Director, whether appointed or
elected." The reference to whether the official is
"appointed or elected" is omitted from the revised law because it does not add to the clear meaning of the law; the described officials are either appointed or elected.

Revised Law

Sec. 203.059. COMPENSATION FOR STATE AGENCY. (a) If the acquisition of real property, property rights, or material by the department from a state agency under this subchapter will deprive the agency of a thing of value to the agency in the exercise of its functions, adequate compensation for the real property, property rights, or material shall be made.

(b) The compensation shall be paid on vouchers drawn for this purpose payable to the state agency providing the real property, property rights, or material.

(c) A payment made to an agency furnishing real property, property rights, or material shall be credited to the appropriation item or account for that agency from which expenditures of that character were originally made.

(d) If an appropriation item or account as described by Subsection (c) does not exist, the payment shall be credited to the appropriate account of the state agency, as determined by the comptroller.

(e) If the department and the state agency are unable to agree on adequate compensation, the General Land Office shall determine the fair, equitable, and realistic compensation to be paid. (V.A.C.S. Arts. 6674w-3(b)(4), (5).)

Source Law

(4) If the land, property rights, or material to be acquired by the State Department of Highways and Public Transportation are of such a nature that its acquisition under the provisions of this Act will deprive any such department or agency of the State of a thing of value to such department or agency in the exercise of its lawful functions, then adequate compensation therefor shall be made, based upon vouchers drawn for this purpose payable to the furnishing department or agency. Payments received by the furnishing department or agency shall be credited to that department's or agency's current appropriation.
items or accounts from which the expenditures of that character were originally made, or if no such items or accounts from which the expenditures of that character were originally made, or if no such item or account exists, then to an account of such department or agency determined to be appropriate thereto by the Comptroller of Public Accounts.

(5) In the event, but only in the event, the State Department of Highways and Public Transportation and such other department or agency are unable to agree upon adequate compensation, then the General Land Office shall determine the fair, equitable and realistic compensation to be paid.

Reviser's Note

(1) V.A.C.S. Article 6674w-3(b)(4) refers to an acquisition under "this Act," meaning the portion of Chapter 300, Acts of the 55th Legislature, Regular Session, 1957, governing acquisition of state land. The portion of that act governing use of state land is revised in this subchapter and the revised law is drafted accordingly.

(2) V.A.C.S. Articles 6674w-3(b)(4) and (5) refer to a state "department or agency." The revised law substitutes "state agency." See Reviser's Note (3) to Section 203.001.

(3) V.A.c.s. Article 6674w-3(b)(4) refers to the "lawful functions" of a state agency. The revised law omits the reference to "lawful" because an activity of a state agency that is "unlawful" would not be a function of that agency.

(4) V.A.C.S. Article 6674w-3(b)(4) refers to credits to "current" appropriations items or accounts. The revised law omits "current" as unnecessary because in the context of this provision a credit can be made only to an existing appropriation item or account.

(5) V.A.C.S. Article 6674w-3(b)(4) refers to the "Comptroller of Public Accounts." Section 403.001, Government Code, provides that the term "comptroller" in any state statute means the comptroller of public accounts.
accounts and the revised law is drafted accordingly.

Revised Law
Sec. 203.060. PURCHASE OF LEASE RIGHTS. (a) Before acquiring property under this subchapter, the department may purchase the right to lease the property to a third party.

(b) The department may make a purchase under Subsection (a) only if the department first determines that the owner is unable to lease or rent the property because of the impending acquisition by the department.

(c) The consideration for the purchase of a lease right under this section may not exceed the fair market rental value of the property as determined by the department and shall be credited against the total compensation due the owner when the department acquires the property.

(d) Payment under this section may be made in periodic increments until the property is acquired by the department. The aggregate total of payments before acquisition may not exceed the department's appraised value of the property.

(e) The department shall adopt rules to implement this section. (V.A.C.S. Art. 6674w-4c.)

Source Law
Art. 6674w-4c. (a) Prior to acquisition of property pursuant to this Act, the State Department of Highways and Public Transportation may purchase the rights to lease the property to third parties, provided that the department first determines that the owner is unable to lease or rent the property by reason of its impending acquisition for highway purposes.

(b) The consideration for the purchase of such rights may not exceed the fair market rental value of the property as determined by the department and shall be credited against the total compensation due the owner at the time the department acquires the property through negotiated purchase or through the exercise of the power of Eminent Domain. Payment under this section may be made in periodic increments until the property is acquired by the department, provided that the aggregate total of payments prior to acquisition may not exceed the department's approved appraised value of the property.

(c) The department shall promulgate reasonable rules for the implementation of this section.
Reviser's Note

V.A.C.S. Article 6674w-4c refers to an acquisition under "this Act," meaning the portion of Chapter 300, Acts of the 55th Legislature, Regular Session, 1957, governing acquisition of property. The portion of that act governing the acquisition of property is revised as this subchapter and the revised law is drafted accordingly.

Revised Law

Sec. 203.061. PAYMENT PROCEDURE. The comptroller may issue a warrant on the appropriate account to pay for real property or an interest in real property when presented with a properly executed deed for the real property or interest. (V.A.C.S. Art. 6674w-2 (part).)

Source Law

Art. 6674w-2. . . .
Upon presentation of a properly executed deed or deeds, the Comptroller of Public Accounts is hereby authorized to issue a State Warrant on the appropriate account as payment of consideration for such land, estate or interest therein. . . .

Reviser's Note

(1) The source law refers to the "Comptroller of Public Accounts." The revised law substitutes "comptroller" for the reason stated in Reviser's Note (5) to Section 203.059.

(2) V.A.C.S. Article 6674w-2 refers to "an estate or interest" in land. The reference to "estate" is omitted from the revised law because "estate" is included within the meaning of "interest" in real property.

Revised Law

Sec. 203.062. PAYMENT PROCEDURE IF OWNER FAILS TO DELIVER EXECUTED DEED; ESCROW. (a) If the owner of property acquired by
the department under this subchapter fails to deliver an executed deed before payment of consideration, the comptroller may issue a warrant on the appropriate account in payment of the consideration. The consideration shall be placed in escrow with a national or state bank that is:

(1) authorized to do business in this state; and
(2) located in the county of the residence of the owner or the county in which the real property is located.

(b) If there is not a bank that satisfies the requirements of Subsection (a)(2), the consideration shall be placed in a national or state bank authorized to do business in this state in an adjoining county or the nearest available banking facility.

(c) Consideration placed in escrow under this section shall be delivered to the owner on receipt of the properly executed deed.

(V.A.C.S. Art. 6674w-2 (part).)

Source Law

Art. 6674w-2
. . . In the event any owner fails or refuses to execute or deliver an executed deed before payment of the consideration, the Comptroller of Public Accounts is hereby authorized to issue a State Warrant on the appropriate account in payment of such consideration, which consideration shall be placed in escrow with any National or State Bank, duly authorized to do business within the State of Texas, which is located in the county of the residence of the owner, the county wherein the land is situated, or in case no such banking facility is available, then in the adjoining county or the nearest available banking facility, to be delivered to the owner upon receipt of the duly and properly executed deed or deeds. . . .

Revisor's Note

(1) V.A.C.S. Article 6674w-2 refers to an owner who "fails or refuses" to execute or deliver a deed. The revised law omits the reference to "refuses" as redundant because an owner who refuses to execute or deliver a deed also fails to do so.

(2) V.A.C.S. Article 6674w-2 refers to an owner who fails "to execute or deliver an executed deed." The revised law omits the reference to "execute" as
redundant because an owner who fails to execute a deed also fails to deliver an executed deed.

(3) V.A.C.S. Article 6674w-2 refers to the "Comptroller of Public Accounts." The revised law substitutes "comptroller" for the reason stated in Revisor's Note (5) to Section 203.059.

Revised Law

Sec. 203.063. PAYMENT FOR REAL PROPERTY ACQUIRED BY EMINENT DOMAIN. (a) If the department acquires real property through the exercise of the power of eminent domain, the comptroller may issue a warrant as required by the judgment of the court.

(b) The comptroller may also issue a warrant to be deposited into the court as required by law to entitle the department to take possession of the property. (V.A.C.S. Art. 6674w-2 (part).)

Source Law

Art. 6674w-2
.. In the event the State Highway Department acquires any property through the exercise of the power of Eminent Domain, the Comptroller of Public Accounts is hereby authorized to issue such warrants as the judgment of the Court may decree, as well as such warrants necessary to be deposited into the Court to entitle the State Highway Department, in the name of the State of Texas, to take possession of such property, as the law may provide.

Revisor's Note

(1) V.A.C.S. Article 6674w-2 refers to the "Comptroller of Public Accounts." The revised law substitutes "comptroller" for the reason stated in Revisor's Note (5) to Section 203.059.

(2) V.A.C.S. Article 6674w-2 refers to the department by eminent domain taking possession of property "in the name of the State." The quoted provision is omitted from the revised law because under V.A.C.S. Article 6674w-3(a)(2), revised in this chapter as Section 203.051, the acquisition of property under this chapter is "in the name of the state." It is not
necessary to restate that restriction in this section.

Revised Law

Sec. 203.064. PAYMENT PROCEDURES IN ADDITION TO OTHER PROCEDURES AUTHORIZED BY LAW. The payment procedures specified by Sections 203.061, 203.062, and 203.063 are in addition to any other procedure or method authorized for the issuance of a warrant by the comptroller on request of the department. (V.A.C.S. Art. 6674w-2 (part).)

Source Law

Art. 6674w-2. In addition to all existing procedures and methods authorized for the issuance of warrants by the Comptroller of Public Accounts upon the request of the State Highway Department, the following authority is hereby granted . . . .

Revisor's Note

The source law refers to the "Comptroller of Public Accounts." The revised law substitutes "comptroller" for the reason stated in Revisor's Note (5) to Section 203.059.

Revised Law

Sec. 203.065. ACQUISITION OF FREEWAY BY GIFT OR DEVISE.

(a) The commission may acquire by gift or devise a property necessary to locate, construct, maintain, or operate a section of a state highway as a freeway.

(b) In this section, "freeway" means a state highway for which the right of access to or from adjoining real property has been acquired in whole or in part from the owners of the adjoining property by the commission. (V.A.C.S. Art. 1085a, Secs. 2 (part), 3 (part).)

Source Law

Art. 1085a

[Section 1. The State Highway Commission . . . within their respective jurisdictions may do any and all things necessary to lay out, acquire, construct, maintain and operate any section or portion of any State highway . . . as a freeway] . . . .

[Sec. 2. For the purposes of this Act, the State
Highway Commission . . . may acquire the necessary property and property rights by] gift, devise, . . . [in the same manner as such governmental agencies are now or hereafter may be authorized by law to acquire such property for State highways] . . . .

... Sec. 3. "Freeway" means a State highway . . . in respect to which the right or easement of access to or from their abutting lands has been acquired in whole or in part from the owners thereof by the State Highway Commission . . . as hereinabove provided.

Revisor's Note

(1) The revised law substitutes "locate" for "lay out" in Section 1, V.A.C.S. Article 1085a, for the reason stated in Revisor's Note (1) to Section 203.003 of this code.

(2) Section 2, V.A.C.S. Article 1085a, states that the commission may acquire property "in the same manner as such governmental agency [is] now or hereafter may be authorized by law to acquire such property for State highways." The quoted provision is omitted from the revised law as unnecessary. The provisions of law that govern the manner of acquisition of property for highway purposes are revised as this subchapter.

(3) Section 3, V.A.C.S. Article 6674w-2, refers to a "right or easement of access." The reference to "easement" of access is omitted from the revised law because "easement" of access is included within the meaning of "right" of access.

Revised Law

Sec. 203.066. ACQUISITION OF FREEWAY BY COUNTY COMMISSIONERS COURT. (a) A county commissioners court may acquire by gift, devise, purchase, or condemnation a property necessary to locate, construct, maintain, or operate a section of a state highway as a freeway.

(b) In this section, "freeway" has the meaning assigned by Section 203.065(b). (V.A.C.S. Art. 1085a, Secs. 1 (part), 2
Sec. 1. ... may do any and all things necessary to lay out, acquire, construct, maintain and operate any section or portion of any State highway ... as a freeway ... .

Sec. 2. For the purposes of this Act, ... County Commissioners Courts ... may acquire the necessary property and property rights by gift, devise, purchase, or condemnation, in the same manner as such governmental agencies are now or hereafter may be authorized by law to acquire such property for State highways ... .

Sec. 3. "Freeway" means a State highway ... in respect to which the right or easement of access to or from their abutting lands has been acquired in whole or in part from the owners thereof ... .

Revisor's Note

(1) The revised law substitutes "locate" for "lay out" in Section 1, V.A.C.S. Article 1085a, for the reason stated in Revisor's Note (2) to Section 203.002 of this code.

(2) The definition of "freeway" in Section 3, V.A.C.S. Article 1085a, is applicable to this section and to Section 203.065 of this chapter. The definition is revised in Section 203.065; this section contains a cross-reference to the definition appearing in that section.

(3) Section 2, V.A.C.S. Article 1085a, states that county commissioners courts may acquire property "in the same manner as such governmental agency [is] now or hereafter may be authorized by law to acquire such property for State highways." The quoted provision is omitted from the revised law for the reason stated in Revisor's Note (2) to Section 203.065 of this code.
Revisor's Note
(End of Subchapter)

Section 1, V.A.C.S. Article 1085a, states:

[N]o existing State highway . . . shall be converted into a freeway except with the consent of the owners of abutting lands, or by the purchase or condemnation of their right of access thereto . . . .

"Freeway" is defined by Section 3 of the article to mean:

a State highway . . . in respect to which the right or easement of access . . . has been acquired . . . from the owners thereof by the State Highway Commission . . . as hereinabove provided.

Section 2 of the article allows acquisition of property by purchase or condemnation.

Because "freeway" is defined by the manner in which the right of access is acquired, stating that a highway may be converted into a freeway only in that manner is redundant and omitted from the revised law.

The further statement in Section 1 that consent is not required where a new highway is constructed is also omitted from the revised law as unnecessary because the revised law provides for the acquisition of abutting lands in that circumstance by purchase or condemnation. See Section 203.051 of this chapter.

The omitted law reads:

Art. 1085a
Sec. 1. . . . except that no existing State highway . . . shall be converted into a freeway except with the consent of the owners of abutting lands, or by the purchase or condemnation of their right of access thereto, providing, however, nothing herein shall be construed as requiring the consent of the owners of abutting lands where a State highway . . . is constructed, established or located for the first time as a new way for the use of vehicular and pedestrian traffic.

[Sections 203.067-203.090 reserved for expansion]

SUBCHAPTER E. RELOCATION OF UTILITY FACILITIES
Revised Law

Sec. 203.091. DEFINITION. In this subchapter, "utility" includes a publicly, privately, or cooperatively owned utility that provides telephone, telegraph, communications, electric, gas, heating, water, railroad, storm sewer, sanitary sewer, or pipeline service. (V.A.C.S. Art. 6674w-4(a) (part).)

Source Law

Art. 6674w-4. (a) ... The term "utility" includes publicly, privately, and cooperatively owned utilities engaged in furnishing telephone, telegraph, communications, electric, gas, heating, water, railroad, storm sewer, sanitary sewer or pipeline service. ...

Revised Law

Sec. 203.092. REIMBURSEMENT FOR RELOCATION OF UTILITY FACILITIES. (a) A utility shall make a relocation of a utility facility at the expense of this state if:

(1) relocation of the utility facility is required by improvement of a highway in this state established by appropriate authority as part of the National System of Interstate and Defense Highways; and

(2) the relocation is eligible for federal participation.

(b) By agreement with the utility the department may relocate the utility facility in accordance with this subchapter.

(c) Subsection (a) includes a relocation for an extension of a highway in an urban area.

(d) The cost of relocation includes the entire amount paid by the utility properly attributable to the relocation less:

(1) any increase in the value of the new facility;

(2) the salvage value derived from the old facility; and

(3) any other deduction established by regulations for federal cost participation. (V.A.C.S. Art. 6674w-4(a) (part).)
Art. 6674w-4. (a) Whenever the relocation of any utility facilities is necessitated by the improvement of any highway in this State which has been or may hereafter be established by appropriate authority according to law as a part of the National System of Interstate and Defense Highways, including extensions thereof within urban areas, such relocation shall be made by the utility at the cost and expense of the State of Texas provided that such relocation is eligible for Federal participation. The term "cost of relocation" includes the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility, and otherwise as may be fixed by regulations for Federal cost participation. It is further provided that by agreement with the affected utility the State Highway Department may relocate such utility facility in accordance with the provisions hereof.

Sec. 203.093. REIMBURSEMENT FROM STATE HIGHWAY FUND.
(a) Reimbursement of the cost of relocation of the utility facility shall be made from the state highway fund to the utility owning the facility.
(b) This section applies notwithstanding anything to the contrary contained in another law or in a permit, agreement, or franchise issued or entered into by a department, commission, or political subdivision of this state. (V.A.C.S. Art. 6674w-4(a) (part).)

Art. 6674w-4. (a) . . . Reimbursement of the cost of relocation of such facilities shall be made from the State Highway Fund to the utility owning such facilities, anything contained in any other provision of law or in any permit, or agreement or franchise issued or entered into by any department, commission or political subdivision of this State to the contrary notwithstanding. . . .

Sec. 203.094. TIMELY RELOCATION. (a) A utility that is eligible for reimbursement under Section 203.092 or that is eligible for reimbursement under applicable law and the policies of the department for the cost of relocating facilities required by improvement of a segment of the state highway system not subject to
Section 203.092 shall accomplish the relocation of the facility in a timely manner as specified in its relocation agreement with the department.

(b) The department may reduce the reimbursement to the utility by 10 percent for each 30-day period or portion of a 30-day period by which the relocation exceeds the limit specified in the relocation agreement. If the department determines that a delay in relocation is the result of circumstances beyond the control of the utility, full reimbursement shall be paid.

(c) The time limit specified in the relocation agreement may not be less than 90 days. (V.A.C.S. Art. 6674w-4(b).)

Source Law

(b) A utility eligible for reimbursement for the cost of relocating its facilities necessitated by the improvement of the National System of Interstate and Defense Highways pursuant to Subsection (a) of this section or which is otherwise eligible for reimbursement for the cost of relocating facilities necessitated by the improvement of any other segment of the state highway system pursuant to applicable law and the policies of the department shall accomplish the relocation of its facilities in a timely fashion as specified in its relocation agreement with the department. For each 30-day period or portion thereof by which the relocation exceeds the specified limit, the department may reduce the reimbursement to the utility by 10 percent; provided, however, that in no case shall the specified time limit stated in the relocation agreement be less than 90 days; and that if the delay in relocation is determined by the department to be the result of circumstances beyond the control of the utility full reimbursement shall be paid.

Revisor's Note

(1) V.A.C.S. Article 6674w-4(b) refers to a utility eligible for reimbursement "for the cost of relocating its facilities necessitated by the improvement of the National System of Interstate and Defense Highways pursuant to [the portion of the source law revised in this subchapter as Section 203.092]." This portion of that statute duplicates Section 203.092 of this code, and the revised law substitutes a cross-reference for conciseness.
(2) V.A.C.S. Article 6674w-4(b) refers to "the specified limit," meaning the limit specified in the relocation agreement with the department. The revised law makes this clear.

Revised Law
Sec. 203.095. RULES. The department shall adopt rules to implement this subchapter. (V.A.C.S. Art. 6674w-4(c).)

Source Law
(c) The department shall promulgate reasonable rules for the orderly implementation of this section.

[Sections 203.096-203.110 reserved for expansion]

SUBCHAPTER F. LEASE OF CERTAIN PROPERTY

Revised Law
Sec. 203.111. LEASE FOR PARKING PURPOSES. (a) The commission may lease for parking purposes real property beneath an elevated section of a freeway located on real property for which the commission holds the title and property rights.

(b) Revenue from a lease under this section shall be used for general governmental purposes.

(c) In this section, "freeway" has the meaning assigned by Section 203.065. (V.A.C.S. Art. 1085a, Secs. 2a, 3 (part).)

Source Law
Sec. 2a. The governmental agency which holds the title and property rights to land on which a freeway is located may lease for parking purposes the portions of land situated beneath the elevated sections of the freeway. Revenue from a parking lease authorized by this section shall be used for general governmental purposes.

Sec. 3. "Freeway" means a State highway . . . in respect to which the right or easement of access to or from their abutting lands has been acquired in whole or in part from the owners thereof by the State Highway Commission . . . as hereinabove provided.

Revisor's Note
(1) Section 2a, V.A.C.S. Article 1085a, refers to the "governmental agency which holds the
title...to land on which a freeway is located...." The revised law substitutes "commission" for governmental agency. V.A.C.S. Article 1085a applied both to the State Highway Commission (see Revisor's Note (2) of the end-of-chapter note) and certain other governmental agencies. This portion of the revised law applies only to the commission. The provisions of V.A.C.S. Article 1085a governing other governmental agencies are revised in this code as Section 311.034.

(2) The definition of "freeway" in Section 3, V.A.C.S. Article 1085a, is applicable to this section and to Section 203.065 of this chapter. The definition is revised in Section 203.065; this section contains a cross-reference to the definition appearing in that section.

Revisor's Note
(End of Chapter)

(1) The revised law omits the statement of purpose contained in V.A.C.S. Article 6674w because it is nonsubstantive and unnecessary. The omitted law reads:

Art. 6674w. PURPOSES. The Legislature finds, determines and declares that the purpose of this Act is to delegate certain additional authority to the State Highway Commission to promote the Public Safety, to facilitate the movement of traffic, to preserve the financial investment of the public in its highways and to promote the National Defense.

(2) The revision omits Section 5, V.A.C.S. Article 1085a, providing that the article is severable, because that provision duplicates Section 311.032, Government Code (Code Construction Act), applicable to the revised law, 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. As omitted, Section 5 reads:

Sec. 5. If any section, subsection, sentence, clause or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed the Act and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

(3) The revised law omits as unnecessary a portion of V.A.C.S. Article 6674w-5 relating to the effect of that article on prior enacted law. An accepted general principle of statutory construction requires that a statute be given cumulative effect with other statutes unless it provides otherwise or unless the statutes are in conflict. Under another accepted general principle of statutory construction, prior enacted statutes that are in conflict are impliedly repealed by the later enacted statute. These general principles apply to the revision. The omitted portion of V.A.C.S. Article 6674w-5 reads:

Art. 6674w-5. The powers, authority, jurisdiction and procedures granted to the State Highway Department and State Highway Commission in the foregoing Sections of this Act shall be deemed to provide additional powers, authority, jurisdiction, and procedures to those now existing and conferred by the laws of the State of Texas upon the State Highway Department and State Highway Commission and shall not be regarded as in derogation of any powers, authority, jurisdiction, or procedures now existing under the laws of Texas, except that restrictions placed upon the powers, authority, jurisdiction or procedures of the State Highway Department and State Highway Commission by other laws, which are in derogation of, or inconsistent with the powers, authority, jurisdiction and procedures prescribed in the foregoing Sections of this Act or which would tend to hamper or limit the State Highway Department and State Highway Commission in the lawful execution of the powers and authority granted by this Act for the proper accomplishment of its purposes,
shall be deemed to have been superseded by
the provisions hereof, and, to the extent
that any other law is in conflict with or
inconsistent with the provisions hereof,
the provisions of this Act shall take
precedence and be effective. . . .

[Chapters 204-220 reserved for expansion]

SUBTITLE B. STATE HIGHWAY SYSTEM

CHAPTER 221. GENERAL PROVISIONS

Sec. 221.001. DEFINITIONS
Sec. 221.002. AGREEMENTS WITH MUNICIPALITIES
Sec. 221.003. IMPROVEMENT OF STATE HIGHWAY SYSTEM

SUBTITLE B. STATE HIGHWAY SYSTEM

CHAPTER 221. GENERAL PROVISIONS

Revised Law
Sec. 221.001. DEFINITIONS. In this subtitle:

(1) "Highway" includes a public road or part of a
public road and a bridge, culvert, or other necessary structure
related to a public road.

(2) "Improvement" includes construction,
reconstruction, maintenance, and the making of a necessary plan or
survey before beginning construction, reconstruction, or
maintenance.

(3) "State highway system" means the highways in this
state included in the plan providing for a system of state highways
prepared by the director under Section 201.103. (V.A.C.S. Arts.
6674a; 6674b.)

Source Law

Art. 6674a. The term "highway" as used in this
Act shall include any public road or thoroughfare or
section thereof and any bridge, culvert or other
necessary structure appertaining thereto. The term
"improvement" shall include reconstruction, or partial construction,
reconstruction or maintenance and the making of all
necessary plans and surveys preliminary thereto. The
term "Commission" refers to the State Highway
Commission and the term "Department" refers to the
State Highway Department.

Art. 6674b. All highways in this State included
in the plan providing a system of State Highways as
prepared by the State Highway Engineer in accordance

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with Section 11 of Chapter 190 of the General Laws of
the Regular Session of the Thirty-fifth Legislature are
hereby designated as the "State Highway System."

Revisor's Note

(1) V.A.C.S. Article 6674a provides definitions
for the terms "commission" and "department." The
revised law omits those definitions because
"commission" and "department" are both defined in
Section 201.001 of this code, a general definitions
section that applies to this chapter.

(2) V.A.C.S. Article 6674a refers to a "road or
thoroughfare." The reference to "thoroughfare" is
omitted from the revised law because "thoroughfare" is
included within the meaning of "road."

(3) V.A.C.S. Article 6674a refers to a public
road and a bridge, culvert, or other necessary
structure "appertaining thereto." The revised law
substitutes "related" for "appertaining thereto"
because, in the context of this section, "related to"
and "appertaining thereto" are synonymous and "related"
is more commonly used.

(4) V.A.C.S. Article 6674a refers to
"construction, reconstruction or maintenance, or
partial construction, reconstruction or maintenance."
The reference to "partial construction, reconstruction
or maintenance" is omitted from the revised law because
"partial construction, reconstruction or maintenance"
is included within the meaning of "construction,
reconstruction or maintenance."

(5) V.A.C.S. Article 6674b refers to the "State
Highway Engineer." The revised law substitutes
"director" for "State Highway Engineer" for the reason
stated in the revisor's note to Section 201.003 of this
code (explaining the change in the name of this
official to "director of the Texas Department of Transportation") and because Section 201.001 of this code, a general definitions section that applies to this chapter, defines "director" as meaning the executive director of the Texas Department of Transportation.

(6) V.A.C.S. Article 6674b refers to Section 11, Chapter 190, Acts of the 35th Legislature, Regular Session, 1917 (V.A.C.S. Article 6670). The relevant part of that statute is codified in this code in Section 201.103, and the revised law is drafted accordingly.

Revised Law
Sec. 221.002. AGREEMENTS WITH MUNICIPALITIES. The commission and the governing body of a municipality may agree to:

(1) provide for the location, relocation, improvement, control, supervision, and regulation of a designated state highway in the municipality; and

(2) establish the respective liabilities and responsibilities of the commission and the municipality under the agreement. (V.A.C.S. Art. 6673b.)

Source Law
Art. 6673b. The State Highway Commission is hereby authorized and empowered, in its discretion, to enter into contracts or agreements with the governing bodies of incorporated cities, towns, and villages, whether incorporated under the home rule provisions of the Constitution, Special Charter, or under the General Laws, providing for the location, relocation, construction, reconstruction, maintenance, control, supervision, and regulation of designated State highways within or through the corporate limits of such incorporated cities, towns, and villages, and determining and fixing the respective liabilities or responsibilities of the parties resulting therefrom; and such incorporated cities, towns, and villages are hereby authorized and empowered, through the governing bodies of such cities, towns, and villages to enter into such contracts or agreements with the State Highway Commission.
Revisor's Note

(1) V.A.C.S. Article 6673b refers to the "State Highway Commission." The revised law substitutes "commission" for "State Highway Commission" for the reason stated in the revisor's note to Section 201.003 of this code (explaining the change in the name of this agency to "Texas Transportation Commission") and because Section 201.001 of this code, a general definitions section that applies to this chapter, defines "commission" as meaning the Texas Transportation Commission.

(2) V.A.C.S. Article 6673b refers to "enter into contracts or agreements." The reference to "contract" is omitted from the revised law because, in the context of this section, "entering into a contract" is included within the meaning of "agreeing to."

(3) V.A.C.S. Article 6673b refers to "incorporated cities, towns, and villages, whether incorporated under the home rule provisions of the Constitution, Special Charter, or under the General Laws." The revised law substitutes the term "municipality" for "cities, towns, and villages" because that is the term used in the Local Government Code. The revised law omits the reference to the incorporation of a municipality under the home-rule provisions of the constitution, a special charter, or under general law because Section 1.005, Local Government Code, defines a municipality as meaning a "general-law municipality, home-rule municipality, or special-law municipality."

(4) V.A.C.S. Article 6673b refers to the "construction," "reconstruction," and "maintenance" of a designated state highway. The revised law substitutes "improvement" because Section 221.001 of
the revised law defines "improvement" as including "construction, reconstruction, and maintenance."

Revised Law

Sec. 221.003. IMPROVEMENT OF STATE HIGHWAY SYSTEM. (a) Improvement of the state highway system with federal aid shall be made under the exclusive and direct control of the department and with appropriations made by the legislature out of the state highway fund.

(b) The department may improve the state highway system without federal aid either with or without county aid. Improvements made without federal aid must comply with Section 223.045.

(c) The department shall make or prepare any survey, plan, specifications, or estimate for an improvement of the state highway system if any part of the improvement will be made with federal aid.

(d) The commissioners court of a county may not directly control the making of an improvement of the state highway system unless the plan and specifications for the improvement have been approved by the director. (V.A.C.S. Art. 6674d (part).)

Source Law

Art. 6674d. All further improvement of said State Highway System with Federal aid shall be made under the exclusive and direct control of the State Department of Highways and Public Transportation and with appropriations made by the Legislature out of the State Highway Fund. The further improvement of said system without Federal aid may be made by the State Department of Highways and Public Transportation either with or without county aid. Improvements made without Federal aid must comply with Section 8A of this Act. Surveys, plans, specifications and estimates for all further improvement of said system with Federal aid or with Federal and State aid shall be made and prepared by the State Department of Highways and Public Transportation. No further improvement of said system shall be made under the direct control of the commissioners' court of any county unless and until the plans and specifications for said improvement have been approved by the State Engineer-Director for Highways and Public Transportation. . . .
Revisor's Note

(1) V.A.C.S. Article 6674d refers to the "State Department of Highways and Public Transportation." The revised law substitutes "department" for "State Department of Highways and Public Transportation" for the reason stated in the reviser's note to Section 201.003 of this code (explaining the change in the name of this agency to "Texas Department of Transportation") and because Section 201.001 of this code, a general definitions section that applies to this chapter, defines "department" as meaning the Texas Department of Transportation.

(2) V.A.C.S. Article 6674d refers to Section 8A of "this Act." The act referred to is Chapter 186, General Laws, Acts of the 39th Legislature, Regular Session, 1925 (V.A.C.S. Article 6674h-1). That section has been revised in this code as Section 223.045, and the revised law is drafted accordingly.

(3) V.A.C.S. Article 6674d refers to the "State Engineer-Director for Highways and Public Transportation." The revised law substitutes "director" for "State Engineer-Director for Highways and Public Transportation" for the reason stated in the reviser's note to Section 201.003 of this code (explaining the change in the name of this official to "director of the Texas Department of Transportation") and because Section 201.001 of this code, a general definitions section that applies to this chapter, defines "director" as meaning the executive director of the Texas Department of Transportation.

(4) The revised law omits a portion of the second paragraph of V.A.C.S. Article 6674d as expired and unnecessary. The omitted provision states that the act and the section may not be construed as prohibiting
the granting of state aid under the provisions of Chapter 190, Acts of the 35th Legislature, Regular Session, 1917. Section 23 of that act (see V.A.C.S. Article 6694, revised in this code in Section 502.051) governed the expenditure of funds in the state highway fund. The granting of state aid is now governed by various other statutes (see, for example, V.A.C.S. Article 6674e, revised in this code as Sections 222.001 and 222.002). Further, the provision is unnecessary because V.A.C.S. Article 6674d does not prohibit the granting of state aid. The omitted provision reads:

Nothing in this section or this Act shall be construed as prohibiting the granting of State aid under the provisions of Chapter 190, General Laws of the Regular Session of the Thirty-fifth Legislature and subsequent amendments thereto, . . .

(5) The revised law omits a portion of V.A.C.S. Article 6674d as executed. The omitted provision states that the law does not prevent the completion of a highway improvement project "already begun" or the carrying out of a contract for a highway improvement project "already begun." This refers to a project already begun on the effective date of the section, which was enacted in 1925. It appears certain that any project begun in 1925 would have been completed well before the effective date of this code. The omitted provision reads:

. . . nor shall anything in this Act prevent the completion of any highway improvement project already begun or the carrying out of any contract for such improvement.

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CHAPTER 222. FUNDING AND FEDERAL AID

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 222.001. USE OF STATE HIGHWAY FUND. Money that is required to be used for public roadways by the Texas Constitution or federal law and that is deposited in the state treasury to the credit of the state highway fund, including money deposited to the credit of the state highway fund under Title 23, United States Code, may be used only:

(1) to improve the state highway system;

(2) to mitigate adverse environmental effects that result directly from construction or maintenance of a state highway by the department; or

(3) by the Department of Public Safety to police the state highway system and to administer state laws relating to traffic and safety on public roads. (V.A.C.S. Art. 6674e(a) (part).)

Source Law

Art. 6674e. (a) All revenues that are required by the Texas Constitution or Federal law to be used for public roadways and that are deposited in the State Treasury to the credit of the "State Highway Fund", including all Federal aid moneys deposited to the credit of said fund under the terms of the Federal Highway Act . . . shall be subject to appropriation for the specific purposes of the improvement of the State Highway System and the mitigation of adverse environmental effects.
environmental impacts directly resulting from
construction or maintenance of State Highways by the
Texas Department of Transportation. However, direct
appropriations may be made from the State Highway Fund
to the Department of Public Safety for policing the
State Highway System and for the administration of laws
prescribed by the Legislature pertaining to the
supervision of traffic and safety on public roads.

Revisor's Note

(1) V.A.C.S. Article 6674e(a) refers to the
"Texas Department of Transportation." Under Section
201.001(2) of this code, the term "department" in this
title refers to that agency. The revised law uses the
defined term.

(2) V.A.C.S. Article 6674e(a), which was enacted
in 1925, refers to the "Federal Highway Act." Federal
law relating to highways and federal funding for state
highways has been codified and revised many times since
1925; this law is now contained in Title 23 of the
United States Code. The revised law is drafted
accordingly.

(3) The revised law omits the portion of
V.A.C.S. Article 6674e(a) that refers to county aid
money deposited to the credit of the state highway fund
under "this Act," meaning Chapter 186, General Laws,
Acts of the 39th Legislature, Regular Session, 1925.
Section 3 of that act (former V.A.C.S. Article 6674c)
authorized the use of county aid. Section 3 was
repealed by Chapter 13, Acts of the 42nd Legislature,
3rd Called Session, 1932, and was not, at that time,
replaced by other law authorizing county aid. A later
enacted provision does authorize county contributions
for the development and construction of public roads
(V.A.C.S. Article 6674c-1, revised in this chapter as
Section 222.052); however, that article governs the use
of money contributed by a county under that article.
The omitted provision reads:
[All revenues] and all county aid moneys deposited to the credit of said fund under the terms of this Act [shall be subject to appropriation.]

(4) V.A.C.S. Article 6674e(a) states that "direct appropriations may be made." The revised law omits this reference because the money cannot be used unless it is appropriated.

Revised Law
Sec. 222.002. USE OF STATE HIGHWAY FUND FOR DEPARTMENT FUNCTIONS. Money in the state highway fund that is not required to be spent for public roadways by the Texas Constitution or federal law may be used for any function performed by the department. (V.A.C.S. Art. 6674e(b).)

Source Law
(b) Revenues that are not required by the Texas Constitution or Federal law to be spent for public roadways and that are deposited in the State Highway Fund may be appropriated for any function performed by the Texas Department of Transportation.

Revisor's Note
V.A.C.S. Article 6674e(b) states that "the State Highway Fund may be appropriated." The revised law omits this reference for the reason stated in Revisor's Note (4) under Section 222.001 of this code.

[Sections 222.003-222.030 reserved for expansion]

SUBCHAPTER B. FEDERAL AID

Revised Law
Sec. 222.031. USE OF FEDERAL AID FOR ROAD CONSTRUCTION. Money appropriated by the federal government for public road construction in this state may be spent only:

(1) by and under the supervision of the department;

and

(2) on the state highway system. (V.A.C.S. Art. 6672.)
Art. 6672. Any funds for public road construction in this State appropriated by the Federal Government shall be expended by and under the supervision of the Department only upon a part of the system of State Highways.

Revised Law
Sec. 222.032. USE OF FEDERAL AID FOR TOLL BRIDGE CONSTRUCTION. (a) The department may:
(1) cooperate with the United States Secretary of Transportation in the construction of a toll bridge under 23 U.S.C. Section 129;
(2) spend state highway funds for the purpose described in Subdivision (1);
(3) impose tolls in accordance with 23 U.S.C. Section 129; and
(4) take other necessary or proper action to give effect to the purpose and intent of this section.
(b) The department shall impose tolls in accordance with this section with the goal that the tolls be eliminated, as contemplated or required by 23 U.S.C. Section 129. (V.A.C.S. Art. 6797b, Sec. 1 (part).)

Source Law
Art. 6797b
Sec. 1. . . . and the State Highway Department of this State is authorized and empowered to cooperate with the Federal Bureau of Roads in the construction of such toll bridges under the provisions of said Act of Congress . . . ; to appropriate and use State Highway Funds for such purpose; to fix, levy and collect such tolls as provided by the said Act of Congress, to the end that such bridges may become free, as contemplated or provided by the said Act of Congress; and to do all such acts and things as may be necessary or proper to give effect to the intent and purpose of this Act.

Revisor's Note
(1) Section 1, V.A.C.S. Article 6797b, refers to the "State Highway Department of this State." The revised law uses the term "department" for the reason stated in Revisor's Note (1) under Section 222.001.
Section 1, V.A.C.S. Article 6797b, refers to the "Federal Bureau of Roads." Under 23 U.S.C. Section 129, the United States Secretary of Transportation is now responsible for federal aid for toll bridges. The revised law is drafted accordingly.

Section 1, V.A.C.S. Article 6797b, refers to 44 Stat. 1398, which authorized the extension of federal aid for the construction of toll bridges. The revised law substitutes a reference to 23 U.S.C. Section 129, which currently governs federal aid for the construction of toll bridges. Former 44 Stat. 1398 was repealed in 1958 by 72 Stat. 885, enacting Title 23, United States Code.

Section 1, V.A.C.S. Article 6797b, authorizes the department to "appropriate and use" state highway funds. The revised law substitutes "spend" for "appropriate and use." Under Section 6, Article VIII, Texas Constitution, only the legislature may make an appropriation. The revised law makes clear that the source law authorizes only the expenditure of appropriated funds.

Section 1, V.A.C.S. Article 6797b, authorizes the department to "fix, levy and collect" tolls. The revised law substitutes "impose" for "fix, levy and collect" because, as used in the source law, the terms are synonymous and the former is more commonly used.

Section 1, V.A.C.S. Article 6797b, requires the department to fix, levy, and collect tolls "to the end that such bridges may become free," meaning that tolls on the bridges would be eliminated in the future. The revised law clarifies this meaning.

Section 1, V.A.C.S. Article 6797b, refers to "this Act," meaning Chapter 173, Acts of the 41st
Legislature, Regular Session, 1929 (V.A.C.S. Article 6797b), the relevant portion of which is revised as this section. The source law is drafted accordingly.

(8) The revised law omits as expired and unnecessary the portion of Section 1, V.A.C.S. Article 6797b, accepting the provisions and benefits of 44 Stat. 1398, which authorized the extension of federal aid for the construction of toll bridges. The federal statute has been repealed and superseded by 29 U.S.C. Section 129 (see Revisor's Note (3), above), and other portions of Article 6797b make clear that the use of the federal funds is conditioned by the provisions of the federal law under which they are granted. The omitted provision reads:

The provisions and benefits of the Act of Congress authorizing the extension of Federal Aid for construction of toll bridges on highways forming a part of the Federal system, under certain conditions and limitations, 44 United States Statutes 1398, approved March 3, 1927, be and the same is hereby accepted . . . .

Revised Law

Sec. 222.033. INTERSTATE TOLL BRIDGES. (a) Section 222.032 applies to a bridge over a stream forming the boundary of this state and an adjoining state.

(b) If the bridge is constructed jointly by this state and the adjoining state, the commission may cooperate with the appropriate authorities of the adjoining state in imposing tolls in accordance with this section. (V.A.C.S. Art. 6797b, Secs. 1 (part), 2.)

Source Law

Sec. 1. . . . [The State Highway Department of this State is authorized and empowered to cooperate with the Federal Bureau of Roads in the construction of such toll bridges under the provisions of said Act of Congress,] including inter-state bridges over streams constituting the boundary line between the State of Texas and an adjoining State . . . .

Sec. 2. This Act shall include inter-state bridges over streams forming the boundary line of the
State of Texas and another state and when such bridge
or bridges are constructed jointly by the State of
Texas and an adjoining State the Highway Commission
shall have authority to cooperate and join with the
appropriate authorities of such adjoining state in
fixing, levying and collecting such tolls to carry out
the provisions of this Act and the Act of Congress.

Revisor's Note

(1) Section 2, V.A.C.S. Article 6797b, refers to
the "Highway Commission." In 1991, the name of the
State Highway Commission was changed to the Texas
Transportation Commission. See the revisor's note
under Section 201.003 of this code. Under Section
201.001 of the revised law, the term "commission" in
this title refers to that agency. The revised law uses
the defined term.

(2) Section 2, V.A.C.S. Article 6797b,
authorizes the commission to "cooperate and join with
the appropriate authorities." The revised law omits
"join" because the meaning of "join" is contained
within the meaning of "cooperate."

(3) Section 2, V.A.C.S. Article 6797b,
authorizes the commission to cooperate in "fixing,
levying and collecting" tolls. The revised law
substitutes "imposing" for the reason stated in
Revisor's Note (5) under Section 222.032.

[Sections 222.034-222.050 reserved for expansion]

SUBCHAPTER C. FUNDING FROM OTHER POLITICAL SUBDIVISIONS

Revised Law

Sec. 222.051. LOCAL FINANCING AND REIMBURSEMENT. (a) A
governmental unit that has the authority to build roads may finance
the construction of an approved project for the state highway
system.

(b) If funds become available, the department may contract
to reimburse the governmental unit that provided financing for the
1 project. (V.A.C.S. Art. 6673m.)

Source Law

Art. 6673m. A unit of government that has the
authority to build roads may finance the construction
of an approved project for the state highway system.
If funds become available, the department may make
contracts to reimburse the governmental unit that
provided the financing for the road project.

Revised Law

Sec. 222.052. LOCAL CONTRIBUTIONS. (a) The governing body
of a political subdivision of this state may contribute funds to be
spent by the commission in the development and construction of the
public roads and state highway system within the political
subdivision.

(b) The commission may accept a contribution made under
Subsection (a).

(c) In this section, "political subdivision" includes a
county or a political subdivision of a county. (V.A.C.S.
Art. 6674c-1.)

Source Law

Art. 6674c-1. Any county, or any other political
subdivision of this State, or political subdivision of
any county, acting through its governing agency, may
make, and the State Highway Commission, in its
discretion, may accept, voluntary contributions of
available funds from such county, or any other
political subdivision of this State, or political
subdivision of any county for expenditure by the State
Highway Commission in the proper development and
construction of the public roads and State Highway
System within such county, or any other political
subdivision of this State, or political subdivision of
any county.

Revisor's Note

(1) V.A.C.S. Article 6674c-1 refers to the
"State Highway Commission." The revised law uses the
term "commission" for the reason stated in Revisor's
Note (1) under Section 222.033.

(2) The revised law adds a definition of
"political subdivision" for the convenience of the
reader and to avoid frequent, unnecessary repetition of
the substance of the definition.

Revisor's Note
(End of Chapter)

V.A.C.S. Article 6673e-2, enacted as Section 3,
Chapter 301, Acts of the 55th Legislature, Regular
Session, 1957, dedicates certain additional funds to
the acquisition of rights-of-way. These additional
funds were provided for by Section 2 of that act and
remitted to the then Highway Department under Section
10, Chapter 88, General Laws, Acts of the 41st
Legislature, 2nd Called Session, 1929 (V.A.C.S. Article
6675a-10, codified in this code in Chapter 502).
Section 2 of the 1957 act amended several provisions of
law, increasing specified registration fees. V.A.C.S.
Article 6673e-2 is omitted from the revised law because
any additional funds attributable to these increases
have been spent in the four intervening decades.

Also note that, since 1957, vehicle registration
fees have been increased several times. In many cases
the basis on which the fees are collected has changed.
For example, in 1957, vehicle registration fees were
based on vehicle weight. Currently, many of these fees
are based on the vehicle's model year. It would be
impossible to determine what portion of a vehicle
registration fee collected now is attributable to the
fee increase authorized in 1957.

The omitted law reads:

Art. 6673e-2. From and after the
effective date of this Act, the Texas
Highway Department shall expend the
additional funds provided for by Section 2
of this Act, which is derived from Section
10 of Chapter 88, Acts of the Forty-first
Legislature, Second Called Session, 1929,
as amended, for the acquisition of rights
of way.
CHAPTER 223. BIDS AND CONTRACTS FOR HIGHWAY PROJECTS

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CHAPTER 223. BIDS AND CONTRACTS FOR HIGHWAY PROJECTS

SUBCHAPTER A. COMPETITIVE BIDS

Revised Law
Sec. 223.001. CONTRACT REQUIRING COMPETITIVE BIDS. The department shall submit for competitive bids each contract for:

(1) the improvement of a highway that is part of the state highway system; or

(2) materials to be used in the construction or maintenance of that highway. (V.A.C.S. Art. 6674h (part).)

Source Law
Art. 6674h. All contracts proposed to be made by the State Department of Highways and Public Transportation for the improvement of any highway constituting a part of the State Highway System or for materials to be used in the construction or maintenance thereof shall be submitted to competitive bids.

Reviser's Note
V.A.C.S. Article 6674h refers to the "State Department of Highways and Public Transportation." In 1991, the name of the agency was changed by amendment to Article 6663, Revised Statutes (Section 1.01, Chapter 7, Acts of the 72nd Legislature, 1st Called Session, 1991), to the Texas Department of Transportation. The revised law refers to "department" because that term is defined for purposes of this title as the "Texas Department of Transportation" by Section 201.001.

Revised Law
Sec. 223.002. NOTICE BY PUBLICATION. (a) The department shall publish notice of the time and place at which bids on a contract will be opened and the contract awarded.

(b) The notice must be published in a newspaper published in the county in which the improvement is to be made once a week for at least two weeks before the time set for awarding the contract.
and in two other newspapers that the department may designate.

(c) Instead of the notice required by Subsection (b), if the contract involves an amount less than $100,000, notice may be published in two successive issues of a newspaper published in the county in which the improvement is to be made.

(d) If a newspaper is not published in the county in which the improvement is to be made, notice shall be published in a newspaper in the county:

(1) nearest the county seat of the county in which the improvement is to be made; and

(2) in which a newspaper is published. (V.A.C.S. Art. 6674h (part).)

Source Law

... Notice of the time when and place where such contracts will be let and bids opened shall be published in some newspaper published in the county where the improvement is to be done once a week for at least two weeks prior to the time set for the letting said contract and in two other newspapers that the department may designate. Provided, however, that on contracts involving less than One Hundred Thousand ($100,000.00) Dollars such advertising may be limited to two successive issues of any newspaper published in the county in which the work is to be done, and if there is no newspaper in the county in which the work is to be done then said advertising shall be for publication in some newspaper in some county nearest the county seat of the county in which the work is to be done. ...

Revised Law

Sec. 223.003. NOTICE BY MAIL. (a) A person may apply to have the name of the person placed on a mailing list to receive notice of any proposed contracts.

(b) The commission shall mail the notice to each person on that mailing list.

(c) The commission may require each applicant to deposit with the commission not more than $25 a year to cover costs of mailing notices. (V.A.C.S. Art. 6674h (part).)

Source Law

... Provided further, that any person, firm or corporation may make application to have the name of
said applicant placed upon a mailing list to receive
notices of lettings of any contracts provided for
herein; and notices of said lettings shall be mailed by
the State Highway and Public Transportation Commission
to all persons, firms or corporations on said mailing
list. The Commission shall have the right to require
all applicants to deposit with the commission a sum of
not exceeding Twenty-five ($25.00) Dollars per year to
cover costs of mailing notices.

Revisor's Note

V.A.C.S. Article 6674h refers to the "State
Highway and Public Transportation Commission." In
1991, the name of the commission was changed by
amendment to Article 6663, Revised Statutes (Section
1.01, Chapter 7, Acts of the 72nd Legislature, 1st
Called Session, 1991), to the Texas Transportation
Commission. The revised law refers to "commission"
because that term is defined for purposes of this title
as the "Texas Transportation Commission" by Section
201.001.

Revised Law

Sec. 223.004. FILING, OPENING, AND REJECTION OF BIDS. (a)
Except as provided by Section 223.005, a bid submitted under this
subchapter must be sealed and filed with the director in Austin and
shall be opened at a public hearing of the commission.
(b) All bidders may attend the opening and all bids shall be
opened in their presence.
(c) A copy of each bid shall be filed with the county in
which the improvement is to be made.
(d) The department may reject any or all bids. (V.A.C.S.
Art. 6674i (part).)

Source Law

Art. 6674i. The State Department of Highways and
Public Transportation shall have the right to reject
any and all such bids. All such bids shall be sealed,
and filed with the State Engineer-Director for Highways
and Public Transportation at Austin, Texas, and shall
be opened at a public hearing of the State Highway and
Public Transportation Commission. All bidders may
attend and all bids shall be opened in their presence.
Copies of all such bids shall be filed with the county.
in which the work is to be performed. . . .

Revisor's Note

V.A.C.S. Article 6674i refers to the "State Engineer-Director for Highways and Public Transportation." In 1991, the name of the engineer-director was changed by amendment to Article 6663, Revised Statutes (Section 1.01, Chapter 7, Acts of the 72nd Legislature, 1st Called Session, 1991), to the executive director of the Texas Department of Transportation. The revised law refers to "director" because that term is defined for purposes of this title as the "executive director of the Texas Department of Transportation" by Section 201.001.

Revised Law

Sec. 223.005. BIDS ON CONTRACTS INVOLVING LESS THAN $100,000. (a) Bids on a contract involving an amount less than $100,000 may, in the commission's discretion, be received at a public hearing by the district engineer at the headquarters for the district in which the improvement is to be made.

(b) All bids received under this section shall be tabulated and forwarded to the commission and may be accepted or rejected by the commission.

(c) If the bids are accepted, the commission shall award the contract to the lowest bidder, subject to Section 223.045.

(d) The commission shall adopt rules governing bids received by a district engineer. Rules adopted by the commission for bids received in Austin by the commission do not apply to bidders submitting bids to district engineers. (V.A.C.S. Art. 6674i (part).)

Source Law

. . . Provided however, on contracts involving less than One Hundred Thousand ($100,000.00) Dollars bids may in the discretion of the Commission be received at a public hearing by the District Engineer at the District Headquarters. All bids so received by the
District Engineer shall be tabulated and forwarded to the Commission, and the Commission shall have the right to accept or reject same, and if accepted, award the contract to the lowest bidder, subject to the requirement of Section 8A of this Act. It shall be the duty of the Commission to prescribe rules and regulations on all bidders on bids received by District Engineers, but the rules and regulations required by the Commission for bids received at Austin by said Commission shall not apply to bidders submitting bids to District Engineers.

Revisor's Note

(1) V.A.C.S. Article 6674i refers to "Section 8A of this Act." That statute is codified in this code as Section 223.045, and the revised law is drafted accordingly.

(2) V.A.C.S. Article 6674i 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. 223.006. CONTRACTOR'S BOND. A successful bidder under this subchapter shall post a bond in an amount provided by law conditioned on the faithful compliance with the bidder's bid and performance of the contract and made payable to the department for the use and benefit of the state highway fund. (V.A.C.S. Art. 6674j (part).)

Source Law

Art. 6674j. The successful bidder or bidders . . . shall give bond in such amounts as is now provided by law, conditioned for the faithful compliance with his bid and performance of the contract and payable to the State Highway Department for the use and benefit of the State Highway Fund.

Revised Law

Sec. 223.007. CONTRACTS. (a) The commission shall prescribe the form of the contract and may include any matter the
commission considers advantageous to the state.

(b) Contract forms shall be uniform as near as possible.

(c) A contract must be:

(1) made in the name of the state;
(2) signed by the director;
(3) approved by at least two members of the commission; and
(4) signed by the successful bidder. (V.A.C.S. Arts. 6674j (part), 6674k, 66741 (part).)

Source Law

Art. 6674j. The successful bidder or bidders shall enter into written contracts with said department . . . .

Art. 6674k. The State Highway Commission shall prescribe the form of such contracts and may include therein such matters as they may deem advantageous to the State. Such forms shall be uniform, as near as may be.

Art. 66741. Every such contract for highway improvement under the provisions of this Act shall be made in the name of the State of Texas, signed by the State Highway Engineer, approved by at least two members of the State Highway Commission and signed by the contracting party . . . .

Revised Law

Sec. 223.008. NO LIABILITY IN EXCESS OF AVAILABLE FUNDS. A contract may not be made under this subchapter that will create a liability on the state in excess of funds available for that purpose under Subchapter A, Chapter 222. (V.A.C.S. Art. 66741 (part).)

Source Law

. . . . and no such contract shall be entered into which will create a liability on the part of the State in excess of funds available for expenditure under the terms of this Act.

Revisor's Note

V.A.C.S. Article 66741 refers to funds available for expenditure under the terms of "this Act." The act referred to is Chapter 186, General Laws, Acts of the 39th Legislature, Regular Session, 1925. The
provisions of that act relating to funds available for
expenditure are codified in this subchapter and
Subchapter A, Chapter 222, of this code and the revised
law is drafted accordingly.

Revised Law

Sec. 223.009. PARTIAL PAYMENT. A contract may provide for
partial payments to the contractor. The aggregate amount of
payments at any time may not exceed 95 percent of the value of the
improvement made. (V.A.C.S. Art. 6674m (part).)

Source Law

Art. 6674m. Said contracts may provide for
partial payments to an amount not exceeding ninety-five
per cent (95%) of the value of the work done. . .

Revised Law

Sec. 223.010. DEPOSIT AND INVESTMENT OF RETAINED AMOUNT.

(a) Five percent of the contract price shall be retained until the
entire improvement has been completed and accepted.

(b) At the request of the contractor and with the approval
of the department and the state treasurer, the amount retained may
be deposited under a trust agreement with a state or national bank
domiciled in this state and selected by the contractor.

(c) The department shall provide a trust agreement that
protects the interests of the state.

(d) The bank, acting as escrow agent and by instructions
from the contractor, may reinvest the retained amount in a
certificate of deposit issued by a state or national bank domiciled
in this state, bank time deposit, or other similar investment
prescribed by the trust agreement.

(e) Interest earned under the trust agreement shall be paid
to the contractor unless specified otherwise under the trust
agreement.

(f) The escrow agent is responsible for all investments and
amounts resulting from the deposits of the retained amount until
released from that responsibility under the trust agreement.

(g) The contractor shall pay all expenses incident to the deposit and all charges made by the escrow agent for custody of the securities and forwarding of interest on those securities. Those expenses or charges may not apply to the contract or to the state.

(V.A.C.S. Art. 6674m (part).)

Source Law

. . . Five per cent (5%) of the contract price shall be retained until the entire work has been completed and accepted. Provided, that at the request of the contractor and with the approval of the State Highway Department and the State Treasurer the five per cent (5%) retained amount may be deposited under the terms of a trust agreement with a state or national bank domiciled in Texas as selected by the contractor. Said bank, acting as escrow agent and by instructions from the contractor, may reinvest the retained amount in certificates of deposit issued by state or national banks domiciled in Texas, bank time deposits, or other similar investments prescribed by the trust agreement. Interest earned on said funds shall be paid to the contractor unless otherwise specified under the terms of said trust agreement. The escrow agent shall be responsible for all investments and funds as a result of the deposits of the retained amounts until released from such responsibility as instructed by the provisions of said trust agreement. The State Highway Department shall provide a trust agreement that will protect the interests of the State of Texas. All expenses incident to the deposit and all charges made by the escrow agent for custody of the securities and forwarding of interest thereon shall be paid solely by the contractor. No such expense or charge shall apply to either the contract or the State of Texas.

[Sections 223.011-223.040 reserved for expansion]

SUBCHAPTER B. CONTRACT PROVISIONS

Revised Law

Sec. 223.041. ENGINEERING AND DESIGN CONTRACTS. (a) The department's policy regarding the regular use of private sector professional services for preliminary and construction engineering and engineering design shall achieve a balance between the use of department employees and the use of private contractors if the costs are equivalent.

(b) The office of the state auditor shall determine relevant costs to be considered under Subsection (a).
(c) The commission may provide for hearings at which private sector complaints relating to the selection process are heard.

(V.A.C.S. Art. 6674g-1.)

Source Law

Art. 6674g-1. The policy of the department regarding the regular use of private sector professional services for preliminary and construction engineering and engineering design shall achieve a balance between the use of department employees and the use of private contractors, provided that the costs are equivalent. Relevant costs to be considered shall be determined by the office of the state auditor. The Commission may provide for hearings at which private sector complaints relating to the selection process shall be heard.

Revised Law

Sec. 223.042. PRIVATIZATION OF MAINTENANCE CONTRACTS. (a) Of the amount spent in a fiscal year by the department for maintenance projects, the department shall spend not less than 50 percent through contracts awarded by competitive bids.

(b) Money spent for maintenance projects to which this section does not apply are included when computing the amount of expenditures for maintenance projects in a fiscal year.

(c) The department shall consider all of its direct and indirect costs in determining the cost of providing the services. The department shall use the cost accounting procedures and instructions developed by the State Council on Competitive Government under Section 15.06(5), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), in determining its cost. On request, the State Council on Competitive Government shall provide technical assistance to the department about the cost accounting procedures and instructions.

(d) Subsection (a) does not apply unless the department determines that a function of comparable quality and quantity can be purchased or performed at a savings by using private sector contracts.

(e) The department shall file a report with the Legislative Budget Board on September 1 of each fiscal year detailing the

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contracts awarded by the department under this section during the
previous fiscal year.

(f) The commission shall adopt rules to administer this
section.

(g) In this section, "maintenance project" means any routine
or preventive maintenance activity. The term includes mowing,
concrete removal and replacement, illumination maintenance,
guardrail repair, fence repair, litter pick-up, herbicide spraying,
pothole repair, silt and erosion control or repair, sign
installation, highway overlaying, paint and bead striping, rest
area maintenance, and installation of raised pavement markings.

(h) This section does not apply to the purchase of materials
for maintenance projects. (V.A.C.S. Art. 6674g, Secs. 1, 2
(part), 3, 4, 5.)

Source Law

Art. 6674g
Sec. 1. In this article, "maintenance project"
means any routine or preventive maintenance activity,
including mowing, concrete removal and replacement,
illumination maintenance, guardrail repair, fence
repair, litter pick-up, herbicide spraying, pothole
repair, silt and erosion control or repair, sign
installation, highway overlaying, paint and bead
striping, rest area maintenance, and installation of
raised pavement markings.

[Sec. 2.]

(e) Not less than 50 percent of the dollar
amount of expenditures by the department for
maintenance projects for the fiscal year ending August
31, 1996, and for all subsequent fiscal years shall be
expended through contracts awarded by the competitive
bidding process.

(f) Funds expended for maintenance projects to
which this article does not apply are included when
computing the dollar amount of expenditures for
maintenance projects in a fiscal year.

(g) A requirement of a minimum dollar amount of
expenditures by the department for maintenance projects
within a fiscal year as provided in this section shall
not apply unless the department determines that a
function of comparable quality and quantity can be
purchased or performed at a savings through utilization
of private sector contracts.

(h) The department shall consider all of its
direct and indirect costs in determining the cost of
providing the services. The department shall use the
cost-accounting procedures and instructions developed
by the state auditor under Section 13.04(a), State
Purchasing and General Services Act (Article 601b,
Vernon's Texas Civil Statutes), in determining its
cost. On request, the state auditor shall provide
technical assistance to the department about the
cost-accounting procedures and instructions.

Sec. 3. This article does not apply to purchases of materials for maintenance projects.

Sec. 4. The board shall adopt rules to administer this article.

Sec. 5. The department shall file a report with the Legislative Budget Board on September 1 of each fiscal year detailing the contracts awarded by the department under this section during the previous fiscal year.

Reviser's Note

(1) Section 2(h), V.A.C.S. Article 6674g, requires the department to use the "cost-accounting procedures and instructions developed by the state auditor under Section 13.04(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) . . . ." It also requires the state auditor, on request, to provide technical assistance to the department about those procedures and instructions. The law referred to was repealed by Section 68(a)(3), Chapter 684, Acts of the 73rd Legislature, Regular Session, 1993. However, Section 41 of Chapter 684 established the State Council on Competitive Government, which was given authority similar to the authority exercised by the state auditor under the repealed law. That authority is found in Section 15.06(5), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). In order to give effect to Section 2(h), the revised law refers to the cost accounting procedures and instructions developed by the State Council on Competitive Government under Section 15.06(5), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

(2) The revised law omits Sections 2(a)-(d), V.A.C.S. Article 6674g, as executed. Those provisions relate to expenditures for maintenance project contracts awarded by the competitive bidding process.
before September 1, 1995. The omitted provisions read:

Sec. 2. (a) Not less than 30 percent of the dollar amount of expenditures from the fiscal year ending August 31, 1992, by the department for maintenance projects shall be expended through contracts awarded by the competitive bidding process.

(b) Not less than 35 percent of the dollar amount of expenditures from the fiscal year ending August 31, 1993, by the department for maintenance projects shall be expended through contracts awarded by the competitive bidding process.

(c) Not less than 40 percent of the dollar amount of expenditures from the fiscal year ending August 31, 1994, by the department for maintenance projects shall be expended through contracts awarded by the competitive bidding process.

(d) Not less than 45 percent of the dollar amount of expenditures from the fiscal year ending August 31, 1995, by the department for maintenance projects shall be expended through contracts awarded by the competitive bidding process.

Revised Law

Sec. 223.043. CITIZEN'S PREFERENCE IN EMPLOYMENT. A citizen of the United States and of the county in which construction, maintenance, or improvement of a designated state highway is being proposed shall be given preference in employment to perform manual labor. (V.A.C.S. Art. 6674p, Sec. 1 (part).)

Source Law

... That citizens of the United States and of the county wherein the work is being proposed shall always be given preference in such employment...

Revisor's Note

The revised law omits part of Section 1 and omits Section 2, V.A.C.S. Article 6674p, as impliedly repealed. That law was enacted in 1931 (Chapter 46, Acts of the 42nd Legislature, Regular Session), and was never amended. It authorizes the State Highway Commission (now the Texas Transportation Commission), to require contracts for the construction, maintenance, or improvement of a designated state highway to contain...
a provision requiring wages of not less than 30 cents
an hour.

The legislature later enacted V.A.C.S. Article
5159a, relating to payment of the prevailing wage rate,
and also enacted the Texas Minimum Wage Act (Chapter
62, Labor Code). Additionally, the current General
Appropriations Act requires the Texas Department of
Transportation to require contractors and
subcontractors to pay at least the federal minimum wage
for maintenance and construction work. (I-315, Chapter
1051, Acts of the 73rd Legislature, Regular Session,
1993.) Those later enactments impliedly repealed
portions of V.A.C.S. Article 6674p, and those portions
are omitted. The omitted provisions read:

Art. 6674p
Sec. 1. Hereafter the State Highway
Commission in letting contracts for the
construction, maintenance or improvement of
any designated State Highway, shall be
authorized to require that all contracts
for any such work, contain a provision that
no person will be employed, by the
contractor, to perform manual labor in the
course of the construction, maintenance or
improvement of any such highway at a wage
of less than thirty cents per hour, and
that any violation of any such provision of
the contract by the contractor,
sub-contractor, or other person subject to
such provision of the contract, shall
authorize the Commission to withhold from
any money due the contractor a sufficient
sum to pay any person such minimum wage for
any labor performed, or the Commission may,
for the benefit of any such person, recover
such sum on the bond of the contractor, if
it does not have in its possession money
owing the contractor, applicable for such
purposes. . . . provided also that all
other departments, bureaus, commissions and
institutions of the State of Texas in all
construction work of every character
requiring employment of day labor shall
likewise be authorized and empowered to
exercise the same authority herein
conferred on the State Highway Commission.

Sec. 2. Hereafter, in advertising
for bids for the construction, maintenance
or improvement of any designated State
Highway, the Commission, in the event it
desires to exercise the authority herein
conferred to require a provision for such
minimum wage, shall so state in the
advertisement, so that all bidders may be
The commission may contract with the Texas Board of Criminal Justice for the provision of inmate labor for a state highway system improvement project.

(b) The contract must be made in conformity with Chapter 771, Government Code. (V.A.C.S. Art. 6674c.)

Art. 6674c. The commission may contract with the Texas Board of Corrections for the provision of inmate labor for a state highway system improvement project. Contracts made pursuant to this article must be made in conformity with The Interagency Cooperation Act, as amended (Article 4413(32), Vernon's Texas Civil Statutes).

Revisor's Note
(1) V.A.C.S. Article 6674c refers to the "Texas Board of Corrections." The name of that board was changed to the Texas Board of Criminal Justice by Section 10.01, Chapter 16, Acts of the 72nd Legislature, Regular Session, 1991. The revised law is drafted accordingly.

(2) V.A.C.S. Article 6674c refers to "The Interagency Cooperation Act, as amended (Article 4413(32), Vernon's Texas Civil Statutes)." That act has been codified as Chapter 771, Government Code. The revised law is drafted accordingly.

Sec. 223.045. STEEL PREFERENCE PROVISIONS IN IMPROVEMENT CONTRACTS. A contract awarded by the department for the improvement of the state highway system without federal aid must contain the same preference provisions for steel and steel products that are required under federal law for an improvement made with
Art. 6674h-1. All contracts awarded by the State Department of Highways and Public Transportation for the improvement of the State Highway System when the improvement is made without Federal aid must contain the same preference provisions for steel and steel products that are required under Federal law when the improvement is made with Federal aid.

Sec. 223.046. USE OF FLY ASH AND BOTTOM ASH FOR ROAD CONSTRUCTION. Design standards, guidelines, and specifications of the department, a county, or a municipality shall require that contract specifications for a road construction project allow for the use of fly ash and bottom ash resulting from combustion of coal or other fossil fuels and used for paving, bridge construction, and other appropriate road construction unless that use is technically inappropriate according to sound engineering principles or increases the cost of that construction. (V.A.C.S. Art. 6674i-3, Sec. 1.)

Art. 6674i-3
Sec. 1. The design standards, guidelines, and specifications of the State Department of Highways and Public Transportation, counties, and municipalities shall require that contract specifications for road construction projects allow for the use of fly ash and bottom ash arising from combustion of coal or other fossil fuels used for paving, bridge construction, and other appropriate road construction unless such use is found to be technically inappropriate in accordance with sound engineering principles or increases the cost of such construction.

The revised law omits Section 2, V.A.C.S. Article 6674i-3, as executed. That provision requires the revision of design standards, guidelines, and specifications for road construction projects by January 1, 1992. The omitted provision reads:

Sec. 2. Each procuring state, county, and municipal entity shall revise its design standards, guidelines, and
specifications for road construction
projects, if necessary to comply with this
article, by January 1, 1992.

Revised Law

Sec. 223.047. PREFERENCE FOR RUBBERIZED ASPHALT PAVING MADE
FROM SCRAP TIRES. (a) If the department, a county, or a
municipality uses rubberized asphalt paving, the department,
county, or municipality shall use scrap tires converted to
rubberized asphalt paving by a facility in this state if available.
(b) In comparing bids submitted for road construction that
require paving, the department, a county, or a municipality may
give a preference to a bid that provides for using, as a part of
the paving material, rubberized asphalt paving described by
Subsection (a) if the cost of that paving material does not exceed
by more than 15 percent the bid cost of alternative paving
materials for the same job. The cost of the materials must be
determined by a life-cycle cost benefit analysis.
(c) In this section:
(1) "Rubberized asphalt" means an asphalt material
containing at least 15 percent by weight of a reacted whole scrap
tire.
(2) "Scrap tire" means a tire that can no longer be
used for its original intended purpose. (V.A.C.S. Art. 6674i-1.)

Source Law

Art. 6674i-1. (a) In this article:
(1) "Scrap tire" means a tire that can no
longer be used for its original intended purpose.
(2) "Rubberized asphalt" means an asphalt
material containing at least 15 percent by weight of a
reacted whole scrap tire.
(b) If the State Department of Highways and
Public Transportation, a county, or a municipality uses
rubberized asphalt paving, the department, county, or
municipality electing to use rubberized asphalt shall
use scrap tires converted to rubberized asphalt paving
by a facility in this state if that paving material is
available.
(c) In comparing bids submitted for road
construction that require paving, the department,
county or municipality may give a preference to bids
the paving materials portion of which includes the use
of rubberized asphalt paving made from scrap tires by a
facility in this state if the cost of those materials
based on life-cycle cost benefit analysis does not
exceed by more than 15 percent the bid cost based on
life-cycle cost benefit analysis of alternative paving
materials for the same job.

Revised Law
Sec. 223.048. TIME OF PAYMENT. The department may not pay a
contractor for highway improvement, construction, or maintenance
before the 10th day of the month after the month in which the work
is performed or the material is used. The department shall make
payment as soon after that date as is practical. (V.A.C.S. Art.
6674m-1.)

Source Law
Art. 6674m-1. Payment to a contractor for
highway improvement, construction, or maintenance may
not be made sooner than the 10th day of the calendar
month after the month the work is performed or the
material is used. The department shall make payment as
soon thereafter as is practical.

[Sections 223.049-223.100 reserved for expansion]

SUBCHAPTER C. EXPEDITED HIGHWAY IMPROVEMENT CONTRACTS

Revised Law
Sec. 223.101. DEFINITIONS. In this subchapter:
(1) "Highway emergency" means a situation or condition
of a designated state highway that:
   (A) poses an imminent threat to life or property
   of travelers; or
   (B) substantially disrupts the orderly flow of
   traffic and commerce.
(2) "Highway improvement contract" means a contract
awarded by the department for the construction, repair, or
maintenance of a designated state highway or any part of that
highway. (V.A.C.S. Art. 6674h-2, Sec. 2 (part).)

Source Law
Sec. 2. As used in this Act:
(3) "Emergency" means any situation or
condition of a designated state highway, resulting from
a natural or man-made cause, which poses an imminent
threat to life or property of the travelling public or
which substantially disrupts the orderly flow of traffic and commerce.

(5) "Highway improvement contract" means any contract let by the State Department of Highways and Public Transportation for the construction, reconstruction, repair, or maintenance of a designated state highway or any part of such highway facility.

Revisor's Note

(1) The revised law omits the definitions of "commission," "department," and "engineer-director" provided by Sections 2(1), (2), and (4), V.A.C.S. Article 6674h-2, because those definitions duplicate the definitions provided by Section 201.001 of this code. The omitted provisions read as follows:

Sec. 2. As used in this Act:
(1) "Commission" means the State Highway and Public Transportation Commission.
(2) "Department" means the State Department of Highways and Public Transportation.
(4) "Engineer-director" means the State Engineer-Director for Highways and Public Transportation.
(2) The revised law omits the term "reconstruction" used in Section 2(5), V.A.C.S. Article 6674h-2, because that term is included in the meaning of "construct."

Revised Law

Sec. 223.102. AWARD OF EMERGENCY HIGHWAY IMPROVEMENT CONTRACT. As an alternative to the procedure provided by Subchapter A, in a highway emergency the department may award a highway improvement contract in accordance with rules adopted by the commission, which may include:

(1) contractor eligibility;
(2) notification of prospective bidders;
(3) bidding requirements;
(4) procedures for awarding the contract;
(5) bonding or other requirements to ensure
satisfactory performance by the contractor and the protection of
claimants supplying labor and materials used in performance;

(6) contract form and content; and

(7) provision for a waiver of or exception to a
procedure or requirement adopted under this section. (V.A.C.S.
Art. 6674h-2, Secs. 1, 3.)

Source Law

Art. 6674h-2 Sec. 1. It is the express purpose of this Act to
provide an alternate procedure for the expedited award
of highway improvement contracts to meet emergency
conditions in which essential corrective or preventive
action would be unreasonably hampered or delayed by
compliance with other laws.

Sec. 3. (a) In the case of an emergency as
defined in Subdivision (3) of Section 2 of this Act and
notwithstanding any other provision of law, the
department may award a highway improvement contract in
accordance with administrative rules promulgated by the
commission.

(b) Such rules may include but are not limited
to:

(1) contractor eligibility;
(2) notification of prospective bidders;
(3) bidding requirements;
(4) letting procedures;
(5) bonding or other requirements to
ensure satisfactory performance by the contractor and
the protection of claimants supplying labor and
materials used in performance;
(6) contract form and content; and
(7) provision for waiver of or exception
to a procedure or requirement promulgated pursuant to
this section.

Revised Law

Sec. 223.103. CERTIFICATION OF EMERGENCY. (a) Before
awarding a contract under this subchapter, the director or a person
the director designates must certify in writing a description of
the highway emergency.

(b) A person designated under Subsection (a) may not occupy
a position below the level of deputy director. (V.A.C.S.
Art. 6674h-2, Sec. 4(a).)

Source Law

Sec. 4. (a) Prior to the award of a contract
under the authority of this Act, the engineer-director
or his designee not below the level of deputy state
engineer-director must certify in writing the fact and
nature of the emergency giving rise to the award.

Revisor's Note

The revised law refers to the "deputy director" instead of the "deputy state engineer-director" for consistency and because that is the title used for that position in the current General Appropriations Act.

Revised Law

Sec. 223.104. CONTRACT REQUIREMENTS. (a) A contract awarded under this subchapter must:

1. be in the name of the state;
2. be signed by the director or a person the director designates; and
3. have attached a copy of the certification required by Section 223.103.

(b) A person designated under Subsection (a) may not occupy a position below the level of district engineer. (V.A.C.S. Art. 6674h-2, Sec. 4(b).)

Source Law

(b) The contract shall be in the name of the State of Texas, be signed by the engineer-director or his designee not below the level of district engineer, and have attached as an exhibit a copy of the certification described in Subsection (a) of this section.

Revised Law

Sec. 223.105. NOTIFICATION OF COMMISSION. Not later than the fifth working day after the date on which the contract is awarded, the director shall notify in writing each member of the commission of the details of the highway emergency and the award of the contract. (V.A.C.S. Art. 6674h-2, Sec. 4(c).)

Source Law

(c) Not later than the fifth working day following the date on which the contract is awarded, the engineer-director shall furnish each member of the commission written notification of the details of the emergency conditions and the award.
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CHAPTER 224. ACQUISITION, CONSTRUCTION, AND MAINTENANCE
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Revised Law
Sec. 224.001. ACQUISITION BY DEPARTMENT. The department shall acquire by purchase, gift, or eminent domain any right-of-way necessary for the national system of interstate and defense highways. (V.A.C.S. Art. 6702-1, Sec. 4.301(f).)

Source Law
(f) The State Department of Highways and Public Transportation is authorized and directed to acquire by purchase, gift, or condemnation all rights-of-way necessary for the National System of Interstate and Defense Highways.

Revisor's Note
Section 4.301(f), V.A.C.S. Article 6702-1, refers to the "State Department of Highways and Public Transportation." The revised law substitutes "department" for "State Department of Highways and Public Transportation" for the reason stated in the reviser's note to Section 201.003 of this code (explaining the change in the name of this agency to "Texas Department of Transportation") and because Section 201.001 of this code, a general definitions section that applies to this chapter, defines "department" as meaning the Texas Department of Transportation.

Revised Law
Sec. 224.002. ACQUISITION BY COUNTY OR MUNICIPALITY GENERALLY. (a) A county or municipality shall acquire, in the manner provided by law, the highway right-of-way that is requested by the department.

(b) Chapter 21, Property Code, governs the procedure for an acquisition by eminent domain. (V.A.C.S. Art. 6702-1, Secs. 4.301(b) (part), (d).)
Source Law

(b) ... In the event of condemnation by the county, the procedure shall be the same as that set out in Chapter 21, Property Code, as amended. . . .

(d) A county or city is authorized and directed to acquire the right-of-way for the highways as are requested and authorized by the State Department of Highways and Public Transportation as provided by existing laws, and in the event condemnation is necessary, the procedure shall be the same as that set out in Chapter 21, Property Code, as amended.

Revisor's Note

Section 4.301(b), V.A.C.S. Article 6702-1, refers to "city." The revised law substitutes the term "municipality" for "city" because that is the term used in the Local Government Code.

Revised Law

Sec. 224.003. ACQUISITION BY COMMISSIONERS COURT. (a) The commissioners court of a county may acquire by purchase or eminent domain any real property, including a right-of-way, or material, including timber, earth, stone, or gravel, that the commission determines is necessary or convenient to a state highway to be constructed, reconstructed, maintained, widened, straightened, or extended. Real property acquired for streambed diversion may not exceed 100 feet in width.

(b) The commission shall furnish to the commissioners court the plats or field notes of the real property and the description of any required materials. After receiving the plats, notes, or description, the commissioners court may make the acquisition in accordance with those documents.

(c) The acquisition is on behalf of the state with title to the State of Texas.

(d) The commissioners court may exercise the power of eminent domain within the limits of a municipality only with the prior consent of the municipality's governing body.

(e) The county may pay for the acquisition from the county road and bridge fund, a special road fund, or any other available
1 county fund. (V.A.C.S. Art. 6702-1, Secs. 4.301(a), (b) (part).)

Source Law

Sec. 4.301. (a) Whenever, in the judgment of
the State Highway and Public Transportation Commission,
the use or acquisition of any land for road or
right-of-way purposes, timber, earth, stone, gravel, or
other material is necessary or convenient to any road
to be constructed, reconstructed, maintained, widened,
straightened, or lengthened, or land not exceeding 100
feet in width for streambed diversion in connection
with the locating, relocating, or construction of a
designated state highway by the State Highway and
Public Transportation Commission, the land or material
may be acquired by purchase or condemnation by the
commissioners court. This authority includes the power
to exercise the right of eminent domain by any
commissioners court within the boundaries of a
municipality with the prior consent of the governing
body of the municipality. The county in which the
state highway is located may pay for the acquisition
out of the county road and bridge fund or any available
county funds.

(b) Any commissioners court may secure by
purchase or by condemnation on behalf of the State of
Texas any new or wider right-of-way or land not
exceeding 100 feet in width for streambed diversion in connection with the locating, relocating, or
construction of a designated state highway or land or
lands for material or borrow pits to be used in the
construction, reconstruction, or maintenance of state
highways and may pay for the acquisition out of the
county road and bridge fund or out of any special road
funds or any available county funds. This authority
includes the power to exercise the right of eminent
domain by any commissioners court within the boundaries of a municipality with the prior consent of the
governing body of the municipality. The State Highway
and Public Transportation Commission shall furnish to
the commissioners court the plats or field notes of the
right-of-way or land and the description of the
materials as may be required, after which the
commissioners court may purchase or condemn the
right-of-way or land or material, with title to the
State of Texas, in accordance with the field
notes. . . .

Revisor's Note

(1) Sections 4.301(a) and (b), V.A.C.S. Article
6702-1, refer to the "State Highway and Public
Transportation Commission." The revised law
substitutes "commission" for "State Highway and Public
Transportation Commission" for the reason stated in the
revisor's note to Section 201.003 of this code
(explaining the change in the name of this agency to
"Texas Transportation Commission") and because Section
201.001 of this code, a general definitions section that applies to this chapter, defines "commission" as meaning the Texas Transportation Commission.

(2) Section 4.301(b), V.A.C.S. Article 6702-1, refers to "lands for material or borrow pits." The reference to "borrow pits" is omitted from the revised law because that terminology is included within the meaning of the revised law terminology of "any . . . land, or material . . . necessary . . . in connection with the construction . . . ."

Revised Law

Sec. 224.004. STATE'S USE OF EMINENT DOMAIN. (a) If the commissioners court does not acquire a right-of-way under Section 224.003, the commission shall immediately serve the commissioners court with an order identifying the right-of-way by field notes and requesting the commissioners court to acquire the right-of-way.

(b) Not later than the 10th day after the date the order is served, the commission shall direct the attorney general to initiate eminent domain proceedings on behalf of the state to acquire the right-of-way.

(c) Venue is in the county in which the right-of-way is located. The district or county attorney for that county shall initiate the eminent domain proceedings.

(d) Chapter 21, Property Code, governs the procedure for the eminent domain proceeding except that the county judge appoints the special commissioners. (V.A.C.S. Art. 6702-1, Sec. 4.301(b) (part).)

Source Law

(b) . . . If the right-of-way in any county is in the judgment of the State Highway and Public Transportation Commission necessary for the construction of a part of a designated state highway and the commissioners court of that county fails or refuses to secure by purchase or by condemnation for or on behalf of the State of Texas the right-of-way or part of it, immediately and as speedily as possible, after being served with a copy of an order of the State Highway and Public Transportation Commission
identifying by field notes the part of the highway necessary for the construction of the designated state highway and requesting the commissioners court to secure the right-of-way, then not later than the 10th day after the day the notice is served the State Highway and Public Transportation Commission shall direct the attorney general to institute condemnation proceedings in the name of the State of Texas for the purpose of securing the right-of-way. The condemnation proceedings shall be instituted by the county or district attorney of the county in which the land is situated and the venue of the proceedings shall be in the county in which the land is situated, and jurisdiction and authority to appoint three disinterested landowners of the county as commissioners is conferred on the county judge of the county in which the land is situated, and otherwise the condemnation shall be according to the provisions of Chapter 21, Property Code, as amended.

Revisor's Note
Section 4.301(b), V.A.C.S. Article 6702-1, refers to the appointment of "three disinterested landowners of the county" as commissioners for the eminent domain proceeding. That reference is omitted from the revised law because it duplicates the substance of Section 21.014, Property Code, which applies to the proceeding.

Revised Law
Sec. 224.005. PARTICIPATION BY DEPARTMENT. (a) In the acquisition of a right-of-way requested by the department in cooperation with local officials for a highway designated by the commission as a United States highway or state highway, the department shall pay to the county or municipality not less than 90 percent of the value, as determined by the department, of the right-of-way or the net cost of the right-of-way, whichever amount is less.

(b) If the acquisition is by eminent domain, the participation by the department shall be based on the final judgment if the department has been notified in writing before the filing of the suit and given prompt notice as to all action taken in the suit. The department is entitled to become a party at any time for any purpose, including the right of appeal. (V.A.C.S. Art. 6702-1, Sec. 4.301(c).)
(c) In the acquisition of all rights-of-way authorized and requested by the State Department of Highways and Public Transportation in cooperation with local officials for all highways designated by the State Highway and Public Transportation Commission as United States or state highways, the State Department of Highways and Public Transportation is authorized and directed to pay to the counties and cities not less than 90 percent of the value as determined by the State Department of Highways and Public Transportation of the requested right-of-way or the net cost of the right-of-way, whichever is the lesser amount. If condemnation is necessary, the participation by the State Department of Highways and Public Transportation shall be based on the final judgment, conditioned that the department has been notified in writing prior to the filing of the suit and prompt notice is also given as to all action taken in the suit. The department has the right to become a party at any time for all purposes, including the right of appeal, at any stage of the proceedings.

Revisor's Note

Section 4.301(c), V.A.C.S. Article 6702-1, refers to "city." The revised law substitutes the term "municipality" for "city" because that is the term used in the Local Government Code.

Revised Law

Sec. 224.006. PAYMENT TO COUNTY OR MUNICIPALITY. (a) On delivery to the department of acceptable instruments conveying to the state the requested right-of-way, the department shall prepare and transmit to the comptroller vouchers covering the payment to the county or municipality of the department's share of the cost of acquiring the right-of-way.

(b) The comptroller shall issue warrants on the appropriate account covering the state's obligation as evidenced by the vouchers. (V.A.C.S. Art. 6702-1, Sec. 4.301(e).)

Source Law

(e) On delivery to the State Department of Highways and Public Transportation of acceptable instruments conveying to the state the requested right-of-way, the State Department of Highways and Public Transportation shall prepare and transmit to the comptroller of public accounts vouchers covering the reimbursement to the county or city for the department's share of the cost of providing the right-of-way, and the comptroller of public accounts is
authorized and directed to issue warrants on the appropriate account covering the state's obligations as evidenced by the vouchers.

Revisor's Note

(1) Section 4.301(e), V.A.C.S. Article 6702-1, refers to the "comptroller of public accounts." The revised law substitutes the term "comptroller" because Section 403.001, Government Code, defines "comptroller" in any state statute to mean the comptroller of public accounts.

(2) Section 4.301(e), V.A.C.S. Article 6702-1, refers to "city." The revised law substitutes the term "municipality" for "city" because that is the term used in the Local Government Code.

Revised Law

Sec. 224.007. PURCHASE OF LEASE RIGHTS. (a) Before acquiring property under this subchapter, the department may purchase the right to lease the property to a third party.

(b) The department may make a purchase under Subsection (a) only if the department first determines that the owner is unable to lease or rent the property because of the impending acquisition by the department.

(c) The consideration for the purchase of a lease right under this section may not exceed the fair market rental value of the property as determined by the department and shall be credited against the total compensation due the owner when the department acquires the property.

(d) Payment under this section may be made in periodic increments until the property is acquired by the department. The aggregate total of payments before acquisition may not exceed the department's appraised value of the property.

(e) This section shall be implemented in accordance with applicable administrative rules and policies of the department. (V.A.C.S. Art. 6702-1, Sec. 4.301(g).)
(g)(1) Prior to acquisition of property pursuant to this section, the county or city may purchase the rights to lease the property to third parties, provided that the city or county first determines that the owner is unable to lease or rent the property by reason of its impending acquisition for highway purposes.

(2) The consideration for the purchase of such rights may not exceed the fair market rental value of the property as determined by the city or county and approved by the State Department of Highways and Public Transportation and shall be credited against the total compensation due the owner at the time the property is acquired through purchase or condemnation. Payments under this subsection may be made in periodic increments until the property is acquired, provided that the aggregate total of payments prior to acquisition may not exceed the approved appraised value of the property as determined by the State Department of Highways and Public Transportation.

(3) Exercise of the authority granted by this subsection shall conform with applicable administrative rules and policies of the State Department of Highways and Public Transportation.

Revisor's Note

Section 4.301(g), V.A.C.S. Article 6702-1, refers to "city." The revised law substitutes the term "municipality" for "city" because that is the term used in the Local Government Code.

Revised Law

Sec. 224.008. UTILITY RELOCATION COSTS. In the acquisition of a highway right-of-way by or for the department, the cost of relocating or adjusting utility facilities, which cost may be eligible under law, is a cost of the acquisition. (V.A.C.S. Art. 6674n-3, Sec. 1.)

Source Law

Art. 6674n-3
Sec. 1. In the acquisition of all highway rights-of-way by or for the Texas Highway Department, the cost of relocating or adjusting utility facilities which cost may be eligible under the law is hereby declared to be an expense and cost of right-of-way acquisition.

Revisor's Note

(1) Section 1, V.A.C.S. Article 6674n-3, refers to an "expense and cost" of right-of-way acquisition.
The reference to "expense" is omitted from the revised law because that term is included within the meaning of "cost."

(2) Section 2, V.A.C.S. Article 6674n-3, validated certain actions of a county or city taken in connection with paying the costs of relocating utility facilities in an acquisition of a right-of-way. This provision is omitted from the revised law because it served its purpose on the day it took effect and, thus, is executed law. Section 311.031(a)(2), Government Code (Code Construction Act), applicable to the revised law, provides that the repeal of a statute does not affect any validation previously made under the statute. The omitted validation reads:

Sec. 2. All contracts or agreements heretofore made and entered into by the various counties and cities for the purposes stated above are hereby ratified and validated.

[Sections 224.009-224.030 reserved for expansion]

SUBCHAPTER B. CONSTRUCTION AND MAINTENANCE GENERALLY

Revised Law

Sec. 224.031. DUTY OF DEPARTMENT. (a) The department has exclusive and direct control of all improvement of the state highway system.

(b) The department shall prepare and pay for surveys, plans, specifications, and estimates for all construction and improvement of the state highway system. (V.A.C.S. Art. 6674q-4 (part).)

Source Law

Art. 6674q-4. All further improvement of the State Highway System shall be made under the exclusive and direct control of the State Department of Highways and Public Transportation. Surveys, plans and specifications and estimates for all construction and improvement of the system shall be made, prepared and paid for by the State Department of Highways and Public Transportation. . . .
Sec. 224.032. DUTY OF COMMISSION. (a) In the development and maintenance of the state highway system, the commission shall provide for the:

(1) efficient maintenance of the system;

(2) construction, in cooperation with the United States to the extent of federal aid to the state, of durable highways of the greatest public necessity;

(3) construction of highways to perfect and extend a correlated system of state highways, independently from state funds; and

(4) construction of highways to provide access to significant new naval military facilities and to provide for the state highway system in impacted regions.

(b) Subsection (a) shall be implemented from funds available to the department except that Subsection (a)(4) shall be implemented only from the state highway fund.

(c) In this section, "significant new naval military facility" and "impacted region" have the meanings assigned by Section 4, Article 1, National Defense Impacted Region Assistance Act of 1985 (Article 689a-4d, Vernon's Texas Civil Statutes).

(V.A.C.S. Arts. 6674q-2 (part), 6674q-4 (part).)

Art. 6674q-2. .... The terms "significant new naval military facility" and "impacted region" have the meanings assigned by Section 4, Article 1, National Defense Impacted Region Assistance Act of 1985.

Art. 6674q-4. .... In the development of the System of State Highways and the maintenance thereof, the State Highway and Public Transportation Commission shall from funds available to the State Department of Highways and Public Transportation, provide:

(a) For the efficient maintenance of all highways comprising the State System;

(b) For the construction, in co-operation with the Federal Government to the extent of Federal Aid to the state, of highways of durable type of the greatest public necessity.

(c) For the construction of highways, perfecting and extending a correlated system of State Highways, independently from state funds.

(d) For the construction of highways from appropriations from the State Highway Fund to provide
access to significant new naval military facilities and to provide for the state highway system in impacted regions.

Revised Law

Sec. 224.033. COUNTY IMPROVEMENT OF STATE SYSTEM. (a) The commissioners court of a county may contract with the department for the improvement by the county of the state highway system.

(b) In this section, "improvement" means a project or activity:

(1) appurtenant to a state highway and including drainage facilities, surveying, traffic counts, driveways, landscaping, signs, lights, or guardrails; or

(2) involving maintenance of a state highway and appurtenant facilities. (V.A.C.S. Art. 6702-1, Sec. 2.012.)

Source Law

Sec. 2.012. (a) The commissioners court of a county may contract with the State Department of Highways and Public Transportation for the improvement of a segment of the state highway system by the county.

(b) In this section, "improvement" means projects or activities:

(1) appurtenant to a state highway and including drainage facilities, surveying, traffic counts, driveways, landscaping, signs, lights, or guardrails; or

(2) involving maintenance of state highways and appurtenant facilities.

Revisor's Note

(End of Subchapter)

(1) V.A.C.S. Article 6674q-1 states the policy of the state to acquire highways previously financed and constructed by counties and road districts and to compensate those entities for the acquisition. That provision is omitted from the revised law because it is nonsubstantive. The omitted article reads:

Art. 6674q-1. It is expressly recognized and declared that all highways now or heretofore constituting a part of the system of State Highways and that all roads not constituting a part of such system, which have been constructed in whole or in part from the proceeds of bonds, warrants, or other evidence of indebtedness issued by counties of the
State of Texas, or by defined road
districts of the State of Texas, under the
laws authorizing the same, have been and
are and will continue to be beneficial to
the State of Texas at large, and have
contributed to the general welfare,
settlement, and development of the entire
state, and that, by reason of the
foregoing, a heavy and undue burden was
placed, and still rests, upon the counties
and defined road districts and their
inhabitants, and both a legal and moral
obligation rests upon the state to
compensate and reimburse such counties and
defined road districts which, as aforesaid,
have performed functions resting upon the
state, and have paid expenses which were
and are properly state expenses; all for
the use and benefit of the state, and to
the extent provided herein that the state
provide funds for the further construction
of roads not designated as a part of the
State Highway System.

Having heretofore, by an Act of the
Legislature (Chapter 13, Acts of the Third
Called Session of the 42nd Legislature in
1932), taken over, acquired, and purchased
the interest and equities of the various
counties and defined road districts in and
to the highways constituting a part of the
system of then designated State Highways,
it is further declared to be the policy of
the state to take over, acquire, purchase,
and retain the interest and equities of the
various counties and defined road districts
in and to the highways, not previously
taken over, acquired, and purchased and
constituting on January 2, 1939, a part of
the system of designated State Highways,
and to acquire and purchase the interest
and equities of the various counties and
defined road districts in and to the roads
not constituting a part of the system of
designated State Highways as of January 2,
1939, and under the provisions of this Act
to acquire such interest and equities in
such roads hereafter to be constructed with
money furnished by the state, and to
reimburse said counties and districts
therefor, and to provide for the
acquisition, establishment, construction,
extension and development of the system of
designated State Highways of Texas, from
some source of income other than the
revenues derived from ad valorem taxes, it
being expressly provided herein that the
state is not assuming, and has not assumed,
any obligation for the construction,
extension, and development of any of the
highways thus acquired and purchased which
do not constitute a part of the system of
designated State Highways. And it is
hereby determined that the further
provisions of this Act constitute fair,
just, and equitable compensation,
repayment, and reimbursement to said
counties and defined districts and for
their aid and assistance to the state in
the construction of State Highways and for
the construction of said roads which are
ancillary to, but do not constitute a part
of said System of State Highways, and fully
discharges the legally implied obligations
of the state to compensate, repay, and
reimburse the agencies of the state for
expenses incurred at the instance and
solicitation of the state, as well as for
expenses incurred for the benefit of the
state, and fully discharges the state's
legally implied obligation to such counties
and defined road districts to provide
additional funds for the further
construction of roads not designated as a part
of the State Highway System.

(2) V.A.C.S. Article 6674q-2 defines "defined
road districts," "road districts," "districts,
"roads," "road," "highways," "State Highways," "State
Designated Highways," "lateral roads," "Board," "fund,"
and "eligible obligations." The revised law omits
those definitions because they involve executed law, as
discussed in other paragraphs of this reviser's note.
V.A.C.S. Article 6674a defines "highway" and V.A.C.S.
Article 6674b defines "state highway system." Those
definitions are codified in Section 221.001 of this
code, which applies to this chapter. The omitted law
reads:

Art. 6674q-2. By the expression
"defined road districts" or "road
districts" or "districts" used in this Act,
is meant any defined road district of the
state or any Justice or Commissioners
Precinct acting as a road district or any
road district located in one or more than
one county.

By the expression "roads" or "road"
as used in this Act, is meant roads, road
beds, bridges, and culverts.

By the expression "highways," "State
Highways" and "State Designated Highways"
are meant roads which prior to January 2,
1939, had become a part of the System of
designated State Highways, including roads
still constituting a part of such system on
said date and those which theretofore
constituted a part of such system, but
whose status had been lost through change,
relocation or abandonment and including
roads concerning which the State Highway
Commission had prior to January 2, 1939,
indicated its intention to designate,
evidencing such intention in the official
records or files.

All roads which prior to January 2,
1941, had not become a part of the system of State Designated Highways, for convenience in this Act, are called "lateral roads."

The term "Board" as used in this Act, when the contrary is not clearly indicated, shall mean the "Board of County and District Road Indebtedness."
The term "fund" as used in this Act, when the contrary is not clearly indicated, shall mean the "County and Road District Highway Fund."
The expression "eligible obligations" as used in this Act shall mean obligations, the proceeds of which were actually expended on State Designated Highways.

(3) V.A.C.S. Article 6674q-6 provides for the comptroller of public accounts to allocate funds from a gasoline tax to various state funds. That provision is omitted from the revised law because it is executed law, the various laws on which it was based having been repealed. The omitted article reads:

Art. 6674q-6. Each month the Comptroller of Public Accounts after computing and ascertaining the maximum amount of refunds that may be due by the state on the business of selling gasoline, as provided in Section 17, Chapter 88, General Laws, Acts of the Second Called Session of the 41st Legislature, as amended by Chapter 104, General Laws, Acts of the Regular Session of the 42nd Legislature, shall deduct same from the total occupation or excise tax paid on the business of selling gasoline, as imposed by Section 17, Chapter 98, General Laws, Acts of the Regular Session of the 42nd Legislature, as amended, and beginning with said taxes collected on or after October 1, 1932, shall, after deducting the said maximum amount of refunds, allocate and place the remainder of said occupation or excise tax on the business of selling gasoline, in the State Treasury as provided by law, in the proportion as follows: one-fourth (1/4) of such occupation or excise tax shall go to, and be placed to the credit of, the Available Free School Fund; one-fourth (1/4) of the same shall go to, and be placed to the credit of a fund to be known as the "County and Road District Highway Fund", subject to the provisions and limitations of Section 3 of this Act; the remainder of such occupation or excise tax shall go to, and be placed to the credit of the State Highways Fund, for the construction and maintenance of the public roads of the state, constituting and comprising the System of State Highways of Texas, as designated by the State Highway
Commission of Texas.

(4) V.A.C.S. Article 6674q-8 provides that V.A.C.S. Article 6674q-1 et seq. may not be construed to authorize the state to assume the indebtedness of a county or road district. The mechanism for the compensation from the state to the counties and road districts for the acquisition of highways was contained in V.A.C.S. Article 6674q-7, which was last amended in 1947 and finally allowed to expire in 1979. V.A.C.S. Article 6674q-8 is omitted from the revised law because it is executed law. The omitted article reads:

Art. 6674q-8. No provision of this Act shall be construed to authorize the giving or lending of the credit of the state to any county or district or to pledge the credit of the state in any manner whatever for the payment of any of the outstanding road indebtedness, herein referred to, of the counties or districts of the state. It is hereby declared that all eligible indebtedness, as herein defined, shall remain indebtedness of the respective counties or defined road districts which issued it, and said counties or defined road districts shall remain liable on said indebtedness according to its terms and tenor; and it is not the purpose or intention of this Act, or any part thereof, to obligate the State of Texas, directly or indirectly or contingently, for the payment of any such obligations, or that the State of Texas should assume the payment of said obligations; and this Act is not to be construed as obligating the State of Texas to the holders of any of said obligations to make any payment of the same, or any part thereof, nor shall such holders have any rights to enforce the appropriation of any of the moneys hereinabove provided for, nor shall any provision hereof constitute a contract on the part of the state to make money available to any county for the construction of additional lateral roads. The provisions hereof are intended solely to compensate, repay, and reimburse said counties and districts for the aid and assistance they have given to the state in furnishing, advancing and contributing money for building and constructing State Highways.

(5) V.A.C.S. Article 6674q-8a refers to the issuance of bonds by navigation districts to finance
the construction of bridges. That provision is omitted from the revised law because it is executed law. The omitted article reads:

Art. 6674q-8a. All bonds heretofore issued by navigation districts of this state, which mature on or after January 1, 1933, and insofar as amounts of same were actually expended in the construction of bridges across any stream or streams or any other waterways upon any highway that constituted and comprised a part of the system of Designated State Highways on September 17, 1932, shall hereafter be included within and eligible under the provisions of Chapter 13 of the Acts of the 42nd Legislature of Texas, passed at its Third Called Session, as amended by the Acts of the 43rd Legislature of Texas, Regular Session, to the extent that the proceeds of the sale of said bonds shall have been actually expended in the construction of such bridges and in such cases the outstanding bonds of said navigation districts in an amount equal to the amount so expended by such navigation districts shall be redeemed under the same conditions as are provided by said Chapter 13, Acts of the 42nd Legislature of Texas, Third Called Session, as amended by the Acts of the 43rd Legislature of Texas, Regular Session, for the redemption of county and road district bonds.

It is expressly provided that the Board of County and District Road Indebtedness shall not be authorized to give the bonds herein referred to preference over other similar bonds eligible under said Bond Act; and it is further expressly provided that said Board in determining the amount of bonds eligible for assumption shall take into consideration the amount of the bond money expended for the construction of said bridge, and the balance due on said amount of bonds used in the construction of said bridge, at the effective date of this Act; and in no event shall said Board be authorized to assume in excess of the balance due on the bonds for the said bridge construction at the effective date of this Act.

(6) V.A.C.S. Article 6674q-9 refers to the disposition of title to highways in the event that succeeding legislatures continue to implement the policy embodied by V.A.C.S. Article 6674q-1 et seq. to acquire highways previously financed and constructed by counties and road districts by compensating those
entities for the acquisition. The mechanism for that compensation, V.A.C.S. Article 6674q-7, was last amended in 1947 and was finally allowed to expire in 1979. That part of V.A.C.S. Article 6674q-9 is omitted from the revised law because it is executed law.

V.A.C.S. Article 6674q-9 refers to the disposition of abandoned highway right-of-way. That part of the article is omitted from the revised law because it was impliedly repealed by V.A.C.S. Article 6673a (codified in this code as Subchapter B, Chapter 202). See State v. Easley, 404 S.W.2d 296 (Tex. 1966).

V.A.C.S. Article 6674q-9 states that V.A.C.S. Article 6674q-1 et seq. does not impose a duty on or grant permission to the state to "maintain or lay out" roads outside the state highway system and that the authority as to those roads remains "undisturbed in the several Commissioners Courts as agents of the state."

That part of the article is omitted from the revised law because it adds no substance to the law but simply states what is already obvious in the context of applicable law.

The omitted law reads:

Art. 6674q-9. If succeeding Legislatures shall continue to carry out the policy herein defined by authorizing a similar appropriation of funds from time to time, (a) then whenever the eligible obligation shall have been fully paid as herein provided, as to or for any county or defined road district according to the provisions of this Act, then, and in that event, the title and possession of all roads, road beds, bridges, and culverts in such county or defined road district, which are included in the system of Designated State Highways, shall automatically vest in fee simple in the State of Texas; in the event of any subsequent physical change therein, such title and possession shall extend to any such change so made; and (b) whenever the interest and principal necessary to retire the outstanding indebtedness owed for lateral roads shall have been fully paid as herein provided, as to, or for any county or defined road district, according to the provisions of
this Act, then, and in that event, the
title of all roads, road beds, bridges, and
culverts in such county or defined road
district, pertaining to the lateral roads
constructed with the proceeds of such
indebtedness, shall automatically vest in
the State of Texas; but the possession
thereof shall remain in such county or
defined road district, and in the event of
any subsequent physical change therein,
such title and possession shall extend to
any such change so made; provided that when
the right-of-way, or any part thereof,
pertaining either to a State Highway or a
lateral road, has been abandoned because of
the abandonment of such road for all public
purposes, and such right-of-way, or any
part thereof, was donated by the owner of
the land for right-of-way purposes, then,
and in that event, the title to the said
right-of-way shall vest in said owner, his
heirs or assigns; provided, however, that
nothing in this Act shall prevent the State
Highway Commission from changing or
abandoning any State Highway, and if the
Commission shall change or abandon any
State Highway in any county, the
Commissioners Court of such county shall
have the right to assume jurisdiction over
such portion of such highway so abandoned
by the State Highway Commission. Likewise,
the title to additional lateral roads, when
constructed, shall vest in the State of
Texas. Provided, however, that this Act
neither imposes the obligation on, nor
confers the right in, the State of Texas,
to maintain and lay out any roads except
those constituting a part of the designated
State Highway System as hereinabove in this
Act defined. The obligation to maintain or
lay out all other roads, including lateral
roads and additional lateral roads as
defined in this Act, shall remain
undisturbed in the several Commissioners
Courts as agents of the state.

(7) The revision omits V.A.C.S. Article
6674q-10, providing that the Act is severable, because
that provision duplicates Section 311.032, Government
Code (Code Construction Act), applicable to the revised
law, 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. The omitted article reads:

Art. 6674q-10. If any Section,
sub-section, paragraph, sentence, clause,
or provision of this Act shall, for any
reason, be held invalid, such invalidity
shall not affect any other portion of this
Act or the application of such Section,
sub-section, paragraph, sentence, clause, or provision to any other person or situation but this Act shall be construed and enforced as if such invalid provisions had not been contained therein.

(8) The revised law omits as unnecessary V.A.C.S. Article 6674q-1la, relating to the cumulative effect of V.A.C.S. Article 6674q-1 et seq. and to the resolution of conflicts with other law in favor of those articles. 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. Another general rule is that a statute automatically has the effect of prevailing over prior conflicting enactments. The provision is, of course, ineffective to prevail over subsequent legislation.

The omitted article reads:

Art. 6674q-1la. This Act shall be cumulative of all other valid laws on the subject, but in the event of a conflict between any provision of this Act and any other Act, the provisions of this Act shall prevail.

[Sections 224.034-224.060 reserved for expansion]

SUBCHAPTER C. CONTRACT WITH TRANSPORTATION CORPORATION

Revised Law

Sec. 224.061. DEFINITIONS. In this subchapter:

(1) "Construction" includes improvement.

(2) "Highway" includes an improvement to a highway.

(3) "Improvement" includes landscaping. (V.A.C.S. Art. 6674r-2, Sec. 7.)

Source Law

Sec. 7. In this article:

(1) "Construction" includes improvement, including landscaping.

(2) "Highway" includes improvements to a highway.
Sec. 224.062. AUTHORITY TO CONTRACT. The commission may contract with a transportation corporation created by the commission under Chapter 431 for the purpose of acquiring highways to be constructed by the corporation. (V.A.C.S. Art. 6674r-2, Sec. 1.)

Art. 6674r-2
Sec. 1. The State Highway and Public Transportation Commission may enter into contracts with transportation corporations created by the commission under authority of the Texas Transportation Corporation Act (Article 15281, Vernon's Texas Civil Statutes) for purposes of acquiring highways to be constructed by the transportation corporations.

Section 1, V.A.C.S. Article 6674r-2, refers to the Texas Transportation Corporation Act (Article 15281, Vernon's Texas Civil Statutes). That statute is codified in this code as Chapter 431, and the revised law is drafted accordingly.

Sec. 224.063. SUFFICIENCY OF FUNDS. (a) Before contracting under this subchapter, the commission shall determine that it will have sufficient funds available in the year of acquisition to meet its financial obligations under the contract.

(b) Payment of any obligation in the contract is contingent on a legislative appropriation for that purpose in the year the obligation is due, and the contract must state that fact. (V.A.C.S. Art. 6674r-2, Sec. 3.)

Sec. 3. Before entering into a contract to acquire a highway to be constructed by a transportation corporation, the commission shall first determine that it will have sufficient funds available in the year of acquisition to meet its financial obligations under the contract. Payment of any obligation contained in a contract entered into under authority of this article shall be subject to an appropriation by the legislature for such purpose in the year the obligation falls due,
and the contract shall state that payment is contingent upon an appropriation by the legislature in the year payment is due.

Revised Law

Sec. 224.064. TERMS AND CONDITIONS. (a) The commission shall determine the terms of a contract under this subchapter.

(b) The contract may not extend for a period of more than six years after the date of execution.

(c) The contract must provide that:

(1) the highway to be acquired is free of debts, liens, or other encumbrances at the time of acquisition;

(2) the highway to be constructed meets minimum design criteria prescribed by the commission;

(3) construction contracts are awarded through competitive bidding to the low bidder;

(4) priority of construction is assigned to particular highway segments;

(5) particular highway segments are opened to the public on completion of construction under right of entry even if consideration has not been paid by the commission; and

(6) the highway right-of-way is fully landscaped before acquisition by the commission. (V.A.C.S. Art. 6674r-2, Secs. 2, 4.)

Source Law

Sec. 2. A contract entered into under authority of this article shall not extend for a period of more than six years from the date of execution, and shall provide that the highway to be acquired pursuant to the contract shall be free of debts, liens, and encumbrances at the time of acquisition.

Sec. 4. The commission shall determine the terms and conditions of any contract entered into under authority of this article. Without limiting the other terms and conditions that may be imposed in such a contract, any such contract shall provide that the highway to be constructed by the transportation corporation meet commission minimum design criteria, that construction contracts be awarded through competitive bidding to the low bidder, that priority of construction be assigned to particular segments of the highway, that particular segments of the highway be opened to the public upon completion of construction under right of entry even though consideration has not
yet been paid by the commission, that the highway
right-of-way be fully landscaped prior to acquisition
by the commission, and may contain such other covenants
as may be determined by the commission to be desirable.

Revisor's Note
Section 4, V.A.C.S. Article 6674r-2, provides
that the "commission shall determine the terms and
conditions of any contract" and provides that a
contract "may contain such other covenants as may be
determined by the commission to be desirable." The
reference to "conditions" is omitted from the revised
law because "conditions" is included within the meaning
of "terms." The reference to the contract containing
other covenants is omitted from the revised law because
that concept is included within the grant of authority
to determine the terms.

Revised Law
Sec. 224.065. CONSTRUCTION MANAGEMENT SERVICES. (a) The
commission may contract with a transportation corporation
constructing a highway for the commission to supervise the
construction of the highway and provide construction management
services for the corporation.

(b) The transportation corporation shall pay the commission
for the supervision and management services at the time the
services are provided. (V.A.C.S. Art. 6674r-2, Sec. 5.)

Source Law
Sec. 5. The commission may enter into contracts
with transportation corporations constructing highways
on behalf of the commission to supervise construction
and provide construction management services for the
transportation corporation. The transportation
corporation shall pay the commission for such
supervision and management services at the time such
services are rendered.

Revised Law
Sec. 224.066. ADDITIONAL POWERS. In addition to the powers
granted under this subchapter, the commission has any other power
that is reasonable and necessary to allow it to contract with a transportation corporation for the construction of a highway as provided by this subchapter. (V.A.C.S. Art. 6674r-2, Sec. 6.)

Source Law

Sec. 6. The commission shall have such other powers as may be reasonable and necessary to enable it to contract with transportation corporations for the construction of highways as provided in this article.

[Sections 224.067-224.090 reserved for expansion]

SUBCHAPTER D. DETOUR ROADS

Revised Law

Sec. 224.091. DETOUR ROAD REQUIRED. (a) If construction on a part of the state highway system causes the closing of a road to traffic, the department shall select, improve, and maintain an all-weather detour road for the convenience of the public.

(b) A detour road shall be used and controlled under the same conditions and authority as that exercised over the state highway system. (V.A.C.S. Art. 66740, Sec. 1 (part).)

Source Law

Art. 66740

Sec. 1. From and after the taking effect of this Act, it shall be the duty of the State Highway Department, wherever construction on any part of the State System of Highways is being carried on and it becomes necessary to close such roads under construction to traffic, to provide for the convenience of the public by the selection and improvement and maintenance of an all-weather detour road, to be used and controlled during the period of such State use under like conditions and authority as exercised over parts of the designated system of State Highways . . . .

Revised Law

Sec. 224.092. DUTIES OF COMMISSION. The commission shall provide for the:

(1) equipment and maintenance of a detour road in a manner adequate for the convenience and safety of normal traffic using the road; and

(2) posting of necessary signs at each end of the
detour road for the guidance and convenience of the public.

(V.A.C.S. Art. 66740, Secs. 1 (part), 3 (part).)

Source Law

Sec. 1. . . . and the Highway Commission shall provide for the equipment of such detour roads in a manner adequate to the convenience and safety of the normal traffic diverted thereupon . . . .

Sec. 3. In all such provisions for detour roads by State Highway Commission . . . it shall be the duty of the public at each end of such detour road, and provide with reasonable adequacy for the maintenance of the detour roads in a manner to respond to normal traffic requirements passing over such State highways . . . .

Revised Law

Sec. 224.093. DUTY OF COUNTY. A county shall cooperate with the commission as necessary to adequately provide for the traffic requirements of the public in the selection and maintenance of a detour road in the county. (V.A.C.S. Art. 66740, Sec. 1 (part).)

Source Law

Sec. 1. . . . counties are hereby required to render the State Highway Commission such cooperation as may be necessary for adequate provision for the traffic requirements of the public in the selection and maintenance of all such detour roads in or through the county.

[Sections 224.094-224.120 reserved for expansion]

SUBCHAPTER E. INTERSTATE BRIDGES

Revised Law

Sec. 224.121. CONDITION FOR IMPLEMENTATION. The department may implement this subchapter only if:

(1) another state has enacted a statute providing for the acquisition, construction, and maintenance of a bridge described by Section 224.122 and for the use of the bridge by the public without charge; and

(2) the bridge connects designated highways of this state and the other state. (V.A.C.S. Art. 6797a, Sec. 2.)
Sec. 2. The provisions of this Act shall not apply in any instance wherein any such State adjoining the State of Texas has not enacted a statute making provisions for the acquirement, construction and maintenance of such bridge as between such State and the State of Texas and for the use of such bridge by the public without charge, nor where such bridge does not connect designated highways of the respective State and the State of Texas.

Revised Law

Sec. 224.122. INTERSTATE BRIDGE AUTHORIZED. The department may spend or allocate aid from any available money to acquire, construct, or maintain a bridge across a stream that is a boundary between this and another state in an amount not to exceed one-half of the amount necessary to acquire, construct, or maintain the bridge. (V.A.C.S. Art. 6797a, Sec. 1.)

Source Law

Art. 6797a
Sec. 1. The State Highway Department of the State of Texas is hereby authorized and empowered to make an allotment of aid from any moneys available and to expend funds of said department to acquire, construct and maintain any bridge across or spanning any stream or portion of any stream constituting a boundary between the State of Texas and any other State in an amount not to exceed one half of the amount necessary to acquire, construct or maintain any such bridge, subject to the provisions hereof.

Revised Law

Sec. 224.123. AUTHORITY TO CONTRACT. The department by the authority of the governor may agree with appropriate departments of an adjoining state and the United States to implement this subchapter for the purpose of furnishing substantial bridges across this state's boundaries for the use of the traveling public without charge. (V.A.C.S. Art. 6797a, Sec. 3.)

Source Law

Sec. 3. The State Highway Department of this State is authorized and empowered by the authority of the Governor to enter into negotiations with, and consummate contracts and agreements with such departments of adjoining States, and with the departments of our National Government, to carry out the purpose of this Act, and in all instances to look to the purpose of furnishing to the traveling public
substantial bridges across our State boundaries for its use, without charge.

Revisor's Note

Section 3, V.A.C.S. Article 6797a, refers to the authority "to enter into negotiations with, and consummate contracts and agreements with such departments." The references to entering into "negotiations with" and to "contracts" are omitted from the revised law because those concepts are included within the meaning of "agreement."

Revisor's Note

(End of Subchapter)

(1) Section 4, V.A.C.S. Article 6797a, states the purpose and intent of the article and requests a federal law to provide assistance to the states in acquiring and constructing interstate bridges. The revised law omits that provision both because it is executed law and because the purpose and intent is stated adequately in the substance of the law. The omitted section reads:

Sec. 4. It is the purpose and intent of this Act to furnish to the traveling public, bridges across our State Boundary for its use without charge, and to elicit the co-operation of each State adjoining the State of Texas, in enacting a similar statute to this Act and to assent to the provisions of an Act of the Sixty-Fourth Congress of the United States, approved July 11, 1916, and being "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes"; and to ask an Act of the Congress of the United States whereby bridges spanning streams which are boundaries between the States and connecting designated highways of such States, may be condemned for public use and travel without charge and to provide the manner of such condemnation and to provide for and make appropriations for acquiring, constructing and the maintenance of such bridges.

(2) Section 4-a, V.A.C.S. Article 6797a, authorizes the commission to acquire bridges across the
Red River under certain conditions. The revised law
omits that provision because it is executed law. The
omitted section reads:

Sec. 4-a. In the event the Highway
Commissions of the States adjoining the
State of Texas are unwilling, or are unable
by the provisions of their laws, to join
with Texas in acquiring bridges and
franchises across Red River: Then in such
event the Highway Commission of Texas is
authorized to acquire such bridges and
franchises as may cross the northern
boundary of Texas over Red River, without
the joinder of such neighboring States or
their Highway Commissions. Provided,
however, that in such purchase the
replacement value of the physical
properties only shall constitute the
purchase price, and in no event shall more
than Fifty Thousand Dollars ($50,000) be
expended; and provided, further, that the
Highway Commission of Texas is hereby
authorized only to purchase such bridges as
may have owned a right of operation
existing for forty (40) years or more prior
to the date of this Act.

(3) V.A.C.S. Article 6797c authorizes the
commission to remove highway bridges obstructing
construction of the intracoastal waterway and then to
replace them. The revised law omits that provision
because it is executed law. The omitted article reads:

Art. 6797c. The State Highway
Commission of Texas, at the request of the
United States Government, or any of its
authorized agents, is hereby authorized,
out of any funds available for such
purpose, to remove Highway Bridges
obstructing the construction of the
Intracoastal Waterway of Louisiana and
Texas now being dredged by the United
States Government, and to replace and
maintain such of said Bridges as the State
Highway Commission of Texas deems
necessary, to be paid for out of any funds
available for such purpose.

CHAPTER 225. STATE HIGHWAY NAMES

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CHAPTER 225. STATE HIGHWAY NAMES

SUBCHAPTER A. STATE HIGHWAY NAMES IN GENERAL

Revised Law

Sec. 225.001. PROHIBITION ON NAMING HIGHWAY. The commission
may not designate a part of the highway system, including a bridge
or street, by a name, including the name of a living or dead
individual or for an organization or event, or by a symbol other
than the regular highway number. (V.A.C.S. Art. 6673e-4, Sec. 2.)

Source Law

Sec. 2. The commission shall not officially name
any road, bridge, street, or highway in the state
highway system for a person or persons, living or dead,
nor for any organization or event; nor shall the
commission give these parts of the highway system any
name or symbol other than the regular highway number.

Revised Law

Sec. 225.002. MEMORIAL DESIGNATION OF HIGHWAY BY LOCAL
GOVERNMENT. (a) A local government may assign a memorial or other
identifying designation to a part of the highway system.
(b) A part of the highway system assigned a designation
under Subsection (a) may be marked only with the regular highway number. (V.A.C.S. Art. 6673e-4, Sec. 3.)

Sec. 3. Local governmental units may assign a memorial or other identifying designation to any part or parts of the highway system; provided, however, that any part or parts of the highway system that are named or identified locally will be marked only with the regular highway number.

Sec. 4. Local governmental units may assign a memorial or other identifying designation to any part or parts of the highway system; provided, however, that any part or parts of the highway system that are named or identified locally will be marked only with the regular highway number.

Revised Law
Sec. 225.003. APPLICATION FOR AND SITE SELECTION OF MEMORIAL MARKER. (a) A local government planning a memorial designation must submit an application to the director completely describing:

1. the nature and objectives of the designation; and
2. any marker to be erected.

(b) A marker may not be erected earlier than the 91st day after the date the director approves an application to allow the department to select and prepare a proper site. (V.A.C.S. Art. 6673e-4, Sec. 6.)

Sec. 6. When a memorial designation is planned by a local governmental unit or units, the sponsor or sponsors shall submit to the state highway engineer a complete description of the nature and objectives of the dedication, and the type and full description of the marker or markers to be erected. If approved by the state highway engineer, a period of 90 days shall be required from the date of approval to the actual erection of the marker or markers, in order for the department to select and prepare a proper site or sites.

Reviser's Note
Section 6, V.A.C.S. Article 6673e-4, refers to the "state highway engineer." The revised law substitutes the term "director" for the reasons described in the reviser's note to Section 201.003.

Sec. 225.004. MEMORIAL MARKER. (a) A local government may purchase and furnish to the department a suitable locally.
identifying memorial marker.

(b) If the director approves the size and type of a marker, the department, on request, may erect the marker at a place most suitable to the department's maintenance operations.

(c) If two or more local governments cooperate in seeking a continuous memorial or other identifying designation, they may furnish to the department markers to be erected at each end of the designated limits and at intermediate sites so that markers are approximately 75 miles apart.

(d) The department shall maintain the grounds for a marker. The local government shall repair or replace a marker. (V.A.C.S. Art. 6673e-4, Secs. 4, 5, 7.)

Source Law
Sec. 4. Local governmental units may purchase and furnish to the department a suitable locally-identifying memorial marker of a size and type which must be approved by the state highway engineer. Upon request, the department may erect such marker at a place most suitable to the department's maintenance operations.

Sec. 5. When two or more local governmental units cooperate in seeking a single continuous memorial designation for a highway through their limits, markers may be furnished to the department to be erected at each end of the designated limits, and at such intermediate sites that markers shall be approximately 75 miles apart.

Sec. 7. The maintenance of grounds surrounding the markers shall be the responsibility of the department, but repairs or replacement of the markers shall be made by the sponsoring governmental unit.

Reviser's Note
Section 4, V.A.C.S. Article 6673e-4, refers to the "state highway engineer." The revised law changes the name of the office to the executive director of the Texas Department of Transportation for the reason described by the reviser's note under Section 225.003.

Revised Law
Sec. 225.005. DESIGNATION OF HISTORICAL ROUTE. (a) The department shall mark with a historical name a farm-to-market or
ranch road that follows a historical route if:

(1) a county historical commission applies to the Texas Historical Commission and the department for the marking of the road; and

(2) the Texas Historical Commission certifies that the name has been in common usage in the area for at least 50 years.

(b) The evidence to support a certification under Subsection (a) must:

(1) be submitted by the county historical commission applying for the designation; and

(2) include an affidavit from each of at least five longtime residents of the area.

(c) The department shall prepare and install signs along the road that indicate the road's historical name. The county historical commission applying for the designation shall pay the cost of preparing the signs. (V.A.C.S. Art. 6673e-4, Sec. 8A.)

Source Law

Sec. 8A. (a) Notwithstanding any other provision of this Act, a county historical commission may apply to the Texas Historical Commission and the department for the marking with a historical name of a farm-to-market or ranch road that follows a historical route.

(b) Before the department may mark the road with the historical name, the Texas Historical Commission must certify that the name has been in common usage in the area for at least 50 years. The certification must be based on evidence submitted by the applying county historical commission, which must include affidavits from at least five long-time residents of the area.

(c) On certification by the Texas Historical Commission, the department shall prepare and install along the road signs indicating the road's historical name. The applying county historical commission shall pay for the preparation of the signs.

Revised Law

Sec. 225.006. EFFECT ON OTHER LAWS. This subchapter does not:

(1) supersede or conflict with an existing statute regulating the marking of a road or street; or

(2) void or supersede the authority of a local
governmental agency to regulate and mark a road or street.

(V.A.C.S. Art. 6673e-4, Sec. 8.)

Source Law

Sec. 8. This act shall not supersede nor be in conflict with any existing statutes regulating the signing and marking of roads or streets nor shall it void or supersede the authority of local governmental agencies to regulate and sign roads and streets within their jurisdiction.

Revisor's Note
(End of Subchapter)

Section 1, V.A.C.S. Article 6673e-4, provides definitions to be used in this subchapter. These definitions are identical to the definitions set out in Section 201.001 of this code, which is a general definitions section that applies to this subchapter, and, therefore, are omitted as unnecessary. The omitted provisions read:

Section 1. In this Act, unless the context requires a different definition:

(1) "Commission" means the State Highway Commission.

(2) "Department" means the Texas Highway Department.

[Sections 225.007-225.020 reserved for expansion]

SUBCHAPTER B. SPECIFIC STATE HIGHWAY NAMES

Revised Law

Sec. 225.021. GENERAL PROVISIONS. (a) The department shall repair and replace each marker required by this subchapter and maintain the grounds for the marker.

(b) The department may accept a grant or donation to assist in financing the construction and maintenance of a marker.

(V.A.C.S. Arts. 6673e-5, Secs. 3(d), (e); 6673e-6, Secs. 2(d), (e); 6673e-7, Secs. 2(d), (e); 6673e-8, Secs. 2(d), (e); 6673e-9, Secs. 2(d), (e); 6673e-10, Secs. 2(d), (e).)

Source Law

[Art. 6673e-5]

(d) The department is responsible for repair and
replacement of the markers and for maintenance of the grounds surrounding each marker.

(e) The department may accept grants and donations from individuals and other entities to assist in financing the construction and maintenance of the markers.

[Art. 6673e-6]

(d) The department is responsible for repair and replacement of the markers and for maintenance of the grounds surrounding each marker.

(e) The department may accept grants and donations from individuals and other entities to assist in financing the construction and maintenance of the markers.

[Art. 6673e-7]

(d) The department is responsible for repair and replacement of the markers and for maintenance of the grounds surrounding each marker.

(e) The department may accept grants and donations from individuals and other entities to assist in financing the construction and maintenance of the markers.

[Art. 6673e-8]

(d) The department is responsible for repair and replacement of the markers and for maintenance of the grounds surrounding each marker.

(e) The department may accept grants and donations from individuals and other entities to assist in financing the construction and maintenance of the markers.

[Art. 6673e-9]

(d) The department is responsible for repair and replacement of the markers and for maintenance of the grounds surrounding each marker.

(e) The department may accept grants and donations from individuals and other entities to assist in financing the construction and maintenance of the markers.

[Art. 6673e-10]

(d) The department is responsible for repair and replacement of the markers and for maintenance of the grounds surrounding each marker.

(e) The department may accept grants and donations from individuals and other entities to assist in financing the construction and maintenance of the markers.

Revised Law

Sec. 225.022. TEXAS VIETNAM VETERANS MEMORIAL HIGHWAY. (a)

To honor the Texas citizens who served in the United States armed forces during the Vietnam War, the part of U.S. Highway 83 located in Texas is the Texas Vietnam Veterans Memorial Highway.

(b) The department shall design and construct memorial markers indicating the highway number, the designation as the Texas Vietnam Veterans Memorial Highway, and any other appropriate information.

(c) The department shall erect a memorial marker at each end
of the memorial highway and at appropriate intermediate sites along
the highway. The intermediate sites may not be farther apart than
100 miles. (V.A.C.S. Art. 6673e-5, Secs. 1, 2, 3(a), (b), (c).)

Source Law

Art. 6673e-5
Sec. 1. To honor the Texas citizens who served
in the United States armed forces during the Vietnam
War, the legislature determines that it is appropriate
to designate the only United States highway in Texas
that spans the entire length of the state from north to
south as the Texas Vietnam Veterans Memorial Highway.

Sec. 2. The segment of U.S. Highway 83 that is
located in Texas, stretching from Brownsville through
the Panhandle, is designated the Texas Vietnam Veterans
Memorial Highway.

Sec. 3. (a) The State Department of Highways
and Public Transportation shall design and construct
memorial markers to be placed along U.S. Highway 83
indicating its designation as the Texas Vietnam
Veterans Memorial Highway.

(b) The markers shall include the highway number
and any other information that the department
determines is appropriate to demonstrate the purpose of
the memorial.

(c) Markers shall be erected at each end of the
highway in Texas, and at intermediate sites that the
department determines are appropriate. The
intermediate sites may not be farther apart than 100
miles.

Revisor's Note

Sections 1 and 2, V.A.C.S. Article 6673e-5,
contain geographic descriptions of U.S. Highway 83.
References to the location of the highway are omitted
from the revised law because the location of the
highway and its designation as U.S. Highway 83 exist
independently of this statute.

Revised Law

Sec. 225.023. NOLAN RYAN EXPRESSWAY. (a) The part of State
Highway 288 between the Brazoria County line and Freeport is the
Nolan Ryan Expressway.

(b) The department shall design and construct memorial
markers indicating the highway number, the designation as the Nolan
Ryan Expressway, and any other appropriate information.

(c) The department shall erect a memorial marker at each end
of the memorial highway and at appropriate intermediate sites along
the highway. (V.A.C.S. Art. 6673e-6, Secs. 1, 2(a), (b), (c).)

Source Law

Art. 6673e-6
Sec. 1. State Highway 288, from the Brazoria
County line to Freeport, is designated the Nolan Ryan
Expressway.
Sec. 2. (a) The State Department of Highways
and Public Transportation shall design and construct
memorial markers to be placed along State Highway 288
indicating its designation as the Nolan Ryan
Expressway.
(b) The markers shall include the highway number
and any other information that the department
determines is appropriate.
(c) Markers shall be erected at each end of the
highway and at intermediate sites that the department
determines are appropriate. The intermediate sites may
not be farther apart than 100 miles.

Revisor's Note
The requirement that intermediate markers be
spaced a minimum of 100 miles apart, found in Section
2(c), V.A.C.S. Article 6673e-6, is omitted because the
expressway is less than 100 miles long.

Revised Law
Sec. 225.024. SAM HOUSTON PARKWAY. (a) Beltway 8 in Harris
County is the Sam Houston Parkway.
(b) The department shall construct markers indicating the
designation as the Sam Houston Parkway and other appropriate
information.
(c) The department may design the markers in coordination
with a local entity. The department has final authority to approve
the design of the markers.
(d) The department shall erect a marker every five miles
along the beltway except at sites where the department determines
the placement of a marker is not feasible. (V.A.C.S. Art. 6673e-7,
Secs. 1, 2(a), (b), (c), (f).)

Source Law
Art. 6673e-7
Sec. 1. Beltway 8 in Harris County is designated
the Sam Houston Parkway.
Sec. 2. (a) The State Department of Highways and Public Transportation shall construct markers to be placed along Beltway 8 indicating its designation as the Sam Houston Parkway.
(b) The markers shall include information that the department determines is appropriate.
(c) Markers shall be erected every five miles except at sites where the department determines the placement of a marker is not feasible.
(f) Markers may be designed by the department in coordination with a local entity. The department shall have final authority to approve the design of the markers.

Revised Law

Sec. 225.025. SENATOR LLOYD BENTSEN HIGHWAY. (a) The part of U.S. Highway 59 from its intersection with Interstate Highway 45 to its intersection with Interstate Highway 35 is the Senator Lloyd Bentsen Highway.
(b) The department shall design and construct memorial markers indicating the highway number, the designation as the Senator Lloyd Bentsen Highway, and any other appropriate information.
(c) The department shall erect a memorial marker at each end of the memorial highway and at appropriate intermediate sites along the highway. The intermediate sites may not be farther apart than 100 miles. (V.A.C.S. Art. 6673e-8, Secs. 1, 2(a), (b), (c).)

Source Law

Art. 6673e-8
Sec. 1. U.S. Highway 59 from its intersection with U.S. Interstate Highway 45 in Houston to its intersection with U.S. Interstate Highway 35 in Laredo is designated the Senator Lloyd Bentsen Highway.
Sec. 2. (a) The Texas Department of Transportation shall design and construct memorial markers to be placed along U.S. Highway 59 indicating its designation as the Senator Lloyd Bentsen Highway.
(b) The markers shall include the highway number and any other information that the department determines is appropriate.
(c) Markers shall be erected at each end of the highway and at intermediate sites that the department determines are appropriate. The intermediate sites may not be farther apart than 100 miles.
Revisor's Note

(1) Section 1, V.A.C.S. Article 6673e-8, refers to "U.S. Interstate Highway." Reference to "U.S." is omitted from the revised law to maintain consistency with other sections of this subchapter. "U.S." is within the meaning of "Interstate Highway."

(2) Section 1, V.A.C.S. Article 6673e-8, refers to the location of the intersection of U.S. Highway 59 and Interstate 45 (in Houston) and the intersection of U.S. Highway 59 and Interstate 35 (in Laredo). The references to the cities where the highways intersect are unnecessary because the beginning and the end of Senator Lloyd Bentsen Highway are definitely identified as being at the named intersections.

Revised Law

Sec. 225.026. FARM-TO-MARKET ROAD 390; SCENIC HIGHWAY. (a) Farm-to-Market Road 390 in Washington County is a scenic highway. (b) The department shall design and construct markers indicating the highway number, the designation as a scenic highway, and any other appropriate information. (c) The department shall erect a marker at each end of the scenic highway and at appropriate intermediate sites along the highway. (V.A.C.S. Art. 6673e-9, Secs. 1, 2(a), (b), (c).)

Source Law

Art. 6673e-9
Sec. 1. Farm-to-Market Road 390, in Washington County, is designated as a scenic highway.
Sec. 2. (a) The State Department of Highways and Public Transportation shall design and construct appropriate markers to be placed along Farm-to-Market Road 390 indicating its designation as a scenic highway. (b) The markers shall include the highway number and any other information that the department determines is appropriate. (c) Markers shall be erected at each end of the highway and at intermediate sites that the department determines are appropriate.
Sec. 225.027. 10TH MOUNTAIN DIVISION HIGHWAY. (a) The 10th Mountain Division Memorial Highway is:

(1) the part of U.S. Highway 290 from Interstate Highway 35 to State Highway 95;
(2) the part of State Highway 95 from U.S. Highway 290 to State Highway 71; and
(3) the part of State Highway 71 from State Highway 95 to Interstate Highway 35.

(b) The department shall design and construct memorial markers to be placed along the memorial highway indicating the highway number, the designation as the 10th Mountain Division Memorial Highway, and any other appropriate information.

(c) The department shall erect a memorial marker at each end of the memorial highway and at appropriate intermediate sites along the highway. (V.A.C.S. Art. 6673e-10, Secs. 1, 2(a), (b), (c).)
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SUBTITLE C. COUNTY ROADS AND BRIDGES
CHAPTER 251. GENERAL COUNTY AUTHORITY
RELATING TO ROADS AND BRIDGES
SUBCHAPTER A. GENERAL PROVISIONS

Revised Law
Sec. 251.001. DEFINITIONS. In this chapter as applied to a public road:

(1) "Abandon" means to relinquish the public's right
of way in and use of the road.

(2) "Discontinue" means to discontinue the maintenance of the road.

(3) "Vacate" means to terminate the existence of the road by direct action of the commissioners court of a county. (V.A.C.S. Art. 6702-1, Sec. 2.002(f).)

Source Law

(f) As used in this subchapter:
(1) "Discontinue" means to discontinue the maintenance of a public road.
(2) "Abandon" means to relinquish the public's right of way in and use of a public road.
(3) "Vacate" means to terminate the existence of a public road by direct action of the commissioners court of a county.

Revised Law

Sec. 251.002. PUBLIC ROADS. A public road or highway that has been laid out and established according to law and that has not been discontinued is a public road. (V.A.C.S. Art. 6702-1, Sec. 2.001.)

Source Law

Sec. 2.001. Public roads and highways that have not been discontinued but have been laid out and established according to law are declared to be public roads.

Revised Law

Sec. 251.003. CONSTRUCTION AND MAINTENANCE OF PUBLIC ROADS.

(a) The commissioners court of a county may:

(1) make and enforce all necessary rules and orders for the construction and maintenance of public roads;

(2) hire the labor and purchase the machinery and equipment needed to construct and maintain public roads; and

(3) use any necessary material most convenient to build, repair, or maintain public roads, regardless of the location or extent of the material.

(b) The court may enter any necessary order for the use of inmates of the county jails to work on the county roads or to build
bridges. (V.A.C.S. Art. 6702-1, Secs. 2.002(b), 4.003(b) (part).)

Source Law

[Sec. 2.002]
(b) The commissioners court may:
(1) make and enforce all reasonable and necessary rules and orders for the construction and maintenance of public roads except as prohibited by law;
(2) hire the labor and purchase the machinery and equipment needed to construct and maintain public roads; and
(3) use any necessary material most convenient to build, repair, or maintain public roads regardless of the location or extent of the material.

[Sec. 4.003]
(b) ... for working public roads or building bridges. The court may make the necessary orders ... for using convict labor for these purposes.

Revisor's Note
(1) Section 2.002(b), V.A.C.S. Article 6702-1, provides that a commissioners court may make and enforce rules and orders "except as prohibited by law." The revised law omits the phrase "except as prohibited by law" as unnecessary. Another statute prohibiting certain actions would be effective without a specific exception in the revised law.

(2) Section 4.003(b), V.A.C.S. Article 6702-1, refers to "convict labor." The revised law substitutes "inmates of the county jails" for consistency with the terminology of the Penal Code.

Revised Law
Sec. 251.004. COMMISSIONERS AS ROAD SUPERVISORS. (a) The county commissioners are the supervisors of the public roads in a county unless the county adopts an optional system of administering the county roads under Chapter 252.

(b) A county commissioner serving as a road supervisor shall supervise the public roads in the commissioner's precinct at least once each month. (V.A.C.S. Art. 6702-1, Sec. 2.009(a) (part).)
Sec. 2.009. (a) Except when road commissioners are employed, the county commissioners shall be supervisors of public roads in their respective counties, and each commissioner shall supervise the public roads within his commissioner's precinct once each month. . . .

Revisor's Note
Section 2.009(a), V.A.C.S. Article 6702-1, states that the county commissioners are road supervisors of the county "[e]xcept when road commissioners are employed." The revised law substitutes for that phrase "unless the county adopts an optional method of administering the county roads under Chapter 252." Chapter 252 includes four optional systems for administering the county roads, including the use of road commissioners. Each of those four systems is inconsistent with the assignment of the county commissioners as road supervisors under Section 2.009(a), and the revised law reflects this fact.

Revised Law
Sec. 251.005. COMMISSIONER'S ROAD REPORT. (a) A county commissioner serving as a road supervisor shall make a sworn report to each regular term of the commissioners court showing:

(1) the condition of each road or part of a road and of each culvert and bridge in the commissioner's precinct;

(2) the amount of money held by overseers available to be spent on the roads in the precinct;

(3) the number of mileposts and fingerboards in the precinct defaced or torn down;

(4) any new road that should be opened in the precinct;

(5) any bridges, culverts, or other improvements necessary to place the roads in the precinct in good condition, and the probable cost of the improvements; and
(6) the name of each overseer who has failed to work on the roads or who in any way neglected to perform the overseer's duties.

(b) The report shall be entered in the minutes of the commissioners court to be considered in improving public roads and determining the amount of taxes imposed for public roads.

(c) The report shall be submitted, together with each contract made by the court since its last report for any work on any road, to the grand jury at the first term of the district court occurring after the report is made to the commissioners court.

(V.A.C.S. Art. 6702-1, Secs. 2.009(a) (part), (b), (c).)

Source Law

(a) . . . He shall also make a sworn report to each regular term of the commissioners court held in his county during the year, showing:

(1) the condition of all roads and parts of roads in his precinct;
(2) the condition of all culverts and bridges;
(3) the amount of money remaining in the hands of overseers subject to be expended on the roads within his precinct;
(4) the number of mileposts and fingerboards defaced or torn down;
(5) what, if any, new roads of any kind should be opened in his precinct and what, if any, bridges, culverts, or other improvements are necessary to place the roads in his precinct in good condition and the probable cost of the improvements; and
(6) the name of every overseer who has failed to work on the roads or who in any way neglected to perform his duty.

(b) The report shall be spread on the minutes of the court to be considered in improving public roads and determining the amount of taxes levied for public roads.

(c) The supervisor's report shall be submitted, together with all contracts made by the court since its last report for any work on any road, to the grand jury at the first term of the district court occurring after the report is made to the commissioners court.

Reviser's Note

Section 2.009, V.A.C.S. Article 6702-1, from which the source law to this section is taken, applies only to a county in which the commissioners serve as road supervisors. Accordingly, this section is drafted to apply only to those counties.
Sec. 251.006. OBTAINING MATERIAL FOR PUBLIC ROADS. (a) The commissioners court of a county may condemn material necessary to construct, repair, or maintain public roads if the owner of the material rejects the price that the court determines to be a fair price.

(b) The commissioners court shall appoint commissioners to condemn the material. A condemnation commissioner is entitled to a fee of $2 for each day of service. The fee shall be paid on order of the commissioners court from the same fund from which payment for the materials is made.

(c) The condemnation commissioners shall hold a hearing to set a fair and reasonable value for the material according to the current method for pricing or valuing the material. The compensation awarded by the condemnation commissioners for the material shall be paid to the owner of the material or deposited with the county treasurer to the owner's credit. When the payment or deposit is made, the county has the right to enter on and use the material.

(d) If the owner of the material or the county is not satisfied with the compensation awarded, the owner or county may appeal the award in the manner provided for appeal of a condemnation case.

(e) Payment for material needed for the general system of county roads shall be made from the county road and bridge fund or from the proceeds of any county bond issue. Payment for material to be used for the benefit of a defined district or political subdivision of the county shall be made from the district or subdivision's funds derived from the sale of bonds or the collection of special taxes. (V.A.C.S. Art. 6702-1, Secs. 2.002(c), (d).)

Source Law

(c) Under the following procedure, the commissioners court may condemn the material necessary to build, repair, or maintain public roads, but only if
the owner of the material rejects what the court
determines to be a fair price:
(1) commissioners appointed by the court
to condemn the materials shall hold a hearing and fix a
fair and reasonable value for the material based on the
current method for pricing or valuing the material;
(2) compensation awarded by the
commissioners for material shall be paid to the owner
or deposited with the county treasurer to the credit of
the owner, and when so paid or deposited the county
shall have the right to enter on and use the material;
if the owner or the county is not satisfied with the
compensation awarded, the owner or the county may
appeal as in condemnation cases; and
(3) the commissioners appointed to condemn
the property are entitled to receive $2 for each day
they may be involved in condemning the material
involved, to be paid out of the same fund from which
payment is made for materials on the order of the
commissioners court.
(d) If material is needed for the general system
of county highways, payment shall be made from the road
and bridge fund or from the proceeds of any county
issue of bonds. If material is to be used for the
benefit of any defined district or political
subdivision of the county, the cost of the material
shall be paid from that district or subdivision's funds
arising through the sale of bonds or the collection of
special taxes.

Reviser's Note
Section 2.002(d), V.A.C.S. Article 6702-1, refers
to the system of "county highways." The revised law
substitutes "county roads" for "county highways"
because the terms are synonymous in the context of this
section and "county road" is the general term used in
this subtitle of the revised law.

Revised Law
Sec. 251.007. CLASSIFICATION OF COUNTY ROADS. (a) The
commissioners court of each county shall classify each public road
in the county as a first-class, second-class, or third-class road.
(b) A county may not reduce a first-class or second-class
road to a lower class.
(c) A first-class road must be not less than 40 feet wide or
more than 100 feet wide. The causeway on a first-class road must
be at least 16 feet wide.
(d) A second-class road and a causeway on a second-class
road must meet the requirements applicable to a first-class road.
(e) A third-class road must meet the requirements applicable to a first-class road, except that:

(1) a third-class road may be less than 40 but not less than 20 feet wide; and

(2) the causeway on a third-class road may be less than 16 but not less than 12 feet wide. (V.A.C.S. Art. 6702-1, Secs. 2.007(a) (part), (c).)

Source Law

Sec. 2.007. (a) The commissioners court shall classify all public roads in their counties as follows:

(1) first-class roads shall be . . . not less than 40 feet nor more than 100 feet wide; . . . and all causeways made at least 16 feet wide;

(2) second-class roads shall conform to the requirements of first-class roads except that they may not be less than 40 feet wide;

(3) third-class roads may not be less than 20 feet wide and the causeway not less than 12 feet wide; otherwise they shall conform to the requirements of first-class roads.

(c) A first-class or second-class road may not be reduced to a lower class.

Revised Law

Sec. 251.008. GENERAL REQUIREMENTS FOR COUNTY ROADS. A public road of any class must:

(1) be clear of all obstructions;

(2) have all stumps over six inches in diameter cut down to not more than six inches of the surface and rounded off; and

(3) have all stumps of six inches or less in diameter cut smooth with the ground. (V.A.C.S. Art. 6702-1, Sec. 2.007(a) (part).)
Revised Law

Sec. 251.009. CATTLE GUARDS ON COUNTY ROADS IN CERTAIN COUNTIES; OFFENSE. (a) The commissioners court of a county with a population of less than 60,000 may authorize the construction of cattle guards on a county road of any class. A cattle guard authorized under this section is not an obstruction of the road.

(b) The commissioners court shall establish plans and specifications for a standard cattle guard to be used on the county roads. The plans and specifications must be plainly written and supplemented by drawings as necessary and must be available for inspection by the residents of the county.

(c) A person who constructs a cattle guard on a county road that does not conform to the plans and specifications established under Subsection (b) commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not less than $5 or more than $100.

(d) The commissioners court may construct a cattle guard on a county road of any class and may pay for its construction from the county road and bridge fund if the court finds that the construction of the cattle guard is in the best interest of the residents of the county. (V.A.C.S. Art. 6702-1, Secs. 2.007(b), (d), (e).)

Source Law

(b) Any county in this state containing a population of less than 60,000 inhabitants according to the most recent federal census may by a majority vote of the commissioners court authorize the construction of cattle guards across any or all of the first-class, second-class, or third-class roads in said county, and the cattle guards may not be classed or considered as obstructions on the roads.

(d) The commissioners court of any county coming under this section shall provide proper plans and specifications for a standard cattle guard to be used on the roads of the county. The plans and specifications shall be plainly written, supplemented by drawings as may be necessary, and shall be available to the inspection of the citizens of the county. After the commissioners court provides the proper plans and specifications for a standard cattle guard to be used on the roads of the county, any person constructing any cattle guard that is not in accordance with the approved plans and specifications prepared by the
commissioners court is guilty of obstructing the roads
of the county, and the person responsible for the
improper construction of the cattle guards commits a
misdemeanor and shall be fined not less than $5 nor
more than $100.

(e) The commissioners court of any county coming
under the provisions of this section may construct
cattle guards on the first-class, second-class, and
third-class roads of the county and may pay for the
construction out of the road and bridge funds of the
county when in its judgment it believes the
construction of the cattle guards to be in the best
interest of the citizens of the county.

Reviser's Note

(1) Section 2.007(b), V.A.C.S. Article 6702-1,
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 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 2.007(b), V.A.C.S. Article 6702-1,
states that a commissioners court may "by a majority
vote" take a certain action. The revised law omits the
quoted phrase as unnecessary because, unless a law
provides otherwise, every action or decision of a
public body is made by majority vote.

(3) Sections 2.007(d) and (e), V.A.C.S. Article
6702-1, refer to the "citizens" of a county. The
revised law substitutes "residents" for "citizens"
because, in the context of this section, "citizen" and
"resident" are synonymous and "resident" is more
commonly used.

Revised Law

Sec. 251.010. GATES ON THIRD-CLASS AND NEIGHBORHOOD ROADS;
OFFENSES. (a) A person who owns real property on which a
third-class road or a neighborhood road established under Section 251.053 is located for which the right-of-way was obtained without cost to the county may erect a gate across the road when necessary. The person shall place a permanent hitching post and stile block on each side of the gate within 60 feet of the gate. The gate must be:

(1) at least 10 feet wide;
(2) free of obstructions above the gate;
(3) constructed so that opening and shutting the gate will not cause unnecessary delay to a person using the road; and
(4) constructed with a fastening to hold the gate open until a person using the gate passes through it.

(b) The property owner shall keep the gate and the approaches to the gate in good order.

(c) A person who erects a gate across a road specified by Subsection (a) and who wilfully or negligently fails to comply with a requirement of this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not less than $5 or more than $20. Each week that the person fails to comply with this section constitutes a separate offense.

(d) A person who wilfully or negligently leaves open a gate on a road specified by Subsection (a) commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not less than $5 or more than $20. (V.A.C.S. Art. 6702-1, Secs. 2.007(f), (g).)

Source Law

(f) The owners of land across which a third-class or neighborhood road may run, when the right-of-way for the road has been acquired without cost to the county, may erect gates across the road when necessary, the gates to be not less than 10 feet wide and free of obstructions at the top.

(g) Any person placing a gate on or across any third-class road or on or across any road designated by Section 2.006 of this Act shall be required to keep the gate and the approaches to it in good order. The gate shall be not less than 10 feet wide and so constructed as to cause no unnecessary delay to the traveling public in opening and shutting the gate. The person shall provide a fastening to hold the gate open until the passengers go through; the person shall place a
permanent hitching post and stile block on each side of
and within 60 feet of the gate. Any person who places
a gate on or across a third-class road or on or across
any road designated by Section 2.006 and who shall
wilfully or negligently fail to comply with any
requirement of this section commits an offense and
shall be fined not less than $5 nor more than $20 for
each offense, and each week of failure is a separate
offense. Whoever wilfully or negligently leaves open
any gate on or across any third-class road or on or
across any road so designated by Section 2.006 of this
Act commits an offense and shall be fined as previously
provided by this section.

Revisor's Note
Section 2.007(g), V.A.C.S. Article 6702-1, refers
to a road designated under Section 2.006 of that
article. Section 2.006 is codified in this chapter as
Section 251.053, and the revised law is drafted
accordingly.

Revised Law
Sec. 251.011. DETOUR ROADS. (a) The commissioners court of
a county shall establish detour roads for the convenience of the
public when a county road that is not part of the state highway
system must be closed to traffic for road construction. When a
county detour road is in use, the county has the same authority
over the road as over an established public road.

(b) The commissioners court shall:
(1) post all signs necessary for the convenience and
guidance of the public at each end of a county detour road; and
(2) maintain a county detour road so that it is
reasonably adequate for normal traffic requirements. (V.A.C.S.
Arts. 6702-1, Sec. 2.302; 6674o, Secs. 2, 3 (part).)

Source Law
[Art. 6702-1]
Sec. 2.302. The commissioners court has the
responsibility to select and maintain detour roads and
to post all necessary signs when county roads not part
of the state system of highways are under construction
as provided by Chapter 25, Acts of the 41st
Legislature, Regular Session, 1929 (Article 6674o,
Vernon's Texas Civil Statutes).

[Art. 6674o]
Sec. 2. From and after the taking effect of this
Act, it shall be the duty of any County Commissioners' Court in this State wherever construction upon any part of the County System of Public Roads, not parts of the designated State System of Highways, is being carried on and it becomes necessary to close such roads under construction to traffic, to provide for the convenience of the public by the selection and use of a detour road, to be controlled and maintained during the period of such county use under like conditions of authority as exercised over an established public road.

Sec. 3. In all provisions for detour roads by County Commissioners' Courts it shall be the duty of the . . . Commissioners' Court . . . to post all necessary signboards for the convenience and guidance of the public at each end of such detour road, and provide with reasonable adequacy for the maintenance of the detour roads in a manner to respond to normal traffic requirements passing over . . . such county roads.

Revised Law

Sec. 251.012. COUNTY AUTHORITY IN MUNICIPALITY. (a) With the approval of the governing body of a municipality, the commissioners court of a county may spend county money to finance the construction, improvement, maintenance, or repair of a street or alley in the county that is located in the municipality, including the provision of:

(1) necessary roadbed preparation or material;
(2) paving or other hard covering of the street or alley; or
(3) curbs, gutters, bridges, or drainage facilities.

(b) County work authorized by this section may be done or financed:

(1) by the county through the use of county equipment;
(2) by an independent contractor with whom the county has contracted;
(3) by the county as an independent contractor with the municipality; or
(4) by the municipality, with the municipality to be reimbursed by the county.

(c) A county acting under this section has, to the extent practicable, the same powers and duties relating to imposing assessments for the construction, improvement, maintenance, or
repair as the municipality would have if the municipality were to
finance and undertake that activity.

(d) A county acting under Subsection (b) may not spend bond
proceeds for the construction of a new road in a municipality
unless the construction is specifically authorized in the election
approving the issuance of the bonds, regardless of the source of
the money used to acquire the equipment used to construct the road.

(e) The authority granted by this section is in addition to
the authority of a county provided by a local road law. (V.A.C.S.
Art. 6702-1, Sec. 2.010.)

Source Law

Sec. 2.010. (a) The commissioners court of a
county may expend county funds to finance the
construction, improvement, maintenance, or repair of a
street or alley located in the county within the limits
of an incorporated city or town if the work on the
street or alley is done with the consent and approval
of the governing body of the city or town.

(b) The authority of the county to finance the
construction, improvement, maintenance, or repair of
the street or alley includes the authority to provide
any necessary roadbed preparation or material, paving
or other hard covering of the street or alley, curbing
or guttering, or bridges or drainage facilities.

(c) The construction, improvement, maintenance,
or repair may be done or financed:

(1) by the county through the use of
county equipment; provided, however, that a county
acting under this subsection may not expend bond funds
for the construction of new roads within the
incorporated limits of a city or town unless such
construction is specifically authorized in the election
approving the issuance of such bonds regardless of the
source of the funds used to acquire that equipment;

(2) by an independent contractor with whom
the county has contracted or by the county as an
independent contractor with the city; or

(3) by the city or town, with the city or
town to be reimbursed by the county.

(d) A county acting under this section has, to
the extent practicable, the same powers and duties
regarding the levying of assessments for the
construction, improvement, maintenance, or repair that
the city or town would have if the city or town were to
finance and undertake the construction, improvement,
maintenance, or repair.

(e) The authority granted under this section is
in addition to any authority granted to a county under
the laws of this state or by a local road law and shall
not limit the authority of that county granted under
such laws.
(1) Section 2.010, V.A.C.S. Article 6702-1, refers to an "incorporated city or town." The revised law substitutes the term "municipality" for references to a city or town because that is the term used in the Local Government Code.

(2) Section 2.010(e), V.A.C.S. Article 6702-1, provides that the authority granted under that section is in addition to and does not limit authority granted under state law, including a local road law. The revised law omits the general reference to state law as unnecessary. 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 reference to a local road law is retained to clarify that the local law does not supersede this section in a county covered by the local law.

Revised Law

Sec. 251.013. ROAD NAMES AND ADDRESS NUMBERS. (a) The commissioners court of a county by order may adopt uniform standards for naming public roads located wholly or partly in unincorporated areas of the county and for assigning address numbers to property located in unincorporated areas of the county. The standards apply to any new public road that is established.

(b) The commissioners court of a county by order may adopt a name for a public road located wholly or partly in an unincorporated area of the county and may assign address numbers to property located in an unincorporated area of the county for which there is no established address system.

(c) If an order adopted under this section conflicts with a
municipal ordinance, the municipal ordinance prevails in the
territory in which it is effective.

(d) A commissioners court may adopt an order under this
section only after conducting a public hearing on the proposed
order. The court shall give public notice of the hearing at least
two weeks before the date of the hearing. (V.A.C.S. Art. 6702-1,
Sec. 2.011.)

Source Law

Sec. 2.011. (a) In this section, "road" means
any public road, street, or highway that is entirely or
partially located in an unincorporated area.
(b) The commissioners court of a county may by
order adopt uniform standards for naming roads and
assigning address numbers to property located in
unincorporated areas of the county. The standards are
applicable to any new roads that may be established.
(c) The commissioners court of a county may by
order adopt names for roads and assign address numbers
to any property located in unincorporated areas of the
county for which there is no established address
system.
(d) If an order adopted under this section
conflicts with a municipal ordinance, the municipal
ordinance prevails within the geographical area in
which the municipal ordinance is effective.
(e) The commissioners court may adopt an order
under this chapter only after conducting a public
hearing on the proposed order. The court shall provide
at least two weeks' public notice of the hearing.

Revisor's Note

Section 2.011, V.A.C.S. Article 6702-1, refers to
a "public road, street, or highway." The revised law
substitutes "public road" for that phrase. The
reference to "highway" is omitted because under Section
2.001 of V.A.C.S. Article 6702-1, revised in this
chapter as Section 251.002, the term "public road"
includes a public highway. The reference to "street"
is omitted because the general term "public road" as
used in this chapter clearly includes public streets.

Revised Law

Sec. 251.014. COUNTY IMPROVEMENT OF STATE HIGHWAY. The
commissioners court of a county may contract with the department
for the county to carry out a project or activity for the
improvement of a segment of the state highway system if the project
or activity:

(1) is appurtenant to a state highway, including
surveying, making a traffic count, or landscaping or an activity
relating to a drainage facility, driveway, sign, light, or
guardrail; or

(2) involves maintenance of a state highway or
appurtenant facility. (V.A.C.S. Art. 6702-1, Sec. 2.012.)

Source Law
Sec. 2.012. (a) The commissioners court of a
county may contract with the State Department of
Highways and Public Transportation for the improvement
of a segment of the state highway system by the county.
(b) In this section, "improvement" means
projects or activities:
(1) appurtenant to a state highway and
including drainage facilities, surveying, traffic
counts, driveways, landscaping, signs, lights, or
guardrails; or
(2) involving maintenance of state
highways and appurtenant facilities.

Revisor's Note
Section 2.012, V.A.C.S. Article 6702-1, refers to
the "State Department of Highways and Public
Transportation." The revised law substitutes
"department" for the name of the agency because in this
title "department" is defined by Section 201.001 of
this code to mean "Texas Department of Transportation,"
the current name of the former "Texas Department of
Highways and Public Transportation." See the revisor's
note to Section 201.003 of this code.

Revised Law
Sec. 251.015. ASSISTING OTHER GOVERNMENTAL ENTITY. The
commissioners court of a county may use county road equipment,
construction equipment, including trucks, and employees necessary
to operate the equipment to assist another governmental entity on a
project if:
(1) the cost does not exceed $3,000;
(2) the use of the equipment or employees does not interfere with the county's work schedule; and
(3) the county pays only the costs that the county would pay if the county did not assist the governmental entity.

(V.A.C.S. Art. 2352j.)

Source Law

Art. 2352j. A commissioners court of a county may use its road equipment, other construction equipment, including trucks, and employees necessary to operate the equipment to assist another governmental entity on any project so long as the cost does not exceed $3,000 if:
(1) the use of the equipment or employees does not interfere with the county's work schedule; and
(2) the county does not pay any costs related to the use of the equipment or employees that the county would not pay if the assistance were not given to the other governmental entity.

[Sections 251.016-251.050 reserved for expansion]

SUBCHAPTER B. ESTABLISHING AND CLOSING ROADS

Revised Law

Sec. 251.051. GENERAL AUTHORITY OF COMMISSIONERS COURT. (a) The commissioners court of a county shall:
(1) order that public roads be laid out, opened, discontinued, closed, abandoned, vacated, or altered; and
(2) assume control of streets and alleys in a municipality that does not have an active de facto municipal government.

(b) A unanimous vote of the commissioners court is required to:
(1) close, abandon, or vacate a public road; or
(2) alter a public road, except to shorten it from end to end.

(c) The commissioners court of a county may not discontinue a public road until a new road designated by the court as a replacement is ready to replace it.

(d) The commissioners court may not discontinue, close, or
1 abandon an entire first-class or second-class road unless the road
2 has been vacated or unused for at least three years. (V.A.C.S.
3 Art. 6702-1, Sec. 2.002(a).)

Source Law

Sec. 2.002. (a) The commissioners court shall:
(1) order that public roads be laid out,
opened, discontinued, closed, abandoned, vacated, or
altered except that:
(A) a public road may not be
discontinued until a new road designated by the
commissioners court as a replacement road is ready to
replace it;
(B) a public road may not be closed,
abandoned, and vacated, nor may it be altered except to
shorten the distance from end to end, unless the action
to be taken be by unanimous vote of all elected
commissioners; and
(C) an entire first-class or
second-class road may not be discontinued, closed, or
abandoned except on vacation or nonuse for a period of
three years; and
(2) assume control of streets and alleys
in all cities and incorporated towns that have no
active de facto municipal government.

Revisor's Note

Section 2.002(a), V.A.C.S. Article 6702-1, refers
to "cities and incorporated towns." The revised law
substitutes the term "municipality" for that phrase
because that is the term used in the Local Government
Code for those entities.

Revised Law

Sec. 251.052. PUBLIC APPLICATION FOR NEW ROAD OR ROAD
CHANGE. (a) The residents of a precinct may apply for a new road
or a change in an existing road by presenting to the commissioners
court a petition signed by:
(1) eight property owners in the precinct, if the
application is to request a new road or that a road be
discontinued; or
(2) one property owner in the precinct, if the
application is for a change in a road other than discontinuing the
road.
(b) A petition presented under Subsection (a)(1) must
specify the beginning and termination points of the proposed new road or road to be discontinued.

(c) The commissioners court may not grant an order on an application made under this section unless the applicants give notice of their intent to apply by posting, at the courthouse door and at two other places in the vicinity of the affected route, a written notice of their intent for at least 20 days before the date the application is made. (V.A.C.S. Art. 6702-1, Sec. 2.003.)

Source Law
Sec. 2.003. (a) Citizens may apply for a new road or a change in an existing road by presenting to the commissioners court a petition signed by:
(1) eight landowners in the precinct if the request is for a new road or to discontinue an existing road; or
(2) one landowner in the precinct if the request is for a change in a road.
(b) The petition must specify the beginning and termination points of a proposed new road or a road to be discontinued.
(c) Before the commissioners court may grant an order based on an application described by Subsection (a) of this section, the applicants must first give notice of their intent to apply by a written advertisement of their intent posted on the courthouse door and at two other places in the vicinity of the route affected for at least 20 days.

Revisor's Note
Section 2.003(a), V.A.C.S. Article 6702-1, refers to "citizens" of a precinct. The revised law substitutes "residents" for "citizens" because, in the context of this section, the terms are synonymous and "resident" is more commonly used.

Revised Law
Sec. 251.053. NEIGHBORHOOD ROADS. (a) As provided by this section, a commissioners court may declare as a public road:
(1) any line between the locations of any persons;
(2) any section line; or
(3) any practical route that is convenient to property owners while avoiding hills, mountains, or streams through any enclosures.
(b) A person who owns real property to which there is no public road or other public means of access may request that an access road be established connecting the person's real property to the county public road system by making a sworn application to the commissioners court requesting the court to establish the road. The application must:

(1) designate the lines sought to be opened;

(2) include the names and places of residence of the persons that would be affected by the establishment of the road; and

(3) describe why the road is necessary.

(c) After an application is filed, the county clerk shall issue notice to the sheriff or constable commanding that officer to summon each property owner affected by the application. The sheriff or constable shall serve the summons and make a return in the manner in which process is served in a civil action in a justice court. A property owner summoned must appear at the next regular term of the commissioners court if the property owner elects to contest the application.

(d) At a regular term of court following the service of the summons under Subsection (c), the commissioners court may hear evidence as to the truth of the application. If the court determines that the applicants do not have access to their real property and premises, the court may issue an order declaring the lines designated in the application, or other lines established by the court, to be a public road. The court may direct the public road to be opened by the property owners and to remain open for a width of not less than 15 feet or more than 30 feet on each side of a designated line. The marked trees or other objects used to designate the lines or the corners of the survey may not be removed or defaced. Notice of the court's order shall be served immediately on the property owners and a return of the notice made in the manner provided by Subsection (c) for a return under that subsection. A copy of the order shall be filed in the deed records.
in the office of the county clerk.

(e) Damages to property owners incident to the opening of a road under this section shall be assessed by a jury of property owners in the manner provided for other public roads. The county shall pay all costs incurred in connection with the proceedings to open a road under this section.

(f) The commissioners court is not required to maintain a road established under this section using county employees but shall make the road initially suitable for use as an access public road.

(g) In the case of a public road established under this section that involves an enclosure of 1,280 acres or more, a person who for 12 months after the person receives notice of the court's order issued under Subsection (d) fails, neglects, or refuses to leave open the person's real property free from all obstructions for 15 feet on the person's side of the line designated by the order commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $20 for each month that the person fails, neglects, or refuses to do so after the first 12 months after the person receives the notice. (V.A.C.S. Art. 6702-1, Sec. 2.006.)

Source Law

Sec. 2.006. (a) The commissioners court may declare as a public highway any line between different persons or landowners, any section line, or any practicable route (a practicable route being one convenient to landowners while at the same time avoiding hills, mountains, or streams through any and all enclosures), subject to the following conditions.

(b) One or more persons, firms, or corporations, who are landowners into whose land there is no public road or public means of access and who desire an access road connecting their land with the county public road system, may make a sworn application to the commissioners court for an order establishing the road, designating the lines sought to be opened and the names and residences of the persons affected by the proposed access road, and stating the facts that show a necessity for the road.

(c) After the application is filed, the county clerk shall issue a notice to the sheriff or constable commanding him to summon those landowners affected by the application. Those summoned must appear at the next regular term of the commissioners court if they desire to contest the application. The notice shall be
served and returned as in the service of citations in
civil actions in justice courts.

(d) At a regular term of the court after due
service of the notice, the court may hear evidence as
to the truth of the application, and if it appears that
the applicants have no means of access to their land
and premises, it may issue an order declaring the lines
designated in the application or the lines as may be
fixed by the commissioners court to be a public highway
and may direct the public highway to be opened by the
owners and left open for a space of not less than 15
feet or more than 30 feet on each side of a designated
line, but the marked trees and other objects used to
designate the lines and the corners of surveys may not
be removed or defaced. Notice of the order shall be
immediately served on the owners and return of the
notice shall be made as previously provided in this
section. A copy of the order shall be filed in the
deed records in the office of the county clerk of the
county.

(e) The damages to the landowners shall be
assessed by a jury of landowners, as for other public
roads, and all costs attending the proceedings in
opening the road shall be paid by the county. The
commissioners court is not required to keep the road
worked by the roadhands as in the case of other public
roads but shall place the roads in the first instance
in condition for use as access public roads.

(f) Once the commissioners court has designated
a public road under this section that involves an
enclosure of 1280 acres or more, a person or owner who
fails, neglects, or refuses for 12 months after legal
notice to leave open his land free from all
obstructions for 15 feet on his side of the designated
line commits an offense and shall be fined not more
than $20 per month after the first 12 months.

Revisor's Note

(1) Section 2.006, V.A.C.S. Article 6702-1,
refers to the establishment of a "public highway." The
revised law substitutes "public road" for "public
highway" because the term "public road" is defined in
Section 2.001 of V.A.C.S. Article 6702-1, revised as
Section 251.002 of this chapter, to include "public
highway," and "public road" is the general term used
throughout this subtitle of the revised law relating to
county roads.

(2) Section 2.006(b), V.A.C.S. Article 6702-1,
refers to "persons, firms, or corporations" that own
land. The references to "firms" and "corporations" are
omitted from the revised law because under Section
311.005(2), Government Code (Code Construction Act),

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"person" is defined to include a corporation or any other legal entity. That definition applies to the revised law.

Revised Law
Sec. 251.054. LAYING OUT NEW ROADS BY JURY OF VIEW. (a) A new road ordered by the commissioners court of a county must be laid out by a jury of view consisting of five property owners appointed by the commissioners court. The jury of view shall lay out the road to the greatest advantage of the public and shall survey and describe the road. The commissioners court may order the county surveyor to cooperate with the jury. The jury shall make a report of its proceedings, including its field notes, survey, or other description of the road, to the court at its next term after the jury has completed its duties.

(b) Not later than the 10th day after the date the commissioners court appoints a jury of view, the clerk of the court shall prepare and deliver to the sheriff two copies of the appointing order, endorsed with the date of that order, for each person appointed. Not later than the 20th day after the date the sheriff receives the copies, the sheriff shall serve one copy of the order on each person appointed in person or by leaving it at the person's usual place of residence. The sheriff shall make the return of service to the clerk on the duplicate copy, stating the date and manner of service or the reason that service was not completed, as applicable.

(c) A person summoned as a juror of view who fails or refuses to perform the service required by law as a juror is liable to the county for a fine of $10. The fine may be recovered by the county attorney or district attorney through a judgment obtained in the name of the county.

(d) Before assuming the duties of a juror of view, each person appointed must take the following oath: "I, ________, do solemnly swear that I will lay out the road now directed to be laid..."
out by the order to us directed from the commissioners court, according to law, without favor or affection, malice or hatred, to the best of my skill and knowledge. So help me God."

(e) The jury of view shall issue a written notice of the time at which it will lay out the road or assess damages incidental to the opening of the road. Not later than the fifth day before the date set out in the notice for action by the jury, the notice must be served on each property owner, or the property owner's agent or attorney, through whose real property the road may pass. Notice to a property owner who is not a resident of the county may be given by publication of the notice in a newspaper of circulation in the county once a week for four consecutive weeks before the road is established. Cost of publication shall be paid as directed by order of the commissioners court.

(f) At or before the time set out in the notice for action by the jury of view, a property owner may present to the jury a written statement of the damages claimed by the property owner incidental to the opening of the road. The jury shall assess the damages incurred by each property owner and return the assessment and the statement of damages claimed by the property owner with the jury's report. If the commissioners court approves the report and orders the road to be opened, it shall consider the jury's assessment of damages and the property owner's statement and allow the property owner just damages and adequate compensation for the real property taken. If no objection is made to the jury's report and the court considers the road sufficiently important, the court may take action to open the road after the court:

(1) makes payment of any compensation allowed to property owners or secures a special deposit with the county treasurer to the property owners for any compensation allowed; and
(2) notifies the property owners of the payment or deposit.

(g) A property owner may appeal the assessment of damages in the manner provided for an appeal from a justice court. An appeal
is limited to the issue of the amount of damages incurred by the property owner and may not prevent the opening of the road.

(V.A.C.S. Art. 6702-1, Sec. 2.004.)

Sec. 2.004. (a) New roads ordered by the commissioners court must be laid out by a jury of view, appointed by the court and consisting of five landowners. The court may order the cooperation of the county surveyor. The jury of view shall lay out, survey, and describe the road to the greatest advantage of the public and make a written report containing the field notes, survey or description of the road, and the jury's proceedings to the next term of the court.

(b) When juries of view are appointed, the clerk of the court shall make out and deliver to the sheriff duplicate copies of the appointing order not later than the 10th day after the day the appointment was made, endorsing on those copies the date of the order. The sheriff shall serve the order on each juror in person or by leaving one of the copies at the appointee's usual place of abode. The sheriff shall make the service not later than the 20th day after the day he receives the copies and shall make his return to the clerk on the duplicate copies, stating the date and manner of service or the cause of his failure to make the service. Any person summoned as a juror of view who fails or refuses to perform the service required of him by law as a juror forfeits and shall pay for each failure the sum of $10, to be recovered by judgment on motion of the district or county attorney in the name of the county.

(c) The jurors shall first take the following oath: "I, , do solemnly swear that I will lay out the road now directed to be laid out by the order to us directed from the commissioners court, according to law, without favor or affection, malice or hatred, to the best of my skill and knowledge. So help me God."

(d) The jury shall issue a written notice of the time when they will proceed to lay out the road or when they will assess the damages incidental to the opening of the road. The notice shall be served on each landowner, his agent, or attorney, through whose land the road may run, not later than the fifth day before the day set in the notice. If the owner is a nonresident of the county, the notice may be given by publication in a newspaper published in the county. The notice must be published once a week for four consecutive weeks, and the road may be established after four weeks' publication. The cost of publishing shall be paid as directed by the judgment of the court.

(e) At the time stated in the notice or previous to that time, the owner may present to the jury a written statement of the damages claimed by him, incidental to the opening of the road, and the jury shall proceed to assess the damages, returning its assessment and the claimant's statement with its report. If the commissioners court approves the report and orders the road to be opened, it shall consider the assessment and damages by the jury and the claimant's statement and allow to the owner just damages and adequate compensation for the land taken. When the damages and compensation are paid or secured by special
deposit with the county treasurer to the credit of the
owner and after notice of the payment or deposit to the
owner, and if no objection is made to the jury's
report, the court may proceed to have the road opened,
if it is considered to be of sufficient importance.
The owner may appeal from the assessment as in cases of
appeal from judgment of justice courts, but the appeal
shall not prevent the road from being opened, but shall
be only to fix the amount of damages.

Revised Law
Sec. 251.055. EXTENDING FARM-TO-MARKET ROAD IN ADJOINING
COUNTY. A county that determines that it would significantly
benefit from the extension of a farm-to-market road in an adjoining
county may contract with the adjoining county for the extension and
agree to pay all or part of the cost that the adjoining county
necessarily incurs in extending the road. (V.A.C.S. Art. 6702-2.)

Source Law
Art. 6702-2. If a county finds that a
significant benefit to the county would occur if a
farm-to-market road in an adjoining county were
extended, the county may contract with the adjoining
county to pay all or a part of the expenses that the
adjoining county necessarily incurs in relation to the
extension of the road.

Revised Law
Sec. 251.056. ROADS ACROSS PUBLIC REAL PROPERTY. (a) A
public road may not be opened across real property owned and used
or intended for use for public purposes by a state institution and
not subject to sale under the general law of this state without the
consent of the governing body of the institution and the approval
of the governor.

(b) The authority in charge of real property described by
Subsection (a) may close a road opened on that real property before
September 1, 1925, if the authority considers it necessary to
protect the interests of the state. An institution that closes a
road under this subsection shall compensate the county in which the
real property is located in an amount equal to the amount paid by
the county to condemn the real property, as shown by the records of
the commissioners court, together with eight percent interest.
Sec. 2.005. A public road may not be opened across land owned and used or intended for actual use by the state, educational, eleemosynary, or other public state institutions for public purposes and not subject to sale under the general laws of the state, without the consent of the trustees of the institution and the approval of the governor. The roads opened before September 1, 1925, across the land may be closed by the authorities in charge of the land whenever they consider it necessary to protect the interests of the state, on repayment to the county where the land is situated, with eight percent interest, the amount actually paid out by the county for the condemnation of the land as shown by the records of the commissioners court.

Revisor's Note
Section 2.005, V.A.C.S. Article 6702-1, refers to "state, educational, eleemosynary, or other public state institutions." The revised law omits the references to "educational" and "eleemosynary" as unnecessary because those institutions are included in the term "state institution." The reference to "public" is omitted as unnecessary because a state institution is a public institution.

Revised Law
Sec. 251.057. ABANDONMENT OF COUNTY ROAD. (a) A county road is abandoned when its use has become so infrequent that one or more adjoining property owners have enclosed the road with a fence continuously for at least 20 years. The abandoned road may be reestablished as a public road only in the manner provided for establishing a new road.

(b) This section does not apply to:

(1) a road to a cemetery; or

(2) an access road that is reasonably necessary to reach adjoining real property. (V.A.C.S. Art. 6702-1, Sec. 2.008.)

Source Law
Sec. 2.008. (a) Whenever the use of a county road has become so infrequent that the adjoining
landowner or landowners have enclosed the road with a fence and the road has been continuously under fence for a period of 20 years or more, the public has no further easement or right to use the road unless and until the road is reestablished in the same manner as required for the establishment of a new road.

(b) This section does not apply to roads to a cemetery or access roads reasonably necessary to reach adjoining land.

Revisor's Note

Section 2.008(a), V.A.C.S. Article 6702-1, states that "the public has no further easement or right to use" certain roads. The revised law replaces that phrase with a statement that a road is "abandoned" because Section 2.002(f), V.A.C.S. Article 6702-1, revised in Section 251.001 of this chapter, is defined to mean substantially the same thing.

Revised Law

Sec. 251.058. CLOSING, ABANDONING, AND VACATING PUBLIC ROAD.

(a) A property owner may not enjoin the entry or enforcement of an order of a commissioners court, acting at the request of any person or on its own initiative, to close, abandon, and vacate a public road or portion of a public road unless the property owner is entitled to an injunction because:

(1) the person owns property that abuts the portion of the road being closed, abandoned, and vacated; or

(2) the portion of the road being closed, abandoned, and vacated provides the only ingress to or egress from the person's property.

(b) Title to a public road or portion of a public road that is closed, abandoned, and vacated to the center line of the road vests on the date the order is signed by the county judge in the owner of the property that abuts the portion of the road being closed, abandoned, and vacated. A copy of the order shall be filed in the deed records of the county and serves as the official instrument of conveyance from the county to the owner of the abutting property.
(c) This section does not deprive a person whose property abuts the road at a point other than the portion of the road being closed, abandoned, and vacated of a right to seek compensation for damages caused by:

(1) any depreciation in the value of the property; or

(2) any impairment to the property owner's right of ingress to or egress from the property. (V.A.C.S. Art. 6702-1, Sec. 2.002(e).)

Source Law

(e) If a commissioners court, acting either upon the request of one or more parties or on its own initiative, by order closes, abandons, and vacates a public road or part thereof, no property owner shall be entitled to enjoin the entry or enforcement of said order unless the property owner might otherwise be entitled to said injunctive relief because the property of such owner abuts the portion of the road being closed, abandoned, and vacated or because ingress or egress to such owner's property is only available by use of said portion of the subject road; provided, however, this subsection shall not deprive a property owner whose property abuts the subject road at a point other than the portion of the road being closed, abandoned, and vacated of any right to seek damages, if any, proximately caused by any depreciation in the value of the owner's property or by any impairment of the owner's right of ingress and egress to the owner's property. Title to the public road or part thereof that is closed, abandoned, and vacated and that abuts an owner's property, to the center line of the road, vests, on the date the order is signed by the county judge, in such abutting property owner. A copy of the order shall be filed of record in the deed records of the county and shall act as the official instrument of conveyance from the county to the abutting property owner.

[Sections 251.059-251.080 reserved for expansion]
Sec. 2.201. The commissioners courts have authority to cause all necessary bridges to be built and kept in repair in their respective counties and to make necessary appropriations of money of the counties for that purpose.

Sec. 251.082. ERECTION OF JOINT COUNTY BRIDGES. On equitable terms agreed to by the commissioners courts of the counties, two or more counties jointly may erect a bridge over a stream that forms the boundary between counties or at any other location at which the counties choose to erect a bridge. (V.A.C.S. Art. 6702-1, Sec. 2.203.)

Sec. 2.203. If any stream constitutes in whole or in part the boundary line between two or more counties or if two or more counties are jointly interested in the construction of a bridge, whether over a stream or elsewhere, the counties may jointly erect bridges on equitable terms that the commissioners court of each county may agree on.

Sec. 251.083. ERECTING AND MAINTAINING BRIDGE IN MUNICIPALITY. (a) The commissioners court of a county may erect a bridge in a municipality in the manner authorized by law for the erection of a bridge outside a municipality.

(b) The commissioners court and the governing body of the municipality may agree to erect the bridge jointly. The county or the municipality may issue bonds to pay its proportionate share of any resulting debt.

(c) The commissioners court of a county that owns a bridge located in a municipality shall maintain the bridge in good condition. The duty imposed by this subsection does not affect the municipality's liability for an injury caused by a defective condition of the bridge. (V.A.C.S. Arts. 2356, 2357.)

Art. 2356. Said court may erect bridges within the corporate limits of any city or town to the same
extent and under the same conditions now prescribed by law for the construction of bridges outside the limits of any city or town. Said court and the governing body of any city or town may co-operate in the erection of a bridge within the corporate limits of a city or town, and jointly erect such bridge upon terms and conditions mutually agreed upon; and either or both the city and county may issue its bonds to pay its proportionate part of the debt by complying with the requirements of the law regulating the issuance of bonds by counties and cities and towns.

Art. 2357. The commissioners court of counties owning bridges, situated within the corporate limits of cities and towns, shall keep the same in repair. This article shall not affect or diminish the liability of town and city corporations for injuries caused by defective condition of such bridges situated within the city limits.

Revisor's Note

(1) V.A.C.S. Articles 2356 and 2357 refer to "city" and "town." The revised law substitutes the term "municipality" for "city or town" because that is the term used in the Local Government Code.

(2) V.A.C.S. Article 2356 refers to "[s]aid court." The revised law substitutes "commissioners court" based on the original statute, prior to the 1925 codification, added by Section 1, Chapter 107, Acts of the 24th Legislature, 1895, which specifies the "commissioners court."

(3) V.A.C.S. Article 2356 provides that a county or municipality may issue bonds "by complying with the requirements of the law regulating the issuance of bonds by counties and cities and towns." The revised law omits the quoted phrase as unnecessary because the general provisions regulating the issuance of bonds apply whenever a county or municipality is authorized to issue bonds, whether or not the statute authorizing issuance makes reference to those provisions.

[Sections 251.084-251.100 reserved for expansion]
SUBCHAPTER D. ACQUISITION OF
RIGHT-OF-WAY FOR COUNTY ROADS

Revised Law
Sec. 251.101. CONDEMNATION FOR COUNTY ROAD IN MUNICIPALITY.
(a) A county may exercise the power of eminent domain in a
municipality with the prior consent of the governing body of the
municipality to condemn and acquire real property, a right-of-way,
or an easement in public or private real property that the
commissioners court determines is necessary or convenient to any
road that forms or will form a connecting link in the county road
system or in a state highway.
(b) This section does not authorize the condemnation of
property used for cemetery purposes.
(c) A condemnation proceeding under this section must be
instituted under the direction of the commissioners court and in
the name of the county. The procedure established by Chapter 21,
Property Code, governs condemnation under this section.
(d) An appeal from the finding and assessment of damages by
the condemnation commissioners may not suspend work by the county
in connection with which the real property, right-of-way, or
easement is sought to be acquired. In an appeal, the county is not
required to give a bond for costs or other purposes. (V.A.C.S.
Art. 6702-1, Sec. 4.302.)

Source Law
Sec. 4.302. (a) The right of eminent domain
within the boundaries of a municipality with prior
consent of the governing body of the municipality is
conferred on counties of the state for the purpose of
condemning and acquiring land, right-of-way, or
easement in land, private or public, except property
used for cemetery purposes, where the land,
right-of-way, or easement is in the judgment of the
commissioners court of the county necessary or
convenient to any road that forms or will form a
connecting link in the county road system or a
connecting link in a state highway.
(b) All condemnation proceedings shall be
instituted under the direction of the commissioners
court and in the name of the county, and the procedure
shall be the same as that set out in Chapter 21,
Property Code, as amended. Appeal from the finding and
assessment of damages by the commissioners appointed
for that purpose may not suspend work by the county in
connection with which the land, right-of-way, or
easement is sought to be acquired. In case of appeal,
counties may not be required to give a bond for costs
or other purposes.

Revised Law

Sec. 251.102. COST OF RELOCATING OR ADJUSTING UTILITY
FACILITY. A county shall include the cost of relocating or
adjusting an eligible utility facility in the expense of
right-of-way acquisition. (V.A.C.S. Art. 6702-1, Sec. 4.303.)

Source Law

Sec. 4.303. The county should include the cost
of relocating or adjusting eligible utility facilities
in the expense of right-of-way acquisition.

Revised Law

Sec. 251.103. RELOCATING WATER LINE. A county may pay for
relocating a water line owned by a water control and improvement
district if:

(1) the relocation is necessary to complete
construction or improvement of a farm-to-market road; and
(2) the district agrees to pay the county for the
relocation costs:

(A) within 20 years; and
(B) with interest at a rate equal to the rate
paid by the county on its road and bridge fund time warrants.

(V.A.C.S. Art. 1581f.)

Source Law

Art. 1581f. The counties of the State of Texas
are hereby authorized to pay for the relocation of
water lines owned by water control and improvement
districts when such relocation is necessary to complete
the construction or improvement of Farm-to-Market Roads
as defined by Subsection 4-b of Article XX of Chapter
184, Acts of the Forty-seventh Legislature, Regular
Session, 1941, as amended, provided the water control
and improvement district which owns the water lines to
be relocated agrees to repay the county for the cost of
relocating the water lines within twenty (20) years
with interest thereon at a rate equal to that paid by
the county on their Road and Bridge Fund time warrants.
Revisor's Note

V.A.C.S. Article 1581f refers to a farm-to-market road as defined by Subsection 4-b, Article XX, Chapter 184, Acts of the 47th Legislature, Regular Session, 1941 (Article 7083a, Vernon's Texas Civil Statutes).

V.A.C.S. Article 7083a was repealed by Section 9(i)(1), Chapter 752, Acts of the 67th Legislature, Regular Session, 1981. Accordingly, the revised law omits the cross-reference.

[Sections 251.104-251.150 reserved for expansion]

SUBCHAPTER E. COUNTY TRAFFIC REGULATIONS

Revised Law

Sec. 251.151. AUTHORITY OF COMMISSIONERS COURT. The commissioners court of a county may regulate traffic on a county road or on real property owned by the county that is under the jurisdiction of the commissioners court. (V.A.C.S. Art. 6702-1, Sec. 2.301(a)(1).)

Source Law

Sec. 2.301. (a)(1) The commissioners court of any county may regulate and restrict traffic on county roads and on other county-owned land under its jurisdiction.

Revisor's Note

Sec. 2.301(a)(1), V.A.C.S. Article 6702-1, provides that the commissioners court may "regulate and restrict" traffic. The revised law omits "restrict" because "restrict" is included within the meaning of "regulate."

Revised Law

Sec. 251.152. PUBLIC HEARING REQUIRED. (a) Except as provided by Section 251.159, before the commissioners court may issue a traffic regulation under this subchapter, the commissioners court must hold a public hearing on the proposed regulation.
(b) The commissioners court shall publish notice of the hearing in a newspaper of general circulation in the county. The notice must be published not later than the seventh or earlier than the 30th day before the date of the hearing. (V.A.C.S. Art. 6702-1, Sec. 2.301(a)(2).)

Source Law

(2) Except as provided by Subdivision (3) of this subsection, the commissioners court shall hold a public hearing before issuing any traffic regulation under this Act. The court shall give advance notice of the proposed regulation by publishing notice of the hearing in a newspaper of general circulation in the county. The notice must be published not later than the seventh day or earlier than the 30th day before the day of the hearing.

Revisor's Note

Section 2.301(a)(2), V.A.C.S. Article 6702-1, refers to the adoption of county traffic regulations under "this Act." In the revised law, the county's authority to adopt traffic regulations is found, for the most part, in this subchapter. The revised law is drafted accordingly to refer to "this subchapter" in place of "this Act."

Revised Law

Sec. 251.153. LOAD LIMITS ON COUNTY ROADS AND BRIDGES. (a) The commissioners court of a county may establish load limits for any county road or bridge.

(b) The commissioners court may authorize a county traffic officer, sheriff, deputy sheriff, constable, or deputy constable to weigh a vehicle to ascertain whether the vehicle's load exceeds the limit prescribed by the commissioners court. (V.A.C.S. Art. 6702-1, Sec. 2.301(b)(2).)

Source Law

(2) The commissioners court may establish load limits for any road or bridge and may authorize the county traffic officer, if one or more officers have been appointed, or any sheriff, deputy sheriff, constable, or deputy constable to weigh vehicles for the purpose of ascertaining whether a vehicle is loaded
in excess of the prescribed limit.

Revised Law
Sec. 251.154. MAXIMUM REASONABLE AND PRUDENT SPEEDS ON COUNTY ROADS. (a) The commissioners court of a county, by order entered on the minutes of the court, may determine and set a maximum reasonable and prudent speed for a vehicle travelling on any segment of a county road, including a road or highway intersection, railroad grade crossing, curve, or hill.

(b) In determining the maximum reasonable and prudent speed, the commissioners court shall consider all circumstances on the affected segment of the road, including the width and condition of the road surface and the usual traffic on the road.

(c) The maximum reasonable and prudent speed set by the commissioners court under this section may be lower than the maximum speed set by law for a vehicle travelling on a public highway.

(d) A speed limit set by the commissioners court under this section is effective when appropriate signs giving notice of the speed limit are installed on the affected segment of the county road. (V.A.C.S. Art. 6702-1, Sec. 2.301(b)(1).)

Source Law
(b)(1) The commissioners court may determine and fix the maximum, reasonable, and prudent speed at any road or highway intersection, railroad grade crossing, curve, or hill or on any other part of a county road slower than the maximum fixed by law for public highways. The court shall take into consideration the width and condition of the surface of the road and other circumstances on the affected portion of the road as well as the usual traffic on the road. If the commissioners court of any county determines and fixes the maximum rate of speed at any point on any county road at a slower rate than the maximum fixed by law for public highways and declares the maximum, reasonable, and prudent speed limit by proper order of the court entered on its minutes, the limit becomes effective and operative at that point on the road when appropriate signs giving notice of the speed limit are erected under order of the court for that portion of the road.

Revised Law
Sec. 251.155. RESTRICTED TRAFFIC ZONES. (a) The
commissioners court of a county may adopt regulations establishing
a system of traffic control devices in restricted traffic zones on
property described by Section 251.151.

(b) A system of traffic control devices adopted under this
section must conform to the manual and specifications of the Texas
Department of Transportation.

(c) The commissioners court by order entered on its minutes
may install and maintain on property to which this section applies
any traffic signal light, stop sign, or no-parking sign that the
court considers necessary for public safety. (V.A.C.S.
Art. 6702-1, Sec. 2.301(c).)

Source Law
(c) The commissioners court may adopt
regulations consistent with this section for
establishment of a system of traffic control devices
within restricted traffic zones established on county
roads and on any other property owned by the county and
located in its jurisdiction. The system shall conform
to the State Department of Highways and Public
Transportation manual and specifications. The court
may under an order entered on its minutes place, erect,
install, and maintain within traffic zones on county
roads and on any other property owned by it traffic
signal lights, stop signs, and no-parking signs as it
considers necessary for public safety.

Revisor's Note
Sec. 2.301(c), V.A.C.S. Article 6702-1, refers to
"county roads and . . . other county property owned by
the county and located in its jurisdiction." The
revised law omits the quoted provision and substitutes
a cross-reference to Section 251.151 of this code,
which contains the substance of the omitted provision.

Revised Law
Sec. 251.156. PARKING RESTRICTIONS. The commissioners court
of a county by order may have signs installed that prohibit or
restrict the stopping, standing, or parking of a vehicle in a
restricted traffic zone on property described by Section 251.151,
if in the opinion of the court the stopping, standing, or parking:
(1) is dangerous to those using the road or property;

or

(2) will unduly interfere with:

(A) the free movement of traffic; or

(B) the necessary control or use of the property. (V.A.C.S. Art. 6702-1, Sec. 2.301(d) (part).)

Source Law

(d) The commissioners court, with respect to roads and any other property owned by the county and located in its jurisdiction, may place signs prohibiting or restricting the stopping, standing, or parking of vehicles within a restricted traffic zone on any road or on any property owned by the county if in the opinion of the commissioners court the stopping, standing, or parking is dangerous to those using the road or the other property owned by the county or if the stopping, standing, or parking of vehicles will unduly interfere with the free movement of traffic or with the necessary control or use of property owned by the county.

Revisor's Note

Sec. 2.301(d), V.A.C.S. Article 6702-1, refers to "county roads and . . . other county property owned by the county and located in its jurisdiction." The revised law omits the quoted provision and substitutes a cross-reference to Section 251.151 of this code, which contains the substance of the omitted provision.

Revised Law

Sec. 251.157. PROHIBITING USE OF ROAD. (a) In this section, "road supervisor" means a person authorized to supervise roads in a county or in a district or precinct of a county.

(b) A road supervisor may prohibit the use of a road or a section of a road under the supervisor's control by any vehicle that will unduly damage the road when:

(1) because of wet weather or recent construction or repairs, the road cannot be safely used without probable serious damage to it; or

(2) a bridge or culvert on the road is unsafe.
(c) Before prohibiting the use of a road under this section, the road supervisor shall post notices that state the maximum load permitted and the time the use of the road is prohibited. The notices must be posted at locations that enable drivers to detour to avoid the restricted road.

(d) The road supervisor may not prohibit the use of a road under this section until a detour has been provided.

(e) If the owner or operator of a vehicle that is prohibited from using a road under this section is aggrieved by the prohibition, the person may file with the county judge of the county in which the restricted road is located a written complaint that sets forth the nature of the grievance. On the filing of the complaint the county judge promptly shall set the issue for a hearing to be held not later than the third day after the date on which the complaint is filed. The county judge shall give to the road supervisor written notice of the date and purpose of each hearing.

(f) The county judge shall hear testimony offered by the parties. On conclusion of the hearing, the county judge shall sustain, revoke, or modify the road supervisor's decision on the restriction. The county judge's judgment is final as to the issues raised. (V.A.C.S. Art. 6702-1, Secs. 2.301(g), (h).)

Source Law

(g) The county commissioner of any precinct, the county road superintendent of any county, or the road supervisor whose road is affected may forbid the use of highways or parts of highways, if from wet weather or recent construction or repairs they cannot be safely used without probable serious damages to the highway or if the bridge or culverts on the highway are unsafe, under the following rules: the officer shall post notices on the highway stating the maximum load permitted and the time the use is prohibited, and the notices shall be posted on the highway in places that will enable the drivers to make detours to avoid the restricted highway or portions of it.

(h) If the owner or operator of any vehicle feels himself aggrieved by an action taken under this subsection, he may complain in writing to the county judge of the county, setting forth the nature of his grievance; if the complaint is filed, the judge shall set the complaint down for a day not later than the third day after the day the complaint is filed and shall give written notice to the county judge of the
day and purpose of the hearing; the judge shall hear
testimony offered by the parties to the complaint and
on conclusion of the hearing shall render judgment
sustaining, revoking, or modifying the order or notice,
and the judgment is final as to the issues raised.

Revisor's Note

(1) The definition of "road supervisor" is added
to the revised law for drafting convenience to
eliminate frequent, unnecessary repetition of the
substance of the definition. The definition in the
revised law replaces the references in Section
2.301(g), V.A.C.S. Article 6702-1, to county
commissioners, road superintendents, and road
supervisors with a general reference to the person
authorized to supervise the road the use of which is to
be prohibited in accordance with the intent of that
section to cover every type of official that supervises
county roads.

(2) Section 2.301(g), V.A.C.S. Article 6702-1,
refers to "highway" and "road" interchangeably. The
revised law refers only to "road" because that is the
general term used in V.A.C.S. Article 6702-1 and
related laws to describe roads constructed and
maintained by a county.

Revised Law

Sec. 251.158. TEMPORARY USE OF COUNTY ROAD FOR FESTIVAL OR
CIVIC EVENT. (a) The commissioners court of a county by order may
permit the temporary use of a county road located in an
unincorporated area of the county for a civic event, including a
festival.

(b) The court by order shall establish procedures for the
temporary diversion of traffic from the road being used for the
event. (V.A.C.S. Art. 6702-1, Sec. 2.301(j).)
Source Law

(j) The commissioners court of a county by order may permit the temporary use of a county road in the unincorporated area of the county for a festival or other civic event. The commissioners court by order shall establish procedures for the temporary diversion of traffic from the road being used for the festival or other civic event.

Revised Law

Sec. 251.159. DELEGATION OF COMMISSIONERS' AUTHORITY. (a) This section applies only to a county with a population of more than 500,000.

(b) The commissioners court of a county may delegate to the county engineer or other county employee any function of the commissioners court under this subchapter, except as provided by Subsection (e). An action of the county engineer or other county employee under this section has the same effect as if the action were an action of the commissioners court.

(c) Before issuing a traffic regulation under this subchapter, the commissioners court, in lieu of publishing notice required by a law other than this subchapter, may give notice of the proposed regulation by posting a conspicuous sign in any location to be affected by the regulation.

(d) The commissioners court is not required to hold a public hearing on the proposed traffic regulation unless a resident of the county requests a public hearing. The request must be in writing and made before the eighth day after the later of:

(1) the date that the sign is posted; or

(2) the date that the notice under Section 251.152 is published.

(e) If a public hearing is requested, the commissioners court may not delegate the duty to hold the hearing. (V.A.C.S. Art. 6702-1, Sec. 2.301(a)(3).)

Source Law

(3) A commissioners court in a county with a population of more than 500,000, according to the most recent federal census, may delegate any function of the commissioners court under this section to the
county engineer or another employee capable of performing the function. The action of the person in carrying out the delegated function has the same effect as if it were the action of the commissioners court. Before issuing a traffic regulation under this Act the commissioners court of such a county, as an alternative to publishing any notice required by law other than this Act, may conspicuously post notice of the proposed regulation by sign at any location affected by the proposed regulation. The commissioners court is not required to hold a public hearing before the regulation is issued unless a resident of the county, in writing, requests the hearing before the eighth day after the later of the date of the publication of the notice, if any, or the date of the posting of the sign. If a hearing is requested, the commissioners court may not delegate the duty to hold the hearing.

Revisor's Note

(1) Section 2.301(a)(3), V.A.C.S. Article 6702-1, 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 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 2.301(a)(3), V.A.C.S. Article 6702-1, authorizes the commissioners court to delegate a function of the court to the county engineer or another employee "capable of performing the function." The revised law omits the quoted provision as unnecessary.

(3) The revised law substitutes "this subchapter" for "this Act" for the reason stated by the reviser's note under Section 251.152 of this code.

Revised Law

Sec. 251.160. LIABILITY OF OWNER OR OPERATOR FOR ROAD DAMAGE. (a) A person who operates or moves a vehicle or other object on a public road or bridge and the owner of the vehicle or
other object are jointly and severally liable for damage sustained
by the road or bridge as a result of the negligent operation or
moving of the vehicle or other object or as a result of the
operation or movement of the vehicle at a time prohibited by the
officials with authority over the road.

(b) The county judge by appropriate legal action may recover
damages for which liability is provided by this section. The
county attorney shall represent the county in an action under this
subsection. Damages collected under this subsection are for the
use of the county to benefit the damaged road or bridge. (V.A.C.S.
Art. 6702-1, Sec. 2.301(i).)

Source Law

(i) The owners, operators, drivers, or movers of
any vehicle, object, or contrivance over a public
highway or bridge are jointly and severally responsible
for all damages that the highway or bridge may sustain
as the result of negligent driving, operating, or
moving of the vehicle or as a result of operating the
vehicle at a time forbidden by the road officials; the
amount of the damages may be recovered in any action at
law by the county judge for the use of the county for
the benefit of the damaged road; the county attorney
shall represent the county in the suit.

Revised Law

Sec. 251.161. VIOLATIONS OF SUBCHAPTER; OFFENSE. (a) A
person commits a misdemeanor offense if the person:

(1) stops, stands, or parks a vehicle in violation of
a restriction stated on a sign installed under Section 251.156;

(2) defaces, injures, knocks down, or removes a sign
or traffic control device installed under an order of the
commissioners court of a county issued under this subchapter;

(3) operates a motor vehicle in violation of an order
of the commissioners court entered under this subchapter; or

(4) otherwise violates this subchapter.

(b) Except as provided by Subsections (c) and (d), an
offense under this section is punishable by a fine not to exceed
$50.

(c) If it is shown on the trial of an offense under this
section that the person has previously been convicted one time of
the offense, the offense is punishable by a fine not to exceed
$200.
(d) If it is shown on the trial of an offense under this
section that the person has previously been convicted two times of
the offense, the offense is punishable by:
(1) a fine not to exceed $500;
(2) confinement in the county jail for a term not to
exceed 60 days; or
(3) both the fine and the confinement. (V.A.C.S.
Art. 6702-1, Secs. 2.301(d) (part), (e), (f).)

Source Law
(d) . . . . The signs shall be erected under an
order of the court, and it is unlawful for any person
to stop, stand, or park any vehicle in violation of the
restrictions stated on the signs.
(e) Any person who shall deface, injure, knock
down, or remove any sign or traffic control device
erected under an order of the commissioners court as
provided by this section commits a misdemeanor.
(f) Any person operating a motor vehicle in
violation of any order of the commissioners court
entered under this section or otherwise violating this
section commits a misdemeanor and shall on conviction
be punished by a fine not exceeding $50 for the first
offense, by a fine not exceeding $200 for the second
offense, and by a fine not exceeding $500 or
imprisonment in the county jail not to exceed 60 days,
or both for each subsequent offense.

Reviser's Note
(End of Subchapter)
V.A.C.S. Article 66740-1 authorizes the State
Highway Commission to prohibit the use of state
highways and certain county authorities to prohibit the
use of county roads. Article 66740-1 was enacted in
1921 and most recently amended in 1929. The revised
law omits that portion of V.A.C.S. Article 66740-1 that
authorizes county authorities to prohibit the use of
county roads as having been impliedly repealed by the
enactment in 1983 of Sections 2.301(g) and (h), County
Road and Bridge Act (Article 6702-1, Vernon's Texas
Civil Statutes). As omitted, the pertinent part of
V.A.C.S. Article 66740-1 reads as follows:

Art. 66740-1. The County Commissioners of any precinct, or County Road Superintendent of any county, or road Supervisor whose road is affected . . . may have the authority by posting notices on the highways or roads under their respective control when from wet weather or recent construction or repairs such cannot be safely used without probable serious damage to same, or when the bridge or culverts on same are unsafe, to forbid the use of such highway or section thereof by any vehicle or loads of such weight or tires of such character as will unduly damage such highway. The notices provided for hereunder shall state the maximum load permitted and the time such use is prohibited and shall be posted upon the highway in such place as will enable the drivers to make detours to avoid the restricted highways or portions thereof; provided no road shall be closed until detours have been provided.

If the owner or operator of any such vehicle feels himself aggrieved by such action, he may complain in writing to the County Judge of such county, setting forth the nature of his grievance. Upon the filing of such complaint the County Judge shall forthwith set down for hearing the issue thus raised for a day certain, not more than three days later, and shall give notice in writing to such official of the day and purpose of each hearing, and at such hearing the County Judge shall hear testimony offered by the parties respectively, and upon conclusion thereof, shall render judgment sustaining, revoking or modifying such order heretofore made by the County Road Superintendent or Road Supervisor . . . and the judgment of the County Judge shall be final as to the issues raised. If upon such hearing the judgment sustains the order of the County Road Superintendent or road Supervisor and it appears that any violation of same has been committed by the complainant since posting such notices, he shall be subject to the same penalty hereinafter provided for such offense as if the same had been committed subsequent to the rendition of such judgment made upon such hearing.

Any party guilty of violating the provisions and directions of any such order or notice of the County Road Superintendent or road Supervisor . . . before or after it has been so approved by such judgment of the County Judge shall be fined not exceeding Two Hundred Dollars.
(1) The primary purpose of a short title is to provide a convenient way of citing a cohesive body of law that deals comprehensively with a subject. The short title to V.A.C.S. Article 6702-1, the County Road and Bridge Act (established by Section 1.001 of that act) is omitted from the revised law because this purpose is no longer served by preserving the short title. Portions of V.A.C.S. Article 6702-1 are revised in this subtitle in distinct chapters according to subject matter. Other statutes that cover related subjects are also included in this subtitle. Portions of V.A.C.S. Article 6702-1 have been transferred to Title 22, Revised Statutes, to be codified at a later date with other statutes governing public securities. In place of the short title, the chapters of the revised law provide a convenient means of citing the related provisions of former V.A.C.S. Article 6702-1.

The omitted provision establishing the short title for V.A.C.S. Article 6702-1 reads:

Art. 6702-1
Sec. 1.001. This Act may be cited as the County Road and Bridge Act.

(2) The revised law omits V.A.C.S. Article 6759, which defines "road" and "work" for purposes of Subdivision 3, Chapter 3, Title 116, Revised Statutes, which until 1985 governed county road superintendents. In 1985, all the other statutes in that subdivision were repealed and replaced by portions of Subchapter B, Chapter 3, V.A.C.S. Article 6702-1, revised in this subtitle of this code. As a result, the definition in V.A.C.S. Article 6759 no longer applies to any law and thus has no effect. The omitted statute reads:

Art. 6759. As used in this subdivision, "road" includes roadbed, ditches, drains, bridges, culverts, and
every part of such road, and "work" and "working" includes the opening and laying out of new roads, widening, constructing, draining, repairing, and everything else that may be done in and about any road.

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CHAPTER 252. SYSTEMS OF COUNTY ROAD ADMINISTRATION

SUBCHAPTER A. EX OFFICIO ROAD COMMISSIONER SYSTEM

Revised Law

Sec. 252.001. ADOPTION OF EX OFFICIO ROAD COMMISSIONER SYSTEM.  (a) The commissioners court of a county may adopt this subchapter by an order made at a regular term of the court when all the members are present.

(b) The commissioners court shall enter the order in its minutes. The order is not required to be in any particular form, and substantial compliance with this section is sufficient.

(c) If the commissioners court adopts this subchapter, Subchapters B, C, and D do not apply to the county. (V.A.C.S. Art. 6702-1, Secs. 3.001(c), 3.004(b).)

Source Law

[Sec. 3.001]  
(c) Subchapters B and C of this chapter do not apply in a county in which the commissioners court acting under Section 3.004 of this Act has adopted this subchapter.

[Sec. 3.004]  
(b) This subchapter applies to a county only if the commissioners court in its judgment considers it advisable and accepts this subchapter by an order of the court made at some regular term of the court when all the members are present. The order shall be entered in the minutes of the court and is not void for want of form. Substantial compliance with this subsection is sufficient.

Revisor's Note

Section 3.001(c), V.A.C.S. Article 6702-1, refers to Subchapters B and C of Chapter 3 of that article. Subchapters B and C of that chapter are codified as Subchapters B, C, and D of this chapter, and the revised law is drafted accordingly.

Revised Law

Sec. 252.002. RELATIONSHIP OF SUBCHAPTER TO OTHER LAW.  If this subchapter conflicts with a general law relating to roads, this subchapter controls. (V.A.C.S. Art. 6702-1, Sec. 3.004(a).)
Sec. 3.004. (a) This subchapter is cumulative of all general laws on the subject of roads, but in case of conflict with those laws, this subchapter controls.

Revisor's Note

The revised law omits as unnecessary the portion of Section 3.004(a), V.A.C.S. Article 6702-1, that relates to the cumulative effect of Subchapter A, Chapter 3, 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.

Revised Law

Sec. 252.003. EX OFFICIO ROAD COMMISSIONERS. A county commissioner is the ex officio road commissioner of the county commissioner's precinct. (V.A.C.S. Art. 6702-1, Sec. 3.001(a) (part).)

Sec. 3.001. (a) In all counties the members of the commissioners court are ex officio road commissioners of their respective precincts . . . .

Sec. 252.004. BOND. (a) Before assuming the duties of an ex officio road commissioner, a county commissioner must execute a bond in the amount of $3,000 payable to the county judge for the use and benefit of the county road and bridge fund. The bond must be conditioned that the member will:

(1) perform the duties required of the ex officio road commissioner by law or by the commissioners court; and

(2) account for the money or other property belonging to the county that comes into the commissioner's possession.
(b) To be effective, the bond must be approved by the county judge. (V.A.C.S. Art. 6702-1, Sec. 3.001(b).)

Source Law

(b) Each commissioner shall first execute a bond of $3,000 payable to and to be approved by the county judge for the use and benefit of the road and bridge fund, conditioned that he will perform all the duties required of him by law or by the commissioners court and that he will account for all money or other property belonging to the county that may come into his possession.

Revised Law

Sec. 252.005. POWERS AND DUTIES OF COMMISSIONERS COURT. (a)
The commissioners court shall adopt a system for laying out, working on, draining, and repairing the public roads.

(b) The commissioners court may purchase vehicles, tools, and machinery necessary for working on public roads and may construct, grade, or otherwise improve a road or bridge by contract in the manner provided by Section 252.213.

(c) The commissioners court may provide reasonable rules and punishment as necessary to require inmates of county jails to work well on public roads and may provide a reward not to exceed $10 to be paid out of the county road and bridge fund for the recapture and delivery of an escaped inmate to be paid to any person other than the person in charge of the inmate at the time of the escape.

(V.A.C.S. Art. 6702-1, Secs. 3.002(a), (b) (part).)

Source Law

Sec. 3.002. (a) The commissioners court shall adopt a system for working, laying out, draining, and repairing the public roads as it considers best, and from time to time the court may change its plan or system of working. The court may purchase teams, tools, and machinery necessary for the working of public roads and may construct, grade, or otherwise improve any road or bridge by contract in the manner provided by Subchapter B of this chapter.

(b) ... The court may provide reasonable regulations and punishment as may be necessary to require the convicts to perform good work and may provide a reward not to exceed $10 to be paid out of the road and bridge fund for the recapture and delivery of any escaped convict to be paid to any person other than the guard or person in charge of the convict at the time of his escape.
Revisor's Note

(1) Section 3.002(a), V.A.C.S. Article 6702-1, authorizes the commissioners court to "from time to time . . . change its plan or system" of constructing and maintaining public roads. The revised law omits this provision as unnecessary because the power to adopt a system for constructing and maintaining public roads includes the power to periodically change the system.

(2) Section 3.002(a) and other provisions of Chapter 3, V.A.C.S. Article 6702-1, revised as this chapter of the revised law, refer to "teams" used to perform road work. The revised law substitutes "vehicles" for "teams" throughout this chapter to modernize the terminology while preserving the intended purpose of the source law.

(3) Section 3.002(a), V.A.C.S. Article 6702-1, authorizes contracts for road work "in the manner provided by Subchapter B" of Chapter 3 of that article. The relevant section in Subchapter B of Chapter 3, Section 3.102(e), is codified in this chapter as Section 252.213, and the revised law is drafted accordingly.

(4) Section 3.002(b), V.A.C.S. Article 6702-1, refers to county "convicts." The revised law substitutes "inmates of county jails" for "convicts" for consistency with the Penal Code.

(5) Section 3.002(b), V.A.C.S. Article 6702-1, refers to the "guard or person in charge of the convict." The reference to "guard" is omitted from the revised law because "guard" is included within the meaning of "person in charge of the convict."

(6) Section 3.002(b), V.A.C.S. Article 6702-1, authorizes a county to provide for the care and
guarding of county inmates working on public roads. That provision is omitted from the revised law as unnecessary because Chapter 511, Government Code, and Chapter 351, Local Government Code, provide comprehensive standards for the care and keeping of jail inmates. The omitted provision reads:

(b) The commissioners court may provide the necessary houses, prisons, clothing, bedding, food, medicine, medical attention, superintendents, and guards for the safe and humane keeping of county convicts working on public roads.

Revised Law
Sec. 252.006. POWERS AND DUTIES OF EX OFFICIO ROAD COMMISSIONERS. (a) Under the direction of the commissioners court, an ex officio road commissioner is responsible for the vehicles, tools, and machinery belonging to the county and placed in the commissioner's control by the court.

(b) Under rules adopted by the commissioners court, an ex officio road commissioner shall direct the:

(1) laying out of new roads;
(2) construction or changing of roads; and
(3) building of bridges.

(c) Subject to authorization by the commissioners court, an ex officio road commissioner may employ persons for positions in the commissioner's precinct to be paid from the county road and bridge fund.

(d) An ex officio road commissioner may discharge any county employee working in the commissioner's precinct who is paid from the county road and bridge fund.

(e) An ex officio road commissioner has the duties of a supervisor of public roads as provided by Sections 251.004 and 251.005.

(f) An ex officio road commissioner shall:

(1) determine the condition of the public roads in the commissioner's precinct;
(2) determine the character of work to be done on the roads; and

(3) direct the manner of grading, draining, or otherwise improving the roads.

(g) A road overseer shall follow a direction given under Subsection (f)(3). (V.A.C.S. Art. 6702-1, Secs. 3.001(a) (part), 3.003.)

Source Law

Sec. 3.001. (a) ... [E]x officio road commissioners ... under the direction of the commissioners court have charge of the teams, tools, and machinery belonging to the county and placed in their hands by the court. They shall superintend the laying out of new roads, the making or changing of roads, and the building of bridges under rules adopted by the court.

Sec. 3.003. (a) Subject to authorization by the commissioners court, each ex officio road commissioner may employ persons for positions in the commissioner's precinct paid from the county road and bridge funds. Each ex officio road commissioner may discharge any county employee working in the commissioner's precinct if the employee is paid from county road and bridge funds. Each ex officio road commissioner also has the duties of a supervisor of public roads as provided by Section 2.009 of this Act.

(b) Each county commissioner, when acting as a road commissioner, shall inform himself of the condition of the public roads in his precinct, shall determine what character of work is to be done on the roads, and shall direct the manner of grading, draining, or otherwise improving the roads, which directions shall be followed and obeyed by all road overseers of his precinct.

Revisor's Note

Section 3.003(a), V.A.C.S. Article 6702-1, refers to Section 2.009, V.A.C.S. Article 6702-1. That statute is codified in this code as Sections 251.004 and 251.005, and the revised law is drafted accordingly.

[Sections 252.007-252.100 reserved for expansion]

SUBCHAPTER B. ROAD COMMISSIONER SYSTEM

Revised Law

Sec. 252.101. SUBCHAPTER NOT APPLICABLE TO CERTAIN COUNTIES.
(a) This subchapter does not apply to Angelina, Aransas, Blanco, Bowie, Calhoun, Camp, Cass, Cherokee, Comal, Dallas, Delta, DeWitt, Fayette, Franklin, Galveston, Gillespie, Grayson, Gregg, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Jack, Jackson, Jasper, Lamar, Lavaca, Limestone, McLennan, Milam, Montgomery, Morris, Nacogdoches, Newton, Panola, Parker, Rains, Red River, Refugio, Sabine, San Augustine, Shelby, Smith, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Washington, or Wood County.

(b) Notwithstanding Subsection (a), the commissioners court of Collin or Dallas County may adopt this subchapter instead of the special law for that county if the court determines that this subchapter is better suited to that county than the special law. (V.A.C.S. Art. 6702-1, Sec. 3.107.)

Source Law

Sec. 3.107. The counties of Angelina, Aransas, Blanco, Bowie, Calhoun, Camp, Cass, Cherokee, Comal, Dallas, Delta, DeWitt, Fayette, Franklin, Galveston, Gillespie, Grayson, Gregg, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Jack, Jackson, Jasper, Lamar, Lavaca, Limestone, McLennan, Milam, Montgomery, Morris, Nacogdoches, Newton, Panola, Parker, Rains, Red River, Refugio, Sabine, San Augustine, Shelby, Smith, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Washington, and Wood are exempt from this subchapter. However, the commissioners courts of Dallas and Collin counties may accept and adopt this subchapter instead of the special acts for Dallas or Collin county, if in its judgment, the provisions of this subchapter are better suited to Dallas or Collin county than the special laws.

Revised Law

Sec. 252.102. RELATIONSHIP OF SUBCHAPTER TO OTHER LAW. If this subchapter conflicts with a general law relating to roads and bridges, this subchapter controls. (V.A.C.S. Art. 6702-1, Sec. 3.106.)

Source Law

Sec. 3.106. This subchapter is cumulative of all other general laws on the subject of roads and bridges but in case of conflict with those laws, this subchapter controls.
Reviser's Note

The revised law omits as unnecessary the portion of Section 3.106, V.A.C.S. Article 6702-1, that relates to the cumulative effect of Subchapter B, Chapter 3, 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.

Revised Law

Sec. 252.103. ROAD COMMISSIONERS. (a) A commissioners court may employ not more than four road commissioners.

(b) A road commissioner must be a resident of the district for which the road commissioner is employed.

(c) If the commissioners court employs more than one road commissioner, the court shall determine the district each road commissioner controls. (V.A.C.S. Art. 6702-1, Sec. 3.101(a) (part).)

Source Law

Sec. 3.101. (a) Each commissioners court may employ not more than four road commissioners, who must be resident citizens of the district for which they are employed. If more than one is employed, the district that each road commissioner is to control shall be defined and fixed by the court.

Reviser's Note

Section 3.101(a), V.A.C.S. Article 6702-1, provides that road commissioners must be "resident citizens" of the districts for which they are employed. The revised law omits "citizens" because, in the context of this section, "resident" and "citizen" are synonymous and "resident" is more commonly used.
Revised Law

Sec. 252.104. BOND OF ROAD COMMISSIONER. (a) Before assuming the duties of a road commissioner, a road commissioner must execute a bond with one or more good and sufficient sureties payable to the county judge in the amount of $1,000, conditioned on the faithful performance of the road commissioner's duties.

(b) To be effective, the bond must be approved by the county judge. (V.A.C.S. Art. 6702-1, Sec. 3.101(a) (part).)

Source Law

(a) . . . Before assuming duties, each road commissioner must execute a bond, payable to the county judge of the county and his successors in office, in the sum of $1,000, with one or more good and sufficient sureties, to be approved by the county judge and conditioned on the faithful performance of his duties.

Revisor's Note

Section 3.101(a), V.A.C.S. Article 6702-1, refers to the "county judge of the county and his successors in office." The revised law omits as unnecessary "and his successors in office" because every reference to a public official applies to that official's successors.

Revised Law

Sec. 252.105. POWERS AND DUTIES OF ROAD COMMISSIONER. (a) A road commissioner controls the overseers, laborers, tools, machinery, and vehicles to be used on the roads in the road commissioner's district and may require overseers to deploy laborers that the road commissioner designates to open, work on, or repair roads or to build or repair bridges or culverts in the district.

(b) A road commissioner shall:

(1) ensure that the roads and bridges in the district are kept in good repair;

(2) under the control of the commissioners court, establish a system of grading and draining public roads in the district and ensure that the system is carried out by the overseers.
and laborers under the road commissioner's control;

(3) under the direction of the commissioners court,
spend the money entrusted to the road commissioner by the court in
the most economical and advantageous manner on the public roads,
bridges, and culverts of the district; and

(4) put the inmates and other laborers furnished by
the commissioners court to work.

(c) A road commissioner is responsible for the safekeeping
of and is liable for the loss or destruction of the machinery,
tools, or vehicles placed under the road commissioner's control
unless the road commissioner was not at fault. When discharged,
the road commissioner shall deliver those items to the person
designated by the commissioners court.

(d) Inmates may not be required to work when there is
available, after building and repairing bridges, a sufficient road
fund to provide for the necessary work on the roads. (V.A.C.S.
Art. 6702-1, Secs. 3.101(b)(1) (part), (2) (part).)

Source Law

(b)(1) A road commissioner has control over all
overseers, hands, tools, machinery, and teams to be
used on the roads in his district and may require
overseers to order out hands in any number he may
designate for the purpose of opening, working, or
repairing roads or building or repairing bridges or
culverts in his district. He shall see that all roads
and bridges in his district are kept in good repair.
Under the direction and control of the commissioners
court, he shall inaugurate a system of grading and
draining public roads in his district and see that the
system is carried out by the overseers and hands under
his control. . . . He shall be responsible for the
safekeeping and liable for the loss or destruction of
all machinery, tools, or teams placed under his
control, unless the loss is without his fault, and when
he is discharged he shall deliver them to the person
designated by the court.

(2) He shall expend the money placed in
his hands by the commissioners court under its
direction in the most economical and advantageous
manner on the public roads, bridges, and culverts of
his district. . . . He shall work the convicts and
other labor as may be furnished him by the
commissioners court. . . . However, the convicts may
not be required to work when there is on hand, after
building and repairing bridges, a sufficient road fund
to provide for the necessary work on the roads.
Revisor's Note

(1) Section 3.101(b)(1), V.A.C.S. Article 6702-1, refers to "hands." The revised law substitutes "laborers" for "hands" because in the context of this section "laborers" and "hands" are synonymous and "laborers" is more commonly used.

(2) Section 3.101(b)(2), V.A.C.S. Article 6702-1, refers to "convicts." The revised law substitutes "inmates" for "convicts" for the reason stated in Reviser's Note (4) under Section 252.005.

(3) Section 3.101(b)(2), V.A.C.S. Article 6702-1, provides that an overseer of jail inmate road workers may be retained after five days even if funds are available to hire road workers to replace jail inmates. The revised law omits that provision as unnecessary because there is no restriction to prevent the continued employment of an overseer to assist in road work. The omitted provision reads:

... When he has funds in his hands to expend for labor on the roads and when it is necessary for any overseer in his district to work more than five days during any one year on the public roads, he may employ the overseer to continue his duties for the length of time as may be necessary and pay the overseer for the services provided after the five days. . . .

Revised Law

Sec. 252.106. SUPERVISION OF ROAD COMMISSIONER BY COMMISSIONERS COURT. (a) A road commissioner shall obey the orders of the commissioners court.

(b) A road commissioner's acts are subject to the control, supervision, orders, and approval of the commissioners court.

(V.A.C.S. Art. 6702-1, Secs. 3.101(b)(1) (part), (2) (part).)

Source Law

(1) . . . He shall obey all orders of the commissioners court. . . .

(2) . . . His acts shall be subject to the control, supervision, orders, and approval of the
Sec. 252.107. REPORT OF ROAD COMMISSIONER. (a) At each regular term of the commissioners court, a road commissioner shall give a report under oath to the court that:

(1) includes an itemized account of the money the road commissioner has received to be spent on roads and bridges and the use made of the money;

(2) describes the condition of the roads, bridges, and culverts in the road commissioner's district; and

(3) includes any other information the court requires.

(b) The road commissioner shall make other reports at any time the commissioners court requires. (V.A.C.S. Art. 6702-1, Sec. 3.101(b)(3).)

Sec. 252.108. USE OF COUNTY ROAD AND BRIDGE FUND. (a) In a county that employs road commissioners under this subchapter, the commissioners court shall ensure that the county road and bridge fund is judiciously and equitably spent on the roads and bridges in the county. As nearly as the condition and necessity of the roads permit, the fund shall be spent in each county commissioner's precinct in proportion to the amount of money in the fund collected in the precinct.

(b) In a county that employs road commissioners under this subchapter, money used in building permanent roads must first be used on:
(1) first-class or second-class roads; and
(2) roads for which the right-of-way has been furnished free of cost to make as straight a road as is practicable and for which the residents have offered the greatest amount of labor, money, or other property. (V.A.C.S. Art. 6702-1, Sec. 3.101(c).)

Source Law

(c) The commissioners court shall see that the road and bridge fund is judiciously and equitably expended on the roads and bridges of its county. As nearly as the condition and necessity of the roads will permit, the fund shall be expended in each county commissioner's precinct in proportion to the amount collected in the precinct. Money used in building permanent roads shall first be used only on first-class or second-class roads and on those roads that have the right-of-way furnished free of cost to make as straight a road as is practicable and that have the greatest bonus offered by the citizens of money, labor, or other property.

Revisor's Note

Section 3.101(c), V.A.C.S. Article 6702-1, refers to "citizens." The revised law substitutes "residents" for "citizens" because, in the context of this section, "citizens" and "residents" are synonymous and "residents" is more commonly used.

Revised Law

Sec. 252.109. DONATIONS. A commissioners court or the road commissioners may accept donations of labor, money, or other property to aid in building or maintaining roads in the county. (V.A.C.S. Art. 6702-1, Sec. 3.103.)

Source Law

Sec. 3.103. The commissioners court or road commissioners may accept donations of money, land, labor, equipment, or any other kind of property or material to aid in building or maintaining roads in the county.
Section 3.103, V.A.C.S. Article 6702-1, refers to "land, equipment, or any other kind of property or material." The references to "land," "equipment," and "material" are omitted from the revised law because "land," "equipment," and "material" are included within the meaning of "property."

Revised Law
Sec. 252.110. LIABILITY FOR PROPERTY DAMAGE OR MISPLACEMENT. A person who knowingly or wilfully damages or misplaces a bridge, culvert, drain, sewer, ditch, sign, milepost, or similar thing placed on a road to benefit the road is liable to the county and any injured person for damages caused by the person's conduct. (V.A.C.S. Art. 6702-1, Sec. 3.104.)

Source Law
Sec. 3.104. Any person who knowingly or wilfully destroys, injures, or misplaces any bridge, culvert, drain, sewer, ditch, signboard, or milepost or anything of like character placed on any road for the benefit of the road is liable to the county and any person injured for all damages caused by that action.

Reviser's Note
Section 3.104, V.A.C.S. Article 6702-1, refers to a person who "destroys" or "injures" certain property. The revised law substitutes "damages" for "destroys" and "injures" because "destroys" and "injures" are included within the meaning of "damages."

Revised Law
Sec. 252.111. DRAINAGE ALONG PUBLIC ROAD. (a) A commissioners court or road commissioner may authorize a person to make a drain along a public road to drain the person's property.
(b) The person must make the drain under the direction of the commissioners court, road commissioner, or a person designated by the commissioners court. (V.A.C.S. Art. 6702-1, Sec. 3.105(a)
Sec. 3.105. (a) The commissioners court [or] a road commissioner may authorize a person to make a drain along a public road for the purpose of draining the person's land. . . .

(b) The person shall make the drain under the direction of the commissioners court, road commissioner, . . . Or another person designated by the commissioners court.

[Sections 252.112-252.200 reserved for expansion]

SUBCHAPTER C. ROAD SUPERINTENDENT SYSTEM

Sec. 252.201. SUBCHAPTER NOT APPLICABLE TO CERTAIN COUNTIES.

(a) This subchapter does not apply to Angelina, Aransas, Blanco, Bowie, Calhoun, Camp, Cass, Cherokee, Comal, Dallas, Delta, DeWitt, Fayette, Franklin, Galveston, Gillespie, Grayson, Gregg, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Jack, Jackson, Jasper, Lamar, Lavaca, Limestone, McLennan, Milam, Montgomery, Morris, Nacogdoches, Newton, Panola, Parker, Rains, Red River, Refugio, Sabine, San Augustine, Shelby, Smith, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Washington, or Wood County.

(b) Notwithstanding Subsection (a), the commissioners court of Collin or Dallas County may adopt this subchapter instead of the special law for that county if the court determines that this subchapter is better suited to that county than the special law.

(V.A.C.S. Art. 6702-1, Sec. 3.107.)

Sec. 3.107. The counties of Angelina, Aransas, Blanco, Bowie, Calhoun, Camp, Cass, Cherokee, Comal, Dallas, Delta, DeWitt, Fayette, Franklin, Galveston, Gillespie, Grayson, Gregg, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Jack, Jackson, Jasper, Lamar, Lavaca, Limestone, McLennan, Milam, Montgomery, Morris, Nacogdoches, Newton, Panola, Parker, Rains, Red River, Refugio, Sabine, San Augustine, Shelby, Smith, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Washington, and Wood are exempt from this subchapter. However, the commissioners courts of Dallas and Collin counties may accept and adopt this subchapter instead of the special acts for Dallas or
Collin county, if in its judgment, the provisions of this subchapter are better suited to Dallas or Collin county than the special laws.

Revised Law

Sec. 252.202. RELATIONSHIP OF SUBCHAPTER TO OTHER LAW. If this subchapter conflicts with a general law relating to roads and bridges, this subchapter controls. (V.A.C.S. Art. 6702-1, Sec. 3.106.)

Source Law

Sec. 3.106. This subchapter is cumulative of all other general laws on the subject of roads and bridges but in case of conflict with those laws, this subchapter controls.

Revisor's Note

The revised law omits as unnecessary the portion of Section 3.106, V.A.C.S. Article 6702-1, that relates to the cumulative effect of Subchapter B, Chapter 3, 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.

Revised Law

Sec. 252.203. ADOPTION OF SUBCHAPTER AND APPOINTMENT OF ROAD SUPERINTENDENTS. (a) The commissioners court of a county may adopt this subchapter by appointing a road superintendent for the county or one superintendent in each county commissioner's precinct by an order made at a regular term of the court.

(b) The commissioners court shall enter the order in its minutes. The order is not required to be in any particular form, and substantial compliance with this section is sufficient.

(c) A road superintendent must be a qualified voter of the county or precinct for which the road superintendent is appointed.
(d) A road superintendent holds office for two years unless removed by the commissioners court for good cause. (V.A.C.S. Art. 6702-1, Sec. 3.102(a).)

Source Law

Sec. 3.102. (a) The commissioners court of any county subject to this subchapter may appoint a competent person as road superintendent for the county or one superintendent in each commissioners precinct as it determines by an order made at a regular term of the court. The order must be entered in the minutes of the court and is not void for want of form, but substantial compliance with this subsection is sufficient. A road superintendent must be a qualified voter in the county or precinct for which he is appointed and holds office for two years or until removed by the commissioners court for good cause. No county is under the operation of this subchapter whose commissioners court does not appoint a road superintendent or superintendents.

Revisor's Note

(1) Section 3.102(a), V.A.C.S. Article 6702-1, provides that a commissioners court may appoint a "competent" person as road superintendent. The revised law omits "competent" as unnecessary because it is implied that a commissioners court should appoint a competent person.

(2) Section 3.102(a), V.A.C.S. Article 6702-1, provides that a road superintendent holds office for two years or "until" removed by the commissioners court for good cause. The revised law provides that a road superintendent holds office for two years "unless" removed by the commissioners court for good cause to clarify that a road superintendent does not serve for an indefinite term.

Revised Law

Sec. 252.204. OATH AND BOND OF ROAD SUPERINTENDENT. (a) Not later than the 20th day after the date of appointment, a road superintendent must:

(1) take and subscribe to the oath required by the constitution; and
(2) give a bond payable to the county judge in an amount fixed by the commissioners court, conditioned that the road superintendent will:

(A) faithfully perform the duties required of the road superintendent by law or the commissioners court; and

(B) disburse money under the road superintendent's control as the law provides or the commissioners court directs.

(b) To be effective, the bond must be approved by the county judge. (V.A.C.S. Art. 6702-1, Sec. 3.102(c).)

Source Law

(c) Each road superintendent shall, not later than the 20th day after the day of his appointment, take and subscribe the oath required by the constitution and give bond payable to and to be approved by the county judge. The bond must be in the sum fixed by the commissioners court and must be conditioned that the road superintendent will faithfully perform all the duties required of him by law or the commissioners court and that he will pay out and disburse the funds subject to his control as the law provides or the court directs.

Revisor's Note

Section 3.102(c), V.A.C.S. Article 6702-1, refers to funds a superintendent will "pay out and disburse." The reference to "pay out" is omitted from the revised law because "pay out" is included within the meaning of "disburse."

Revised Law

Sec. 252.205. POWERS AND DUTIES OF ROAD SUPERINTENDENT. (a) Subject to the orders of the commissioners court, a road superintendent has general supervision over the public roads in the road superintendent's county or precinct and the county inmates working on the roads.

(b) A road superintendent shall:

(1) perform the duties of supervisor imposed on the county commissioners in counties not adopting this subchapter;
(2) direct the laying out, constructing, changing, and repairing of roads and the building of bridges in the road superintendent's county or precinct, except where otherwise contracted;

(3) take charge of and be responsible for the safekeeping of the tools, machinery, and vehicles placed under the road superintendent's control by the commissioners court, execute a receipt for an item described by this subdivision, and file the receipt with the county clerk;

(4) ensure that the roads and bridges in the road superintendent's county or precinct are kept in good repair;

(5) under the direction of the commissioners court, establish and carry out a system of working on, grading, and draining the public roads in the road superintendent's county or precinct;

(6) employ a sufficient force to enable the road superintendent to do the necessary work in the road superintendent's county or precinct, giving due regard to the condition of the county road and bridge fund and the work to be done;

(7) buy or hire tools, machinery, and vehicles as directed by the commissioners court;

(8) work on the roads in the manner directed by the commissioners court;

(9) perform any other service required by the commissioners court; and

(10) on leaving office, deliver all money and other property to the person the commissioners court directs.

(c) Notwithstanding Subsection (a), the commissioners court may employ a person to supervise the inmates and direct the work to be done by them. (V.A.C.S. Art. 6702-1, Secs. 3.102(b)(1) (part), (2), (4) (part).)
(b)(1) Subject to the orders of the court, each superintendent has general supervision over all public roads of his county or precinct and shall superintend the laying out of new roads, the making, changing, working, and repairing of roads, and the building of bridges, except where otherwise contracted, and over all county convicts worked on the roads. This subsection does not prevent the commissioners court from employing a person to watch and manage the convicts and direct the work to be done by them. The road superintendent shall take charge of and be responsible for the safekeeping of all tools, machinery, implements, and teams placed under his control by the commissioners court and execute his receipt for the items, which shall be filed with the county clerk. On leaving office, he shall deliver all the money and property to any person as the commissioners court may direct.

(2) Each superintendent shall see that all roads and bridges in his county or precinct are kept in good repair. Under the direction of the commissioners court, he shall inaugurate and carry out a system of working, grading, and draining the public roads in his county or precinct. He shall act as supervisor of the roads in his county or precinct and perform all the duties of supervisor devolving on the county commissioners in counties not adopting this subchapter. He shall do and perform other service as the court requires.

(4) Each road superintendent shall employ a sufficient force to enable him to do the necessary work in his county or precinct, as the case may be, having due regard for the condition of the county road and bridge fund and the quality and durability of the work to be done. He shall buy or hire tools, teams, implements, and machinery as directed by the commissioners court, and he shall work the roads in the manner directed by the commissioners court.

Revisor's Note

(1) Section 3.102(b)(1), V.A.C.S. Article 6702-1, refers to "county convicts." The revised law refers to "county inmates" for the reason stated in Revisor's Note (5) under Section 252.005.

(2) Section 3.102(b)(1), V.A.C.S. Article 6702-1, refers to "tools, machinery, [and] implements." The reference to "implements" is omitted from the revised law because "implements" is included within the meaning of "tools" and "machinery."

(3) Section 3.102(b)(3), V.A.C.S. Article 6702-1, provides for the delivery of money to a
county's road and bridge fund. This provision is omitted from the revised law because it is superseded by Section 113.022, Local Government Code. The omitted provision reads:

Not later than the 10th day after the day of collection of any money on account of the road or bridge fund, he shall deliver the money to the county treasurer, taking his receipt for the money, and shall keep an accurate account of the money.

Revised Law
Sec. 252.206. LIABILITY OF ROAD SUPERINTENDENT. A road superintendent is liable for:

(1) the loss, injury, or destruction of machinery or a tool or vehicle placed under the road superintendent's control by the commissioners court unless the road superintendent was not at fault; and

(2) the improper expenditure of any money for roads entrusted to the road superintendent. (V.A.C.S. Art. 6702-1, Sec. 3.102(b)(1) (part).)

Source Law
(1) He shall be liable for the loss, injury, or destruction of any of the tools, teams, implements, or machinery unless the loss occurred without his fault and for the wrongful or improper expenditure of any road funds coming into his hands. . . .

Revisor's Note
(1) Section 3.102(b)(1), V.A.C.S. Article 6702-1, refers to "tools, . . . implements, or machinery." The reference to "implements" is omitted as unnecessary because "implements" are included within the meaning of "tools" and "machinery."

(2) Section 3.102(b)(1), V.A.C.S. Article 6702-1, refers to "wrongful or improper" expenditures. The reference to "wrongful" is omitted from the revised law because "wrongful" is included within the meaning
of "improper."

Revised Law
Sec. 252.207. REPORT OF ROAD SUPERINTENDENT. (a) A road superintendent shall make a sworn report to the commissioners court at each regular term of the court showing:

(1) an itemized account of the money the road superintendent has received belonging to the road fund;
(2) the person from whom the money was received;
(3) the use the road superintendent has made of the money;
(4) the condition of the roads and bridges in the county or precinct; and
(5) any other matter on which the court requires information.

(b) A road superintendent shall make other reports as required by the commissioners court. (V.A.C.S. Art. 6702-1, Sec. 3.102(b)(3) (part).)

Source Law
(3) Each superintendent shall make a sworn report to the court at each regular term of the court showing an itemized account of all money belonging to the road fund he has received, from whom received, what disposition he has made of the money, the condition of all roads and bridges in the county or precinct, and other matters on which the court may desire information. He shall make other reports as required by the court. . . .

Revised Law
Sec. 252.208. SUPERVISION OF ROAD SUPERINTENDENT BY COMMISSIONERS COURT. Work performed under a road superintendent is subject to the general supervision of the commissioners court. (V.A.C.S. Art. 6702-1, Sec. 3.102(b)(4) (part).)

Source Law
(4) . . . The work at all times is subject to the general supervision of the commissioners court. . . .
Sec. 252.209. CONTRACTS BY ROAD SUPERINTENDENT; PAYMENT.

(a) A road superintendent shall make the best contract possible for labor or machinery and in payment for the labor or machinery shall issue to the person entitled to payment a certificate showing the amount due and the purpose for which the certificate was given.

(b) The certificate shall be dated, numbered, and signed by the road superintendent.

(c) The road superintendent and the sureties on the road superintendent's official bond are liable for the damages caused by:

(1) the wrongful issuance of a certificate; or

(2) an extravagance in the amount of a certificate.

(d) On approval by the commissioners court, a warrant shall be issued to the person entitled to payment to be paid by the county treasurer out of the proper fund in the same manner as other warrants. (V.A.C.S. Art. 6702-1, Sec. 3.102(b)(4) (part).)

He shall make the best contract possible for labor or machinery and in payment for the labor or machinery he shall issue to the entitled person his certificate showing the amount due and the purpose for which it was given. On approval by the commissioners court, a warrant shall be issued to the person, to be paid by the county treasurer out of the proper fund as other warrants. The certificates shall be dated, numbered, and signed by the road superintendent, and he and the sureties on his official bond shall be liable for all loss or damages caused by the wrongful issue of a certificate or any extravagance in the amount of a certificate.

Section 3.102(b)(4), V.A.C.S. Article 6702-1, refers to "loss or damages." The reference to "loss" is omitted from the revised law because "loss" is included within the meaning of "damages."
Sec. 252.210. DIVISION OF COUNTY OR PRECINCT INTO ROAD DISTRICTS. (a) If the commissioners court directs, a road superintendent shall:

(1) divide the road superintendent's county or precinct into road districts of convenient size;
(2) define the boundaries of the districts; and
(3) designate the districts by number.
(b) To be effective, the districts must be approved by the commissioners court.
(c) The boundaries shall be recorded in the minutes of the commissioners court.
(d) The road superintendent shall:
(1) determine the names of the persons subject to road duty in each district;
(2) keep a record of the names of the persons; and
(3) report the record to the commissioners court.

(V.A.C.S. Art. 6702-1, Sec. 3.102(b)(5).)

Sec. 252.211. SALARY OF ROAD SUPERINTENDENT. (a) A road superintendent's salary shall be paid at stated intervals on the order of the commissioners court.
(b) The commissioners court may suspend the salary of a road superintendent whose services are no longer needed. (V.A.C.S. Art. 6702-1, Sec. 3.102(d).)
(d) Each road superintendent's salary shall be paid on the order of the court at stated intervals. The court may suspend the salary of any superintendent whose continued services are not needed.

Section 252.212. POWERS OF COMMISSIONERS COURT. In a county that appoints one or more road superintendents, the commissioners court may:

(1) purchase or hire the road machinery, tools, vehicles, and labor required to grade, drain, or repair the roads of the county;

(2) use labor and spend money on the roads; and

(3) adopt and enforce reasonable and necessary orders and rules for laying out, working on, and improving the public roads. (V.A.C.S. Art. 6702-1, Sec. 3.102(e)(1).)

(e)(1) The commissioners court is authorized to purchase or hire all necessary road machinery, tools, implements, teams, and labor required to grade, drain, or repair the roads of the county. The court may make all reasonable and necessary orders and regulations not in conflict with law for laying out, working, and otherwise improving the public roads, utilize the labor and money expended on the roads, and enforce the orders and regulations.

Revisor's Note

Section 3.102(e)(1), V.A.C.S. Article 6702-1, authorizes a commissioners court to adopt orders and regulations "not in conflict with law." The revised law omits the quoted language as unnecessary because a commissioners court does not have the authority to adopt an order or regulation that conflicts with the law.

(a) In a county that appoints one or more road superintendents,
the commissioners court by contract may construct, grade, gravel, or otherwise improve a road or bridge.

(b) At the time the contract is made, the commissioners court shall direct the county treasurer to:

(1) transfer the amount of money stipulated in the contract to a particular fund; and

(2) keep a separate account of the money.

(c) The money may be used only for payment under the contract and may be paid only on the order of the commissioners court. (V.A.C.S. Art. 6702-1, Sec. 3.102(e)(2).)

Source Law

(2) The commissioners court may, when considered best, construct, grade, gravel, or otherwise improve any road or bridge by contract. At the time of making the contract the court shall direct the county treasurer to pass the amount of money stipulated in the contract to a particular fund and to keep a separate account of the money. The money may be used for no other purpose and can only be paid out on the order of the court.

Revisor's Note

Section 3.102(e)(2), V.A.C.S. Article 6702-1, authorizes a commissioners court, "when considered best," to take certain actions. The revised law omits the quoted language as unnecessary because it is implied that a commissioners court will do what it considers best.

Revised Law

Sec. 252.214. DONATIONS. A commissioners court may accept donations of labor, money, or other property to aid in building or maintaining roads in the county. (V.A.C.S. Art. 6702-1, Sec. 3.103 (part).)

Source Law

Sec. 3.103. The commissioners court . . . may accept donations of money, land, labor, equipment, or any other kind of property or material to aid in building or maintaining roads in the county.
Revisor's Note

Section 3.103, V.A.C.S. Article 6702-1, refers to "land, . . . equipment, or any other kind of property or material." The references to "land," "equipment," and "material" are omitted from the revised law because "land," "equipment," and "material" are included within the meaning of "property."

Revised Law

Sec. 252.215. LIABILITY FOR PROPERTY DAMAGE OR MISPLACEMENT.

A person who knowingly or wilfully damages or misplaces a bridge, culvert, drain, sewer, ditch, sign, milepost, or similar thing placed on a road to benefit the road is liable to the county and any injured person for damages caused by the person's conduct. (V.A.C.S. Art. 6702-1, Sec. 3.104.)

Source Law

Sec. 3.104. Any person who knowingly or wilfully destroys, injures, or misplaces any bridge, culvert, drain, sewer, ditch, signboard, or milepost or anything of like character placed on any road for the benefit of the road is liable to the county and any person injured for all damages caused by that action.

Revisor's Note

Section 3.104, V.A.C.S. Article 6702-1, refers to a person who "destroys" or "injures" certain property. The revised law substitutes "damages" for "destroys" and "injures" because "destroys" and "injures" are included within the meaning of "damages."

Revised Law

Sec. 252.216. DRAINAGE ALONG PUBLIC ROAD. (a) A commissioners court or, with the approval of the commissioners court, a road superintendent may authorize a person to make a drain along a public road to drain the person's property.

(b) The person must make the drain under the direction of the commissioners court, road superintendent, or a person
designated by the commissioners court. (V.A.C.S. Art. 6702-1, Sec. 3.105 (part).)

Source Law

Sec. 3.105. (a) The commissioners court . . . or a road superintendent may authorize a person to make a drain along a public road for the purpose of draining the person's land. The road superintendent must have the concurrence of the commissioners court to grant the authorization.
(b) The person shall make the drain under the direction of the commissioners court . . . road superintendent, or another person designated by the commissioners court.

[Sections 252.217-252.300 reserved for expansion]

SUBCHAPTER D. COUNTY ROAD DEPARTMENT SYSTEM

Revised Law

Sec. 252.301. ADOPTION OF COUNTY ROAD DEPARTMENT SYSTEM.
(a) A county may adopt this subchapter at an election held as provided by this section.
(b) The commissioners court shall submit the question of whether to adopt this subchapter to the voters of the county if it receives a petition signed by a number of registered voters of the county equal to at least 10 percent of the number of votes received in the county by all the candidates for governor in the most recent gubernatorial election. The court shall order the election to be held on the first authorized uniform election date prescribed by Subchapter A, Chapter 41, Election Code, that occurs after the 30th day after the date the petition is filed with the court. The ballot for the election shall be printed to permit voting for or against the proposition: "Adopting the Optional County Road System in ______ County."
(c) If the majority of the votes received in the election favor adoption, this subchapter takes effect in the county on the date the official result of the election is determined.
(d) A county that votes to adopt this subchapter may vote in the same manner to discontinue use of this subchapter.
(e) An election on the question of adopting or discontinuing
use of this subchapter may not be held more often than every two
years. (V.A.C.S. Art. 6702-1, Secs. 3.201(a) (part), (b), (c).)

Source Law

Sec. 3.201. (a) By a majority vote of its
qualified voters, any county at an election held for
that purpose may adopt this subchapter . . . .

(b) The commissioners court shall submit the
question to the qualified voters of the county at a
general or special election if it receives a petition
of the qualified voters of the county in a number equal
to 10 percent of the number voting for governor at the
last preceding general election in the county. The
court shall order the election to be held on the next
uniform election date authorized by Section 9b, Texas
Election Code, as amended (Article 2.01b, Vernon's
Texas Election Code), that occurs after the 30th day
after the day the petition is filed with the
commissioners court. The ballot for the election shall
be printed to permit voting for or against the
proposition: "Adopting the Optional County Road System
in County."

(c) If the majority of the votes cast at the
election favor adoption, this subchapter becomes
effective in the county with the official proclamation
of the results of the election. In like manner, a
county that votes to come under this subchapter may
vote to abandon this subchapter. No election on the
questions of adopting or abandoning this subchapter may
be held more often than every two years.

Revisor's Note

(1) The revised law omits as unnecessary the
 provision in Section 3.201(a), V.A.C.S. Article 6702-1,
 stating the purpose of Subchapter C, Chapter 3, of that
 article. The operative sections of the revised law
clearly indicate what the law is intended to
accomplish. The omitted law reads:

(a) . . . [A county may adopt this
 subchapter] for the construction and
 maintenance of county roads and bridges and
 for the expenditure of the county road and
 bridge fund.

(2) Section 3.201(b), V.A.C.S. Article 6702-1,
 refers to a "general or special election." The revised
 law omits as unnecessary "general or special" because
 an election to adopt the county road system may only be
 a general or special election.

(3) Section 3.201(b), V.A.C.S. Article 6702-1,
requires the petition to be signed by the "qualified voters" of the county. The revised law uses "registered voters" instead of "qualified voters" because Section 277.0021, Election Code, provides that "qualified voter" means "registered voter" in determining eligibility to sign a petition.

(4) Section 3.201(b), V.A.C.S. Article 6702-1, refers to the next uniform election date authorized by Section 9b, Texas Election Code, as amended (Article 2.01b, Vernon's Texas Election Code). That statute was codified in 1985 as Subchapter A, Chapter 41, Election Code. Subchapter A, Chapter 41, Election Code, governs uniform election dates. Accordingly, the revised law refers to Subchapter A, Chapter 41, Election Code. The revised law omits as unnecessary "as amended" because under Section 311.027, Government Code (Code Construction Act), applicable to this code, unless expressly provided otherwise, a reference to any portion of a statute applies to all amendments of the statute.

Revised Law

Sec. 252.302. ORGANIZATION OF SYSTEM. (a) The county road department is responsible for the construction and maintenance of county roads.

(b) The county road department includes:

(1) the commissioners court as the policy-making body;

(2) the county road engineer as the chief executive officer;

(3) other administrative personnel; and

(4) road employees. (V.A.C.S. Art. 6702-1, Sec. 3.202.)

Source Law

Sec. 3.202. The construction and maintenance of county roads is vested in the county road department,
which shall include the commissioners court as the policy-determining body, the county road engineer as the chief executive officer, other administrative personnel, and road employees.

Revised Law
Sec. 252.303. COUNTYWIDE SYSTEM. In a county that adopts this subchapter, the construction and maintenance of county roads, the ownership and use of county road department equipment, materials, and supplies, and the administration of the county road department are to be based on the county as a whole without regard to commissioners' precincts. (V.A.C.S. Art. 6702-1, Sec. 3.203.)

Source Law
Sec. 3.203. The construction and maintenance of county roads, the ownership and use of all county road department equipment, materials, and supplies, and the administration of the county road department shall be on the basis of the county as a whole without regard to commissioners precincts.

Revised Law
Sec. 252.304. COUNTY ROAD ENGINEER OR ROAD ADMINISTRATOR. (a) The commissioners court shall appoint a county road engineer, who must:

(1) be a licensed professional engineer experienced in road construction and maintenance; and

(2) meet the qualifications required by the Texas Department of Transportation for its district engineers.

(b) If the commissioners court is unable to employ a licensed professional engineer, it may employ a county road administrator to perform the duties of the county road engineer. The county road administrator must have had experience in road building or maintenance or other types of construction work qualifying the person to perform the duties of the position but need not have had any particular amount of professional training or experience in engineering work.

(c) For purposes of this subchapter, a reference in another section of this subchapter to the county road engineer means the
county road administrator. (V.A.C.S. Art. 6702-1, Sec. 3.204.)

Sec. 3.204. The county road engineer shall be appointed by the commissioners court. He must be a licensed professional engineer experienced in road construction and maintenance and must meet the qualifications required by the State Department of Highways and Public Transportation for its county engineers. If the commissioners court is not able to employ a licensed professional engineer for any reason, the commissioners court may employ a qualified road administrative officer, who is to be known as the county road administrator, to perform the duties of the county road engineer. The county road administrator must have had experience in road building or maintenance or other types of construction work qualifying him to perform the duties imposed on him, but it is not necessary that he have had any fixed amount of professional training or experience in engineering work. The county road administrator shall perform the same duties as are imposed upon the county road engineer, and all references in other sections of this subchapter to the county road engineer include and apply to the county road administrator.

Revisor's Note

(1) Section 3.204, V.A.C.S. Article 6702-1, refers to the "State Department of Highways and Public Transportation." The revised law substitutes "Texas Department of Transportation" for "State Department of Highways and Public Transportation" for the reason stated in the reviser's note under Section 201.003 of this code.

(2) Section 3.204, V.A.C.S. Article 6702-1, refers to "county engineers" of the department of transportation. The revised law substitutes "district engineers" for "county engineers" because the department does not have any county engineers. The department refers to its local chief engineers as "district engineers," and the revised law reflects that fact.

(3) Section 3.204, V.A.C.S. Article 6702-1, provides that if the commissioners court is unable to employ a licensed professional engineer "for any
reason," it may employ a county road engineer. The revised law omits "for any reason" as unnecessary.

(4) Section 3.204, V.A.C.S. Article 6702-1, authorizes the commissioners court to employ a "qualified road administrative officer," to be known as the county road administrator, to perform the duties of the county road engineer. The revised law omits as unnecessary the reference to a "qualified road administrative officer" because Section 3.204 specifies the title, qualifications, and duties of the position.

Revised Law
Sec. 252.305. OATH; BONDS. (a) A county road engineer must take the official oath of office.

(b) As required by the commissioners court, the county road engineer and other administrative personnel of the county road department must give a bond in an amount and with a surety approved by the commissioners court. The county shall pay the premiums on the bond. (V.A.C.S. Art. 6702-1, Secs. 3.212, 3.213.)

Source Law
Sec. 3.212. The county road engineer and other administrative personnel of the county road department as required by the commissioners court shall give bond in an amount and with surety approved by the commissioners court. The premiums on the bonds shall be paid by the county.

Sec. 3.213. The county road engineer must take the official oath of office.

Revised Law
Sec. 252.306. SALARY OF COUNTY ROAD ENGINEER. A county road engineer shall receive an annual salary to be paid in equal monthly installments out of the county road and bridge fund. (V.A.C.S. Art. 6702-1, Sec. 3.205.)

Source Law
Sec. 3.205. The county road engineer shall receive an annual salary to be paid in 12 equal monthly installments out of the road and bridge fund of the county.
Revised Law

Sec. 252.307. TERM AND REMOVAL. (a) A county road engineer holds the position for an indefinite term.

(b) A county road engineer may be removed by a majority vote of the commissioners court. The removal takes effect on the 30th day after the date the county road engineer receives written notice that the court intends to remove the engineer. The court shall hold a public hearing on the removal before the removal takes effect if the county road engineer requests a hearing in writing. (V.A.C.S. Art. 6702-1, Sec. 3.206.)

Source Law

Sec. 3.206. The county road engineer holds his position for an indefinite term and may be removed by a majority vote of the commissioners court. Removal does not become effective until the 30th day after the day he receives notice in writing of the intention of the commissioners court to remove him. The court shall hold a public hearing on the question of his removal before the removal becomes effective if the hearing is requested in writing by the county road engineer.

Revised Law

Sec. 252.308. COUNTY ROAD ENGINEER UNABLE TO PERFORM DUTIES. A commissioners court may designate a qualified administrative officer to perform the county road engineer's duties during any period in which the county road engineer is absent or unable to perform those duties. (V.A.C.S. Art. 6702-1, Sec. 3.207.)

Source Law

Sec. 3.207. In the absence or inability of the county road engineer to perform his duties, the commissioners court may designate a qualified administrative officer to perform the duties of county road engineer during the absence or inability.

Revised Law

Sec. 252.309. POWERS AND DUTIES OF COUNTY ROAD ENGINEER. (a) The county road engineer is responsible to the commissioners court for the efficient and economical construction and maintenance of the county roads.

(b) The county road engineer may:
1. (1) appoint for an indefinite term and remove the county road department's personnel, subject to the approval of the commissioners court; and
2. (2) authorize administrative personnel to employ and remove subordinates.

3. (c) Except for the purpose of inquiry, the commissioners court shall deal with the county road department's personnel through the county road engineer.
4. (d) The county road engineer shall attend all meetings of the commissioners court relating to county road matters and may participate in the discussions and make recommendations.
5. (e) The county road engineer shall:
6. (1) ensure that the policies of the commissioners court relating to county roads are faithfully executed;
7. (2) supervise the administration of the county road department;
8. (3) prepare detailed annual budget estimates for the construction and maintenance of the county roads and the operation of the county road department;
9. (4) prepare estimates and specifications for the equipment, materials, supplies, and labor necessary for the construction and maintenance of the county roads and the operation of the county road department;
10. (5) serve as custodian of the equipment, materials, and supplies belonging to the county road department;
11. (6) prepare plans and specifications for county road construction and maintenance;
12. (7) maintain cost-accounting records of county road department expenditures;
13. (8) keep an inventory of county road department equipment, materials, and supplies; and
14. (9) perform any other duties required by the commissioners court that are consistent with this subchapter.

(V.A.C.S. Art. 6702-1, Sec. 3.208.)
Sec. 3.208. (a) The county road engineer is responsible to the commissioners court for the efficient and economical construction and maintenance of the county roads. He may appoint for an indefinite term and remove all county road department personnel, subject to the approval of the commissioners court. He may authorize certain administrative personnel to employ and remove subordinates or employees under their respective direction. Except for the purpose of inquiry, the commissioners court shall deal with the county road department's administrative personnel and employees through the county road engineer.

(b) The county road engineer shall attend all meetings of the commissioners court when it sits to consider county road matters. The county road engineer has the right to participate in the discussions and to make recommendations. He shall see that the policies of the commissioners court relating to county roads are faithfully executed, supervise the administration of the county road department, and prepare detailed annual budget estimates for the construction and maintenance of the county roads and the operation of the county road department. The county road engineer shall prepare estimates and specifications for all equipment, materials, supplies, and labor necessary for the construction and maintenance of the county roads and the operation of the county road department, serve as custodian for all equipment, materials, and supplies belonging to the county road department, prepare plans and specifications for all county road construction and maintenance, maintain cost-accounting records on county road department expenditures, keep a perpetual inventory of all county road department equipment, material, and supplies, and perform other duties that are required by the commissioners court and are consistent with this subchapter.

Revisor's Note

(1) Section 3.208(a), V.A.C.S. Article 6702-1, authorizes the county road engineer to permit administrative personnel to employ and remove "subordinates or employees under their respective direction." The reference to "employees under their respective direction" is omitted from the revised law because "employees under their respective direction" is included within the meaning of "subordinates."

(2) Section 3.208(a), V.A.C.S. Article 6702-1, refers to "administrative personnel and employees." The revised law substitutes "personnel" for "administrative personnel and employees" for brevity.
Revised Law
Sec. 252.310. INSPECTIONS. The county road engineer shall inspect for the county the progress of work on a county road construction and maintenance project awarded to a private contractor. (V.A.C.S. Art. 6702-1, Sec. 3.209 (part).)

Source Law
Sec. 3.209. On projects of county road construction and maintenance let to private contractors, the county road engineer is the representative of the county in inspecting the progress of the work. . . .

Revised Law
Sec. 252.311. FUNDING. (a) Expenditures for the construction and maintenance of the county roads and the operation of the county road department shall be paid out of the county road and bridge fund strictly in accordance with annual budgeted appropriations.

(b) On application of the county road engineer, the commissioners court may transfer any part of an unencumbered appropriation balance for an item in the county road and bridge fund budget to another item. (V.A.C.S. Art. 6702-1, Sec. 3.210.)

Source Law
Sec. 3.210. All expenditures for the construction and maintenance of the county roads and the operation of the county road department shall be paid out of the road and bridge fund strictly in accordance with annual budgeted appropriations. However, on application of the county road engineer, the commissioners court may transfer any part of any unencumbered appropriation balance for some item within the road and bridge fund budget to some other item.

Revised Law
Sec. 252.312. COMPETITIVE BIDDING. (a) Except as provided by Subsection (b), the commissioners court shall purchase the equipment, materials, and supplies for the county road department through competitive bidding in conformity with estimates and specifications prepared by the county road engineer.

(b) If the county road engineer so recommends and the
commissioners court considers it to be in the best interest of the county, a purchase in an amount of $15,000 or less may be made through negotiation by the commissioners court or the court's authorized representative on requisition to be approved by the commissioners court or the county auditor without advertising for competitive bids.

(c) A purchase may not be divided or reduced to avoid the competitive bidding requirement on a purchase that would otherwise cost more than $15,000. (V.A.C.S. Art. 6702-1, Sec. 3.211 (part).)

Source Law

Sec. 3.211. All equipment, materials, and supplies for the construction and maintenance of county roads and for the county road department shall be purchased by the commissioners court on competitive bids in conformity with estimates and specifications prepared by the county road engineer. However, on recommendation of the county road engineer and when in the judgment of the commissioners court it is considered in the best interest of the county, purchases in an amount not to exceed $15,000 may be made through negotiation by the commissioners court or the commissioners court's authorized representative on requisition to be approved by the commissioners court or the county auditor without advertising for competitive bids. . . . This section does not permit the division or reduction of purchases for the purpose of avoiding the requirement of taking formal bids on purchases that would otherwise exceed $15,000.

Revisor's Note

Section 3.211, V.A.C.S. Article 6702-1, refers to the purchase of items for "the construction and maintenance of county roads and for the county road department." The revised law omits as unnecessary "the construction and maintenance of county roads" because under Section 3.202, V.A.C.S. Article 6702-1, revised as Section 252.302 of this chapter, the county road department is responsible for the construction and maintenance of county roads.

Revised Law

Sec. 252.313. PAYMENT OF CLAIMS. Before the commissioners court orders payment of a claim covering the purchase of equipment,
materials, supplies, or services, including county road
collection or maintenance, contracted for by the court, the
county road engineer must certify in writing that the claim is
correct and that:

(1) any equipment, materials, or supplies covered by
the claim conform to specifications approved by the county road
engineer and have been delivered in good condition;

(2) any county road department services contracted for
by the commissioners court have been satisfactorily performed; and

(3) any county road construction or maintenance done
under the contract conforms to the plans and specifications called
for in the contract. (V.A.C.S. Art. 6702-1, Secs. 3.209 (part),
3.211 (part).)

Source Law

Sec. 3.209. ... Before a claim for county
road construction or maintenance done by private
contractors may be ordered paid by the commissioners
court, the county road engineer must certify in writing
the correctness of the claim and must certify that the
work done conforms to the plans and specifications
called for in the contract.

Sec. 3.211. ... Before any claim covering the
purchase of the equipment, materials, and supplies and
for any services contracted for by the commissioners
court may be ordered paid by the commissioners court,
the county road engineer must certify in writing the
correctness of the claim and must certify that the
respective equipment, materials, and supplies covered
by the claim conform to specifications approved by him,
that the equipment, materials, and supplies were
delivered in good condition, and that any road
department services contracted for by the commissioners
court have been satisfactorily performed....

CHAPTER 253. COUNTY IMPROVEMENT OF SUBDIVISION ROADS

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CHAPTER 253. COUNTY IMPROVEMENT OF SUBDIVISION ROADS

Sec. 253.001. APPLICABILITY. This chapter applies only to a subdivision, part of a subdivision, or an access road in an unincorporated area of a county. (V.A.C.S. Art. 6702-3(a), as added Ch. 891, Acts 71st Leg., R.S., 1989.)

Source Law

Art. 6702-3. (a) This article applies only to a subdivision or a part of a subdivision in an unincorporated area of the county. To the extent that this article authorizes the improvement of an access road to a subdivision, this article applies only to an access road in an unincorporated area of the county.

Revisor's Note

V.A.C.S. Article 6702-3(a) contains the reference "[t]o the extent that this article authorizes the improvement of an access road to a subdivision . . . ." The revised law deletes this reference as unnecessary.

Revised Law

Sec. 253.002. DEFINITION. In this chapter, "improvement" means construction or repair. (V.A.C.S. Art. 6702-3(b), as added Ch. 891, Acts 71st Leg., R.S., 1989.)

Source Law

(b) In this article, "improvement" means the construction, reconstruction, or repair of a road.

Revisor's Note

V.A.C.S. Article 6702-3(b), as added by Chapter 891, Acts of the 71st Legislature, Regular Session, 1989, refers to the "reconstruction" of a road. The
revised law omits the term "reconstruction" because the term is included within the meaning of "construction" and "repair."

Revised Law

Sec. 253.003. PROPOSAL FOR COUNTY IMPROVEMENT OF SUBDIVISION ROADS AND ASSESSMENT OF COSTS. If the commissioners court of a county determines that the improvement of a road in a subdivision or of an access road to a subdivision is necessary for the public health, safety, or welfare of the residents of the county, the commissioners court may propose to:

(1) improve the road to comply with county standards for roads; and

(2) assess all or part of the costs of the improvement pro rata against the record owners of the real property of the subdivision. (V.A.C.S. Art. 6702-3(c) (part), as added Ch. 891, Acts 71st Leg., R.S., 1989.)

Source Law

(c) The commissioners court of a county may order that the county improve a road in a subdivision or an access road to a subdivision to comply with any county standards for roads and assess all or part of the costs of the improvement pro rata against the owners of real property in the subdivision if:

(1) the commissioners court determines that the improvement is necessary for the public health, safety, or welfare of the residents of the county; . . .

Revisor's Note

V.A.C.S. Article 6702-3(c) provides that a commissioners court may "order" certain improvements and assessments. The revised law substitutes the term "propose" for the term "order" to conform to other provisions of V.A.C.S. Article 6702-3 that refer to Article 6702-3(c). Articles 6702-3(d) and (e) refer to the "proposed improvement and assessment" or the "proposition"; Article 6702-3(f) provides that, under certain conditions, the commissioners court of a county
"may not propose the order again." These references are to the proposal under Article 6702-3(c).

Revised Law

Sec. 253.004. NOTICE. (a) The commissioners court must publish notice of the proposed improvement and assessment at least twice in a newspaper of general circulation in the county.

(b) The notice must state the date the commissioners court will hold a public hearing to consider the proposed improvement and assessment. (V.A.C.S. Art. 6702-3(d) (part), as added Ch. 891, Acts 71st Leg., R.S., 1989.)

Source Law

(d) Before ordering an improvement and assessment under this article, the commissioners court must give notice of the proposed improvement and assessment . . . . The notice must be published at least twice in a newspaper of general circulation in the county and must state that, on a date that is specified in the notice . . . the commissioners court will hold a public hearing to consider the question of whether it should order the improvement and assessment.

Revisor's Note

V.A.C.S. Article 6702-3(d) provides that a commissioners court of a county must hold a public hearing to consider "the question of whether it should order" the improvement and assessment. The revised law omits the reference to "the question of whether it should order" to conform to V.A.C.S. Article 6702-3(e), which requires the commissioners court to order the improvement and assessment if the property owners approve the improvement and assessment by ballot. V.A.C.S. Article 6702-3(d) implies that the issuance of the order is permissive. However, under V.A.C.S. Article 6702-3(e), the pertinent part of which is revised as Section 253.007 of this chapter, issuance of the order is clearly mandatory if certain conditions are met.
Sec. 253.005. PUBLIC HEARING. The commissioners court must hold a public hearing to consider the proposed improvement and assessment on or after the 31st day after the date the commissioners court publishes the first required notice. (V.A.C.S. Art. 6702-3(d) (part), as added Ch. 891, Acts 71st Leg., R.S., 1989.)

(d) Before ordering an improvement and assessment under this article, the commissioners court must hold a public hearing on the question on a date that is after the 30th day after the date the notice is first published, the commissioners court will hold a public hearing to consider the question.

Sec. 253.006. BALLOT. (a) Not later than the 10th day after the date the commissioners court holds a public hearing under Section 253.005, the commissioners court by certified mail shall send to each record owner of real property in the subdivision:

(1) a ballot on whether the commissioners court shall order the improvement and assessment; and

(2) an addressed stamped envelope for the return of the completed ballot to the county clerk.

(b) The ballot must state the maximum assessment that could be made against each property in the subdivision if a majority of the votes received favor the proposition. (V.A.C.S. Art. 6702-3(e) (part), as added Ch. 891, Acts 71st Leg., R.S., 1989.)

(e) Within 10 days after the date of the public hearing, the commissioners court shall send by certified mail to each owner of real property in the subdivision a ballot on the question and a return addressed, stamped envelope for the return of the completed ballot to the county clerk. The ballot must be printed to show the maximum amount of assessment that would be made against each property in the subdivision if a majority of the voting record owners of real property in the subdivision favor the proposition.
Revised Law

Sec. 253.007. RESULTS OF VOTE. (a) Not later than the 30th day after the date of the public hearing, the county clerk shall tally the returned ballots and declare the results to the commissioners court.

(b) If a majority of returned ballots are in favor of the improvement and assessment, the commissioners court shall order the improvements and assess the costs of the improvements against the real property owners of the subdivision.

(c) If the proposition fails, the commissioners court may not:

(1) order the improvement and assessment; or

(2) again propose the improvement and assessment before the fourth anniversary of the date the county clerk declares the results of the vote to the commissioners court. (V.A.C.S. Arts. 6702-3(c) (part), (e) (part), (f), as added Ch. 891, Acts 71st Leg., R.S., 1989.)

Source Law

(c) [The commissioners court of a county may order that the county improve a road . . . if:] (2) a majority of those record owners of real property in the subdivision who are voting vote by mailed ballot in favor of the county improvement and assessment.

(e) . . . Within 30 days after the date of the public hearing, the county clerk shall tally the returned ballots and declare the results to the commissioners court. If a majority of those record owners of real property in the subdivision who are voting vote by returned ballot in favor of the improvement and assessment, the commissioners court shall order that the county make the improvements and assess the costs of the improvements against the real property owners.

(f) If those record owners of real property in the subdivision voting against the improvement and assessment constitute one-half or a majority of those voting, the commissioners court may not order the improvement and assessment and may not propose the order again for four years after the date that the county clerk declares the results of the vote to the commissioners court.

Revised Law

Sec. 253.008. ASSESSMENT OF COSTS. (a) The commissioners
court may provide the time, terms, and conditions of payment and
default of an assessment.

(b) The commissioners court may not require the payment of
interest on an assessment.

(c) An assessed property owner is personally liable for the
amount of the assessment. (V.A.C.S. Arts. 6702-3(g), (h) (part),
as added Ch. 891, Acts 71st Leg., R.S., 1989.)

Source Law

(g) In making an assessment under this article,
the commissioners court may provide the time, terms,
and conditions of payment and default of the
assessment, except that the commissioners court may not
require the payment of any interest on an assessment.

(h) ... Each property owner shall be
personally liable for the amount of the assessment.

Revised Law

Sec. 253.009. LIEN. (a) An assessment is secured by a lien
against the real property of the assessed property owner.

(b) The lien is effective on the date written notice of the
assessment is filed for record in the office of the county clerk of
the county in which the property is located.

(c) The written notice must be in recordable form and
contain the:

(1) amount of the assessment;

(2) legal description of the property; and

(3) name and address of each property owner.

(d) An assessment lien under this chapter is inferior only
to a tax lien or mortgage lien recorded before the effective date
of the assessment lien. (V.A.C.S. Art. 6702-3(h) (part), as added
Ch. 891, Acts 71st Leg., R.S., 1989.)

Source Law

(h) An assessment shall be secured by a lien
against the real property of the assessed property
owner. The lien shall be effective from the date that
written notice of the assessment is filed for record
and recorded in the office of the county clerk of the
county in which the assessed property is located. Such
written notice shall be in recordable form and contain
the dollar amount of the assessment, the legal
description of the property assessed, and the name and
address of each property owner. The lien securing the
assessment shall be inferior only to tax liens and to
bona fide mortgage liens recorded prior to the
effective date of the assessment lien. . . .

Revised Law

Sec. 253.010. APPEAL. (a) Not later than the 15th day
after the date a property owner receives an assessment, the owner
may appeal the assessment by filing a petition in a district court
having jurisdiction in the county.

(b) The appeal may be made on the basis of the assessment
amount or the inaccuracy, irregularity, invalidity, or
insufficiency of the proceedings or the road improvements.
(V.A.C.S. Art. 6702-3(i), as added Ch. 891, Acts 71st Leg., R.S.,
1989.)

Source Law

(i) Not later than the 15th day after the date
that a property owner receives an assessment made under
this article, the owner may appeal the assessment by
filing a petition in the district court having
jurisdiction in the county. The appeal may be made on
the basis of the assessment amount or any inaccuracy,
irregularity, invalidity, or insufficiency of the
proceedings or the road improvements under this
article.

Revised Law

Sec. 253.011. MAINTENANCE OF ROADS. (a) A road improved
under this chapter is a county road.

(b) The county shall maintain the road according to county
road standards. (V.A.C.S. Art. 6702-3(j), as added Ch. 891, Acts
71st Leg., R.S., 1989.)

Source Law

(j) A road improved under this article is a
county road, and the county shall maintain the road in
accordance with county road standards.

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CHAPTER 254. DRAINAGE ON PUBLIC ROADS

Revised Law

Sec. 254.001. DEFINITIONS. In this chapter:

(1) "Ditch" includes a drain or other watercourse.

(2) "Public road" means a road or highway that has not been discontinued and that has been established according to law, and includes each road or highway opened to and used by the public for at least 10 years before March 25, 1897. (V.A.C.S. Art. 6702-1, Secs. 2.101, 2.102(a) (part).)
Sec. 2.101. For the purposes of this subchapter, roads and highways that have not been discontinued but have been laid out and established according to law, including all roads and highways that have been opened to and used by the public for 10 years prior to March 25, 1897, are declared to be public roads.

Sec. 2.102. (a) . . . These ditches, drains, and watercourses, hereinafter called ditches . . . .

Revisor’s Note

Section 2.101, V.A.C.S. Article 6702-1, refers to roads and highways "laid out and established" according to law. The revised law omits "laid out" as included within "established."

Revised Law

Sec. 254.002. PETITION FOR DRAINAGE CONSTRUCTION. (a) The commissioners court of a county may not order a drainage system to be constructed unless a petition is presented to the court as provided by this section.

(b) To be valid, the petition must include:

(1) the signatures of at least 100 registered voters of the county;

(2) a statement of the necessity for and availability of the drainage system;

(3) the number of miles of public roads, as accurately as possible;

(4) the width and depth of the ditches to be built along the first-class roads;

(5) the name and location of each natural waterway crossed by the county's first-class roads;

(6) the distance of each waterway from another along the first-class roads; and

(7) the names and residences, if known, of each owner of real property adjacent to or within one mile of each first-class road. (V.A.C.S. Art. 6702-1, Sec. 2.104.)
Sec. 2.104. Before the commissioners court may order that a drainage system be constructed, a petition shall be presented to the court that includes:

(1) signatures of at least 100 qualified voters of the county;
(2) a statement of the necessity for and availability of the drainage system;
(3) the number of miles of public roads as accurately as possible;
(4) the width and depth of the ditches to be built along the first-class roads;
(5) the name and location of each natural waterway crossed by the county's first-class roads;
(6) the distance of each waterway from another along the first-class road; and
(7) the names and residences, if known, of each landowner with land adjacent to or within one mile of each first-class road.

Reviser's Note
Section 2.104, V.A.C.S. Article 6702-1, requires the petition to be signed by "qualified voters" of the county. The revised law uses "registered voters" instead because Section 277.0021, Election Code, provides that "qualified voter" means "registered voter" in determining eligibility to sign an election petition.

Revised Law
Sec. 254.003. NOTICE OF HEARING ON ESTABLISHING DRAINAGE SYSTEM. (a) After a petition is filed under Section 254.002, the county clerk shall issue notice of the petition not later than the 20th day before the date on which the next regular session of the commissioners court convenes. Each notice must contain a brief statement of the contents of the petition and must require all interested persons who wish to contest the petition to appear at the court's next regular session.

(b) The county clerk shall post a copy of the notice:

(1) at the courthouse door; and
(2) at each of four other public places in the county, not more than one of which may be posted in the same municipality.

(c) The sheriff shall post the notices and shall return them
to the county clerk on or before the first day of the term.

(d) For services provided under this section, the county clerk shall receive a fee of $1.50. (V.A.C.S. Art. 6702-1, Sec. 2.105.)

Source Law

Sec. 2.105. (a) After the petition is filed, the clerk shall issue five notices not later than the 20th day before the day on which the next regular session of the commissioners court will convene. The notices must contain a brief statement of the petition's contents and must command all interested persons who wish to contest the petition to appear at the court's next regular session.

(b) The notices are to be posted in the following manner:

(1) one at the courthouse door; and
(2) one each at four other public places in the county, no two of which may be in the same city or town.

(c) The sheriff shall post the notices and return them to the clerk on or before the first day of the term.

(d) The clerk shall receive $1.50 and the sheriff $3 for their services.

Revisor's Note

(1) Section 2.105(b), V.A.C.S. Article 6702-1, refers to "city or town." The revised law substitutes the term "municipality" for "city or town" because that is the term used in the Local Government Code.

(2) Section 2.105(d), V.A.C.S. Article 6702-1, provides a fee for the services of the sheriff. The revised law omits the provision for a fee for the sheriff because Section 61, Article XVI, Texas Constitution, requires sheriffs to be compensated on a salary basis. That section of the constitution has the effect of prohibiting a sheriff from receiving a fee of the nature described by Section 2.105(d) for performing an official function. See Wichita County v. Robinson, 276 S.W.2d 509 (Tex. 1954).
Revised Law
Sec. 254.004. HEARING AND DETERMINATION ON ESTABLISHING DRAINAGE SYSTEM. (a) At the hearing on the petition, the commissioners court shall:
(1) consider the petition and hear all testimony for or against its provisions; and
(2) determine whether the drainage system proposed by the petition is necessary or advisable for the public benefit.
(b) If the court approves the petition, the court shall:
(1) order the decision entered into the court's minutes and made part of the record; and
(2) enter into the minutes whether notice was properly served.
(c) The court's order is final if notice was properly served.
(d) If the court disapproves the petition for the drainage system, the court may not hear another application for the drainage system before the first anniversary of the date of disapproval.
(V.A.C.S. Art. 6702-1, Sec. 2.106.)

Source Law
Sec. 2.106. (a) At the specified time, the commissioners court shall:
(1) consider the petition and hear all testimony for or against its provisions; and
(2) determine whether the petition proposing the drainage system is necessary or advisable for the public benefit.
(b) If the court approves the petition, the court shall:
(1) order the decision entered into the court's minutes and made part of the record; and
(2) enter whether notice has been properly served.
(c) If notice was properly served, the court's order is final.
(d) If the court disapproves the petition for the drainage system, another application for the drainage system may not be heard for one year after the date of disapproval.

Revised Law
Sec. 254.005. AUTHORITY TO PROVIDE DRAINAGE. (a) The commissioners court of a county may order the construction or
maintenance of ditches as provided by this chapter at any regular
session of the court.

(b) If a ditch is constructed under this chapter, the ditch
must be placed on or within the exterior lines of a public road in
the county and must have the capacity to carry off into a natural
waterway all surface water reasonably adjacent that may collect in
the ditch from natural causes.

(c) The commissioners court shall:
(1) make a drain on each side of a public road when
necessary and use the dirt from the drain excavation to build the
road; and
(2) drain a public road when necessary and have one or
more ditches cut for that purpose, taking into account the natural
waterflow and causing as little damage as possible to adjacent
property owners.

(d) In connection with its authority to construct and
maintain ditches, the commissioners court may construct any
necessary side, lateral, spur, or branch ditch.

(e) The commissioners court may acquire by purchase or
condemnation any new or wider right-of-way not wider than 100 feet
for streambed diversion and drainage channels, but only for
locating, constructing, or maintaining a county road. The cost of
acquisition may be paid from the county road and bridge fund or any
available county money.

(f) If damages are suffered by a property owner, the
commissioners court shall determine the damages and pay the
property owner out of the county general fund. If the
commissioners court and the property owner disagree as to the
amount of damages, the amount may be determined by civil suit.
(V.A.C.S. Art. 6702-1, Secs. 2.102(a) (part), (b) (part), (c),
(d).)

Source Law
Sec. 2.102. (a) The commissioners court may
order at any regular session after complying with the
provisions of this subchapter the construction and
maintenance of ditches, drains, and watercourses as provided by this subchapter. These ditches ... shall be placed on or within the exterior lines of all public roads within the county and shall have the capacity to carry off into natural waterways all surface water reasonably adjacent and liable to collect in the ditches from natural causes.

(b) In connection with this authority to construct and maintain ditches, the commissioners court may construct any side, lateral, spur, branch ditch, or watercourse necessary.

(c) The commissioners court shall:

(1) make a drain on each side of a road and use the dirt from the drain excavation to build the road;

(2) drain public roads when necessary and have ditches cut for that purpose, taking into account the natural waterflow and causing as little injury as possible to adjacent landowners; and

(3) in case of damages to a landowner, assess the damages and make payment to the landowner out of the county's general revenue; in case of disagreement, the amount of damages may be settled by suit as in other cases.

(d) The commissioners court may acquire by purchase or condemnation any new or wider right-of-way not exceeding 100 feet in width for streambed diversion and drainage channels, but only for locating, relocating, building, rebuilding, or maintaining public roads. This may be paid out of the county road and bridge fund or out of any available funds.

Revisor's Note

Section 2.102(d), V.A.C.S. Article 6702-1, refers to a county "locating, relocating, building, rebuilding" roads. The revised law substitutes "locating" and "constructing" for those terms because "relocating" and "rebuilding" are included within the meaning of "locating" and "building," and "constructing" is the term used in this chapter for "building."

Revised Law

Sec. 254.006. RESTRICTIONS ON DRAINAGE AUTHORITY. (a) The commissioners court of a county may not construct a ditch without an outlet to a natural waterway large enough to carry off all water that may collect in the ditch.

(b) The commissioners court may not change the natural course of any branch, creek, or stream. The public road must cross
(c) A culvert must be of sufficient size to allow water to flow, at its natural rate at its normal peak level, from the side of the road where the road intersects the natural channel to the natural channel at the other side of the road. (V.A.C.S. Art. 6702-1, Sec. 2.102(b) (part).)

Source Law

(b) ... However:

(1) a ditch may not be constructed without an outlet to a natural waterway large enough to carry off all water that may collect in the ditch; and

(2) a commissioners court or its employee may not change the natural course of any branch, creek, or stream; branches, creeks, or streams shall cross public roads at the water's natural crossing; culverts shall be of sufficient size to allow water to flow at high tide from its intersection with the road across its natural outflow at the opposite natural channel.

Revisor's Note

Section 2.102(b)(2), V.A.C.S. Article 6702-1, provides certain restrictions on the actions of a commissioners court "or its employee." The revised law omits the reference to employee as unnecessary. Restrictions on the authority of the commissioners court apply to the county's employees when carrying out the court's authority.

Revised Law

Sec. 254.007. PRIVATE DITCHES. An owner of real property abutting a road or ditch or the owner of a tract of property that is located wholly or partly within one mile of a road or ditch may construct at the owner's cost lateral drainage ditches and may connect those ditches with a main ditch constructed under this chapter. (V.A.C.S. Art. 6702-1, Sec. 2.103.)

Source Law

Sec. 2.103. Any owner of land abutting on the road or ditch or the owner of any tract of land lying wholly or partially within one mile of the road or ditch may construct at his own cost lateral drainage ditches and connect the ditches with the main ditch or ditches constructed under this subchapter.
Sec. 254.008. REGULATION OF PRIVATE DITCHES IN COUNTIES OF 100,000 OR LESS. (a) In a county with a population of 100,000 or less, the commissioners court by order may:

(1) remove the blockage of a ditch on real property that is not owned by the county, if the ditch connects with a drainage ditch constructed or maintained by the county; or

(2) provide for the removal or clearance of a blockage from a ditch that is in violation of an order adopted under this section.

(b) Before a commissioners court acts to remove or clear a blockage under this section, the court shall send a notice by certified mail to the record owners of the property on which the blockage is located in violation of an order adopted under this section. The notice must inform the owners of the order and of the other relevant provisions of this section. The court may not remove or clear the blockage before the 20th day after the date the notice is sent.

(c) The commissioners court shall pay the costs incurred in clearing or removing a blockage under this section.

(d) In this section:

(1) "Blockage" means an accumulation of refuse, vegetation, or other matter in a ditch that substantially decreases or stops the flow of water through the ditch.

(2) "Ditch" includes a culvert. (V.A.C.S. Art. 6702-1, Sec. 2.1035.)
other than land owned by the county if the ditch connects with a drainage ditch constructed or maintained by the county; and

(2) provide for the removal or clearance of a blockage from a ditch that is in violation of an order adopted under this section.

(d) Before the commissioners court takes any action to remove or clear a blockage under this section, the court shall send a notice by certified mail to the record owners of the land on which the blockage is located in violation of an order adopted under this section. The notice must inform the owners of the order adopted by the commissioners court under Subsection (c) of this section and of the other relevant provisions of this section. The court may not remove or clear the blockage before the 20th day after the date the notice is sent under this subsection. The blockage and removal costs shall be paid by the commissioners court.

Revisor's Note

Section 2.1035, V.A.C.S. Article 6702-1, defines "ditch" as ditch, drain, culvert, or watercourse. A portion of Section 2.102(a), Article 6702-1, revised in Section 254.001 of this code, states that "ditch" refers to a ditch, drain, or watercourse. Accordingly, the definition of ditch in Section 2.1035 that includes "culvert" is revised to omit the redundant references to drains and watercourses.

Revised Law

Sec. 254.009. DRAINAGE SYSTEM SURVEY. (a) After approval of a petition under Section 254.004, the commissioners court shall hire a surveyor to conduct a survey under this section for an amount determined by the court at the same meeting or at a subsequent term of court. The surveyor must be an engineer.

(b) The survey shall be applied first to the first-class roads, followed by the second-class and third-class roads.

(c) The surveyor shall make the survey and system of levels required by this section as soon as practicable after the surveyor is employed.

(d) The surveyor shall:

(1) run a line of levels along the county's public roads, measure the roads from beginning to end, and measure the...
distance of each waterway crossed by a public road from the
location of the beginning of the waterway;

(2) place stakes or monuments along the line at
intervals of 100 feet, with intermediate stakes that may be
necessary, numbered progressively;

(3) establish permanent benchmarks along the line at
intervals of one mile or less as necessary;

(4) establish by stakes or monuments different in
character and appearance from all other stakes or monuments the
highest point on the road between each of the natural waterways
crossed by the road;

(5) measure and establish by suitable marks the
frontage of each tract of real property abutting the road; and

(6) if there is a natural waterway adjacent to the
line of the road and ditch and the waterway is necessary as an
outlet for the water at any point on the ditch, measure the
distance to the waterway and run the line of levels to the waterway
at the nearest practicable point on the road and ditch.

(e) The surveyor shall prepare a map showing:

(1) the location of the ditch or ditches, with the
position of stakes or monuments with numbers corresponding with
those on the ground;

(2) the location of benchmarks with their elevations
referred to an assumed or previously determined datum; and

(3) the lines and boundaries of adjacent property and
the courses and distances of any adjacent watercourse, with a
profile of the line of the ditch showing the assumed datum and the
grade line of the bottom of the ditch, and the elevation of each
stake, monument, or other important feature along the line, such as
the top of the banks, the bottom of all ditches or watercourses,
the surface of the water, the top of the rail, the bottom of the
tie, the foot of the embankment, and the bottom of each borrow pit
of each railroad.

(f) The map or an explanation accompanying the map must:
(1) give in tabular form the depth of the cut and the width at the bottom, at the top, at the source, at the outlet, and at each 100-foot stake or monument to the ditch;

(2) show the total number of cubic yards of earth to be excavated and removed from the ditch between each natural waterway into which the water is to be conveyed;

(3) show an estimate of the cost of each portion of each ditch located between natural waterways crossed by the road; and

(4) show an estimate of total cost of the whole work.

(g) The surveyor shall also prepare detailed specifications for the execution of the project.

(h) If in the surveyor's opinion it is advantageous to run a ditch underground through drainage tiles, the surveyor shall so state in the surveyor's report, map, and specifications, with a statement of the location of the underground ditch, its length, and the dimensions or character of tiling or other material required for the underground ditch.

(i) The surveyor shall file a report and the survey, map, and explanation with the county clerk as soon as those items are completed. (V.A.C.S. Art. 6702-1, Secs. 2.107(a), (b) (part), 2.108.)

Source Law

Sec. 2.107. (a) The commissioners court, following its approval of the petition, shall hire a surveyor for a sum to be determined by the court at either the same meeting or at any succeeding term of the court. The surveyor must be an engineer.

(b) The surveyor shall run a line of levels along the county's public roads, measure the roads from beginning to end, and measure the distance of each waterway crossed by a public road from that waterway's beginning point. The survey shall be first applied to the first-class roads, followed by the second-class and third-class roads.

Sec. 2.108. (a) The surveyor shall:

(1) as soon as practicable after his employment, proceed to make such survey and system of levels and shall cause stakes or monuments to be placed along the line at intervals of 100 feet, with intermediate stakes as may be necessary, numbered progressively;

(2) establish permanent benchmarks along
the line at intervals of one mile or less as may be necessary;
(3) establish by stake or monument of a different character and appearance from all other stakes or monuments the highest point on the road between each of the natural waterways crossed by the road;
(4) measure and establish by suitable marks the frontage of each tract of land abutting on the road;
(5) if there is a natural waterway adjacent to the line of the road and ditch and the waterway is necessary for use as an outlet for the water at any point on the ditch, measure the distance to the waterway and run the line of levels to the waterway at the nearest practicable point on the road and ditch; and
(6) prepare a map showing:
(A) the location of the ditch or ditches, together with the position of stakes or monuments with numbers corresponding with those on the ground;
(B) the location of benchmarks with their elevations referred to an assumed or previously determined datum; and
(C) the lines and boundaries of adjacent land and the courses and distances of any adjacent watercourse, together with a profile of the line of the ditch, which shall show the assumed datum and the grade line of the bottom of the ditch, and the elevation of each stake, monument, or other important feature along the line, such as the top of the banks, the bottom of all ditches or watercourses, the surface of the water, the top of the rail, the bottom of the tie, the foot of the embankment, and the bottom of the borrow pits of all railroads.
(b) The map prepared under Subdivision (6) of Subsection (a) of this section accompanying the map shall:
(1) give in tabular form the depth of the cut and the width at the bottom, at the top, at the source, at the outlet, and at each 100-foot stake or monument to the ditch;
(2) show the total number of cubic yards of earth to be excavated and removed from the ditch between each natural waterway into which the water is to be conveyed;
(3) show an estimate of the cost of each portion of the ditch or ditches lying between natural waterways crossed by the road; and
(4) show an estimate of total cost of the whole work.
(c) The surveyor shall also prepare detailed specifications for the execution of the project. Whenever in his opinion it may be advantageous to run the ditch underground through drainage tiles, he shall so state in the report, map, and specifications, together with the statement of the location of the underground ditch, its length, and the dimensions or character of tiling or other material required for the underground ditch.
(d) As soon as completed, the surveyor shall file the survey, report, map, explanation, and estimate with the county clerk.
Revised Law

Sec. 254.010. APPOINTMENT OF JURY OF VIEW. (a) At any regular or called session of the commissioners court after the filing of the surveyor's report, the court shall appoint five real property owners of the county as a jury of view. An appointee may not:

(1) have a direct interest in property adjacent to a proposed ditch or within one mile of a proposed ditch; or

(2) have a family relationship with a person having a direct interest in property described by Subdivision (1).

(b) The court may appoint a single jury of view for the entire proposed drainage system or a separate jury of view for each ditch.

(c) If the jurors selected fail or refuse to perform their duties or the report of the jury is rejected by the commissioners court, the court may appoint another jury of view with the same duties as the initial jury.

(d) A member of a jury of view is entitled to compensation in the amount of $3 for each day of service.

(e) After the appointment of a jury of view, the county clerk shall provide the jurors with a certified copy of the petition, court order, and the original surveyor's report with maps, specifications, and the surveyor's estimate of costs.

(V.A.C.S. Art. 6702-1, Sec. 2.109.)

Source Law

Sec. 2.109. (a) Following the filing of the surveyor's report, at any called or regular session of the court, the court shall appoint five landowners of the county as a jury of view, who are entitled to compensation of $3 a day for each day of actual service. The appointees may not have a direct interest in land adjacent to the proposed ditch or within one mile of the ditch and may not have a family relationship with anyone with a direct interest.

(b) If for any reason the jurors selected fail or refuse to perform their duties or if for any reason their report is rejected by the court, the court may appoint another jury of view with the same duties as the first.

(c) The court may appoint separate juries of view for each ditch or a single jury of view for the entire proposed drainage system.
(d) Once appointed, the county clerk shall issue the jurors a certified copy of the petition, court order, and the original surveyor's report with maps, specifications, and his estimate of the cost.

Revised Law

Sec. 254.011. OATH OF JURY. Members of the jury of view must take the following oath before assuming their duties: "I do solemnly swear that I am not directly interested in the construction of the proposed ditch, either as the owner or otherwise, or in adjacent land lying within one mile of the proposed ditch, and that I am not related to any person who is so interested. I further swear that I have no bias or prejudice toward any person directly interested in the ditch, and that I will assess the amount of expense due on and by all adjacent lands lying within one mile of the ditch, according to law, without fear, favor, hatred, or hope of reward, to the best of my knowledge and ability. So help me God." (V.A.C.S. Art. 6702-1, Sec. 2.111.)

Source Law

Sec. 2.111. The jury must take the following oath before assuming its duties: "I do solemnly swear that I am not directly interested in the construction of the proposed ditch, either as the owner or otherwise, or in adjacent land lying within one mile of the proposed ditch, and that I am not related to any person who is so interested. I further swear that I have no bias or prejudice toward any person directly interested in the ditch, and that I will assess the amount of expense due on and by all adjacent lands lying within one mile of the ditch, according to law, without fear, favor, hatred, or hope of reward, to the best of my knowledge and ability. So help me God."

Revised Law

Sec. 254.012. NOTICE TO PROPERTY OWNERS OF JURY PROCEEDINGS.

(a) Not later than the fifth day before the date of the meeting to determine costs of ditch construction, the jury of view shall issue notice of the time and place of the meeting to each property owner or to the agent of each property owner who owns real property adjacent to or within one mile of the proposed ditch. The notice must state that:

(1) the purpose of the meeting is to determine each
property owner's share of the expense of constructing the ditch; and

(2) each property owner's share of the total expense of constructing the ditch is to be a proportional share of one-half of the total expense of constructing the ditch.

(b) The notice may be served by anyone competent to testify and shall be returned and filed with the jury's final report.

(c) Notice to a property owner who is not a resident of the county and does not have an agent or representative in the county shall be published in a newspaper in the county in the manner provided for giving notice to a nonresident defendant in a district court action. The notice must be published at least four weeks before the jury's meeting date. (V.A.C.S. Art. 6702-1, Secs. 2.110(a), (b).)

Source Law
Sec. 2.110. (a) Not later than the fifth day before the day of the meeting to determine costs of construction, the jury shall issue notices giving the time and place of the meeting to landowners or their agents who own land adjacent to or within one mile of the proposed ditch. The notice must state that the purpose of the meeting is to determine each landowner's share of the cost of constructing the ditch, which will be a proportionate share of one-half of the total cost of the construction. The notice may be served by anyone competent to testify and shall be returned and filed with the jury's final report.

(b) If the owner is a nonresident of the county and has no agent or representative in the county, the notice shall be published in a newspaper in the county according to the provisions for giving notice to nonresident defendants in district court actions. Notice to nonresidents must be published at least four weeks prior to the jury's meeting date.

Revised Law
Sec. 254.013. CLAIMS BY PROPERTY OWNERS. (a) A person whose real property may be affected by the ditch may appear before the jury of view and express the person's opinion on any matter relating to the assessment of expense against the person. The owner at or before the time stated in the notice of the jury's meeting may present to the jury a written statement of an objection to or dissatisfaction with the ditch and any claim for damage.
sustained because of the construction of the ditch.

(b) Failure to make an objection or claim for damages under Subsection (a) is a waiver of all claim or right to make the objection or claim.

(c) The jury shall return each claim or objection to the commissioners court with the jury's report.

(d) An adjacent property owner may appear before and be heard by the commissioners court on the property owner's protest or claim against the action of the jury. (V.A.C.S. Art. 6702-1, Sec. 2.112.)

Source Law

Sec. 2.112. Any person whose land may be affected by the ditch may appear before the jury and freely express his opinion on all matters pertaining to the assessment of expense against him. The owner of the land may at the time stated in the notice or previous to that time present to the jury a written statement of any objections to or dissatisfaction with the ditch or drain and any claim for damages that he may have sustained by reason of making the ditch or drain. A failure to make the objection or claim for damages or compensation is a waiver of all claim or right to make the objection or claim. The claims or objections shall be returned to the commissioners court in connection with the report of the jury. Any adjacent landowner may appear before and be heard by the commissioners court on his protest or claim against the action of the jury.

Revised Law

Sec. 254.014. DETERMINATION OF DAMAGES AND ASSESSMENTS; ACTION OF COMMISSIONERS COURT. (a) After giving the required notice and conducting a meeting at which all interested persons have been heard, the jury of view shall:

(1) consider all of the partial estimates and the surveyor's total cost estimate;

(2) draw parallel lines one mile on each side of the ditch; and

(3) apportion to each parcel of real property abutting or within the parallel lines and to the owner of each parcel a proportional share of one-half of the total expense of the ditch, considering the relative amount of benefit to the property derived...
from the ditch.

(b) The jury shall determine the damages due to any property owner whose property is crossed by any spur, branch, or lateral ditch constructed by order of the commissioners court. Before the ditch may be opened, the damages must be paid by an order of the court out of the money set aside for the ditch.

(c) The jury shall make a sworn report to the court, signed by at least three jurors, as soon as practicable after its meeting. The report must include:

(1) an accurate description of each tract of property assessed, with the number of acres and the names of the owners; and

(2) the amount assessed against each tract and its owners.

d) The jury shall return the surveyor's report and records to the county clerk. The county clerk shall file the jury's report and the surveyor's report and records. The reports and records are public information after filing.

(e) The commissioners court shall approve or reject the jury's report at its next regular or called term. (V.A.C.S. Art. 6702-1, Secs. 2.210(c), (d), (e), (f), (g).)

Source Law

(c) After complying with the requirements for giving notice and after the meeting at which all interested parties have been heard, the jury shall take all of the partial estimates and the surveyor's total cost, draw parallel lines one mile on either side of the ditch, and apportion to each parcel of land abutting or within the parallel lines and to each owner his proportionate share of one-half of the total cost of the ditch, taking into consideration the relative amount of benefit derived by the land from the ditch.

(d) The jury shall determine the damages due to any landowner whose land is crossed by any spur, branch, or lateral ditch constructed by order of the court. These damages are to be paid by an order of the court out of the funds set aside for the ditch before the ditch can be opened.

(e) The jury shall make a sworn report to the court, signed by at least three jurors, as soon as is practicable after its meeting. The report must include:

(1) an accurate description of each tract of land assessed with the amount of acres and the names of the owners; and

(2) the amount assessed against the tract and its owners.
(f) The jury shall also return the surveyor's report and records. The clerk shall file the jury's report and the surveyor's report and records, and they are a public record after filing.

(g) The commissioners court shall approve or reject the jury's report at the next regular or called term.

Revised Law

Sec. 254.015. APPEALS BY PROPERTY OWNERS. (a) A person aggrieved by an assessment may appeal from the final order of the commissioners court approving the report of the jury of view to the appropriate court in the county by:

(1) giving notice of the appeal in open court;

(2) having the notice entered as part of the judgment of the court; and

(3) filing a transcript of the proceeding in the commissioners court with the justice or clerk of the court to which the appeal is taken.

(b) The transcript must be filed not later than the 10th day after the date the judgment of the commissioners court is entered, and must be filed with an appeal bond that has at least two good sureties. The appeal bond must:

(1) be in an amount that is at least twice the amount of the probable costs to accrue;

(2) be conditioned that the appellant will prosecute the appeal to effect and pay all costs that may be adjudged against the appellant in the appeal; and

(3) be approved by the clerk or justice of the court.

(c) The issue in an appeal from an assessment of expense is whether the assessment made against the appellant for construction of the ditch is in proportion to the benefit to the real property derived from the ditch.

(d) The issue in an appeal from an assessment of compensation is whether the assessment of compensation made by the jury of view is adequate to the damage suffered and to the value of the property. (V.A.C.S. Art. 6702-1, Sec. 2.113.)
Sec. 2.113. (a) Any person, firm, or corporation aggrieved by an assessment may appeal from the final order of the commissioners court approving the report of the jury to any proper court within the county. The appeal is made by giving notice of appeal in open court and having the notice entered as a part of the judgment of the court and by filing a transcript of the proceeding in the commissioners court with the justice or clerk of the court to which appeal is taken. The transcript must be filed not later than the 10th day after the day the judgment is entered and must be filed with an appeal bond that has at least two good sureties. The appeal bond must be approved by the clerk or justice, be in double the amount of the probable costs to accrue, and be conditioned that the appellant will prosecute his appeal to effect and pay all costs that may be adjudged against him in the court.

(b) Appeals from an assessment of expense shall be heard on the issue of whether the assessments made against the appellant for the construction of the ditch are in proportion to the benefits to be derived from the ditch. Appeals from an assessment of compensation shall be heard on the issue of whether the assessment of compensation made by the jury is adequate to the injury occasioned and to the value of the land.

Reviser's Note

Section 2.113(a), V.A.C.S. Article 6702-1, provides for an appeal by any "person, firm, or corporation." The references to "firm" and "corporation" are omitted from the revised law because under Section 311.005(2), Government Code (Code Construction Act), "person" is defined to include a corporation or any other legal entity. That definition applies to the revised law.

Revised Law

Sec. 254.016. PROCEDURES GOVERNING PROPERTY OWNER APPEAL.

(a) In an appeal of an assessment under Section 254.015, the appellant has the burden of proof.

(b) The court that tries the appeal shall determine the amount of expense chargeable to the appellant, or the amount of compensation due the appellant, as appropriate, and shall enter that amount as the court's judgment.

(c) Except as provided by Subsection (d), the costs of the
appeal shall be adjudged against the appellant.

(d) The costs of the appeal shall be adjudged against the county if the court finds that:

(1) the amount chargeable to the appellant is less than the amount of expense charged by the jury of view; or

(2) the appellant is entitled to a greater amount of compensation as damages than determined by the jury of view.

(e) Not later than the fifth day after the date of the judgment, the clerk of the court or the justice, as appropriate, shall issue a certified copy of the judgment and return it to the commissioners court. The commissioners court shall:

(1) file the judgment with the records relating to the ditch; and

(2) enter the judgment as the judgment of the commissioners court.

(f) After the commissioners court enters the judgment on appeal:

(1) there is no further appeal from the judgment of the court for either party to the appeal; and

(2) the appellant is liable for the amount of expense or entitled to the amount of compensation, as applicable, as determined by the judgment. (V.A.C.S. Art. 6702-1, Sec. 2.114.)

Sec. 2.114. (a) In the trial of all appealed cases the burden of proof is on the appellant. The court or jury trying the cause shall state the correct amount of expense chargeable to appellant or the correct amount of compensation due the appellant as found by them, and that amount shall be entered as the judgment of the court. No further appeal from the judgment is allowed to either party.

(b) If the verdict of the jury finds that the appellant is chargeable with a lesser amount of expense or that the appellant is entitled to a greater amount of compensation as damages than was found by the jury of viewers, the costs shall be adjudged against the county. Otherwise the costs shall be adjudged against the appellant.

(c) Not later than the fifth day after the day of the judgment, the clerk or justice shall issue and return to the commissioners court a certified copy of the judgment. The commissioners court shall file the judgment with the papers pertaining to the ditch, and the judgment shall be entered by the commissioners
court as the judgment of that court. After the commissioners court enters the judgment, the appellant shall be held for or claim the amount specified in the judgment.

Revisor's Note

Sections 2.114(a) and (b), V.A.C.S. Article 6702-1, refer to a determination or verdict of the jury in an appeal from a county's assessment or determination of damages made in connection with roadway drainage construction. The revised law omits the references to the jury, substituting references to the court generally. In an appeal, a determination would be made and a verdict returned by a jury if one were requested, or by the judge if a jury is waived.

Revised Law

Sec. 254.017. CERTIFICATION AND COLLECTION OF ASSESSMENTS; LIENS. (a) At the same term at which the commissioners court enters its order for the construction of the ditches and adjoining roadway or at any subsequent term, the court shall enter on its minutes a list of each tract of real property for which an assessment of expense was made and reported by the jury of view and approved by the court. The list must include:

(1) the names of the owners and original grantees of each tract;

(2) the number of acres covered by the assessment; and

(3) the amount of the assessment.

(b) The county clerk shall issue a certificate against each person on the list showing the amount of each assessment, the ditch or road for which the assessment was issued, and the tract of property on which the assessment was issued. The certificate must be signed by the county judge in open court and attested under the hand and seal of the county clerk, and that fact shall be noted in the minutes of the court.

(c) All amounts assessed against any property and its owner
by the jury of view or the order of the court are a lien on the
property unless prohibited by the Texas Constitution.

(d) The county judge shall deliver the certificates to the
county treasurer, and shall take a receipt for delivery from the
treasurer and file it with the county records relating to the
ditch. The treasurer shall collect each amount due on the
certificates and deposit the money collected to the credit of the
county road and bridge fund.

(e) If a person against whom a certificate is issued does
not pay the amount due to the treasurer on demand, the treasurer
shall report that fact to the county attorney. The county attorney
shall immediately file suit for foreclosure of the lien or for a
personal judgment, as permitted by law. (V.A.C.S. Art. 6702-1,
Sec. 2.116.)

Source Law

Sec. 2.116. (a) At the same term or at any
succeeding term after the entry of the order for the
construction of the ditches and roadway, the
commissioners court shall make and enter on the minutes
of the court a list showing the names of the owners,
the amounts due, the tract of land, the original
grantees, and the number of acres covered by each
assessment of expense, as made and reported by the jury
of view and approved by the court. The county clerk
shall issue a certificate against each person on the
list showing the amount of each assessment, the ditch
or road for which the assessment was issued, and the
tract of land on which the amount was assessed. The
certificate must be signed by the county judge in open
court and attested under the hand and seal of the
county clerk, which fact shall be noted in the minutes
of the court.

(b) All assessments, sums, and charges assessed
against any land and its owner by the jury of view or
by order of court constitute a lien on the land unless
prohibited by the constitution of this state. The
county judge shall deliver the certificate to the
county treasurer, taking his receipt for delivery,
which shall be filed with the papers and archives
concerning the ditch. The county treasurer shall
collect the sums due on the certificates and deposit
the amount collected to the credit of the road and
bridge fund. If any person against whom the
certificate may be issued fails or refuses to pay the
same to the county treasurer on demand, the treasurer
shall turn the case over to the county attorney, who
shall at once file suit for foreclosure of the lien on
the land or for a personal judgment, as permitted by
law.
Revised Law

Sec. 254.018. APPROPRIATION FOR DITCH CONSTRUCTION.

Following its approval of the report of the jury of view, the commissioners court may order that a portion of the road and bridge fund or the special road and bridge fund, if necessary, be set aside for the construction of the ditch described in the report.

(V.A.C.S. Art. 6702-1, Sec. 2.115(a).)

Source Law

Sec. 2.115. (a) The commissioners court, following its approval of the jury's report, may order that a portion of the road and bridge fund or the special road and bridge fund, if necessary, be set aside for the construction of the ditch described in the jury's report.

Revised Law

Sec. 254.019. CARRYING OUT CONSTRUCTION OF DITCHES. (a)

The commissioners court shall order the person in charge of the road adjoining the proposed ditch to construct the ditch in the manner prescribed, using the earth taken from the excavation to build a raised road adjoining the ditch. In the alternative, the court may hire a suitable and competent person other than the person normally in charge of the road adjacent to the proposed ditch to oversee the construction of the ditch for compensation in an amount ordered by the court.

(b) The court by order shall assign to the person in charge of constructing the ditch all county employees assigned to the road adjacent to the ditch and all county equipment and materials. The order shall provide that the person may employ additional labor or purchase additional equipment or material to construct the ditch. The order must show the amount to be paid to the director of construction for the person's services. The court shall order the money required for additional labor, equipment, or material to be paid from the money set aside from the road and bridge fund.

(c) The drainage system shall be applied first to the county's first-class roads, followed by the second-class and
third-class roads.

(d) The county may construct one or more ditches at the same time, as the financial condition of the county permits. (V.A.C.S. Art. 6702-1, Secs. 2.107(b) (part), (c); 2.115(b), (c).)

Source Law

[Sec. 2.107]
(b) . . . the drainage system shall be first applied to the first-class roads, followed by the second-class and third-class roads.
(c) This section does not prohibit the court from constructing one or more ditches at the same time, as the financial condition of the county will permit.

[Sec. 2.115]
(b) The court shall order whoever is in charge of the road adjoining the proposed ditch to construct the ditch in the manner prescribed, using the earth taken from the excavation to build a raised road adjoining the ditch. The court may hire a suitable and competent person other than the person normally in charge of the road adjacent to the proposed ditch to oversee the construction of the ditch at a sum to be ordered by the court.
(c) The court by order shall assign to whoever is in charge of constructing the ditch all county employees assigned to the road adjacent to the ditch and all equipment and materials owned by the county. The court shall further order that whoever is in charge of constructing the ditch may employ additional labor or purchase additional equipment or material to construct the ditch. This order shall show the sum due the director of construction for his services. The money required for the additional labor, equipment, or material shall be ordered paid from the funds set aside from the road and bridge fund, as ordered by the court.

CHAPTER 255. COUNTY REGULATION OF SIGHT DISTANCES
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CHAPTER 255. COUNTY REGULATION OF SIGHT DISTANCES

Revised Law
Sec. 255.001. DEFINITION. In this chapter, "sight distance" means the unimpaired view of a motorist at or near the intersection
of a road with another road or with an alley, driveway, or another
way intended for vehicular traffic. (V.A.C.S. Art. 6702-1, Sec.
2.412.)

Source Law
Sec. 2.412. In this subchapter "sight distance"
means the unimpaired view of a motorist at or near the
intersection of a road with another road, an alley, a
driveway, or another way intended for use by vehicular
traffic.

Revised Law
Sec. 255.002. COUNTY REGULATORY AUTHORITY. (a) The
commissioners court of a county by order may regulate the sight
distance for an intersection that involves a county road and that
is located outside the limits of a municipality. The commissioners
court may:
(1) define the appropriate sight distance;
(2) prohibit an obstruction of the sight distance by
any vegetation, loose earth, or other item except a building or
other structure affixed to the ground, if the obstruction is a
traffic hazard; and
(3) provide for the removal and disposition of an
obstruction maintained in violation of an order adopted under this
section.
(b) The commissioners court may not adopt an order under
this section that conflicts with an ordinance of a municipality
located in the county or with a rule adopted by a state agency
relating to billboards or outdoor advertising. An order adopted in
violation of this subsection is void. (V.A.C.S. Art. 6702-1, Sec.
2.413.)

Source Law
Sec. 2.413. (a) The commissioners court of the
county may by order regulate the sight distance for
intersections involving a county road not located
within the incorporated limits of a municipality. The
commissioners court, in accordance with this section,
may:
(1) define the appropriate sight distance;
(2) prohibit an obstruction of the sight
distance by any vegetation or loose earth or any item
other than a building or other man-made structure affixed to the ground, if the obstruction constitutes a traffic hazard;

(3) provide, after notice to the person who owns the property on which an obstruction is located and an opportunity for a hearing, for the removal and disposition of an obstruction maintained in violation of an order adopted under this section; and

(4) provide for the assessment against a person who owns the property from which an obstruction is removed under Subdivision (3) of this subsection of the costs incurred by the county in removing and disposing of the obstruction.

(b) The commissioners court may not adopt an order under this section that conflicts with an ordinance of a municipality located in the county or with a rule of a state agency relating to billboards or outdoor advertising. An order adopted in violation of this subsection is void.

Revisor's Note

(1) Section 2.413(a)(3), V.A.C.S. Article 6702-1, states that the removal of a sight distance obstruction must be preceded by notice to and an opportunity for a hearing by the property owner. The revised law omits that provision as unnecessary because Sections 2.414 and 2.415, V.A.C.S. Article 6702-1, revised as Sections 255.003 and 255.004 of this chapter, provide more specifically for the same notice and hearing.

(2) Section 2.413(a)(4), V.A.C.S. Article 6702-1, authorizes an assessment for the removal and disposition of a sight distance obstruction. The revised law omits that provision as unnecessary because Section 2.416, V.A.C.S. Article 6702-1, revised as Section 255.005 of this chapter, provides more specifically for the same assessments.

Revised Law

Sec. 255.003. NOTICE TO OWNER OF OBSTRUCTION. (a) If the commissioners court determines that an obstruction of the sight distance exists in violation of an order adopted under Section 255.002, the court shall send a written notice of that determination by registered mail, return receipt requested, to the
record owner of the property on which the obstruction is located.

(b) The notice must include:

(1) a description of the obstruction and its location;

and

(2) an order requiring the owner to take measures specified in the order to correct or remove the obstruction.

(V.A.C.S. Art. 6702-1, Sec. 2.414.)

Source Law

Sec. 2.414. If the commissioners court determines that an obstruction of the sight distance exists in violation of an order adopted under this subchapter, the commissioners court shall send a written notice by registered mail, return receipt requested, to the record owner of the property on which the obstruction is located. The notice must include:

(1) a description of the obstruction and

of the location of the obstruction; and

(2) an order requiring that the owner take specified measures to correct or remove the obstruction.

Revised Law

Sec. 255.004. HEARING ON REMOVAL ORDER. (a) A person who is aggrieved by an order issued under Section 255.003 may request a hearing on the order. The request must be made not later than the 10th day after the date the person receives notice of the obstruction.

(b) The commissioners court shall hold the hearing not later than the 10th day after the date the request for a hearing is received.

(c) After the hearing, the commissioners court shall make appropriate orders relating to the obstruction. (V.A.C.S. Art. 6702-1, Sec. 2.415.)

Source Law

Sec. 2.415. A person who is aggrieved by an order issued under Section 2.414 of this subchapter may, not later than the 10th day after the date the person receives notice of the obstruction, request a hearing on the matter. If a hearing is requested, the commissioners court shall hold the hearing not later than the 10th day after the date the request is received. After the hearing, the commissioners court shall make appropriate orders relating to the obstruction.
Reviser's Note

Section 2.415, V.A.C.S. Article 6702-1, refers to Section 2.414 of Subchapter F of that article. That section is codified in this chapter as Section 255.003, and the revised law is drafted accordingly.

Revised Law

Sec. 255.005. ASSESSMENT. (a) If after notice and expiration of the time permitted for a hearing request under this chapter, a person does not comply with an order adopted under this chapter, the commissioners court may remove, dispose of, or correct the obstruction and assess the costs incurred by the county in doing so against the owner of the property on which the obstruction was located.

(b) Interest accrues at an annual rate of 10 percent on any unpaid part of the costs.

(c) If a person assessed costs under this section does not pay the costs within 60 days after the date of assessment, a lien in favor of the county attaches to the property from which the obstruction was removed or corrected to secure the payment of the costs and interest. (V.A.C.S. Art. 6702-1, Sec. 2.416.)

Source Law

Sec. 2.416. (a) If a person does not comply with an order adopted under this subchapter, the commissioners court may, after notice and the expiration of the time permitted for a hearing request, remove, dispose of, or correct the obstruction and assess the costs incurred by the county in removing, disposing of, or correcting the obstruction against the owner of the property on which the obstruction was located.

(b) If a person assessed costs under this section does not pay the costs within 60 days after the date of assessment, a lien in favor of the county attaches to the property from which the obstruction was removed or corrected to secure the payment of the costs and interest accruing at an annual rate of 10 percent on any unpaid part of the costs.

Revised Law

Sec. 255.006. COMPENSATION FOR LOSS OF VALUE. The commissioners court shall pay the owner of the property from which
an obstruction is removed by the court or required by the court to be removed under this chapter an amount sufficient to cover the loss of value, if any, of the obstruction incurred by the owner because of the removal. (V.A.C.S. Art. 6702-1, Sec. 2.418.)

Source Law

Sec. 2.418. If the commissioners court removes or requires a property owner to remove an obstruction under this subchapter, the court shall pay the owner an amount sufficient to cover the loss of the value of the obstruction, if any, incurred by the owner by reason of the removal.

Revised Law

Sec. 255.007. OFFENSE FOR VIOLATION OF ORDER. (a) A person commits an offense if the person violates an order adopted under this chapter.

(b) An offense under this section is a Class C misdemeanor.

V.A.C.S. Art. 6702-1, Sec. 2.417.)

Source Law

Sec. 2.417. A person commits an offense if the person violates an order adopted under this subchapter. An offense under this section is a Class C misdemeanor.

CHAPTER 256. FUNDS AND TAXES FOR COUNTY ROADS

SUBCHAPTER A. FUNDS USED FOR COUNTY ROADS

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[Sections 256.009-256.050 reserved for expansion]
### CHAPTER 256. FUNDS AND TAXES FOR COUNTY ROADS

#### SUBCHAPTER A. FUNDS USED FOR COUNTY ROADS

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<th>Section</th>
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<tr>
<td>256.001</td>
<td>USE OF COUNTY ROAD AND BRIDGE FUND. (a) Money in the road and bridge fund of a county may be used only for working public roads or building bridges, except as otherwise provided by law. (b) Money in the fund may be spent only by order of the commissioners court of the county. The court may make the necessary orders for utilizing the money . . . .</td>
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<td>256.003(b) (part)</td>
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<td>256.003(a), V.A.C.S. Article 6702-1,</td>
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<tr>
<td>9, Article VIII, Texas Constitution,</td>
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<td>that relate to county road and bridge funds. The policy of the legislative council's statutory revision program is to omit from the revised codes the duplicating statutory provisions, because a statute that tracks the language of the constitution is not only superfluous but may foster the</td>
<td></td>
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erroneous belief that a constitutional requirement is merely statutory and subject to amendment through the ordinary legislative process. The omitted statute reads:

Sec. 4.003. (a) Article VIII, Section 9, of the Texas Constitution, as amended, gives counties the authority to establish a county road and bridge fund and to use a portion of its general revenue as a source of money for the fund, subject to the limitation on tax rates described in that article. That article, with limitations, permits counties to levy an additional tax for the road and bridge fund if that tax is approved by the voters in a manner described by Section 4.102 of this Act.

(2) Section 4.003(c), V.A.C.S. Article 6702-1, is omitted from the revision as unnecessary because that provision simply refers to V.A.C.S. Article 6675a-10, revised as ___ of this code. The omitted statute reads:

(c) The county's share of funds collected from the registration of motor vehicles that is deposited in the county road and bridge fund shall be determined according to Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-10, Vernon's Texas Civil Statutes), or a future law.

Revised Law

Sec. 256.002. DISTRIBUTION OF COUNTY AND ROAD DISTRICT HIGHWAY FUND. (a) The state treasurer shall distribute to the counties on or before October 15 of each year the money appropriated from the county and road district highway fund for that fiscal year.

(b) The money appropriated under Subsection (a) shall be allocated among the counties as follows:

(1) one-fifth according to area, determined by the ratio of the area of the county to the area of the state;

(2) two-fifths according to rural population, determined by the ratio of the rural population of the county to
the rural population of the state; and

(3) two-fifths according to lateral road mileage, determined by the ratio of the mileage of lateral roads in the county to the mileage of lateral roads in the state as of January 1 of the year of the allocation as shown by the records of the State-Federal Highway Planning Survey and the department.

(c) On its own motion or at the request of a county, the commission may have a survey made of the county's lateral road mileage. If a survey is made, its results shall be substituted for the corresponding government information to be used under Subsection (b)(3). The governmental entity that requests the survey shall pay for it. (V.A.C.S. Art. 6702-1, Secs. 4.001(a), (b), (c).)

Source Law
Sec. 4.001. (a) The State Treasurer shall distribute to the counties on or before October 15 of each year the money appropriated from the county and road district highway fund for that fiscal year.

(b) The allocation of the money among the counties is determined as follows:

(1) one-fifth of the money appropriated is allocated on the basis of area, determined by the ratio of the area of the county to the area of the state;

(2) two-fifths of the money appropriated is allocated on the basis of rural population according to the most recent federal census, determined by the ratio of the rural population of the county to the rural population of the state; and

(3) two-fifths of the money appropriated is allocated on the basis of lateral road mileage, determined by the ratio of the mileage of lateral roads in the county to the mileage of lateral roads in the state as of January 1 of the year of the allocation as shown by the records of the State-Federal Highway Planning Survey and the State Department of Highways and Public Transportation.

(c) On its own motion or at the request of a county, the State Highway and Public Transportation Commission may have a survey made of the county's lateral road mileage. If a survey is made its results shall be substituted for the corresponding government figures. The governmental entity requesting the study shall pay for it.

Revisor's Note
Sections 4.001(b) and (c), V.A.C.S. Article 6702-1, refer to the State Department of Highways and Public Transportation and the State Highway and Public Transportation Commission.
Transportation Commission. The revised law substitutes
"department" and "commission" for the reasons stated in
the reviser's note to Section 201.003 of this code.

Revised Law

Sec. 256.003. USE OF REVENUES FROM COUNTY AND ROAD DISTRICT
HIGHWAY FUND. (a) A county may use the money it receives under
Section 256.002 only for:

(1) purchasing right-of-way for lateral roads,
farm-to-market roads, or state highways;
(2) constructing and maintaining lateral roads,
including the hiring of labor and the purchase of materials,
supplies, and equipment; or
(3) paying the principal, interest, and sinking fund
requirements maturing during the fiscal year on bonds, warrants, or
other legal obligations incurred to finance activities described in
Subdivisions (1) and (2).

(b) On or before October 1 of each year the county judge of
each county shall file with the state treasurer a sworn report that
includes:

(1) an account of how the money allocated to the
county under Section 256.002 during the preceding year was spent;
(2) a description, including location, of any new
roads constructed in whole or part with that money; and
(3) any other information related to the
administration of Section 256.002 and this section that the state
treasurer requires.

(c) A county officer or employee shall provide to the state
treasurer on request any information necessary to determine the
legality of the use of funds allocated under Section 256.002.

(d) A county may require that bids for construction funded
in whole or part by money received under Section 256.002 be
submitted to the commission in the manner provided for bids for
construction of a state highway.
(e) On the request of a county, the commission shall provide technical and engineering assistance in making surveys, preparing plans and specifications, preparing project proposals, and supervising construction. The county shall pay the costs of providing the assistance. (V.A.C.S. Art. 6702-1, Secs. 4.001(d), (e), (f), (g), (h).)

Source Law

(d) A county may use the money it receives from the county and road district highway fund only for the following purposes:

(1) purchasing right-of-way for lateral roads, farm-to-market roads, or state highways;
(2) constructing and maintaining lateral roads, including the hiring of labor and purchasing of materials, supplies, and equipment; and
(3) paying the principal, interest, and sinking fund requirements maturing during the fiscal year on bonds, warrants, or other legal obligations incurred to finance the activities described in Subdivisions (1) and (2) of this subsection.

(e) On or before October 1 of each year the county judge of each county shall file with the State Treasurer a sworn report including:

(1) an account of how the money allocated to the county under this section during the preceding year was spent;
(2) a description, including the location, of any new roads constructed in whole or in part with these funds; and
(3) other information pertinent to the administration of this section that the State Treasurer requests.

(f) A county officer or employee shall provide to the State Treasurer on request any information necessary to determine the legality of the use of funds allocated under this section.

(g) A county may require that bids for construction funded in whole or in part by money received under this section be submitted to the State Highway and Public Transportation Commission in the manner provided for bids for construction of state highways.

(h) On request by a county the State Highway and Public Transportation Commission shall provide technical and engineering assistance in making surveys, preparing plans and specifications, preparing project proposals, and supervising construction. The cost of this assistance shall be paid by the county.

Revisor's Note

(1) Section 4.001(e)(3), V.A.C.S. Article 6702-1, refers to the administration of "this section," referring to Section 4.001 of that article. That section is revised in part as this section of the
revised law and in part as Section 256.002 of this chapter. Accordingly, the reference to "this section" is revised to refer to both this section of the revised law and Section 256.002.

(2) Sections 4.001(e)(1), (f), and (g), V.A.C.S. Article 6702-1, refer to funds allocated or received under "this section." The provisions of that section allocating that money to the counties are revised in Section 256.002 of this chapter, and the revised law is drafted accordingly.

(3) Sections 4.001(g) and (h), V.A.C.S. Article 6702-1, refer to the State Highway and Public Transportation Commission. The revised law substitutes "commission" for the reasons stated in the revisor's note to Section 201.003 of this code.

Revised Law

Sec. 256.004. DEPOSITS OF TAXES TO COUNTY FARM-TO-MARKET AND LATERAL ROAD FUND AND FLOOD CONTROL FUND. (a) The commissioners court of a county shall credit taxes collected under Section 256.054 to the credit of separate funds called the farm-to-market and lateral road fund and the flood control fund.

(b) If the voters at an election held under Section 256.054 approved separately a farm-to-market and lateral road tax and a flood control tax, the court shall credit the taxes collected to those funds in proportion to the allocation adopted at the election. (V.A.C.S. Art. 6702-1, Sec. 4.103(c) (part).)

Source Law

(c) Taxes levied and collected under this section shall be credited by the commissioners court to separate funds known as the farm-to-market and lateral road fund ... and to the flood control fund ... The credits shall be made proportionately in accordance with the allocation adopted at the election called under the provisions of Subsections (h) and (i) of this section.
Revisor's Note

Section 4.103(c), V.A.C.S. Article 6702-1, refers to taxes collected under "this section." The authority for the taxes is codified as Section 256.054 of this chapter, and the revised law is drafted accordingly.

Revised Law

Sec. 256.005. USE OF FARM-TO-MARKET AND LATERAL ROAD FUND.

(a) The farm-to-market and lateral road fund of a county is under the jurisdiction and control of the commissioners court. Money in the fund may be used only for the construction and maintenance of farm-to-market and lateral roads in the county.

(b) All or part of the money in the fund may be used in cooperation with the department in acquiring rights-of-way and in constructing and maintaining farm-to-market and lateral roads.

(c) Money in the fund shall be spent to equitably distribute as nearly as possible the benefits derived from the expenditures to the commissioners' precincts in accordance with the taxable value of property in each precinct. (V.A.C.S. Art. 6702-1, Secs. 4.103(b) (part), (c) (part), (d), (g) (part)).

Source Law

(b) ... The revenue from these taxes shall be used as provided in this section for the construction and maintenance of farm-to-market and lateral roads ... and for these [two] purposes only.

(c) [Taxes levied and collected under this section shall be credited by the commissioners court to separate funds known as] the farm-to-market and lateral road fund to be used solely for farm-to-market and lateral roads within the county ... .

(d) The funds placed in the farm-to-market and lateral road fund shall be under the jurisdiction and control of the commissioners court of the county, and all or part of the fund may be used in cooperation with the State Department of Highways and Public Transportation in acquiring rights-of-way and in constructing and maintaining farm-to-market and lateral roads.

(g) Both the farm-to-market and lateral road fund and ... shall be expended so as to equitably distribute as nearly as possible the benefits derived from the expenditures to the various commissioners' precincts in accordance with the taxable values in the precincts.
Revisor's Note

Section 4.103(d), V.A.C.S. Article 6702-1, refers to the State Department of Highways and Public Transportation. The revised law substitutes "department" for the reasons stated in the reviser's note to Section 201.003 of this code.

Revised Law

Sec. 256.006. USE OF FLOOD CONTROL FUND. (a) The flood control fund of a county is under the jurisdiction and control of the commissioners court. Money in the fund may be used only for flood control purposes in the county and political subdivisions of the county, including:

(1) any soil conservation activity such as contouring, terracing, or tank building; or
(2) any other activity that controls or conserves moisture or water.

(b) Money in the fund shall be spent to equitably distribute as nearly as possible the benefits derived from the expenditures to the commissioners' precincts in accordance with the taxable value of property in each precinct.

(c) All or part of the money in the fund may be used in connection with the plans and programs of:

(1) the United States Soil Conservation Service;
(2) the Texas Agricultural Extension Service;
(3) a state soil conservation district, conservation and reclamation district, drainage district, water control and improvement district, navigation district, flood control district, or levee improvement district; or
(4) a municipality.

(d) Plans for an improvement constructed with money from the fund must be approved by the county and, if applicable, the affected political subdivision.

(e) The commissioners court may hire a federal or state soil
conservation engineer or personnel of the Texas Agricultural
Extension Service to plan a soil, water, erosion, and drainage
program for flood control under this section and may acquire the
machinery, equipment, or material useful in carrying out the
program. The machinery and equipment shall be made available to
the owner of a farm or ranch for purposes consistent with the
purposes of this section. A farm or ranch owner using the
machinery or equipment shall compensate the county for the use
according to the actual expenses incurred by the county, not
including depreciation. (V.A.C.S. Art. 6702-1, Secs. 4.103(b)
(part), (c) (part), (e), (f), (g) (part).)

Source Law

(b) . . . The revenue from these taxes shall be
used as provided in this section . . . for flood
control and for these [two] purposes only.
(c) . . . the flood control fund to be used
solely for flood control purposes within the county.
(e) The funds transferred to the flood control
fund are under the jurisdiction and control of the
commissioners court of the county and shall be used
solely for flood control purposes. All or part of the
funds may be used in connection with the plans and
programs of the federal Soil Conservation Service and
the state soil conservation districts and the state
extension service, conservation and reclamation
districts, drainage districts, water control and
improvement districts, navigation districts, flood
control districts, levee improvement districts, and
municipal corporations. The funds may be expended by
the commissioners court in accordance with this section
for flood control purposes, including all soil
conservation practices such as contouring, terracing,
and tank building, and all other practices actually
controlling and conserving moisture and water, within
the county and political subdivisions of the county for
flood control and soil conservation programs. The
plans for improvement must be approved by the county
and political subdivision.
(f) To this end, the commissioners court may in
its discretion engage the services of a federal or
state soil conservation engineer or of extension
service personnel in devising and planning a soil,
water, erosion, and drainage program coming within the
purview of this section and consistent with the
expenditure of the funds for flood control purposes
only and may acquire whatever machinery, equipment, and
material is useful and necessary in carrying out the
flood control program. The machinery and equipment
shall be made available to farm and ranch owners for
purposes consistent with the provisions of this section
on an out-of-pocket expense basis, not including
depreciation.
(g) . . . the flood control fund shall be
expended so as to equitably distribute as nearly as
possible the benefits derived from the expenditures to
the various commissioners' precincts in accordance with
the taxable values in the precincts.

Revisor's Note
Section 4.103(e), V.A.C.S. Article 6702-1, refers
to a "municipal corporation." The revised law
substitutes the term "municipality" for "municipal
corporation" because that is the term used in the Local
Government Code.

Revised Law
Sec. 256.007. TRANSFERS OF SURPLUS REGISTRATION FEE REVENUE.
The commissioners court of a county that does not impose a tax for
the construction and maintenance of roads and bridges may transfer
surplus money derived from motor vehicle registration fees to any
county fund that the court designates and may spend that money for
any purpose authorized by Section 7-a, Article VIII, Texas
Constitution. (V.A.C.S. Art. 6702-1, Sec. 4.203.)

Source Law
Sec. 4.203. The commissioners court of any
county not levying a tax for building and maintaining
roads and bridges and having surplus funds from
revenues derived from motor vehicle registration fees
is authorized to transfer the surplus to any county
fund that the court may designate and to expend the
surplus for any use or purpose.

Revisor's Note
Section 4.203, V.A.C.S. Article 6702-1, states
that surplus motor vehicle registration fees may be
spent for any use or purpose. Section 7-a, Article
VIII, Texas Constitution, requires all motor vehicle
registration fees to be used for certain purposes.
Accordingly, the revised law adds a reference to the
constitutional provision to clarify the appropriate
uses of the excess fees.
Revised Law

Sec. 256.008. STATE FUNDING OF FARM-TO-MARKET ROADS. (a) Money in the farm-to-market road fund may be used only to finance the construction, improvement, and maintenance of farm-to-market roads by the department.

(b) The department shall use money made available for the construction, improvement, and maintenance of farm-to-market roads so that not less than $23 million is used each year for those purposes on farm-to-market roads selected under Subsection (c).

(c) The money spent under Subsection (b) shall be used for a system of roads selected by the department after consultation with the commissioners courts of the counties to identify the most needed roads in the counties. The department shall make the selections in a manner intended to ensure equitable and judicious distribution of money and work among the counties.

(d) To be selected, a road must have the following general characteristics:

(1) it may not be a potential addition to the federal aid primary highway system;

(2) it must serve rural areas primarily and must connect farms, ranches, rural homes, sources of natural resources such as oil, mines, timber, and water loading points, schools, churches, and points of public congregation, including community developments and villages;

(3) it must be capable of contributing to the creation of economic values in the areas it serves;

(4) it must preferably serve as a public school bus route or rural free delivery postal route; and

(5) it must be capable of early integration into the improved state road system, and at least one end of the road should connect with an improved road or a road that is soon to be improved that is in the state road system. (V.A.C.S. Art. 6702-1, Sec. 4.002.)
Sec. 4.002. (a) The farm-to-market road fund is established for financing the construction, improvement, and maintenance of farm-to-market roads by the State Department of Highways and Public Transportation.

(b) The State Department of Highways and Public Transportation shall use the money transferred to the farm-to-market road fund under Article 4364a, Revised Statutes, as amended, and other funds made available to the department for such purposes so that not less than $23 million each year is used for the construction, improvement, and maintenance of designated farm-to-market roads.

(c) The farm-to-market road fund shall be used for a system of roads selected by the State Department of Highways and Public Transportation after consultation with the commissioners courts of the counties of the state relative to the most needed roads in the counties. The selections shall be made in a manner to ensure equitable and judicious distribution of funds and work among the several counties of the state.

(d) The general characteristics of the roads to be selected are as follows:

1. The roads shall not be potential additions to the federal aid primary highway system;
2. The roads shall serve rural areas primarily and shall connect farms, ranches, rural homes, and sources of natural resources such as oil, mines, timber, and water loading points, schools, churches, and points of public congregation, including community developments and villages;
3. The roads shall be capable of assisting in the creation of economic values in the areas served;
4. The roads shall preferably serve as public school bus routes or rural free delivery postal routes or both; and
5. The roads shall be capable of early integration with the previously improved Texas road system, and at least one end should connect with a road already or soon to be improved on the state system of roads.

Revisor's Note

(1) Section 4.002, V.A.C.S. Article 6702-1, refers to the State Department of Highways and Public Transportation. The revised law substitutes "department" for the reasons stated in the revisor's note to Section 201.003 of this code.

(2) Section 4.002(b), V.A.C.S. Article 6702-1, refers to money transferred to the farm-to-market road fund under Article 4364a, Revised Statutes. That article was revised in 1987 as Section 403.093,
Government Code. Subsection (b) of that section, which provided for transfers of general revenue to the farm-to-market road fund, was repealed in 1989. Accordingly, the reference to Article 4364a, Revised Statutes, is omitted from the revised law.

Revisor's Note
(End of Subchapter)

The revised law omits V.A.C.S. Article 6674q-8c, which provides a penalty for misuse or other actions by county officials relating to revenue from the lateral road account. The lateral road account was abolished in 1979 when former V.A.C.S. Article 6674q-7 expired according to its terms. The expiration date was added to that article by Section 2.021 of Chapter 735, Acts of the 65th Legislature, Regular Session, 1977. Accordingly, Article 6674q-8c has no application and therefore has no effect. The omitted statute reads:

Art. 6674q-8c. It shall be unlawful for any County Judge or any County Commissioner, while acting in his official capacity or otherwise, to use any money out of the Lateral Road Account for any purpose except the purposes enumerated in this Act. If any County Judge or any County Commissioner shall knowingly expend or use, or vote for the use of, or agree to expend or use any sum of money accruing to any county in this state from the Lateral Road Account, for any purpose not authorized by this Act, or shall knowingly make any false statement concerning the expenditure of any such money, he shall be deemed guilty of a felony, and upon conviction shall be punished by confinement in the State Penitentiary for not less than two (2) years nor more than five (5) years.

[Sections 256.009-256.050 reserved for expansion]

SUBCHAPTER B. TAXES FOR COUNTY ROADS

Revised Law

Sec. 256.051. COUNTY, PRECINCT, AND ROAD DISTRICT BOND TAXES. (a) In each year in which bonds issued under Article 726, Revised Statutes, are outstanding, the county, precinct, or road
1 district that issued the bonds shall impose taxes in an amount
2 sufficient to pay the principal of and interest on the bonds.
3
4 (b) The taxes shall be imposed in the manner provided by
5 Sections 51.502 through 51.506, Water Code. A reference in Chapter
6 257 of this code or in Article 726, Revised Statutes, to ad valorem
7 taxes applies to a tax levied by the commissioners court under this
8 section on a basis other than the ad valorem basis.
9
10 (c) Taxes for bonds issued on the full faith and credit of
11 the county shall be assessed and collected by the county
12 assessor-collector in the manner provided by law for the assessment
13 and collection of other county taxes.
14
15 (d) Taxes for bonds issued for and on the full faith and
16 credit of a precinct or road district shall be assessed and
17 collected by the county assessor-collector in the manner provided
18 for the assessment and collection of common school district taxes.
19
20 (e) The county assessor-collector shall pay taxes collected
21 under this section to the county treasurer in the manner that other
22 taxes are paid. (V.A.C.S. Art. 6702-1, Secs. 4.425, 4.426, 4.427,
23 4.428.)
24
25 Source Law
26
27 Sec. 4.425. Each year that bonds are
28 outstanding, taxes shall be levied sufficient to pay
29 the principal of and interest on the bonds. Taxes
30 shall be levied in accordance with the procedures for
31 taxation set forth in Sections 51.502 through 51.506,
32 Water Code. To the extent that the provisions of this
33 Act refer to ad valorem taxes, such provisions shall be
34 deemed to refer to taxes levied on any basis of
35 taxation for which provision is herein made if the
36 commissioners court determines to levy on a basis other
37 than an ad valorem basis.
38
39 Sec. 4.426. When the bonds are issued on the
40 faith and credit of the county, the taxes authorized by
41 this subchapter shall be assessed and collected in the
42 same manner as now provided by law for the assessment
43 and collection of other county taxes.
44
45 Sec. 4.427. When the bonds are issued for and on
46 the faith and credit of a political subdivision or road
47 district, the taxes shall be assessed and collected in
48 the same manner as for the assessment and collection of
49 common school district taxes.
50
51 Sec. 4.428. The tax assessor and tax collector
52 of the county in which the taxes have been levied shall
53 assess and collect the taxes in the manner and at the
54 time as other taxes, and when so collected, the tax
55 collector shall pay them to the county treasurer as
56 other taxes are paid.
Revisor's Note

(1) Section 4.425, V.A.C.S. Article 6702-1, refers to "bonds." In context, that term refers to road bonds issued under Parts 2 and 3, Subchapter E, Chapter 4, V.A.C.S. Article 6702-1. Those provisions are transferred by a conforming amendment to this code to Article 726, Revised Statutes, and the revised law is drafted accordingly.

(2) Section 4.425, V.A.C.S. Article 6702-1, refers to "the provisions of this Act" (Article 6702-1) that refer to ad valorem taxes. All the relevant provisions authorizing ad valorem taxes are codified in Chapter 257 of this code, relating to road districts, or are transferred by a conforming amendment to this code to Article 726, Revised Statutes. Accordingly, the revised law replaces the reference to "the provisions of this Act" with references to those two statutes.

(3) Section 4.428, V.A.C.S. Article 6702-1, refers to the "tax assessor" and "tax collector" of the county. Under Sections 14, 16, and 16a, Article VIII, Texas Constitution, a single officer is responsible for assessing and collecting county taxes, and under Section 6.21, Tax Code, that officer is referred to as the county assessor-collector. Accordingly, the revised law uses "county assessor-collector."

Revised Law
Sec. 256.052. ADOPTION OF SPECIAL ROAD TAX. (a) At an election held under this section, a county or political subdivision or defined district of a county may adopt the additional ad valorem tax not to exceed 15 cents on the $100 valuation of property provided by Section 9, Article VIII, Texas Constitution, for the further maintenance of the county roads.
(b) On a petition signed by a majority of the registered voters of a political subdivision or other specified portion of a county, the commissioners court of the county by order shall declare the political subdivision or specified portion of the county to be a defined district and shall record the order in the court's minutes. The petition must define by metes and bounds the territory requested to be included in the proposed defined district.

(c) The commissioners court shall order an election to adopt the tax if it receives a petition requesting the election that is signed by:

(1) at least 200 registered voters of the county, if the petition requests an election to approve a tax for the county; or

(2) at least 50 registered voters of the political subdivision or defined district, if the petition requests an election to approve a tax for a political subdivision or defined district.

(d) The commissioners court shall set the rate of the tax in the election order. The court shall order the election to be held on the first authorized uniform election date prescribed by Subchapter A, Chapter 41, Election Code, that occurs after the 20th day after the date the election is ordered.

(e) The county judge shall issue an election proclamation.

(f) The ballot for the election shall be printed to permit voting for or against the proposition: "Adopting a road tax."

(g) If a majority of the votes received in the election favor adoption of the tax, the commissioners court shall impose the tax in the amount specified in the order for the election in the same manner as it imposes other taxes. If the election is held in time, in the year of the election the court shall impose the tax at the same time as other county taxes. Otherwise, the court may impose the tax at any time before the tax roll is made out. If a greater rate is not imposed for a year, the court may lower the
rate for the next year without a petition for that action.

(h) A petition calling for an election to adopt a tax under this section may not be granted on or before the first anniversary of the date of an election held under this section at which the voters do not approve the adoption of the tax.

(i) This section does not authorize the issuance of bonds.

(V.A.C.S. Art. 6702-1, Secs. 4.102(a), (b) (part), (c) (part), (d).)

Source Law

Sec. 4.102. (a) On presentation to the commissioners court at any regular session of a petition signed by 200 qualified voters of the county or a petition of 50 persons so qualified in any political subdivision or defined district of the county requesting the election, the court shall order an election to determine whether the county shall levy a road tax not to exceed 15 cents on the $100 value of property under the provisions of the amendment of 1889 to the constitution of the State of Texas, adopted in 1890. The court may act on the petition without notice and may make an order for the election, fixing the amount to be levied, not to exceed 15 cents on the $100. The court shall order the election to be held on the next uniform election date authorized by Section 9b, Texas Election Code, as amended (Article 2.01b, Vernon's Texas Election Code), that occurs after the 20th day after the day the order is made. On a petition signed by a majority of the qualified voters of any portion of any county or of any political subdivision of any county to the court requesting that the portion of the county or political subdivision be created as a defined district, the court shall, declare the territory a defined district and record the order for the district in the minutes of the court. The petition must define by metes and bounds the territory desired to be incorporated in the defined district.

(b) No formal notice need be given of the election, but the county judge shall issue an election proclamation. Notice of the election shall be published in the newspapers of the county or political subdivision or defined district as fully as practicable. . . . The ballots shall be printed to provide for voting for or against the proposition: "Adopting a road tax." . . .

(c) If at the election a majority of the qualified voters voting on the question vote for the tax, . . . the commissioners court shall then levy a road tax, in the same manner that other taxes are levied, in the amount specified in the order for the election. The levy shall be made at the same time other county taxes are levied, if the election is held in time for that action. Otherwise, it may be made at any time before the rolls are made out. . . . But if it fails to carry, another petition may be granted in one year, but not sooner, and the order granting the second or any subsequent petition may fix a greater or lesser rate of levy, but not to exceed 15 cents on the $100 worth of property. If no greater rate is levied
for any one year the commissioners court may lower the
rate for the next year without a petition for that
action. . . .
(d) No bonds may be issued under this
subchapter.

Revisor's Note
(1) Section 4.102(a), V.A.C.S. Article 6702-1,
refers to the tax authorized by the 1889 amendment to
the constitution adopted in 1890. That amendment added
authority for a tax of 15 cents for each $100 of
taxable property to Section 9, Article VIII, Texas
Constitution. The revised law replaces the reference
to the year of the amendment with a reference to the
applicable section of the constitution.
(2) Section 4.102(a), V.A.C.S. Article 6702-1,
requires a petition to be signed by the "qualified
voters" of the county, road district, or precinct. The
revised law uses "registered voters" instead because
Section 277.0021, Election Code, provides that
"qualified voter" means "registered voter" in
determining eligibility to sign a petition.
(3) Section 4.102(a), V.A.C.S. Article 6702-1,
states that a "[commissioners] court may act on the
petition without notice." The revised law omits that
provision because it is superseded by the public notice
requirements of the open meetings law (Subchapter C,
Chapter 551, Government Code).
(4) Section 4.102(a), V.A.C.S. Article 6702-1,
refers to the next uniform election date authorized by
Section 9b, Texas Election Code, as amended (Article
2.01b, Vernon's Texas Election Code). That statute was
codified in 1985 as Subchapter A, Chapter 41, Election
Code. Accordingly, the revised law refers to
Subchapter A, Chapter 41, Election Code. The revised
law omits as unnecessary "as amended" because under
Section 311.027, Government Code (Code Construction Act), applicable to this code, unless expressly provided otherwise, a reference to any portion of a statute applies to all amendments of the statute.

(5) Section 4.102(b), V.A.C.S. Article 6702-1, states that no formal notice of the election is necessary. That provision is omitted because it is unnecessary. Section 4.102(b) also provides for notice of the election by publication. The revised law omits that provision because Sections 4.003(c) and (d), Election Code, provide that the newspaper notice prescribed by Section 4.003(a)(1), Election Code, applies to any election ordered by a commissioners court. Accordingly, the Election Code notice requirement supersedes the similar newspaper notice requirement of Section 4.102(b), V.A.C.S. Article 6702-1.

(6) Section 4.102(c), V.A.C.S. Article 6702-1, provides that following an unsuccessful election to adopt the tax an order for another election to adopt the tax pursuant to a subsequent petition may propose a greater or lesser tax rate than was proposed at the first election. That provision is omitted as unnecessary because the general authority to call an election under Section 4.102, codified as Subsection (c) of this section of the revised law, provides that the commissioners court may set the rate of the tax in any election order.

(7) Section 4.102(b), V.A.C.S. Article 6702-1, provides for the printing and delivery of ballots and for the conduct of an election held under that section. Section 4.102(c) of that article provides for the counting of the votes and announcement of the results of the election as provided for other elections. The
revised law omits those provisions as unnecessary. The
Election Code governs those matters for elections
generally, and Section 1.002, Election Code, provides
that the Election Code applies to all special
elections. Section 4.102(b) also provides that only
qualified voters may vote in the election. That
provision is omitted as unnecessary because Section
11.001, Election Code, provides that only a qualified
voter may vote in any election unless otherwise
provided by law. The omitted provisions of Sections
4.102(b) and (c) read:

(b) . . . Ballots for the election
shall be printed by the county and sent to
each voting precinct by the county judge
before the election opens and as long
before that time as
practicable. . . . The expenses of the
election shall be paid for by the county.
The special election shall be conducted as
other elections to the extent practicable.
The officers to conduct the same shall be
appointed as in other cases. Only
qualified voters in the county or political
subdivision or defined district shall be
permitted to vote at the election.

(c) [If at the election a majority
of the qualified voters voting on the
question vote for the tax,) it is not
necessary to make further proclamation of
that fact than to count the votes, as in
other cases, and officially announce the
result . . . .

Revised Law

Sec. 256.053. REPEAL OF SPECIAL ROAD TAX. (a) The
commissioners court of a county may order and conduct an election
to repeal a tax adopted under Section 256.052 in the manner
provided for an election to adopt the tax.

(b) A petition requesting an election to repeal the tax may
not be granted on or before the second anniversary of the date of
the election at which the tax is adopted.

(c) The commissioners court may grant a petition calling for
an election to repeal the tax only if satisfactory proof is
presented to the court that:
(1) there is great dissatisfaction with the tax; and

(2) it is probable that a majority of the residents of
the county, political subdivision, or defined district who are
qualified to vote for the tax would vote for repeal of the tax.

(V.A.C.S. Art. 6702-1, Sec. 4.102(c) (part).)

Source Law

(c) . . . If at the election, the proposition
for the tax shall carry, no petition for its repeal
shall be granted in less than two years. . . . An
election to repeal the levy may be ordered and held as
in other cases, but there must be satisfactory proof
presented to the commissioners court that there is
great dissatisfaction with the tax and that it is
probable that a majority of the citizens of the county
or political subdivision or defined district who are
authorized to vote for the tax would vote for the
repeal of the law. Unless the proof is made, the
petition to repeal shall be denied.

Revisor's Note

(1) Section 4.102(c), V.A.C.S. Article 6702-1,
refers to "citizens" of a county, political
subdivision, or defined district. 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.

(2) The last sentence of Section 4.102(c),
V.A.C.S. Article 6702-1, states that a petition to
repeal the special tax shall be denied if the required
proof is not made. That sentence is omitted as
unnecessary because the preceding sentence states that
a petition may be granted only if the proof is made.

Revised Law

Sec. 256.054. ADDITIONAL COUNTY TAXES FOR COUNTY ROADS AND
FLOOD CONTROL; BONDS. (a) A county may impose ad valorem taxes as
provided by Section 1-a, Article VIII, Texas Constitution, for the
construction and maintenance of farm-to-market and lateral roads or
for flood control, not to exceed the maximum tax rate established
by that section, only if the taxes are approved at an election held
under this section.

(b) The commissioners court of the county may order an election under this section on its own motion. The court shall order an election under this section if it receives a petition requesting the election signed by a number of registered voters of the county equal to at least 10 percent of the number of voters who voted in the most recent general election in the county. The court may adopt the order only at a regular session of the court. The order must specify the maximum rate of the tax to be voted on.

(c) The proposition submitted to the voters at the election may provide that the tax may be used for the construction and maintenance of farm-to-market and lateral roads, for flood control purposes, or for both, as determined by the commissioners court. At an election to adopt a tax for only one of those purposes, the ballot shall be printed to permit voting for or against the proposition: "Adopting a tax not exceeding ____ cents on each $100 valuation," specifying the purpose of the tax to be voted on. At an election to adopt a tax for each of those purposes, the ballot shall be printed to permit voting for or against the proposition: "Adopting a farm-to-market and lateral roads tax not exceeding ____ cents and a flood control tax not exceeding ____ cents on each $100 valuation."

(d) In addition to the notice of the election required by Section 4.003, Election Code, the county judge shall post a copy of the election order at a public place in each county election precinct not later than the 14th day before the date of the election.

(e) If a majority of the votes received in the election favor adoption of the tax, the commissioners court shall impose the tax each year in the same manner as other county ad valorem taxes.

(f) The commissioners court may call a subsequent election to change the maximum rate of a farm-to-market and lateral road tax or flood control tax previously adopted by the county in the manner provided by this section for an election to adopt a tax.
(g) The commissioners court of a county that adopts a tax as provided by this section may issue negotiable county bonds or county time warrants for the construction or improvement of farm-to-market and lateral roads or the construction of permanent improvements for flood control purposes if the bonds or warrants are authorized by a majority of the votes received in an election ordered by the commissioners court. The commissioners court shall submit each proposition separately at the election. The commissioners court shall issue the bonds or warrants and impose the taxes for those bonds or warrants as provided by Chapter 1, Title 22, Revised Statutes. (V.A.C.S. Art. 6702-1, Secs. 4.103(b) (part), (h), (i) (part), (j), (k).)

Source Law

(b) The several counties of the state may levy, assess, and collect ad valorem taxes on all property within their respective boundaries for county purposes, except the first $3,000 value of residential homesteads, not to exceed 30 cents on each $100 valuation, in addition to all other ad valorem taxes authorized by the constitution of the state. . . .

(h) Before any county may levy, assess, and collect the tax provided for in this section, the commissioners court shall submit the question to a vote of the qualified voters of the county at an election called for that purpose, either on the commissioners court's own motion or on petition of 10 percent of the qualified voters of the county as shown by the returns of the last general election. The election shall be ordered at a regular session of the commissioners court and the order shall specify the rate of tax to be voted on, not to exceed 30 cents on each $100 valuation of taxable property within the county, shall state the date when the election shall be held, and shall appoint officers to hold the election in accordance with the election laws of this state. The proposition submitted to the qualified voters at the election may provide that the tax at a rate not to exceed 30 cents on each $100 valuation may be used for the construction and maintenance of farm-to-market and lateral roads or for flood control purposes, either or both, as the commissioners court may determine (in which event the ballots shall be printed to permit voting for or against the proposition: "Adopting a tax not exceeding __ cents on each $100 valuation," specifying the tax to be voted on), or the proposition may provide for a specific maximum tax for farm-to-market and lateral roads purposes and a specific maximum tax for flood control purposes, the total of the two specific maximum taxes not to exceed 30 cents on the $100 valuation (in which event the ballots shall be printed with the proposition: "Adopting a farm-to-market and lateral roads tax not exceeding __ cents and a flood control tax not exceeding __ cents, on the $100 valuation").
Elections may subsequently be called and held in the same manner for the purpose of changing the amount of the maximum tax within the limit of 30 cents on the $100 valuation or for changing the amounts of the maximum specific tax voted for each purpose.

(i) The county judge shall cause notice of the election to be posted at a public place in each voting precinct in the county not later than the 14th day before the day of the election..., which notice shall be a substantial copy of the election order...

(j) If a majority of the qualified voters voting at the election vote in favor of the tax, the tax shall be annually levied, assessed, and collected as other county ad valorem taxes are levied, assessed, and collected.

(k) After an election has been held under Subsections (h) and (i) of this section, at which election a majority of the qualified voters voting at the election voted in favor of the tax, the commissioners court may issue either negotiable county bonds or county time warrants for the purpose of the construction or improvement of farm-to-market and lateral roads or for the purpose of constructing permanent improvements for flood control purposes. However, the bonds or warrants must have been authorized by a majority of the qualified voters voting at an election called by the commissioners court. The bonds and warrants shall be issued and the taxes levied and collected in accordance with Chapter 1, Title 22, Revised Statutes, and each proposition shall be separately submitted to the voters at the election.

Revisor's Note

(1) Sections 4.103(b) and (h), V.A.C.S. Article 6702-1, provide that taxes levied under that section may not exceed 30 cents per $100 of taxable value. The revised law substitutes a provision stating that the taxes may not exceed the rate provided by Section 1-a, Article VIII, Texas Constitution, which authorizes the tax provided by Section 4.103 and contains the same 30-cent tax rate limit. The policy of the legislative council's statutory revision program is to omit from the revised codes statutory provisions that duplicate a constitutional provision because a statute that tracks the language of the constitution is not only superfluous but may foster the erroneous belief that a constitutional limitation is merely statutory and subject to amendment through the ordinary legislative process. The revised law retains the reference to the
constitutional provision to clarify that the tax rate is limited and that the limit applies even if separate taxes are authorized for each of the specified purposes. Section 4.103(b) also states that the tax may not be imposed on "the first $3,000 value of residential homesteads." The revised law omits that provision because Section 11.13(a), Tax Code, provides for the same exemption.

(2) Section 4.103(h), V.A.C.S. Article 6702-1, states that an election order shall state the date on which the election is to be held. That requirement is omitted from the revised law as unnecessary because Section 3.006, Election Code, applicable to the revised law, requires any election order to state the date of the election.

(3) Section 4.103(h), V.A.C.S. Article 6702-1, provides for appointment of election officers as provided by state election law. The revised law omits that requirement as unnecessary. The applicable provisions of the Election Code governing the administration of county elections apply to a tax election held under this section of the revised law without the necessity of a reference to that effect in this section.

(4) Section 4.103(a), V.A.C.S. Article 6702-1, provides that no state ad valorem tax may be levied for general revenue purposes except as provided by that section. That provision is omitted from the revised law because it is substantially identical to the prohibition contained in Sections 1-a and 1-e, Article VIII, Texas Constitution. The policy of the legislative council's statutory revision program is to omit from the revised codes statutory provisions that duplicate a constitutional provision because a statute
that tracks the language of the constitution is not only superfluous but may foster the erroneous belief that a constitutional requirement is merely statutory and subject to amendment through the ordinary legislative process. Section 4.103(a) also purports to provide that the other provisions of Section 4.103 are an exception to the prohibition against state ad valorem taxes. That provision is omitted because it has no effect. The remainder of that section authorizes county taxes, not a state tax. The omitted statute reads:

Sec. 4.103. (a) No state ad valorem tax may be levied on any property within this state for general revenue purposes, except as provided in this section.

(5) Section 4.103(i), V.A.C.S. Article 6702-1, provides for publication of notice of the election in a newspaper. The revised law omits that requirement because Sections 4.003(c) and (d), Election Code, provide that the newspaper notice provided under Section 4.003(a)(1), Election Code, applies to any election ordered by a commissioners court. Accordingly, that provision supersedes the similar newspaper notice requirement contained in Section 4.103, V.A.C.S. Article 6702-1. Section 4.103(i), V.A.C.S. Article 6702-1, also provides that only qualified voters may vote in the tax election. That provision is omitted as unnecessary because Section 11.001, Election Code, provides that only a qualified voter may vote in any election unless otherwise provided by law. The omitted provisions of Section 4.103(i) read:

(i) The county judge shall cause notice of the election . . . to be published on the same day in each of two successive weeks in a newspaper of general circulation published within the county, the date of the first publication to be not later than the 14th day before the day of
the election . . . . Only those shall be
entitled to vote at the election who are
qualified voters in the county.

Revisor's Note
(End of Subchapter)

(1) Section 4.101, V.A.C.S. Article 6702-1, is
omitted from the revision because the provision
authorizing a county tax is substantively identical to
the taxing authority provided by Section 9, Article
VIII, Texas Constitution, and the remainder of Section
4.101 simply refers to the tax rate limitations
contained in Section 9, Article VIII. The policy of
the legislative council's statutory revision program is
to omit from the revised codes the statutory provisions
that duplicate or simply refer to a constitutional
provision because a statute that tracks the language of
the constitution is not only superfluous but may foster
the erroneous belief that a constitutional requirement
is merely statutory and subject to amendment through
the ordinary legislative process. The omitted statute
reads:

Sec. 4.101. The commissioners court
of each county may levy a tax, part of the
revenue from which may be used to establish
the road and bridge fund, as long as the
limitations in Article VIII, Section 9, of
the Texas Constitution, as amended, are
observed.

(2) Section 4.201, V.A.C.S. Article 6702-1,
provides for the use of fines collected in violation of
certain traffic and vehicle statutes formerly included
in Title 13, Chapter 1, of the Penal Code of 1925. In
1973, the Penal Code was revised, and many of those
traffic and vehicle provisions were transferred to the
Uniform Act Regulating Traffic on Highways (V.A.C.S.
Article 6701d) (revised as Subtitle C, Title 7, of this
code). Section 144(a) of Article 6701d, revised as
Section 542.402 of this code, contains identical
provisions for the disposition of fines collected under that article by a county. Other offenses formerly contained in Title 13, Chapter 1, of the Penal Code of 1925 and the disposition of fines collected under those provisions are governed by general law relating to the disposition of criminal fines. Accordingly, Section 4.201, V.A.C.S. Article 6702-1, is omitted as obsolete.

The omitted statute reads:

Sec. 4.201. Fines collected for violations of any highway law that was previously set forth in Chapter 1, Title 13, Vernon's Texas Penal Code, 1925, shall be used by the municipality or the counties in which the fines are assessed and to which the fines are payable in the construction and maintenance of roads, bridges, and culverts in the municipality or county, for the enforcement of the traffic laws regulating the use of the public highways by motor vehicles and motorcycles, and to help defray the expense of county traffic officers.

CHAPTER 257. ROAD DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 257.001. ROAD DISTRICT OR PRECINCT OPERATING UNDER ROAD BOND LAW DESIGNATED BODY CORPORATE; POWER TO SUE AND BE SUED

Sec. 257.002. CONTRACTS OF ROAD DISTRICT OR PRECINCT OPERATING UNDER ROAD BOND LAW

Sec. 257.003. ACQUISITION OF ROADS

Sec. 257.004. ROAD DISTRICT SIGNS

Sec. 257.005. NOTICE TO PURCHASERS OF REAL PROPERTY IN ROAD DISTRICT

[Sections 257.006-257.020 reserved for expansion]

SUBCHAPTER B. ROAD DISTRICT WITHIN COUNTY

Sec. 257.021. ESTABLISHMENT OF ROAD DISTRICTS

Sec. 257.022. ABOLITION OF ROAD DISTRICT

Sec. 257.023. EXCLUSION OF CERTAIN TERRITORY OF EXISTING DISTRICTS FROM ROAD DISTRICT
CHAPTER 257. ROAD DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 257.001. ROAD DISTRICT OR PRECINCT OPERATING UNDER ROAD BOND LAW DESIGNATED BODY CORPORATE; POWER TO SUED AND BE SUED. (a) A county commissioners precinct or justice precinct operating under Article 726, Revised Statutes, or a road district is a body corporate and may sue or be sued in the same manner as a county.

(b) A commissioners precinct or justice precinct operating under Article 726, Revised Statutes, or a road district may not be held liable for a tort except as provided by Chapter 101, Civil Practice and Remedies Code. (V.A.C.S. Art. 6702-1, Sec. 4.432.)

Source Law

Sec. 4.432. Any road district, or any political subdivision accepting this subchapter, shall be a body corporate and may sue and be sued in like manner as counties. However, the road district or political subdivision may not be held liable for torts except as provided by the Texas Tort Claims Act, as amended (Article 6252-19, Vernon's Texas Civil Statutes).

Revisor's Note

(1) Section 4.432, V.A.C.S. Article 6702-1, refers to a "political subdivision accepting this subchapter." The reference is to Subchapter E, Chapter 4, Article 6702-1, transferred by a conforming amendment to this code to Chapter 3, Title 22, Revised Statutes, as Article 726, and the revised law is drafted accordingly. Under that subchapter, a commissioners precinct or justice precinct (referred to in that subchapter as "political subdivisions") may issue road bonds and carry out related functions as a defined district of the county for purposes of Section 52, Article III, Texas Constitution. That subchapter does not use the term "accepting" for a precinct that issues road bonds. The revised law substitutes...
"operating under" for "accepting" because that term more accurately describes the meaning of the source law.

(2) Section 4.432, V.A.C.S. Article 6702-1, refers to V.A.C.S. Article 6252-19 (the Texas Tort Claims Act). That act is codified as Chapter 101, Civil Practice and Remedies Code, and the revised law is drafted accordingly.

Revised Law
Sec. 257.002. CONTRACTS OF ROAD DISTRICT OR PRECINCT OPERATING UNDER ROAD BOND LAW. (a) A county commissioner is the ex officio road superintendent with power to enter into a contract in an amount that is not more than $50 on behalf of:

(1) a road district located in the commissioner's precinct;

(2) a justice precinct operating under Article 726, Revised Statutes, and located in the commissioner's precinct; or

(3) the commissioner's precinct if it is operating under Article 726, Revised Statutes.

(b) A contract made under Subsection (a) must be approved by the commissioners court.

(c) A contract in an amount that is more than $50 made on behalf of a road district or precinct described by Subsection (a) must be awarded by the commissioners court of the county in which the road district or precinct is located.

(d) The commissioners court may enter into a contract with an engineer, financial advisor, attorney, or other consultant as the court determines appropriate to act on behalf of the county or the road district or precinct. (V.A.C.S. Art. 6702-1, Sec. 4.435.)

Source Law
Sec. 4.435. The county commissioner in whose commissioner precinct the political subdivision or road district is located shall be ex officio road superintendent of the subdivision or district with
power to contract in behalf of the subdivision or
district in an amount not to exceed $50, which shall be
approved by the commissioners court. All contracts
exceeding the sum of $50 shall be awarded by the entire
court. This Act shall constitute wholly sufficient
authority for the commissioners court, if in its sole
discretion it considers it advisable, to enter into
contracts with engineers, financial advisors,
attorneys, and other consultants to act in behalf of
the county or any political subdivision or road
district thereof.

Revisor's Note

Section 4.435, V.A.C.S. Article 6702-1, refers to
a "political subdivision." For the reasons given in
Revisor's Note (1) to Section 257.001 of this code, the
revised law substitutes references to a commissioners
precinct or justice precinct operating under Article
726, Revised Statutes.

Revised Law

Sec. 257.003. ACQUISITION OF ROADS. (a) Subject to
Subsection (b), a road district established pursuant to Section 52,
Article III, Texas Constitution, may agree to:

(1) reimburse a private person for money spent to
construct a road or improvement that has been or will be dedicated
or otherwise transferred to public use; or

(2) purchase a road or improvement constructed by a
private person.

(b) A road district may agree to make a reimbursement or
purchase under Subsection (a) only if:

(1) the construction was carried out through the award
of contracts in substantial conformity with the bid procedures
applicable to a county;

(2) the construction was performed in accordance with
the road standards and rules of the county in which the road or
improvement is located; and

(3) the road or improvement was not opened for public
use or accepted by official action of a governmental entity before
the district agreed to the reimbursement or purchase.
(c) A construction contract awarded for the construction of a road for which reimbursement is to be paid or that is to be purchased under Subsection (a) must be approved by the commissioners court of the county in which the road is or will be situated. The amount paid for the reimbursement or purchase:

1. (1) may include all construction costs, including engineering, legal, financing, and other expenses incident to the construction; and

2. (2) may be paid with proceeds from the sale of the district's bonds or from any other money available to the district.

(d) In addition to the procedure provided by Subsection (a), a road district may acquire, pay for the construction of, or agree to reimburse the costs of construction or acquisition of a road, including engineering, legal, financing, and other expenses incident to the construction or acquisition, at a price not to exceed the replacement cost of the road or road improvements as determined by the commissioners court.

(e) A road district bond election may state as one of its purposes the construction or acquisition of, or reimbursement of expenses for construction or acquisition of, roads for an amount that may not be more than the cost of construction on the basis of competitive bid contracts plus engineering, legal, financing, and other expenses incident to the construction, improvement, or acquisition.

(f) A road district may enter into an agreement to use the proceeds of a subsequent bond sale for reimbursing all construction costs, engineering and other expenses, and financing costs incident to construction or acquisition of a road to a private person who constructs or acquires a facility that benefits the road district pursuant to the agreement. The agreement may provide the terms and conditions under which the road district will be required to accept the dedication or transfer of the road or road improvements to the district for the benefit of the public and to pay or reimburse the cost of constructing or acquiring the road. A road district may
assign all or any portion of its rights or obligations under the agreement to any other political subdivision authorized by law to own, operate, or maintain the road that is the subject of the agreement.

(g) In this section, "construction" includes improvement and landscaping. (V.A.C.S. Art. 6702-1, Secs. 4.447, 4.448.)

Source Law

Sec. 4.447. (a) Any road district created pursuant to Article III, Section 52, of the Texas Constitution may agree to reimburse to a private individual or entity funds expended to construct roads or improvements which have been or will be dedicated or otherwise transferred to public use or to purchase roads or improvements constructed by a private individual or entity, whether such construction occurs prior to or after the creation of the district so long as the road had been constructed or otherwise improved as a result of the award of contracts in substantial conformity with the bid procedures applicable to and required to be observed by a county and so long as such roads have been improved or constructed in accordance with the road standards and regulations of the county in which they are located, and so long as such road improvements have not been opened for public use or accepted by official action by a governmental entity earlier than the time the district agrees to such reimbursement. Construction contracts awarded for the construction and improvement of such roads must be approved by the commissioners court of the county in which the road is or will be situated. Reimbursement or purchase price may include all construction costs, including engineering, legal, financing, and other expenses incident to said construction, and may be paid with proceeds from the sale of the district's bonds or from any other funds available to the district.

(b) Any road district bond election may state as one of its purposes the construction, improvement, or acquisition of, or reimbursement of expenses for construction, improvement, or acquisition of roads for an amount not to exceed the cost of construction on the basis of competitive bid contracts plus engineering, legal, financing, and other expenses incident to such construction, improvement, or acquisitions.

(c) Notwithstanding the provisions of Subsection (a) of this section, any road district may acquire, pay for the construction or improvement of, or agree to reimburse the costs of construction, improvement, or acquisition of a road including engineering, legal, financing, and other expenses incident to such construction, improvement, or acquisition at a price not to exceed the replacement cost of the road or improvements as that may be determined by the commissioners court.

(d) Any road district may enter into an agreement to use the proceeds of a subsequent bond sale for reimbursing all construction costs, engineering and other expenses, and financing costs incident to construction, improvement, or acquisition of any road to any private individual or entity who constructs, improves, or acquires any facility which benefits the
road district pursuant to such agreement. Any such agreement may provide the terms and conditions under which the road district will be required to accept the dedication or transfer of such road or improvements thereto for the benefit of the public and to pay or reimburse the cost of acquiring, improving, or constructing the road. A road district may assign all or any portion of its rights or obligations under such agreement to any other political subdivision authorized by law to own, operate, or maintain any road which is the subject of such agreement.

Sec. 4.448. In Section 4.447 of this Act, "construction" includes improvement, including landscaping.

Revisor's Note

(1) Section 4.447(a), V.A.C.S. Article 6702-1, refers to a "private individual or entity." The revised law substitutes "private person" for that phrase because under Section 311.005(2), Government Code (Code Construction Act), "person" is defined to include an individual or any other legal entity. That definition applies to the revised law.

(2) Section 4.447(a), V.A.C.S. Article 6702-1, refers to roads or improvements constructed by a private person "whether such construction occurs prior to or after the creation of the district." The revised law omits the quoted language as unnecessary because without that language the revised law applies to all roads or improvements regardless of when they were constructed.

(3) Section 4.447(a), V.A.C.S. Article 6702-1, refers to reimbursement for or purchase of "roads or improvements," "roads . . . improved or constructed," and "road improvements." For consistency, the revised law refers to the construction or improvement of roads, in conformity with the apparent intent of the source law.

Revised Law

Sec. 257.004. ROAD DISTRICT SIGNS. (a) A road district to
which this chapter applies shall post signs indicating the existence of the district at two or more principal entrances to the district so that they are readable by traffic entering the district. The signs must be posted not later than the 60th day after the date the district is established and must be maintained as long as the district exists.

(b) Consistent with state and local rules governing signs, the signs must be permanent and contain the name of the district in at least three-inch letters. The signs may contain other information as determined by the commissioners court. (V.A.C.S. Art. 6702-1, Sec. 4.418.)

Source Law

Sec. 4.418. Any road district created under this Act shall, within 60 days after the effective date of this section or the creation of the district, post signs indicating the existence of the district at at least two principal entrances to the district. Such signs, consistent with state and local regulations regarding signs, shall be of permanent construction, shall contain the name of the district in three-inch letters, may contain such other information as the court may direct, and shall be placed so as to be readable by traffic entering the district. The district shall maintain such signs so long as the district is in existence.

Revisor's Note

Section 4.418, V.A.C.S. Article 6702-1, provides that an existing road district must post signs within 60 days after the effective date of that section. The revised law omits the reference to the 60th day after the effective date of Section 4.418, which took effect in 1983, because that date has expired. The revised law retains the effect of that provision by requiring a road district created under Article 6702-1 to post the signs.

Revised Law

Sec. 257.005. NOTICE TO PURCHASERS OF REAL PROPERTY IN ROAD DISTRICT. (a) Before the final closing of a sale of real property
located in a road district, the seller shall furnish to the buyer of the real property a written notice, executed and acknowledged by the seller, that:

(1) contains a statement that the real property is located in the road district and includes the name of the district;

(2) states the total amount of any bonds, notes, or other obligations that have been approved and authorized to be issued by the district but have not been issued; and

(3) states the total amount of any bonds, notes, or other obligations payable from property taxes that have been issued and sold by the district, if any, and the district's current tax rate if this subdivision applies.

(b) The seller shall provide to the road district a copy of the notice.

(c) The notice is sufficient if it substantially complies with this section. (V.A.C.S. Art. 6702-1, Sec. 4.416A.)

Source Law

Sec. 4.416A. (a) Each seller of land within a road district shall furnish to the purchaser of such land, prior to the final closing of the sale and purchase, a separate written notice, executed and acknowledged by the seller, which shall contain, at a minimum, the following information:

(1) a statement that the land lies in whole or in part within the boundaries of a road district, which shall be identified by name;

(2) if the road district has bonds, notes, or other obligations which have been voted but are unissued, the total amount of bonds authorized to be issued by the district; and

(3) if the district has bonds, notes, or other obligations payable in whole or in part from taxes which have been voted, issued, and sold, the amount of such obligations then outstanding and the current tax rate assessed by the road district.

(b) A copy of said notice shall be provided to the road district, and such notice shall be sufficient if it is in substantial compliance with this subsection.

[Sections 257.006-257.020 reserved for expansion]
commissioners court of a county by order may establish one or moreoad districts in the county as provided by Section 52, Article
III, Texas Constitution. The order must define the boundaries of
the road district. A road district is a governmental entity and
body politic.

(b) A road district created under this section may include:
(1) all or part of a municipality; or
(2) another road district or a precinct or political
subdivision of the county for which road bonds have been approved
by the voters and issued as provided by Section 52, Article III,
Texas Constitution.

(c) Before establishing a road district under this section,
the commissioners court shall conduct a public hearing on the
matter. Notice of the hearing shall be given in the manner
provided for notice of an election by Section 2.006, Article 726,
Revised Statutes.

(d) The establishment of a defined road district or the
issuance of road district bonds in a county with outstanding
countywide road bonds is not prevented by this chapter or Part 2,
Article 726, Revised Statutes. (V.A.C.S. Art. 6702-1, Secs.
4.413(a), (b) (part).)

Source Law

Sec. 4.413. (a) The county commissioners courts
in their sole discretion may, after a public hearing
for which notice is given as provided herein for
notices of elections, establish one or more road
districts as governmental entities and bodies politic
pursuant to Article III, Section 52, of the Texas
Constitution in their respective counties and may or
may not include within the boundaries and limits of the
districts, villages, towns, and municipal corporations
or any portion of a village, town, and municipal
corporation and may or may not include previously
created road districts and political subdivisions or
precincts that have voted and issued road bonds
pursuant to Article III, Section 52, of the Texas
Constitution, by entering an order declaring the road
district established and defining the boundaries of it.

(b) This part does not prevent the creation of
defined road districts and the issuance of bonds of
districts in counties having outstanding countywide
road bonds...
Revisor's Note

(1) Section 4.413(a), V.A.C.S. Article 6702-1, refers to "villages, towns, and municipal corporations." The revised law substitutes the term "municipality" for those terms because that is the term used in the Local Government Code for all three types of municipal entities.

(2) Section 4.413(a), V.A.C.S. Article 6702-1, requires notice of a hearing to be given "as provided herein for notices of elections." That reference is to Section 4.419, V.A.C.S. Article 6702-1, redesignated by a conforming amendment to this code as Section 2.006, Article 726, Revised Statutes, and the revised law is drafted accordingly.

(3) The second sentence of Section 4.413(b), V.A.C.S. Article 6702-1, stating that road districts created in counties with outstanding countywide road bonds are created and issue bonds in the manner provided by statute, is omitted as unnecessary. The first sentence of that section, revised as Subsection (d) of the revised law, makes it clear that such districts may be created and that they may issue bonds. In the absence of any specific restriction, road districts in those counties may be created under general law. The omitted sentence reads:

... The defined road districts may be created in the counties in the manner provided by statute for the creation of defined road districts and issuing the bonds of the districts.

Revised Law

Sec. 257.022. ABOLITION OF ROAD DISTRICT. (a) The commissioners court by order may abolish a road district after a public hearing on the matter if:

(1) the road district has no outstanding bonds, as
that term is defined by the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes); or

(2) all the bonds of the district have been assumed and exchanged for county bonds under Part 3, Article 726, Revised Statutes.

(b) The road district ceases to exist when the commissioners court adopts the order abolishing the district. (V.A.C.S. Art. 6702-1, Sec. 4.414.)

Source Law

Sec. 4.414. In the event that a road district has no outstanding bonds, notes, or other obligations as those terms are defined in the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), or if all of the bonds of a district have been assumed and exchanged for county bonds under the provisions relating to compensation bonds, the commissioners court may, after a public hearing, by an order passed abolishing the road district, abolish the road district, and it shall then cease to exist.

Reviser's Note

(1) Section 4.414, V.A.C.S. Article 6702-1, refers to "bonds, notes, or other obligations as those terms are defined in the Bond Procedures Act of 1981." That Act does not define "notes" or "obligations." However, that Act does define "bonds" to include "notes" and "other obligations." As a result, the revised law refers only to "bonds."

(2) Section 4.414, V.A.C.S. Article 6702-1, refers to an exchange of bonds "under the provisions relating to compensation bonds." Those provisions of V.A.C.S. Article 6702-1 are transferred by a conforming amendment to this code to Part 3, Article 726, Revised Statutes, and the revised law uses a reference to that statute to replace the description of the statute.

Revised Law

Sec. 257.023. EXCLUSION OF CERTAIN TERRITORY OF EXISTING DISTRICTS FROM ROAD DISTRICT. (a) A county commissioners court
may exclude from a proposed road district any territory that is
part of or adjacent to an existing road district that includes all
or part of a levee improvement district, drainage district, or
other improvement district created under a law authorized by
Section 52, Article III, Texas Constitution. The excluded
territory shall continue to bear and pay its proportion of existing
debt created for the construction of macadamized, graveled, or
paved roads or turnpikes or in aid of these purposes, but may not
be used to pay debt created for those purposes after the territory
is excluded from the new road district.

(b) Except as specifically permitted by Sections 3.004 and
3.005, Article 726, Revised Statutes, a road district may not
contain a fractional part of a preexisting road district.

(V.A.C.S. Art. 6702-1, Sec. 4.415.)

Source Law

Sec. 4.415. If any road district, a portion of
which is proposed to be incorporated into a new road
district, should embrace the whole or any part of any
levee improvement district, drainage district, or other
improvement district created under any law passed
pursuant to Article III, Section 52, of the Texas
Constitution, the territory covered by the other
district and other adjacent territory may be excluded
from the district sought to be created. Except as
specifically permitted in this subchapter, no
fractional part of a previously created road district
shall be included within the limits of the road
district created under this subchapter. The excluded
territory shall continue to bear and pay its proper
proportion or any existing debt created for the
construction of macadamized, graveled, or paved roads
and turnpikes or in aid of these purposes, but may not
pay any portion of any debt created for these purposes
after the territory is excluded from the district.

Reviser's Note

Section 4.415, V.A.C.S. Article 6702-1, prohibits
inclusion of any portion of a preexisting road district
"[e]except as specifically permitted in this
subchapter." The specific provisions authorizing
inclusion of that territory are found in Sections 4.454
and 4.455 of Part 3 of that subchapter (Subchapter E,
Chapter 4, Article 6702-1). Sections 4.454 and 4.455
are transferred by a conforming amendment to this code to Article 726, Revised Statutes, and redesignated as Sections 3.004 and 3.005 of that article. The revised law substitutes a reference to those sections for the more general reference in the source law to "this subchapter."

Revised Law
Sec. 257.024. EXCLUDING REAL PROPERTY FROM ROAD DISTRICT.
(a) Before the commissioners court orders an election to authorize bonds for a road district, the commissioners court, on its own motion or on receipt of a written petition from a property owner seeking to exclude the property owner's real property from the district, may hold a hearing on the question of excluding specified real property from the district.

(b) If the commissioners court determines that a hearing should be held, the court shall give notice of the time and place of the hearing in the manner provided for notice of a hearing for the creation of a road district.

(c) The court shall exclude real property from the district if:

(1) the retention of the real property in the district's taxing jurisdiction would:

(A) be arbitrary and unnecessary to protect the public welfare;

(B) impair the value of the real property; and

(C) arbitrarily impose a confiscatory burden on the real property;

(2) the retention of the real property in the district and the extension to it of the benefits, service, or protection of the district's roads would create an undue and uneconomical burden on the remainder of the district; or

(3) the real property cannot be benefited by the district's proposed improvements.
(d) If, after considering the engineering information and
other evidence presented at the hearing, the commissioners court
determines that a ground for exclusion of the real property exists,
the court shall enter an order:

(1) excluding the real property from the road
district; and

(2) redefining the boundaries of the district.

(V.A.C.S. Art. 6702-1, Sec. 4.432A, Subsec. (a).)

Source Law
Sec. 4.432A. (a) Excluding Land From District.
(1) At any time before the court orders an election
for the authorization of bonds for a road district, the
court may, on its own motion or upon receipt of a
written petition from a landowner seeking the exclusion
of that landowner's property from the district, call a
hearing on the question of the exclusion of specified
land from the district.

(2) If the court determines that an
exclusion hearing should be held, the court shall give
notice of a time and place of a hearing in the manner
provided for notices of hearings for creation herein.

(3) Exclusions from the district may be
made on the grounds that:

(i) to retain certain land within
the district's taxing power would be arbitrary and
unnecessary to protect the public welfare, would impair
or destroy the value of the property desired to be
excluded, and would constitute the arbitrary imposition
of a confiscatory burden;

(ii) to retain any given land or
other property in the district and to extend to it,
either presently or in the future, the benefits,
service, or protection of the district's roads would
create an undue and uneconomical burden on the
remainder of the district; or

(iii) the land desired to be
excluded cannot be bettered as to conditions of living
and health or otherwise benefitted by the district's
proposed improvements.

(4) After considering all engineering data
and other evidence presented to it at a hearing, the
court shall determine whether grounds for exclusion of
the property in question exist and, if they do, the
court shall enter an order excluding all land or other
property falling within the conditions defined as
grounds for exclusion and shall redefine in the order
the boundaries of the district to embrace all land not
excluded.

Reviser's Note
(1) Subsection (a)(3), Section 4.432A, V.A.C.S.
Article 6702-1, provides that land "may" be excluded
from the district on certain grounds. The revised law
substitutes "shall" for "may" because under Subsection (a)(4), Section 4.432A, V.A.C.S. Article 6702-1, the commissioners court is required to exclude land if a ground for exclusion exists.

(2) Subsection (a)(3)(i), Section 4.432A, V.A.C.S. Article 6702-1, authorizes exclusion of land if retention of the land would "impair or destroy" its value. The reference to "destroy" is omitted from the revised law because "destroy" is included within the meaning of "impair."

(3) Subsections (a)(3)(ii) and (4), Section 4.432A, V.A.C.S. Article 6702-1, refer to "land or other property." The revised law omits "or other property" because it has no effect. The remaining provisions of Section 4.432A apply only to land.

(4) Subsection (a)(3)(iii), Section 4.432A, V.A.C.S. Article 6702-1, authorizes the exclusion of land if the land cannot be "bettered as to conditions of living and health or otherwise benefitted" by the district's proposed improvements. The revised law omits as unnecessary "bettered as to conditions of living and health" because "bettered as to conditions of living and health" is included within the meaning of "benefited."

Revised Law

Sec. 257.025. ADDING REAL PROPERTY TO ROAD DISTRICT BY PROPERTY OWNER PETITION. (a) One or more persons may file a petition with the commissioners court of a county requesting that real property owned by the person or persons be annexed to a road district. The petition must describe the real property by:

(1) metes and bounds; or

(2) lot and block number if there is a recorded plat of the real property.
(b) Before the real property may be annexed to the road district, each petitioner must agree to:

(1) assume the petitioner's share of:

(A) any outstanding bonds, notes, or other obligations of the district; and

(B) any bonds of the district payable in whole or part from taxes that have been approved by the voters but have not been issued; and

(2) authorize the commissioners court to impose a tax on the petitioner's property in each year in which the bonds, notes, or other obligations payable in whole or part from taxes are outstanding to pay the petitioner's share of the indebtedness.

(c) The commissioners court shall hold a hearing to consider the petition and shall give notice of the hearing in the manner required for a hearing for creation of a road district.

(d) The commissioners court may annex the real property described by the petition to the district if the court determines that:

(1) it is to the advantage of the real property to be annexed to the district; and

(2) the real property already in the district will not be injured by the annexation.

(e) If each petitioner agrees to the items specified by Subsection (b), the commissioners court may issue any unissued bonds that have been approved by the voters of the district even though the boundary of the district has been altered by the annexation since the bonds were approved.

(f) If no qualified voter resides on the real property proposed to be annexed to the district, the commissioners court may order the annexation of the real property without further proceedings.

(g) If a qualified voter resides on the real property to be added and there are any outstanding bonds, notes, or other obligations of the district that are payable from taxes, the
commissioners court shall order an election to be held in the
district, including the real property to be annexed to the
district, on the question of the assumption by the real property to
be annexed of the district's outstanding and approved but unissued
bonds, notes, or other obligations and of the taxes imposed to pay
those obligations. Notice of the election shall be given and the
election shall be held as provided by law for a bond election in
the district.

(h) The order annexing the real property to the district
shall provide that the annexation does not take effect unless a
majority of the votes cast at the election held under Subsection
(g) favor the assumption of the district's outstanding bonds,
notes, and other obligations and the imposition of a tax to pay
those obligations. (V.A.C.S. Art. 6702-1, Sec. 4.432A, Subsecs.
(b), (d).)

Source Law

(b) Adding Land by Petition of Landowner. (1)
The owner or owners of land contiguous to the district
or otherwise may file a petition with the court
requesting that there be included in the district the
land described in the petition by metes and bounds or
by lot and block number if there is a recorded plat of
the area to be included in the district.

(2) If the district has bonds, notes, or
other obligations outstanding or bonds payable in whole
or in part from taxes which have been voted but are
unissued, the court shall require the petitioner or
petitioners to assume their share of the outstanding
bonds, notes, or other obligations and the voted but
unissued tax bonds of the district and authorize the
court to levy a tax on their property in each year
while any of the bonds, notes, or other obligations
payable in whole or in part from taxation are
outstanding in order to pay their share of the
indebtedness.

(3) After notice given in the manner
required for hearing for creation herein, the court
shall hear and consider the petition and may add to the
district the land described in the petition if it is
considered to be to the advantage to the land to be
added and to the district without injuring land already
in the district. If the petitioner or petitioners have
consented as provided herein, the court may issue any
voted but unissued bonds even though the boundaries of
the district have been altered since the authorization
of the bonds. If there are no qualified voters
residing within the boundaries of the land proposed to
be added to the district, the court may order the
addition of such land without further proceedings. If
any qualified voters reside within the boundaries of
the land to be added and if the district has bonds,
notes, or other obligations payable from taxes currently outstanding, the court shall further order that an assumption election as provided herein shall be held in the district, as enlarged by reason of the annexation of the area, on the question of the assumption of the outstanding and voted but unissued bonds, notes, obligations, and taxes by the annexed area; and the court shall provide in its order annexing an area to the district that the annexation will not be complete or final unless the assumption election results favorably to the assumption of the district's outstanding bonds, notes, and obligations and the levy of a tax to pay the same.

(d) Notice of Assumption Elections. Whenever an election is ordered to be held in the district for the purpose of the assumption of bonds, notes, other obligations, or taxes or the assumption of voted but unissued bonds by reason of the annexation of any area, the election shall be held and notice given as provided for bond elections held by the district.

Reviser's Note
Subsection (b)(1), Section 4.432A, V.A.C.S. Article 6702-1, refers to land "contiguous to the district or otherwise." The revised law omits the quoted language as unnecessary because without that phrase the revised law applies to both contiguous and noncontiguous land.

Revised Law
Sec. 257.026. ADDING TERRITORY TO ROAD DISTRICT BY PETITION OR ON COMMISSIONERS COURT MOTION. (a) The commissioners court of a county on its own motion may hold a hearing on the question of annexing a defined area to a road district and shall hold a hearing on the question on receipt of a petition requesting the annexation signed by:

(1) owners of real property the taxable value of which is a majority of the taxable value of real property in the defined area according to the county tax roll; or

(2) at least 50 property owners in the defined area if there are more than 50 property owners in the defined area.

(b) The commissioners court shall give notice of the hearing in the manner required for notice of a hearing on creation of a road district.
(c) If after the hearing the commissioners court finds that annexation of the defined area to the district is feasible and practical and would benefit the area and the district, the court may annex the area to the district. The order annexing the area to the district is not required to include all of the real property described by a petition requesting the annexation if the court finds that a modification is necessary or desirable.

(d) The annexed area is subject to any bonds, notes, or other obligations issued or taxes imposed before the area was annexed to the district.

(e) The commissioners court shall, in the order annexing the area to the district, order an election to be held in the district, including the area to be annexed, on the questions whether the annexed area should assume:

(1) the bonds, notes, or other obligations issued or taxes imposed by the district before the area was annexed to the district; and

(2) its part of the bonds of the district payable in whole or part from taxes that have been approved by the voters but have not been issued, and the imposition of the district's ad valorem tax on the taxable property in the annexed area for the payment of the bonds.

(f) At the election held under Subsection (e) the commissioners court, in a separate proposal, may submit the question whether the court should be authorized to issue bonds for the construction, purchase, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes, or in aid of those purposes, in the annexed area.

(g) Notice of an election held under this section shall be given and the election shall be held in the manner provided by law for a bond election in the district.

(h) If the majority of the votes received in the election favor the assumptions proposed under Subsection (e), the district may issue its approved but unissued bonds even though the
boundaries of the district have been changed by the annexation since the original election approving the bonds.

(i) The commissioners court shall provide in its order annexing an area to the district that the annexation does not take effect unless the voters approve the assumptions proposed under Subsection (e).

(j) The commissioners court may provide in its order annexing an area to the district that the annexation does not take effect unless the voters approve an issuance of bonds proposed under Subsection (f). (V.A.C.S. Art. 6702-1, Sec. 4.432A, Subsecs. (c), (d).)

Source Law

(c) Adding Land by Petition of Less Than All Landowners or on Own Motion. (1) The court, on its own motion or on receipt of a petition requesting the annexation of a defined area signed by a majority in value of the owners of land in the defined area (as shown by the tax rolls of the county) or signed by 50 landowners if the number of landowners is more than 50, shall order a hearing on the question of annexation. Notice for such hearing shall be given in the manner required for notice of hearings on creation as provided herein.

(2) If upon the hearing it is found by the court that the proposed annexation of the area to the district is feasible and practical and would be of benefit both to the area and to the district, then the court may receive the proposed area as an addition to the district. The order adding the proposed territory to the district need not include all of the land described in the petition, if on the hearing a modification or change is found necessary or desirable by the court.

(3) The added area shall be subject to all of the bonds, notes, obligations, or taxes, issued or levied before the annexation of the area to the district, provided that in its order adding such land to the district the court shall order an election to be held in the district, as enlarged by reason of the annexation of the area, on the question of the assumption of the bonds, notes, obligations, and taxes by the annexed area. At the same election, the court shall also submit a proposition on the question of whether the annexed area should assume its part of the bonds of the district payable in whole or in part from taxes which have been voted previously but not yet issued or sold and the levy of an ad valorem tax on all taxable property within the area annexed along with a tax on the rest of the district for the payment of the bonds. At the same election, the court, in a separate proposal, may also submit the question of whether the court should be authorized to issue bonds for the purpose of the construction, acquisition by purchase, maintenance and operation of macadamized, graveled, or paved roads and turnpikes, or in aid of these purposes
in the annexed area. If the election results favorably, the district shall be authorized to issue its voted but unissued bonds even though the boundaries of the district have been changed since the original election approving the bonds.

(4) The court shall provide in its order annexing an area to the district that the annexation will not be complete or final unless the indebtedness, tax, bond, note, or other obligation assumption elections result favorably to the assumption of the district's outstanding bonds, notes or other obligations, and voted but unissued bonds.

(5) The court may provide in its order annexing an area to the district that the annexation will not be complete unless the election results favorably to the issuance of bonds for the purpose of construction, acquisition by purchase, maintenance and operation of macadamized, graveled, or paved roads and turnpikes, or in aid of these purposes in the area to be annexed.

(d) Notice of Assumption Elections. Whenever an election is ordered to be held in the district for the purpose of the assumption of bonds, notes, other obligations, or taxes or the assumption of voted but unissued bonds by reason of the annexation of any area, the election shall be held and notice given as provided for bond elections held by the district.

[Sections 257.027-257.100 reserved for expansion]

**SUBCHAPTER C. ROAD DISTRICT IN ADJOINING COUNTIES**

**Revised Law**

Sec. 257.101. ROAD DISTRICT AUTHORIZED; NATURE OF DISTRICT.

(a) The qualified voters of two or more adjoining counties or portions of adjoining counties in the manner provided by this subchapter may combine those counties or portions of counties to establish a defined road district for the purpose of constructing, maintaining, and operating macadamized, graveled, or paved roads and turnpikes, or in aid of those activities.

(b) A road district established under this subchapter is a defined district for purposes of the Texas Constitution and is a body corporate. (V.A.C.S. Art. 6702-1, Secs. 4.462, 4.464 (part)).

**Source Law**

Sec. 4.462. In the event the qualified voters residing within two or more adjoining counties or portions of counties desire to combine the counties or portions of counties into one defined road district for the purpose of the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes or in aid of these purposes, it shall be
lawful for them to do so by following the procedure prescribed in the subsequent sections of this part.

Sec. 4.464. The district when so formed shall be a defined district within the meaning of the constitution and a body corporate.

Reviser's Note

The revised law states that a road district may be "established" under this subchapter because that term is used in Section 4.463, V.A.C.S. Article 6702-1, revised in this subchapter as Section 257.102, and adopted throughout this subchapter for consistency.

Revised Law

Sec. 257.102. PETITION TO ESTABLISH ROAD DISTRICT. (a) A petition to establish a road district under this subchapter must be signed by at least 50 registered voters or a majority of the registered voters, whichever is less, in each county or in each portion of a county of which less than the entire county is included in the proposed district.

(b) The petition must:

(1) describe in general terms the road or roads proposed to be constructed and any municipalities to be connected by the road or roads;

(2) name each county proposed to be included in the road district and define the portion of each county proposed to be included if less than the entire county is proposed to be included in the district; and

(3) request each commissioners court to order an election to determine whether the county or defined portion of the county is to be included in the proposed district.

(c) A separate petition for the establishment of the road district must be presented to the commissioners court of each county or portion of a county in the proposed district. (V.A.C.S. Art. 6702-1, Secs. 4.463(a) (part), (b).)
Sec. 4.463. (a) The petition for the creation and establishment of a defined road district composed of two or more adjoining counties or portions of counties must be signed by not less than 50 qualified voters or a majority of qualified voters, whichever is less, in each county or in each portion of each county if less than the entire county is included in the proposed road district. A separate petition for the establishment of the district must be presented to the commissioners court of each county or portion of a county in the proposed district.

(b) Each petition must describe in general terms the road or roads proposed to be constructed and in like general terms the cities, towns, and villages, if any, to be connected by the road or roads and must name each county proposed to be included within the road district or define the portion of each county proposed to be included if less than the entire county is proposed to be included within the road district. Each petition must request the commissioners court to order an election to determine whether the county or defined portions of counties shall be included in the proposed road district.

Revisor's Note

(1) Section 4.463(a), V.A.C.S. Article 6702-1, refers to "creation and establishment." The reference to "creation" is omitted from the revised law as unnecessary because "creation" is included within the meaning of "establishment."

(2) Section 4.463(a), V.A.C.S. Article 6702-1, requires the petition to be signed by the "qualified voters" of the county. The revised law uses "registered voters" instead because Section 277.0021, Election Code, provides that "qualified voter" means "registered voter" in determining eligibility to sign a petition.

(3) Section 4.463(b), V.A.C.S. Article 6702-1, refers to "cities, towns, and villages." The revised law substitutes the term "municipalities" for "cities, towns, and villages" because that is the term used in the Local Government Code.

(4) The last sentence of Section 4.463(a), V.A.C.S. Article 6702-1, states that the procedures
prescribed by that section governing the establishment of a road district must be conducted in each county in the proposed district. Each section of the revised law derived from Section 4.463, including this section and Sections 257.104, 257.105, 257.106, and 257.107, is by its own terms applicable to all the counties in a proposed district. Accordingly, the last sentence of Section 4.463(a), V.A.C.S. Article 6702-1, is omitted from the revised law. The omitted sentence reads:

The proceedings prescribed by this section shall be had in each county or portion of a county.

Revised Law
Sec. 257.103. CHANGE IN ROADS DESIGNATED IN PETITION. The commissioners court of a county may change a road designated in the petition calling for the establishment of a road district under this subchapter if at the hearing on the petition the court finds that the change:

(1) is necessary and practicable;
(2) would be a public benefit; and
(3) would be beneficial to all taxable property in the county. (V.A.C.S. Art. 6702-1, Sec. 4.476(a).)

Source Law
Sec. 4.476. (a) The commissioners court of the county may change any road or roads designated in the petition to create the road district if it is found at the hearing on the petition that the change is necessary and practicable, would be a public benefit, and would be beneficial to all taxable property in the county.

Revised Law
Sec. 257.104. NOTICE OF HEARING ON PETITION. (a) On presentation of a petition under Section 257.102, the commissioners court of each county shall order the time for the petition to be heard on a date not less than 15 or more than 30 days after the date of the order. The hearing shall be held at the regular
meeting place of the commissioners court in the county courthouse.

(b) The county clerk shall immediately issue notice of the time and place of the hearing. The notice must:

1. inform all interested persons of the time and place of the hearing and of their right to appear at the hearing and support or contest the ordering of the election; and
2. set forth in substance the contents of the petition, including the name of each county proposed to be included in whole or part in the road district.

(c) Before the 10th day before the date of the hearing, the clerk shall post a copy of the notice:

1. at the courthouse door; and
2. at a public place in each commissioners precinct contained in whole or part in the proposed road district.

(d) Not later than the fifth day before the date of the hearing, the clerk shall publish the notice in a newspaper of general circulation published in the county. If a newspaper is not published in the county, the posting of the notice as provided by Subsection (c) is sufficient. (V.A.C.S. Art. 6702-1, Secs. 4.463(c), (d) (part).)

Source Law

(c) On presentation of each petition, the court to which it is presented shall fix a time the petition shall be heard, and the date of hearing must be not less than 15 nor more than 30 days after the date of the order. The hearing shall be held at the regular meeting place of the commissioners court in the county courthouse.

(d) The county clerk shall immediately issue notice of the time and place of hearing. The notice must inform all concerned persons of the time and place of hearing and of their right to appear at the hearing and contend for or protest the ordering of the election. The notice must set forth in substance the contents of the petition and must give the name of each county proposed to be included in whole or in part within the road district. The clerk shall execute the notice by posting copies in five public places within the county as follows: one copy at the courthouse door and one copy in each commissioners precinct contained wholly or partially within the proposed road district. The notice shall be posted for at least 10 days prior to the date of the hearing. The notice shall also be published in a newspaper of general circulation, published in the county one time, and at least five days prior to the hearing. If no newspaper is
published in the county, the posting of the notice as
directed previously in this section is
sufficient. . . .

Revisor's Note

(1) Section 4.463(d), V.A.C.S. Article 6702-1, refers to "concerned" persons. The revised law substitutes "interested" for "concerned" for consistency with Section 4.463(e), V.A.C.S. Article 6702-1, codified in part in this subchapter as Section 257.105.

(2) Section 4.463(d), V.A.C.S. Article 6702-1, provides that the notice shall be published in a newspaper in the county "one time." The revised law omits "one time" as unnecessary because nothing in the source law requires that the notice be published more than once.

(3) Section 4.463(d), V.A.C.S. Article 6702-1, provides that the duties imposed on the clerk may be performed by the clerk or by a deputy as provided by law for similar duties. The revised law omits this provision as unnecessary because it is implied that the clerk may delegate the clerk's duties to a deputy. The omitted law reads:

...The duties imposed by this part upon the clerk may be performed by the clerk in person or by a deputy as provided by law for similar duties.

Revised Law

Sec. 257.105. HEARING ON PETITION. (a) At the time and place set for the hearing of a petition presented under Section 257.102, or on a subsequent date set at that time, the commissioners court of each county in the proposed road district shall hear the petition and all matters relating to the proposed district.

(b) Any interested person may appear before the court in
person or by attorney and support or protest the establishment of
the proposed road district.

(c) The court may adjourn the hearing from day to day and
from time to time as it considers necessary. (V.A.C.S.
Art. 6702-1, Sec. 4.463(e) (part).)

Source Law

(e) At the time and place set for the hearing of
the petition or the subsequent date as may then be
fixed, the court shall proceed to hear the petition and
all matters in respect to the proposed road district.
Any interested person may appear before the court in
person or by attorney and contend for or protest the
creation of the proposed road district. The hearing
may be adjourned from day to day and from time to time
as the court may consider necessary. . . .

Revisor's Note

Section 4.463(e), V.A.C.S. Article 6702-1, refers
to "creation." The revised law substitutes
"establishment" for "creation" for consistency with
Section 4.463(a), V.A.C.S. Article 6702-1, codified in
this subchapter as Section 257.102.

Revised Law

Sec. 257.106. ORDER OF ELECTION TO ESTABLISH DISTRICT. (a)
The commissioners court of each county included in whole or part in
a proposed road district may issue and record in its minutes an
order directing that an election be held within the county or the
defined portion of the county if on the hearing of the petition to
establish the district the court finds that:

(1) the petition is signed by the required number of
registered voters of the county or defined portion of the county;
(2) notice of the hearing was given as required by
law; and
(3) the establishment of the proposed district by the
consolidation of the county or defined portion of the county with
the other counties or defined portions of counties named in the
proceedings would be for the benefit of all taxable property in the
county or defined portion of the county.

(b) The court shall order the election to be held on the next uniform election date authorized by Subchapter A, Chapter 41, Election Code, that occurs after the 15th day after the date of the order. An election must be held on the same date in each county in the proposed road district. (V.A.C.S. Art. 6702-1, Secs. 4.463(e) (part), 4.476(b).)

Source Law

[Sec. 4.463]

If on the hearing of the petition it is found that the petition is signed by the requisite number of the qualified voters of the county or defined portions of counties and that due notice of the hearing has been given and that the creation of the proposed district by the consolidation of the county or defined portions of counties with the other counties or defined portions of counties named in the proceedings would be for the benefit of all taxable property situated in the county or defined portions of counties, the court may issue and cause to be entered of record in its minutes an order directing that an election be held within the county or the defined portions of counties. The court shall order the election to be held on the next uniform election date authorized by Section 9b, Texas Election Code, as amended (Article 2.01b, Vernon's Texas Election Code), that occurs after the 15th day after the day the order is made. Notice of the election shall be given in the same manner and for the same time required for notices of the hearing on the petition. The elections must be held on the same date in each county.

[Sec. 4.476]

(b) This part does not require any commissioners court to grant a petition for the establishment of the road district if at the hearing provided in this part it is found that it would not be beneficial to the taxable property in the county to include the county or portion of a county within the proposed road district.

Revisor's Note

(1) Section 4.463(e), V.A.C.S. Article 6702-1, refers to the number of "qualified voters" of the county or defined area having signed a petition. The revised law uses "registered voters" instead because Section 277.0021, Election Code, which is applicable to this code, provides that "qualified voter" means "registered voter" in determining eligibility to sign a petition.
(2) Section 4.463(e), V.A.C.S. Article 6702-1, refers to "creation." The revised law substitutes "establishment" for "creation" for consistency with Section 4.463(a), V.A.C.S. Article 6702-1, codified in this subchapter as Section 257.102.

(3) Section 4.463(e), V.A.C.S. Article 6702-1, refers to the next uniform election date authorized by Section 9b, Texas Election Code, as amended (Article 2.01b, Vernon's Texas Election Code). That statute was codified in 1985 as Subchapter A, Chapter 41, Election Code. Chapter 41, Election Code, governs uniform election dates. Accordingly, the revised law refers to Subchapter A, Chapter 41, Election Code. The revised law omits as unnecessary "as amended" because under Section 311.027, Government Code (Code Construction Act), applicable to this code, unless expressly provided otherwise, a reference to any portion of a statute applies to all amendments of the statute.

Revised Law

Sec. 257.107. ELECTION TO ESTABLISH DISTRICT. (a) Notice of an election to establish a road district under this subchapter shall be given in the same manner and for the same time required for notices of the hearing on the petition to establish the district.

(b) The conduct of the election and the canvassing and making the returns is governed by general law when not in conflict with this section.

(c) The officer directed by the commissioners court of each county to administer the election in the county shall make returns of the election to the commissioners court and return all ballot boxes to the clerk of the commissioners court.

(d) The commissioners court of each county or portion of a county in the proposed road district, on receiving the returns of
the election, shall canvass the returns and certify the result of
the election in the county or defined portion of the county to the
county judge of the county in the proposed district with the
greatest population. On receipt of the returns of the election in
the different counties or defined portions of counties in the
proposed district, the county judge designated to canvass the votes
shall canvass the votes and certify the result of the election to
each county included in whole or part in the proposed district.

(e) If a majority of the votes received in each county or
defined portion of a county favor the consolidation of the counties
or portions of counties into a defined road district, the
commissioners court of each county or portion of a county shall
declare the district established, and the district shall be known
as "______ Counties Road District of Texas," listing in
alphabetical order each county included in whole or part in the
district. (V.A.C.S. Art. 6702-1, Secs. 4.463(e) (part), (f),
(g)).

Source Law

(e) . . . Notice of the election shall be given
in the same manner and for the same time required for
notices of the hearing on the petition. . . .
(f) The manner of holding the election and
canvassing and making the returns shall be governed by
the general laws of this state when not in conflict
with this part.
(g) When the election for the creation of the
district has been held, the officers named by the
commissioners courts of the different counties to hold
the election in their respective counties shall make
returns of the election to the commissioners courts of
their respective counties and return all ballot boxes
to the clerk of the commissioners court of the county.
The commissioners court of each county or portion of a
county in the proposed road district, on receiving the
returns of the election, shall canvass the returns and
certify the result of the election in the county or in
the defined portion to the county judge of the county
having the largest number of inhabitants as shown by
the most recent federal census. On receipt of the
returns of the election in the different counties or
the defined portions of counties of the district, the
county judge designated to canvass the vote shall
canvass the vote and certify the result to each county
or the defined portions of counties in the proposed
district. If the votes cast in each and all counties
or in each and all defined portions of counties show a
majority in favor of the consolidation of the counties
or portions of counties into a defined road district,
the commissioners court of each county or portion of a
county shall declare the defined road district created, and the district shall be known as Counties Road District of Texas, enumerating the counties embraced within the district in whole or in part in alphabetical order.

**Revisor's Note**

(1) Section 4.463(g), V.A.C.S. Article 6702-1, refers to a road district that has been "created." The revised law substitutes "established" for "created" for consistency with Section 4.463(a), V.A.C.S. Article 6702-1, codified in this subchapter as Section 257.102.

(2) Section 4.463(g), V.A.C.S. Article 6702-1, describes a population 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.

**Revised Law**

Sec. 257.108. EX OFFICIO DISTRICT DIRECTORS. (a) The following are ex officio directors of a road district established under this subchapter:

(1) for a county that is wholly included in the district, the county judge and each county commissioner; and

(2) for a county only part of which is included in the district, the county judge and the county commissioner of each commissioner precinct included in whole or part in the district.

(b) The ex officio directors have the same power and authority in the management of the affairs of the road district as the commissioners court of a county has in a road district located entirely in the county. (V.A.C.S. Art. 6702-1, Sec. 4.464 (part).)
Sec. 4.464. The county judges and county commissioners of the counties composing the district shall be ex officio directors of the district. If less than the entire county is included within the road district the county commissioners whose precincts are included in whole or in part in the road district, together with the county judge of each county included in whole or in part in the road district, shall be ex officio directors of the district. They have the same power and authority with reference to the management of the affairs of the district as commissioners courts have in respect of road districts wholly within one county.

Revised Law

Sec. 257.109. MEETINGS OF COMMISSIONERS OR DIRECTORS. A joint meeting of the commissioners courts or ex officio directors of a road district established under this subchapter may be adjourned from day to day or time to time as the courts consider necessary and advisable. (V.A.C.S. Art. 6702-1, Sec. 4.472.)

Source Law

Sec. 4.472. Any joint meeting of the courts or the ex officio directors may be adjourned from day to day and from time to time as the courts may consider necessary and advisable.

Revised Law

Sec. 257.110. DISTRICT TREASURER OR DEPOSITORY. (a) At a joint meeting held for that purpose in the county having the greatest population, the commissioners of the counties included in whole or part in a road district established under this subchapter shall select a treasurer or depository for the district. The treasurer or depository must be a bank, banking corporation, or individual banker resident in the district.

(b) The treasurer or depository is governed by the laws and subject to the penalties applicable by law to a depository of county money.

(c) The selected treasurer or depository may not receive any road district money until the treasurer or depository gives a surety bond to the district:

(1) in an amount equal to the amount of district money
deposited;

(2) made with a corporate surety authorized to do business in the state; and

(3) conditioned on the safekeeping and paying of the district money. (V.A.C.S. Art. 6702-1, Sec. 4.475.)

Source Law

Sec. 4.475. The treasurer or depository of the district shall be any bank, banking corporation, or individual banker resident in the district. The treasurer or depository shall be selected by the commissioners courts of the counties or portions of counties included within the district at joint meetings held for that purpose in the county having the largest number of inhabitants. The treasurer or depository shall be governed by the same laws and shall be subject to the same penalties as are provided by law for depositories of county funds. Before the treasurer or depository is entitled to receive any funds of the district, it must give a surety bond to the district, with a corporate surety that is authorized to do business in the state, in an amount equal to the funds so deposited and conditioned on the safekeeping of the funds and paying of the funds.

Revised Law

Sec. 257.111. PURCHASE OF IMPROVED ROADS. (a) A road district established under this subchapter may purchase or take over an improved road previously constructed by a county or by another road district.

(b) A district may purchase or take over a road under Subsection (a) only in the manner provided by Part 3, Article 726, Revised Statutes, except that a petition is not required to be filed. (V.A.C.S. Art. 6702-1, Sec. 4.465.)

Source Law

Sec. 4.465. The road district may or may not purchase or take over improved roads already constructed by any county or other road district included in the district. In the event the road district is determined to take over or purchase the improved roads, the take-over or purchase shall be done in conformity with the procedure prescribed by Part 3 of this subchapter except that no petition shall be necessary.
Revisor's Note

Section 4.465, V.A.C.S. Article 6702-1, refers to "Part 3 of this subchapter," (Subchapter E, Chapter 4, of V.A.C.S. Article 6702-1). That statute is redesignated by a conforming amendment to this code as Part 3, Article 726, Revised Statutes, and the revised law is drafted accordingly.

Revised Law

Sec. 257.112. BONDS AND TAX AUTHORIZED. As provided by Section 52, Article III, Texas Constitution, to construct, maintain, and operate macadamized, graveled, or paved roads or turnpikes, or in aid of those activities, two or more adjoining counties or portions of adjoining counties through a road district established under this subchapter may:

(1) issue bonds in any amount not to exceed one-fourth of the taxable value of the real property located in the district;

(2) impose an annual ad valorem tax to pay the interest on the bonds; and

(3) provide a sinking fund for the redemption of the bonds. (V.A.C.S. Art. 6702-1, Sec. 4.461(b).)

Source Law

(b) Pursuant to authority conferred by Article III, Section 52, of the Texas Constitution, any number of adjoining counties or portions of counties within this state may issue bonds in any amount not to exceed one-fourth of the assessed valuation of the real property of the territory included within the counties or defined portions of counties and may levy and collect annually ad valorem taxes to pay the interest on the bonds and may provide a sinking fund for the redemption of the bonds for the purpose of the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes or in aid of these purposes.

Revisor's Note

(1) Section 4.461(b), V.A.C.S. Article 6702-1, states that adjoining counties may issue bonds and collect taxes as provided by Section 52, Article III,
Texas Constitution. The rest of Part 4, Subchapter E, Chapter 4, of Article 6702-1, codified as this subchapter of the revised law, provides for the establishment of road districts to carry out that authority. For clarity, the revised law includes a reference to the road districts in connection with the issuance of the bonds and collection of the tax.

(2) Section 4.461(b), V.A.C.S. Article 6702-1, refers to the "assessed value" of real property. Title 1, Tax Code, defines the value on which ad valorem taxes are imposed, sometimes referred to as "assessed value," as "taxable value." Accordingly, the revised law substitutes "taxable value" for "assessed value."

(3) Section 4.461(a), V.A.C.S. Article 6702-1, defines "any number of adjoining counties" as two or more contiguous counties. The revised law omits that definition as unnecessary because "contiguous" and "adjoining" are synonymous in the context of geographical areas such as counties. The omitted subsection reads:

Sec. 4.461. (a) In this part, "any number of adjoining counties" means two or more counties contiguous to each other.

Revised Law

Sec. 257.113. ORDER FOR BOND ELECTION. (a) The members of the commissioners courts of the counties included in whole or part in a road district established under this subchapter at a joint meeting held in the county having the greatest population may order an election to authorize bonds for the district.

(b) The members of the commissioners courts shall order the election to be held on a date authorized by Section 41.001, Election Code. Notice of the election shall be given as provided by Chapter 4, Election Code.

(c) At the election, the voters shall be permitted to vote
for or against the following proposition:

"Authorizing the __________ Counties Road District of Texas to issue the bonds of the district in the total sum of $______ and to levy annually ad valorem taxes on all taxable property in the district to pay the interest on the bonds and create a sinking fund to redeem the principal at maturity for the purpose of the construction, maintenance, and operation of macadamized, graveled, or paved road and turnpikes or in aid of these purposes within the district.

"The roads to be constructed from the proceeds of the sale of the bonds and the amount apportioned to each road is as follows:

"(Here set out the road or roads as described in the order and notice of the election to determine the establishment of the district and the amount to be expended on each road or roads.)"

(d) If the proposition provides for the road district to purchase or take over improved roads constructed by an included county or another road district included in the road district, the election order must conform to the requirements of Section 3.001, Article 726, Revised Statutes. (V.A.C.S. Art. 6702-1, Sec. 4.466.)

Source Law

Sec. 4.466. (a) After the creation of the road district, the commissioners court of the counties or portions of counties included in the district at a joint meeting held in the county having the largest number of inhabitants as shown by the most recent federal census may order an election to be held within the district. The court shall order the election to be held on an election date authorized by Section 41.001, Election Code, and notice shall be given as provided by Chapter 4, Election Code. The voters shall be permitted to vote for or against the proposition:

"Authorizing the __________ Counties Road District of Texas to issue the bonds of the district in the total sum of $______ and to levy annually ad valorem taxes on all taxable property in the district to pay the interest on the bonds and create a sinking fund to redeem the principal at maturity for the purpose of the construction, maintenance, and operation of macadamized, graveled, or paved road and turnpikes or in aid of these purposes within the district.

"The roads to be constructed from the proceeds of the sale of the bonds and the amount apportioned to each road is as follows:

"(Here set out the road or roads as described in the order and notice of the election to determine the
creation of the district and the amount to be expended on each road or roads.)"

(b) If it is proposed to purchase or take over the improved roads already constructed by an included county or any included road district, the election order shall be in conformity with the provisions of Section 4.451 of this Act.

Revisor's Note

(1) Section 4.466, V.A.C.S. Article 6702-1, provides for a bond election to be called at a joint meeting of the "commissioners court" of the counties in the road district. The revised law substitutes "the members of the commissioners courts" of those counties because that is what the source law clearly intends.

(2) Section 4.466, V.A.C.S. Article 6702-1, refers to "the county having the largest number of inhabitants as shown by the most recent federal census." The revised law substitutes for that phrase "the county having the greatest population." In context of the source law "inhabitants" is synonymous with the more frequently used term "population." 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.

(3) In 1987, the 70th Legislature at its regular session passed two acts amending the reference to the election date for an election held under Section 4.466, V.A.C.S. Article 6702-1. Section 20, Chapter 984, provided for the election to be held on an election date "authorized by the Texas Election Code." Section 2, Chapter 212, provided for the election to be held on an election date "authorized by Section 41.001,
Election Code." Section 41.001 requires all elections not covered by an exception to be held on one of the uniform dates established by that section. Since none of the exceptions applies to an election held under Section 4.466, V.A.C.S. Article 6702-1, the revised law maintains the reference to Section 41.001, Election Code.

(4) Section 4.466(b), V.A.C.S. Article 6702-1, refers to Section 4.451 of that article. That statute is redesignated by a conforming amendment to this code as Section 3.001, Article 726, Revised Statutes, and the revised law is drafted accordingly.

Revised Law

Sec. 257.114. NOTICE OF BOND ELECTION. (a) A certified copy of an order for an election made under Section 257.113 shall be sent to the county clerk of each county included in whole or part in the road district.

(b) After the clerk receives the certified copy of the election order, the commissioners court of each county at a regular or special session of the court held in the respective counties shall give notice of the proposed bond election to be held on the date provided by the order. The notice must state the time and place at which the election is to be held and state in substance the contents of the order.

(c) All other proceedings relating to the question submitted must be in accordance with the provisions of Parts 2 and 3, Article 726, Revised Statutes, that apply to county road bond elections.

(V.A.C.S. Art. 6702-1, Sec. 4.467 (part).)

Source Law

Sec. 4.467. After the election order has been passed at a joint meeting of the commissioners courts, a certified copy of the order shall be transmitted to the county clerk of each county or portion of a county within the district. Thereupon, the commissioners court of each county or portion of a county at a regular or special session held in their respective counties shall give notice of the proposed bond
election to be held on the date named in the order of
the courts passed at the joint meeting. Each election
notice must state the time and place of holding the
election and must state in substance the contents of
the election order. All other proceedings in respect
of the question so submitted shall be in accordance
with the provisions of Section 4.411 of this Act
relative to county road bond elections. . . .

Revisor's Note
Section 4.467, V.A.C.S. Article 6702-1, provides
that the provisions of Section 4.411 of that article
that govern county road bond elections apply to
proceedings relating to submission of a question on
approval of certain road district bonds under Part 4,
Subchapter E, Chapter 4, of V.A.C.S. Article 6702-1
(revised as this subchapter). Section 4.411 does not
contain any relevant provisions. However, former
V.A.C.S. Article 778g, the law from which Section
4.467, V.A.C.S. Article 6702-1, was derived when
V.A.C.S. Article 6702-1 was enacted in 1983, stated
that the relevant proceedings were to be in accordance
with Chapter 16, General Laws, Acts of the 39th
Legislature, 1st Called Session, 1926. That act was
the source from which Parts 2 and 3, Subchapter E,
Chapter 4, V.A.C.S. Article 6702-1, were derived. The
relevant portions of V.A.C.S. Article 6702-1 are
transferred by a conforming amendment to this code as
Parts 2 and 3 of Article 726, Revised Statutes.
Accordingly, to clarify the apparent intent of the
source law, the revised law substitutes a general
reference to the applicable provisions of Article 726,
Revised Statutes, for the erroneous reference to
Section 4.411 of V.A.C.S. Article 6702-1.

Revised Law
Sec. 257.115. DECLARATION OF BOND ELECTION RESULTS. The ex
officio directors of a road district established under this
subchapter by order shall declare the result of a district bond election and certify the result to the county judge of the county in the road district that has the greatest population. (V.A.C.S. Art. 6702-1, Sec. 4.467 (part).)

Source Law

Sec. 4.467. . . . The ex officio directors of the road district shall by order declare the result and certify the result to the county judge of the county having the largest population. . . .

Revised Law

Sec. 257.116. ORDERS TO ISSUE BONDS AND LEVY TAX. If in a bond election held under this subchapter two-thirds of the votes received in each county or portion of a county included in the road district favor issuing the bonds, the commissioners court of each county or portion of a county, as soon after the declaration of the result of the election as practicable, shall pass the orders necessary to issue the bonds and impose taxes to pay the bonds. (V.A.C.S. Art. 6702-1, Sec. 4.467 (part).)

Source Law

Sec. 4.467. . . . If at the election two-thirds of the qualified voters of each county or each portion of a county voting at the election cast their ballots in favor of the issuance of the bonds, the commissioners court of each county or portion of a county, as soon after the declaration of the result as practicable, shall pass the orders that may be necessary in the issuance of the bonds and the levy of taxes in payment of the bonds.

Revised Law

Sec. 257.117. LEVY OF BOND TAX. (a) Each year, the commissioners courts of the counties included in whole or part in a road district established under this subchapter shall determine the amount of the district bond tax to be imposed.

(b) The commissioners court of each county shall impose the portion of the bond tax imposed by the road district in that county at the time and in the manner that other taxes are imposed in the county by the commissioners court of the county. The imposition of
the tax is governed by the law governing the imposition of county
taxes. (V.A.C.S. Art. 6702-1, Sec. 4.469.)

Source Law

Sec. 4.469. The amount of the bond tax to be
levied annually shall be determined by the
commissioners courts of the respective counties or
portions of counties before the period at which the
annual levy of taxes is made in the counties composing
the district. The proportion of the tax levied against
the property in each of the counties, respectively,
shall be levied by the commissioners court of the
county at the same time and in the same manner that
other taxes in the counties are levied. The levy and
collection of the tax shall be governed by the same
laws that govern the levy and collection of county
taxes.

Revised Law

Sec. 257.118. ISSUANCE OF BONDS. (a) Bonds issued by a
road district under this subchapter shall be:

(1) issued in the name of the road district;
(2) signed by the county judge of each county included
in whole or part in the district; and
(3) countersigned by the clerk of each of those
   counties.

(b) The seal of the commissioners court of each county
   included in whole or part in the district must be impressed on the
   bonds.

(c) The bonds must be attested by the treasurer or
depository of the district.

(d) As nearly as practicable, the bonds shall be issued in
   the form used for the issuance of county bonds, except as provided
   by this section. (V.A.C.S. Art. 6702-1, Sec. 4.470.)

Source Law

Sec. 4.470. The bonds shall be issued as nearly
as may be in form in use in this state in the issuance
of county bonds, except that the bonds shall be issued
in the name of the district and shall be signed by the
county judges of the several counties or portions of
counties composing the district and countersigned by
the county clerks of the counties, with the seals of
the commissioners courts of the counties impressed on
the bonds. The bonds shall be attested by the
treasurer or depository of the district.
Sec. 257.119. SALE OF BONDS. (a) The commissioners courts of the counties included in whole or part in a road district established under this subchapter, at a joint meeting held in the county having the greatest population, shall advertise bonds issued under this subchapter for sale in an advertisement or notice published in a newspaper of general circulation published in the district not later than the 10th day before the date set for the sale.

(b) The commissioners courts shall convene in joint meeting in the county having the greatest population on the date specified for the sale in the notice to consider bids for the purchase of the bonds. The courts may reject any bid.

(c) The commissioners courts shall sell some or all of the bonds at that joint meeting at a price permitted by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes). The purchase money shall be deposited with the road district's treasurer or depository to the credit of the available road fund of the road district. (V.A.C.S. Art. 6702-1, Sec. 4.471.)

Source Law

Sec. 4.471. The commissioners court of the counties or portions of counties embraced in the district, at a joint meeting held in the county having the largest number of inhabitants as shown by the most recent federal census, shall advertise the bonds for sale. The advertisement or notice of the proposed sale shall be published in a newspaper of general circulation published in the district, one time, and not later than the 10th day before the day fixed for the sale. The commissioners courts shall convene in joint meeting on the date specified in the published notice for the sale of the bonds. The joint meeting shall be held in the county having the largest number of inhabitants for the purpose of considering bids for the purchase of the bonds. The courts are entitled to reject any and all bids. The bonds shall be sold by the courts at the joint meeting either in whole or in parcels at a price permitted by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes). The purchase money shall be placed in the treasury or depository of the district to the credit of the available road fund of the district.
Revisor's Note

(1) Section 4.471, V.A.C.S. Article 6702-1, provides for a joint meeting of the "commissioners court" of the counties in the road district. The revised law substitutes "the commissioners courts" of those counties because that is what the source law clearly intends.

(2) Section 4.471, V.A.C.S. Article 6702-1, refers to "the county having the largest number of inhabitants as shown by the most recent federal census." The revised law substitutes for that phrase "the county having the greatest population." In context of the source law "inhabitants" is synonymous with the more frequently used term "population." 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.

(3) Section 4.471, V.A.C.S. Article 6702-1, states that a bond notice must be published "one time." The revised law omits "one time" as unnecessary. Nothing in the other requirements of that section indicates or implies that more than one publication is required.

(4) Section 4.471, V.A.C.S. Article 6702-1, refers to the "treasury" of a road district. Section 4.475 of that article authorizes a road district "treasurer" and "treasurer" is also used in the other applicable provisions of V.A.C.S. Article 6702-1. Accordingly, the revised law substitutes "treasurer" for "treasury" in this section.
Sec. 257.120. BOND PROCEEDS. (a) On the issuance and sale of road district bonds under this subchapter, the commissioners court of each county included in whole or part in the road district may adopt any necessary order setting aside an amount of the proceeds from the sale of the bonds as the ex officio directors of the road district consider necessary to be used for the maintenance, repair, and upkeep of the district's roads.

(b) The necessary expense incident to the issuance of the bonds may be paid out of the proceeds from the sale of the bonds. (V.A.C.S. Art. 6702-1, Sec. 4.468 (part).)

Sec. 257.121. APPLICATION OF COUNTY BOND LAWS. Except as otherwise provided by this subchapter, the general laws governing county road bonds authorized under Section 52, Article III, Texas Constitution, apply to the authorization, issuance, approval, certification, registration, sale, and payment of bonds issued under this subchapter. (V.A.C.S. Art. 6702-1, Sec. 4.468 (part).)

Sec. 257.122. INTEREST RATE AND MATURITY OF BONDS. Bonds
issued under this subchapter shall mature not later than the 40th
anniversary of the date of their issuance and shall bear interest
at a rate not to exceed that provided by Chapter 3, Acts of the
61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's
Texas Civil Statutes). (V.A.C.S. Art. 6702-1, Sec. 4.468 (part).)

Source Law
Sec. 4.468. . . . The bonds shall mature not later than 40 years from their date and shall bear interest not to exceed the interest rate prescribed by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes). . . .

Revised Law
Sec. 257.123. BOND RECORDS. (a) The commissioners court of each county included in whole or part in a road district established under this subchapter shall make a record of the district bonds issued under this subchapter.

(b) The county clerk of each county shall keep the record. The record must show:

(1) the numbers of the bonds;
(2) the amount of each bond;
(3) the interest rate of each bond;
(4) the date of issue of each bond; and
(5) when each bond is due and where it is payable.

(V.A.C.S. Art. 6702-1, Sec. 4.473.)

Source Law
Sec. 4.473. The commissioners courts for each county or portion of a county included within the district shall make a record of a list of the bonds. The record shall be kept by the county clerk of each county, showing their numbers, amount, rate of interest, date of issue, when due, and where payable. The record is a public record in each county.

Revisor's Note
Section 4.473, V.A.C.S. Article 6702-1, provides that the bond records are public records. The revised law omits that provision as unnecessary under the
pertinent part of the open records law because Section 552.021, Government Code, states that information collected, assembled, or maintained under a law or in connection with the transaction of official business by a governmental body, including a special district, is public information. As such, that information is a public record without an express statement to that effect.

Revised Law
Sec. 257.124. BOND WARRANTS. (a) The treasurer or depository of a road district established under this subchapter shall pay out the proceeds from the sale of the district's bonds on warrants drawn on the available road fund and issued by the county clerk of the county in the road district having the greatest population. A warrant must be countersigned by the county judge of each district included in whole or part in the road district.
(b) A warrant may be issued only in payment of a certified account approved by the ex officio directors of the district.

Source Law
Sec. 4.474. The purchase money for the bonds shall be paid out by the treasurer or depository of the district on warrants drawn on the available road fund issued by the county clerk of the county having the largest number of inhabitants. The warrants shall be countersigned by the county judge of each county or portion of a county situated within the road district. No such warrant may be issued except in payment of certified accounts approved by the ex officio directors.

Revisor's Note
(End of Chapter)
(1) Section 4.403, V.A.C.S. Article 6702-1, authorizes an election for cancellation of authority to issue road bonds authorized but unsold as of September 22, 1932. That section is omitted as obsolete. To the extent that any unused bond authority arising before
that date may still exist, V.A.C.S. Article 717g authorizes a county to call an election to cancel any unused bond authority. The omitted section reads:

Sec. 4.403. (a) In the event any road bonds voted or issued or any portion of the road bonds voted or authorized by a county, political subdivision, or defined district of the county remain unsold on September 22, 1932, the commissioners court may on its own motion or on petition of not less than 50 or a majority of the qualified voters of the governmental entity order an election to determine whether or not the road bonds shall be revoked or cancelled. The election shall be ordered, held, and conducted in the same form and manner as that at which the bonds were originally authorized.

(b) The result of the election, whether favorable to the cancellation of the bonds or not, shall be duly recorded by the commissioners court and the returns and the result duly entered of record in the minutes of the court. In the event the result of the election for the cancellation and revocation of the unsold bonds shows that two-thirds of the qualified voters of the county, political subdivision, or defined district of the county voting at the election have voted for the cancellation and revocation of the unsold bonds, the commissioners court shall cancel and burn the bonds and forward to the comptroller a certified copy of the minutes showing the destruction and cancellation. The comptroller shall promptly cancel the registration of the bonds on the records of his office.

(c) When the bonds have been destroyed, the commissioners court shall readjust the existing tax levies in the county, political subdivision, or defined district by any amount equal to that levied or proposed to be levied for the interest and sinking fund accounts of the bonds to be cancelled.

(d) After deducting the compensation of the tax assessor, tax collector, and county treasurer and any other claims properly chargeable against the taxes, the unexpended part of all taxes that have been collected, with a view to the sale of the bonds as destroyed, shall be refunded to the taxpayers ratably on order of the commissioners court. The county treasurer shall take and file proper receipts for all funds so refunded. In the event there shall remain an unclaimed surplus of the taxes, after a period of 20 years and after a diligent effort has been made to return the unclaimed surplus, the surplus may be used by the county, political subdivision of the county, or any local district that has been or may be created by any general or special law for the purpose of the
maintenance, operation, and improvement of macadamized, graveled, or paved roads as may be determined by the commissioners court of any county or the officials of any political subdivision of a county or any road district.

(e) The expense of holding the election shall be paid out of the general fund of the county.

(f) This section does not invalidate any bond election or any bonds that have been sold by the county, political subdivision, or defined district.

(2) Section 4.439, V.A.C.S. Article 6702-1, validated certain road bonds authorized before September 22, 1932. This provision is omitted from the revised law because it served its purpose on the day it took effect and, thus, is executed law. Section 311.031(a)(2), Government Code (Code Construction Act), applicable to the revised law, provides that the repeal of a statute does not affect any validation previously made under the statute. The omitted section reads:

Sec. 4.439. (a) All road bonds that have been voted and authorized before September 22, 1932, by any political subdivisions, or by any road district, in accordance with the provisions and requirements of Article III, Section 52, of the Texas Constitution, and that were not issued and sold before September 22, 1932, are validated. The commissioners court of the county including the political subdivision or road district may make and enter any and all orders and provisions necessary for the purpose of issuing and selling the bonds so authorized to be issued by the qualified electors of the political subdivision or road district. The court may levy general ad valorem taxes on all taxable property situated in the political subdivision or road district as the taxable property appears on the assessment rolls for state and county taxes in amount sufficient to pay the interest on the bonds and the principal on the bonds at maturity. The bonds, when approved by the attorney general, registered by the state comptroller, and delivered, shall be the general, direct, and binding obligations of the political subdivision or road district issuing the bonds.

(b) It is hereby expressly found that the property in all political subdivisions and road districts the bonds of which are validated by this section will be benefited by the improvements proposed to be made with the proceeds of the bonds to an amount not less than the taxes that
will be levied against the property for the purpose of paying principal of and interest on the bonds.

(3) Section 4.440, V.A.C.S. Article 6702-1, validated certain actions related to the exchange of certain bonds sold before March 13, 1934. This provision is omitted from the revised law because it served its purpose on the day it took effect and, thus, is executed law. Section 311.031(a)(2), Government Code (Code Construction Act), applicable to the revised law, provides that the repeal of a statute does not affect any validation previously made under the statute. The omitted section reads:

Sec. 4.440. (a) In all instances in which counties acting by and through their commissioners courts have before March 13, 1934, lawfully sold a part or parts of an issue of road bonds approved by the attorney general at a price of not less than their par value and the purchase money shall have been placed in the county treasury of the county in accordance with Section 4.424 of this Act, and thereafter the counties acting through their commissioners courts have permitted certain bonds of the issue or issues still owned and held by the counties to be exchanged for bonds of the issue or issues previously lawfully sold, and under circumstances that the counties actually receive bonds of the same issue or issues in identical amounts as the bonds surrendered by the county in the exchange or exchanges, the acts of the counties by and through their respective commissioners courts in permitting the exchanges, in surrendering the bonds in the exchange or exchanges, and in receiving for the use and benefit of the counties the bonds in exchange are validated as if the bonds thus delivered by the county have been delivered in accordance with law and the county received full value for the bonds. The bonds received by the county in exchange for those bonds are the property of the county and subject to sale and resale in accordance with law.

(b) This section does not apply in a case in which a county depository or treasury was designated to act as such and was, at the time of the transfer or exchange of the bonds, located in some county other than the county in which the bonds were originally voted.

(4) Section 4.442, V.A.C.S. Article 6702-1,
validated road bonds authorized before May 16, 1947, and related taxes. This provision is omitted from the revised law because it served its purpose on the day it took effect and, thus, is executed law. Section 311.031(a)(2), Government Code (Code Construction Act), applicable to the revised law, provides that the repeal of a statute does not affect any validation previously made under the statute. The omitted section reads:

Sec. 4.442. (a) All road bonds voted and authorized before May 16, 1947, together with the levy of a tax to redeem them by a two-thirds majority vote of the qualified voters under authority of Article III, Section 52, of the Texas Constitution, but which bonds are unissued and unsold, in all or any road districts or political subdivisions in any county in the state that embraces within its boundaries all or any portion of a previously created road district or road districts that has or have outstanding road bonds issued under authority of Article III, Section 52, of the Texas Constitution, but for which the outstanding road bonds of the included district or districts no compensation bonds were voted, authorized, or issued by the road district or political subdivision so embracing the road district, districts, or portions thereof, are in all things validated. All proceedings had by the commissioners court of any county including the road district or political subdivision the bonds of which are validated, in calling the election, the conduct of the election, canvassing returns of election, and all other proceedings incident to the authorization of the bonds are validated. The commissioners court may proceed in the issuance of the bonds in the manner provided by law for the issuance of road district bonds in ordinary road districts and just as though there were no former road districts or parts thereof covering any of the territory embraced within the boundaries of the road district or political subdivision the bonds of which are validated hereby. The commissioners court of the counties respectively are authorized to levy, assess, and collect ad valorem taxes on all taxable property situated in the road districts or political subdivisions in amounts sufficient to pay the interest on the bonds and the principal at maturity. The bonds, when approved by the attorney general, registered by the state comptroller of public accounts, and sold and delivered according to law, shall constitute general, direct, and binding obligations of the road district or political subdivision issuing the bonds.
(b) This section does not impair, release, or in any manner affect the debt or lien, or the validity of the debt or lien, evidenced by any legally outstanding road bonds issued by any road district or road districts, all or any part of which is embraced within the boundaries of the road district or political subdivision the bonds of which are validated. The bonds so outstanding shall be and remain the debt and obligation of the district issuing them in the first instance, and the commissioners court of each of the counties containing the road district may continue to levy, assess, and collect ad valorem taxes on the taxable property situated in the road districts, as originally created, in the manner provided by law for the payment of all principal and interest to mature on the outstanding bonds, the same as if the road district or road districts or portions thereof had never been embraced within the boundaries of the subsequently created road district or political subdivision.

(c) It is expressly found and declared that all property situated in the road districts or political subdivisions, the bonds of which are validated, including all or any portion of road districts which are included in the districts or subdivisions, will be benefited by the improvements proposed to be made with the proceeds of the bonds validated to an amount not less than the amount of the taxes that will be levied and collected against the property for the purpose of paying the principal and interest on the bonds validated.

(5) Section 4.443, V.A.C.S. Article 6702-1, validated certain municipal tax bonds authorized before December 2, 1957. This provision is omitted from the revised law because it served its purpose on the day it took effect and, thus, is executed law. Section 311.031(a)(2), Government Code (Code Construction Act), applicable to the revised law, provides that the repeal of a statute does not affect any validation previously made under the statute. The omitted section reads:

Sec. 4.443. All proceedings in connection with any tax bonds favorably voted before December 2, 1957, in any city, including any home-rule city, for the purpose of providing permanent public improvements by the acquisition of land and improvement of the land for off-street parking purposes or for the purpose of extending and improving the park system of the city and to provide for municipal
off-street parking facilities are in all
things validated. The bonds may be issued
and delivered by the governing body of the
city for the purpose or purposes so voted
and in the manner provided by Chapter 1,
Title 22, Revised Statutes, as amended,
regardless of any irregularities in the
holding of any election at which the bonds
were voted and regardless of whether or not
the bonds so voted were submitted in only
one proposition, and regardless of the
wording of the language appearing on the
ballots concerning any proposition so
submitted. The governing body of the city
is in all things authorized to operate and
maintain any facilities acquired or
constructed with the proceeds from the sale
of the bonds.

(6) Section 4.444, V.A.C.S. Article 6702-1,
validated road bonds and taxes authorized before May
21, 1959. This provision is omitted from the revised
law because it served its purpose on the day it took
effect and, thus, is executed law. Section
311.031(a)(2), Government Code (Code Construction Act),
applicable to the revised law, provides that the repeal
of a statute does not affect any validation previously
made under the statute. The omitted section reads:

Sec. 4.444. (a) All road bonds
voted and authorized before May 21, 1959,
under the provisions of Article III,
Section 52, of the Texas Constitution, by a
two-thirds majority vote of the qualified
voters voting at an election held for that
purpose and all proceedings had in
connection with the bonds, including the
petition for election, the order of
election, the giving of notice of the
election, the holding of the election and
declaring the results of the election, and
the order authorizing the issuance and
levying of a tax in payment of the bonds
are in all things validated. The bonds,
when approved by the attorney general,
registered by the comptroller of public
accounts, and delivered to the purchaser,
are general, direct, and binding
obligations of the political subdivision or
road district issuing the bonds and are
incontestable except for fraud or forgery.
The bonds that have been approved before
May 21, 1959, by the attorney general,
registered by the comptroller of public
accounts, and delivered to the purchaser
are in all things validated and are
general, direct, and binding obligations of
the political subdivision or road district
that issued the bonds and are incontestable
except for fraud or forgery.
(b) This section does not apply to any political subdivision or road district that is now or has been involved in litigation questioning the validity of its road bonds if the litigation is ultimately determined against the validity of the bonds.

(7) Section 4.445, V.A.C.S. Article 6702-1, validated road bonds and taxes authorized before June 10, 1969, and road districts and other districts created by the counties before that date. This provision is omitted from the revised law because it served its purpose on the day it took effect and, thus, is executed law. Section 311.031(a)(2), Government Code (Code Construction Act), applicable to the revised law, provides that the repeal of a statute does not affect any validation previously made under the statute. The omitted section reads:

Sec. 4.445. (a) All road bonds voted and authorized before June 10, 1969, under the provisions of Article III, Section 52, of the Texas Constitution, by a two-thirds majority vote of the qualified voters voting at an election held for that purpose in any road district or other defined district in the state as the case may be and all proceedings had with respect to the voting of the bonds, including the petition praying for the calling of the elections, the giving of notice of the hearing had on the petition, and the holding of the hearing and also including the order calling the elections and the giving of the notices of election in the elections, including also the holding of each election and the declaring of the results of the election, are in all things validated. The bonds voted and issued before June 10, 1969, including the order authorizing the issuance of the bonds and the levying of the tax in payment of the bonds, are in all things validated. The bonds voted before June 10, 1969, but not yet issued, when approved by the attorney general, registered by the comptroller of public accounts, and delivered to the purchaser, are general, direct, and binding obligations of the road district or other defined district against which the bonds are issued and are incontestable except for fraud or forgery. The bonds that have been approved before June 10, 1969, by the attorney general, registered by the comptroller of public accounts, and delivered to the purchaser are in all things validated and are general, direct,
and binding obligations of the road
district or other defined district against
which the bonds are issued and are
incontestable except for fraud or forgery.
(b) All road districts or other
districts created and defined before June
10, 1969, by the commissioners courts of
this state that have voted and authorized
before that date the issuance of road bonds
under the provisions of Article III,
Section 52, of the Texas Constitution, by a
two-thirds majority vote of the qualified
voters of the road district or other
defined district at an election held for
that purpose are in all things validated as
though each road district or other defined
district had been created and defined in
the first instance by the legislature.
(c) It is expressly found and
declared that all property subject to
taxation situated in the road districts or
other defined districts, the bonds of which
have been voted before June 10, 1969, by a
two-thirds majority vote pursuant to the
provisions of Article III, Section 52, of
the Texas Constitution, and which are
validated, will be or has been benefited by
the improvements proposed to be made or
which have been made with the proceeds of
the bonds validated to an amount not less
than the amount of the required levy of ad
valorem taxes against the property and the
collection of the taxes for the purpose of
paying the principal and interest on the
bonds validated.
(d) This section does not apply to
the road bonds or to the road district or
other defined district involved in
litigation pending in any court of
competent jurisdiction in this state on
June 10, 1969, questioning the validity of
any matters validated, if the litigation is
ultimately determined against the validity
of the bonds. This section does not apply
to the road bonds or to the road district
or other defined district that has been
declared invalid by a court of competent
jurisdiction in this state.

(8) Section 4.456, V.A.C.S. Article 6702-1,
validated certain road bonds and related taxes and
other actions. This provision is omitted from the
revised law because it served its purpose on the day it
took effect and, thus, is executed law. Section
311.031(a)(2), Government Code (Code Construction Act),
applicable to the revised law, provides that the repeal
of a statute does not affect any validation previously
made under the statute. The omitted section reads:

Sec. 4.456. (a) If (1) under
authority of Article III, Section 52, of the Texas Constitution, a two-thirds majority of the qualified voters of any road district embracing portions of any previously created road district, subdivision, or precinct, which district was created in conformity with the provisions and requirements of Section 4.415 of this Act, voting on the proposition, having voted at an election held in the road district in favor of the issuance of bonds, for the purchase of roads within the road district, subdivision, or precinct, portions of which were and are included within the new district, and also voting on the proposition of the further construction of roads within the new district, and the levy of taxes in payment of the bonds, the canvass of the vote revealing the two-thirds majority having been recorded in the minutes of the county commissioners court; (2) thereafter, the county commissioners court of the county in which the road district is situated, by orders adopted and recorded in its minutes, authorized the issuance of the bonds, prescribed the date and maturity of the bonds and rate of interest the bonds were to bear, the place of payment of principal and interest, providing for the levy of taxes on taxable property in each road district sufficient to pay the interest on the bonds and to produce a sinking fund sufficient to pay the bonds at maturity; and (3) territory of the district, subdivision, or precinct not included in the newly created road district shall continue to bear and pay its proper proportion of the outstanding road bond debts thereof, and the bonds were approved by the attorney general and registered by the comptroller of public accounts, each election and all acts and proceedings had and done in connection with the bonds by the county commissioners court and the levy of taxes are hereby legalized, approved, and validated. All bonds voted or issued thereunder are validated and declared to be the legal and binding obligations of the several districts according to their terms.

(b) The commissioners court of the county in which the district is situated may adopt all orders and do all acts necessary in the issuance or sale of any unissued or unsold bonds of the district. The manner of issuing the district compensation bonds for the district shall be the same as that provided for the issuance of other district and county compensation bonds.

(c) This part does not impair, release, or in any manner affect the lien evidenced by outstanding bonds on any portion of any road district, subdivision, or precinct, not included within the limits of the subsequently created road district, authorizing or issuing the bonds for the
purchase of roads from the previously
created district, subdivision, or precinct.
(d) The excluded territory shall
continue to bear and pay its proper
proportion of the existing debt. The
subsequently created road district shall
assume only that portion of the outstanding
bonded indebtedness of the previously
created district, subdivision, or precinct
in the same ratio that the assessed
valuation of the property of the previously
created road district, subdivision, or
precinct (and which property is included in
the subsequently created district) bears to
the assessed valuation of the property
situated within the original boundaries of
the previously created road district,
subdivision, or precinct.

[Chapters 258-279 reserved for expansion]

CHAPTER 280. MISCELLANEOUS PROVISIONS

Sec. 280.001. CONDEMNING RAILROAD ROADBED

Revised Law

Sec. 280.001. CONDEMNING RAILROAD ROADBED. The
commissioners court of a county may condemn a railroad roadbed on
the petition of at least 20 freeholders of an unincorporated
community for the purpose of opening, widening, or extending a
street in the community. (V.A.C.S. Art. 1150.)

Source Law

Art. 1150. County commissioners shall have the
right, upon petition of twenty freeholders of any
community, or unincorporated town or city, to condemn
roadbed of railroads for the same purpose mentioned in
the preceding article.

Revisor's Note

(1) V.A.C.S. Article 1150 authorizes "county
commissioners" to condemn a railroad roadbed. The
revised law substitutes "commissioners court" for
"county commissioners" to conform to the terminology of
the Local Government Code.

(2) V.A.C.S. Article 1150 refers to a
"community, or unincorporated town or city." The
revised law substitutes the term "unincorporated community" because the context of this provision shows that the legislature intended to apply the provision only to unincorporated communities and the substituted term includes unincorporated cities and towns.

(3) V.A.C.S. Article 1150 provides that property may be condemned "for the same purpose mentioned in the preceding article." The preceding article is V.A.C.S. Article 1149, which is not codified in this code. See End of Chapter Revisor's Note (1) under Chapter 311. Article 1149 authorizes certain towns and villages to condemn a railway roadbed for the "purpose of opening, widening, or extending the streets of such town or village." This is the only stated purpose in that article and the purpose is added to the revised law.
SUBTITLE D. ROAD LAWS RELATING TO PARTICULAR COUNTIES

CHAPTER 281. ACQUISITION OF PUBLIC INTEREST IN PRIVATE ROAD

BY CERTAIN COUNTIES

Sec. 281.001. APPLICABILITY OF CHAPTER

This chapter applies only to a county with a population of 50,000 or less.

(V.A.C.S. Art. 6812h, Sec. 6.)

Sec. 6. This Act shall have no effect on counties with population greater than 50,000 according to the last preceding federal census.

Revisor's Note

Section 6, V.A.C.S. Article 6812h, 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 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.
Sec. 281.002. ACQUISITION OF PUBLIC INTEREST IN PRIVATE ROAD. A county may acquire a public interest in a private road only by:

(1) purchase;
(2) condemnation;
(3) dedication; or
(4) a court's final judgment of adverse possession.

(V.A.C.S. Art. 6812h, Sec. 2(a).)

Sec. 2. (a) A county may not establish, acquire, or receive any public interest in a private road except under the following circumstances: (1) purchase; (2) condemnation; (3) dedication; or (4) final judgment of adverse possession in a court of competent jurisdiction.

Revised Law

Sec. 281.003. DEDICATION. (a) For purposes of this chapter, a dedication must be:

(1) an explicit voluntary grant of the use of a
private road for public purposes; and

(2) communicated in writing to the commissioners court
of the county in which the real property is located.

(b) An oral dedication or intent to dedicate by overt act is
not sufficient to establish a public interest in a private road
under this chapter. (V.A.C.S. Art. 6812h, Secs. 1, 4.)

Source Law

Art. 6812h
Sec. 1. In this Act, "dedication" means the
explicit, written communication to the commissioners
court of the county in which the land is located of a
voluntary grant of the use of a private road for public
purposes.

Sec. 4. For the purposes of this Act, neither
verbal dedication nor intent to dedicate by overt act
is sufficient to establish a public interest in a
private road.

Revised Law

Sec. 281.004. ADVERSE POSSESSION. For purposes of this
chapter, adverse possession is not established by the:

(1) use of a private road by the public with the
permission of the owner; or

(2) maintenance with public funds of a private road in
which a public interest is not recorded. (V.A.C.S. Art. 6812h,
Sec. 5.)

Source Law

Sec. 5. For the purposes of this Act, neither
the use of a private road by the public with the
permission of the owner nor the maintenance with public
funds of a private road in which no public interest has
been recorded as provided by Section 2 of this Act is
sufficient to establish adverse possession.

Revised Law

Sec. 281.005. RESOLUTION OF COMMISSIONERS COURT. (a) After
a public interest in a private road is acquired under this chapter,
the commissioners court of the county in which the road is located
shall record by resolution the interest in the records of the
court.
The resolution must state:

1. the date on which the interest was acquired; and
2. the circumstance by which the interest was acquired. (V.A.C.S. Art. 6812h, Sec. 2(b).)

Source Law

Once a public interest has been established in accordance with Subsection (a) of this section, the interest must be recorded in the records of the commissioners court of the county in which the road is located by resolution which declares the circumstance by which such interest was acquired and the effective date thereof.

Revisor's Note

Section 2(b), V.A.C.S. Article 6812h, refers to the date a public interest is "established." The revised law substitutes "acquired" for "established" for the reason stated in Revisor's Note (1) under Section 281.002.

Revised Law

Sec. 281.006. NOTICE TO OWNER REQUIRED. A commissioners court may not assert a public interest in a private road acquired under this chapter until the court:

1. complies with Section 281.005; and
2. gives written notice to the owner of the road in person or by registered mail to the address of the owner shown on the most recent ad valorem tax roll for the county. (V.A.C.S. Art. 6812h, Sec. 2(c).)

Source Law

The commissioners court may not assert that a public interest has been established in a private road by any of the four methods provided in Subsection (a) of this section until the interest has been recorded in the manner provided in Subsection (b) of this section and written notice has been given to the owner(s) of the road either in person or by registered mail to the address of the person as shown on the most recent ad valorem tax roll for the county.
Sec. 281.007. CONTEST. A person asserting a right, title, or interest in a private road in which a public interest is asserted under this chapter may file suit in a district court in the county in which the road is located not later than the second anniversary after the later of:

(1) the date that the resolution required by Section 281.005 is recorded; or

(2) the date the notice required by Section 281.006 is given to the owner. (V.A.C.S. Art. 6812h, Sec. 3.)

Sec. 3. Any person asserting any right, title, or interest in a private road in which a public interest has been asserted in accordance with Section 2 of this Act may file suit in a district court in the county in which the road is located within two years after the later of the following: (1) the resolution in the records of the commissioners court of the public interest in the road; and (2) the written notice to the owner(s) of the road.

CHAPTER 282. TOLL UNDERPASS OR TUNNEL IN CERTAIN COUNTIES

Sec. 282.001. APPLICABILITY OF CHAPTER

Sec. 282.002. GRANT OF FRANCHISE AUTHORIZED

Sec. 282.003. TERM OF FRANCHISE

Sec. 282.004. CONTRACT AUTHORIZED

Sec. 282.005. MAINTENANCE REQUIRED

Sec. 282.006. TOLL

Sec. 282.007. OPTION OF COUNTY TO PURCHASE

Sec. 282.008. OWNERSHIP BY COUNTY AUTHORIZED

Sec. 282.009. CROSSING UNDER NAVIGABLE BODY OF WATER

Sec. 282.010. TOLL BY COUNTY AUTHORIZED

Sec. 282.011. CONDEMNATION OF RIGHT-OF-WAY OR EASEMENT

Sec. 282.012. GRANTS OR LOANS OF PUBLIC FUNDS

CHAPTER 282. TOLL UNDERPASS OR TUNNEL IN CERTAIN COUNTIES

Sec. 282.001. APPLICABILITY OF CHAPTER. This chapter
applies only to a county with a population of 350,000 or more. (V.A.C.S. Art. 6795a, Sec. 1 (part).)

Source Law

Art. 6795a
Sec. 1. The Commissioners' Court situated within any County having not less than three hundred and fifty thousand (350,000) population, according to the last preceding Federal Census . . . .

Revisor's Note

Section 1, V.A.C.S. Article 6795a, 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 the reference is unnecessary. Section 311.005(3), Government Code (Code Construction Act), and Section 312.011(20), Government Code, define "population" as population according to the most recent federal decennial census. That definition applies to the revised law.

Revised Law

Sec. 282.002. GRANT OF FRANCHISE AUTHORIZED. The commissioners court of a county may grant to a person a franchise for the construction, maintenance, and operation of a toll underpass or tunnel under a body of water and any necessary approach to the underpass or tunnel. (V.A.C.S. Art. 6795a, Sec. 1 (part).)

Source Law

Sec. 1. [The Commissioners' Court situated within any County] . . . shall have full power and authority to grant to a person, firm or private corporation, a franchise for the construction, maintenance and operation of a toll underpass or tunnel under any stream, channel or body of water in the State of Texas and necessary approaches thereto . . . .
Reviser's Note

(1) Section 1, V.A.C.S. Article 6795a, refers to "person, firm or private corporation." The reference to "firm or private corporation" is omitted from the revised law because under Section 311.005(2), Government Code (Code Construction Act), "person" is defined to include a corporation or any other legal entity. That definition applies to the revised law.

(2) Section 1, V.A.C.S. Article 6795a, refers to an underpass or tunnel under any "stream, channel or body of water." The references to "stream" and "channel" are omitted from the revised law because those terms are included within the meaning of "body of water."

(3) Section 1, V.A.C.S. Article 6795a, refers to water "in the State of Texas." The revised law omits the quoted language as unnecessary because a commissioners court has authority only within the boundaries of the county the commissioners court serves.

Revised Law

Sec. 282.003. TERM OF FRANCHISE. The term of a franchise granted under this chapter may not exceed 50 years. (V.A.C.S. Art. 6795a, Sec. 1 (part).)

Source Law

Sec. 1. . . . said franchise to be granted to said person, firm or corporation for such number of years as the Court may think proper not to exceed fifty (50) years . . . .

Reviser's Note

Section 1, V.A.C.S. Article 6795a, refers to granting the franchise for the number of years "as the Court may think proper." The revised law omits the quoted language because the discretion of the
commissioners court is implicit in the revised law.

**Revised Law**

Sec. 282.004. CONTRACT AUTHORIZED. The commissioners court may contract with the franchisee to finance, construct, own, maintain, and operate a toll underpass or tunnel and any approach. (V.A.C.S. Art. 6795a, Sec. 1 (part).)

**Source Law**

Sec. 1. . . . and to enter into a contract with such person, firm and/or corporation to finance, build, construct, own, maintain, and operate such toll underpass or tunnel and approaches . . . .

**Revisor's Note**

(1) Section 1, V.A.C.S. Article 6795a, refers to "person, firm and/or corporation." The revised law substitutes "franchisee" for the quoted language because the term includes those entities and clarifies the relationship between the parties.

(2) Section 1, V.A.C.S. Article 6795a, authorizes the commissioners court to enter into a contract to "build" and "construct" a toll underpass or tunnel. The reference to "build" is omitted from the revised law because "build" is included within the meaning of "construct."

**Revised Law**

Sec. 282.005. MAINTENANCE REQUIRED. (a) The franchise must be conditioned on the franchisee's building and keeping in continuous repair, for the term of the franchise, the toll underpass or tunnel and any approach in accordance with the plans and specifications in the contract and franchise.

(b) The contract and franchise must provide that the franchisee keep the underpass or tunnel and any approach in continuous repair during the term of the contract or franchise. (V.A.C.S. Art. 6795a, Sec. 1 (part).)
Source Law
Sec. 1. ... and such contract and franchise to provide that such persons, firm or corporation shall keep said tunnel and/or underpass and approaches in continuous repair during the term of said contract or franchise; the granting of said franchise shall be conditioned that the contractor shall build and keep in continuous repair the tunnel or underpass and approaches so contemplated for the term of years agreed upon, in accordance with the plans and specifications therefor set out in said contract and franchise.

Revisor's Note
Section 1, V.A.C.S. Article 6795a, refers to "persons, firm or corporation." The revised law substitutes "franchisee" for the reason stated in Revisor's Note (1) under Section 282.004.

Revised Law
Sec. 282.006. TOLL. The commissioners court and the franchisee shall agree on a reasonable toll to impose for all cattle, railroads, persons, or vehicles that pass through the underpass or tunnel. (V.A.C.S. Art. 6795a, Sec. 1 (part).)

Source Law
Sec. 1. ... with a reasonable toll charge to be agreed upon, to be levied upon or charged all railroads, persons, vehicles, cattle, motor cars and motor busses and/or other vehicles of transportation passing through said tunnel or underpass . . . .

Revisor's Note
(1) Section 1, V.A.C.S. Article 6795a, refers to a toll charge to be "levied upon or charged." The revised law substitutes the concept of imposing a toll for the synonymous concept of levying or charging a toll because imposition of a toll is a more common way of expressing the idea in this code.

(2) Section 1, V.A.C.S. Article 6795a, refers to levying a toll charge on "vehicles," "motor cars," "motor busses," and "other vehicles of transportation." The references to "motor cars," "motor busses," and
"other vehicles of transportation" are omitted from the revised law because those terms are included within the meaning of "vehicles."

Revised Law

Sec. 282.007. OPTION OF COUNTY TO PURCHASE. The contract and franchise granted may provide that the county has the right to purchase the underpass or tunnel at the time and price specified by the contract or franchise. (V.A.C.S. Art. 6795a, Sec. 2.)

Source Law

Sec. 2. The Commissioners' Court may provide in said contract and franchise that the county shall have the right to purchase said tunnel and/or underpass at a time and for a price to be agreed upon in said contract or franchise.

Revised Law

Sec. 282.008. OWNERSHIP BY COUNTY AUTHORIZED. The commissioners court may provide for the county to construct, acquire, own, and operate an underpass or tunnel and any necessary approach as part of the county's road and bridge system. (V.A.C.S. Art. 6795a, Sec. 5 (part).)

Source Law

Sec. 5. Such county, through the Commissioners' Court, is hereby authorized and empowered as a part of its road and bridge system, to construct, build, acquire, own and operate an underpass or tunnel with necessary approaches . . . .

Revisor's Note

Section 5, V.A.C.S. Article 6795a, authorizes the commissioners court to "construct" and "build" an underpass or tunnel. The reference to "build" is omitted from the revised law because "build" is included within the meaning of "construct."

Revised Law

Sec. 282.009. CROSSING UNDER NAVIGABLE BODY OF WATER. The franchise must provide that the underpass or tunnel be constructed
so that, where it crosses a navigable body of water, the tunnel or
underpass is at a depth below the fixed navigable depth of the body
of water adequate to comply with law and the rules and regulations
of a state authority or department of the United States government
in charge of the body of water. (V.A.C.S. Art. 6795a, Sec. 3.)

Source Law

Sec. 3. Said tunnel or underpass when crossing a
navigable stream shall be located, built and
constructed at an adequate depth below the fixed
navigable depth of such navigable stream, river or
channel, as may be provided by law or by the rules and
regulations of the State authorities and/or Department
of the United States Government having control or
charge of said river, stream or channel and said
franchise from the Commissioners' Court of the County
wherein such tunnel or underpass is to be built,
constructed, operated and maintained, shall so provide.

Reviser's Note

(1) Section 3, V.A.C.S. Article 6795a, refers to
a tunnel or underpass "located," "built,
"constructed," "operated," and "maintained." The
revised law omits the references to "located," "built,
"operated," and "maintained" because the term
"constructed" fully conveys the idea intended by that
section.

(2) Section 3, V.A.C.S. Article 6795a, refers to
the depth of a "stream, river or channel." Section 1,
V.A.C.S. Article 6795a, refers to any "stream, channel
or body of water." The revised law omits the reference
to "stream, river or channel" and substitutes the term
"body of water" to be consistent with the use of the
term "body of water" in Section 1 and because "stream,"
"river," and "channel" are included within the meaning
of "body of water."

Revised Law

Sec. 282.010. TOLL BY COUNTY AUTHORIZED. The commissioners
court of a county that operates an underpass or tunnel may impose a
toll for use of the underpass or tunnel. (V.A.C.S. Art. 6795a, Sec. 5 (part).)

Source Law
Sec. 5. . . . and to charge tolls therefor and/or operate same upon free service or upon free and toll service, as may be provided by the Commissioners' Court . . . .

Revisor's Note
(1) Section 5, V.A.C.S. Article 6795a, refers to charging tolls. The revised law substitutes the concept of imposing a toll for the reason stated in Revisor's Note (1) under Section 282.006.

(2) Section 5, V.A.C.S. Article 6795a, authorizes a commissioners court to operate the underpass or tunnel as a free service or as a free and toll service. The revised law omits that authorization since the revised law permits but does not require the commissioners court to charge a toll.

Revised Law
Sec. 282.011. CONDEMNATION OF RIGHT-OF-WAY OR EASEMENT. A county may condemn a right-of-way or easement in real property necessary to construct an underpass, tunnel, or approach. (V.A.C.S. Art. 6795a, Sec. 4.)

Source Law
Sec. 4. The right of eminent domain is hereby conferred upon counties of the State of Texas for the purpose of condemning and acquiring land right of way or easement in land, where said land right of way or easement is necessary for the purposes of the construction of said tunnels or underpasses and approaches thereto.

Revisor's Note
Section 4, V.A.C.S. Article 6795a, confers on a county the right of eminent domain for the purpose of condemning or acquiring certain interests in land. The revised law omits the reference to eminent domain for
the purpose of acquiring an interest in land because
that power is included in the authority to condemn
property.

Revised Law

Sec. 282.012. GRANTS OR LOANS OF PUBLIC FUNDS. A
commissioners court may enter into an agreement that relates to a
grant or loan of public funds from the federal government as
necessary to carry out this chapter. (V.A.C.S. Art. 6795a, Sec. 5
(part).)

Source Law

Sec. 5. . . . and is hereby authorized to enter
into such contract or agreement relative to grants or
loans of public funds by the United States Government
as may be necessary to carry out the purposes of this
Act.

Revisor's Note

Section 5, V.A.C.S. Article 6795a, authorizes the
commissioners court to enter into a "contract or
agreement." The reference to "contract" is omitted
from the revised law because "contract" is included
within the meaning of "agreement."

Revisor's Note
(End of Chapter)

(1) The revision omits Section 6, V.A.C.S.
Article 6795a, providing that the article is severable,
because that provision duplicates Section 311.032,
Government Code (Code Construction Act), applicable to
the revised law, 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. The omitted provision reads:

Sec. 6. The provisions of this Act
shall be severable and if any of its
provisions shall be held to be
unconstitutional the decision so holding
shall not be construed to affect the
validity of any of the remaining provisions
of this Act. It is hereby declared as the

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legislative intent that this Act would have been adopted had such unconstitutional provision not been included therein.

(2) Section 7, V.A.C.S. Article 6795a, repeals all laws in conflict with that article. This revision omits this provision as unnecessary because, under general rules of statutory construction, a statute automatically has the effect of repealing prior conflicting enactments. The provision is, of course, ineffective to repeal subsequent legislation. The omitted provision reads:

Sec. 7. That all laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed.

CHAPTER 283. CAUSEWAYS, BRIDGES, AND TUNNELS IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

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[Sections 283.105-283.200 reserved for expansion]

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CHAPTER 283. CAUSEWAYS, BRIDGES, AND TUNNELS IN CERTAIN COUNTIES
SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 283.001. DEFINITIONS. In this chapter:

(1) "Bondholder" includes a trustee for a bondholder.

(2) "Bond instrument" means a bond resolution or trust indenture.

(3) "Interim bond" means a temporary bond, with or without coupons, that may be converted to a definitive bond.

(4) "Project" means a causeway, bridge, or tunnel, including a necessary approach, fixture, accessory, or equipment that:

(A) is located in one county; and

(B) traverses or lies under the water of the Gulf of Mexico, including a bay or inlet opening. (V.A.C.S. Art. 6795b, Secs. 1 (part), 4 (part), 5 (part), 6 (part), 8 (part).)

Source Law

Sec. 1. ... a causeway, bridge, tunnel, or any combination of such facilities, including all necessary approaches, fixtures, accessories, and equipment (all of which are hereinafter referred to as "the project") from one point in said county to another, in, over, through, or under the waters of the Gulf of Mexico or any bay or inlet opening thereinto . . . .

Sec. 4. ... bond resolution or trust indenture such resolution or indenture . . . temporary or interim bonds, with or without coupons, exchangeable for definitive bonds . . . resolution providing for the issuance of the bonds or such trust indenture . . . .

Such bond resolution or indenture . . . such bond resolution or trust indenture . . . .

Sec. 5. Any holder or holders of bonds issued hereunder, including a trustee or trustees for such holders . . . bond resolution or trust indenture . . .

bond resolution or trust indenture . . .

Sec. 6. ... bond resolution or trust indenture . . .
Sec. 8. ... bond resolution or trust indenture ... 

Revisor's Note

(1) Section 1, V.A.C.S. Article 6795b, provides that a county may construct, acquire, improve, operate, and maintain a causeway, bridge, tunnel, "or any combination of such facilities." The revised law omits the reference to a combination of facilities as unnecessary because the county has authority to act in regard to each individual facility and, therefore, has authority to act in regard to any combination of the individual facilities.

(2) The definitions of "bondholder," "bond instrument," "interim bond," and "project" are added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definitions.

Revised Law

Sec. 283.002. APPLICABILITY. This chapter applies only to a county that:

(1) borders on the Gulf of Mexico; and

(2) has a population of at least 20,000 as determined before the issuance of bonds under this chapter. (V.A.C.S. Art. 6795b, Sec. 1 (part).)

Source Law

Art. 6795b

Sec. 1. Any county in the State of Texas which borders on the Gulf of Mexico and which has a population of twenty thousand (20,000) or more, according to the last Federal Census, preceding the authorization of bonds hereunder ... .

Revisor's Note

Section 1, V.A.C.S. Article 6795b, refers to a county "in the State of Texas." The revised law omits the quoted reference as unnecessary because the
legislature is authorized to enact laws affecting only counties in this state.

Section 1 also describes a population number that is to be determined according to the most recent federal census. The revised law omits the reference to a 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.

Revised Law
Sec. 283.003. GENERAL AUTHORITY TO ACT. (a) Except as provided in Subsection (b), a county acting through its commissioners court may:

(1) construct, acquire, improve, operate, and maintain a project;

(2) authorize by resolution and issue revenue bonds, including interim bonds, to pay the cost of construction, acquisition, or improvement of the project; and

(3) accept a loan, gift, or grant from this state or the United States and enter into any agreement necessary to obtain the loan, gift, or grant.

(b) A county may not construct a bridge that traverses a ship channel or waterway with a maintained depth of 20 feet or more.

(c) Except as provided by Section 283.104, a county may act as authorized by this chapter without the consent, approval, supervision, or regulation of the state.

(d) A county performs an essential governmental function when it acts as authorized by this chapter. (V.A.C.S. Art. 6795b, Secs. 1 (part), 3 (part), 4 (part), 7 (part), 8 (part).)
Sec. 1. [Any county] . . . acting through its Commissioners Court, is hereby authorized and empowered to construct, acquire, improve, operate, and maintain [a causeway, bridge, tunnel, or any combination of such facilities, including all necessary approaches, fixtures, accessories, and equipment (all of which are hereinafter referred to as "the project") from one point in said county to another, in, over, through, or under the waters of the Gulf of Mexico or any bay or inlet opening thereinto,) and to issue its revenue bonds . . . to pay the cost of such construction, acquisition, or improvement . . . provided, however, that nothing in this Act shall authorize the construction of a bridge over and across any ship channel or waterway with a maintained depth of twenty (20) feet or more.

Sec. 3. Any county proceeding hereunder may accept any loan, gift, or grant from the United States of America or the State of Texas, or any agency or instrumentality thereof, and may enter into any agreement or agreements not prohibited by the constitution which may be necessary to obtain such loan, grant, or gift. . . .

Sec. 4. Bonds issued hereunder may be authorized by resolution at one time or from time to time. . . . Prior to the issuance of definitive bonds, [temporary or interim bonds, with or without coupons, exchangeable for definitive bonds] may be issued. . . .

Sec. 7. The accomplishment of the purposes stated in this Act being for the benefit of the people of this State and for the improvement of their commerce and property, the county in carrying out the purposes of this Act will be performing an essential governmental function . . . .

Sec. 8. The powers herein granted may be carried out by such counties and the projects may be acquired and operated and tolls and charges fixed and maintained without the consent, approval, supervision, or regulation of any commission, department, bureau, agency, or officer of the State of Texas . . . .

Revisor's Note
(1) Section 1, V.A.C.S. Article 6795b, refers to "a causeway, bridge, tunnel, or any combination of such facilities, including all necessary approaches, fixtures, accessories, and equipment . . . from one point in said county to another, in, over, through, or under the waters of the Gulf of Mexico or any bay or inlet opening thereinto." The revised law substitutes the term "project," which is defined by Section 283.001(4) of this code to include those facilities.
(2) Section 3, V.A.C.S. Article 6795b, refers to the United States and this state "or any agency or instrumentality thereof" and Section 8, V.A.C.S. Article 6795b, refers to this state and "any commission, department, bureau, agency, or officer" of the state. The revised law omits the reference to an "agency or instrumentality" of the United States because under Section 311.005(9), Government Code (Code Construction Act), "United States" includes an "agency or instrumentality" of the United States. The revised law also omits the reference to the various instrumentalities of this state because, in the context of Sections 3 and 8, the state cannot act except through its instrumentalities; therefore, a reference to this state includes a reference to an "agency or instrumentality" of this state.

Section 3 also provides that a county may enter any agreements "not prohibited by the constitution." The revised law omits this provision as unnecessary because a county may not act in a manner that is contrary to the provisions of the constitution of this state or the United States.

(3) Section 4, V.A.C.S. Article 6795b, provides that bonds may be authorized "at one time or from time to time." The revised law omits the quoted provision as unnecessary because the provision does not limit the county's authority to authorize bonds; accordingly, the revised law states that a county may authorize bonds.

Section 4 also refers to "temporary or interim bonds, with or without coupons, exchangeable for definitive bonds." The revised law substitutes the term "interim bonds," which is defined by Section 283.001(3) of this code to include those descriptions.

(4) Section 7, V.A.C.S. Article 6795b, states
the purpose of this article (or chapter of the revised law). The revised law omits this reference as superfluous.

[Sections 283.004-283.100 reserved for expansion]

SUBCHAPTER B. PROVISIONS RELATING TO A PROJECT

Revised Law

Sec. 283.101. ACQUISITION OF PROPERTY. (a) A county acting under this chapter may enter on land, water, or other premises to make a survey, sounding, or examination of the property.

(b) When a condemnation proceeding is filed by a county, the county may take immediate possession of the property being condemned pending the results of the proceeding if the county tenders a bond or other security approved by the court that is sufficient to secure the property owner for damages to the property.

(c) The state grants to a county any easement or right-of-way traversing state property that is necessary or convenient to the construction, acquisition, or efficient operation of a project. (V.A.C.S. Art. 6795b, Sec. 3 (part).)

Source Law

Sec. 3. ... Such county may enter on any lands, waters, and premises for the purpose of making surveys, soundings, and examinations ... Upon the institution of any such condemnation proceedings and upon tender of a bond or other security in sufficient sum to secure the owner or owners for damages and upon approval of such bond or other security by the Court, the county shall have the right to immediate possession of the property which is the subject matter of the condemnation proceedings and may enter thereon. The State of Texas hereby expressly grants to any such county full easements and rights of way through, across, under, and over any lands or property owned by the State which may be necessary or convenient to the construction, acquisition or efficient operation of the project.

Revisor's Note

Section 3, V.A.C.S. Article 6795b, provides that a county may take possession of property "and may enter
thereon." The revised law omits the reference to entering on the property because a party who has possession also has the right to enter on property.

Revised Law

Sec. 283.102. MANAGEMENT OF PROJECT. (a) A bond instrument may allow the project to be managed and controlled by a board of trustees while the bonds issued are outstanding.

(b) The bond instrument in providing for a board of trustees must:

1. name no more than five board members;
2. provide the manner of appointment; and
3. specify the powers and duties of the board.

(V.A.C.S. Art. 6795b, Sec. 6 (part).)

Source Law

Sec. 6. The management and control of the project during such time as any of the bonds remain outstanding may by the terms of the [bond resolution or trust indenture] be placed in the hands of a Board of Trustees to be named therein, consisting of not more than five (5) members, to be appointed in such manner and to have such powers and duties as may be therein provided.

Revisor's Note

Section 6, V.A.C.S. Article 6795b, refers to a "bond resolution or trust indenture." The revised law substitutes the term "bond instrument" pursuant to the definition provided in Section 283.001(2) of this code.

Revised Law

Sec. 283.103. TOLLS REQUIRED. The county shall impose tolls and other charges for use of the project in amounts that are sufficient to:

1. pay operation and maintenance costs of the project;
2. pay principal and interest when due on the bonds;
3. establish a reserve fund if required; and
(4) establish an adequate depreciation and replacement fund. (V.A.C.S. Art. 6795b, Sec. 4 (part).)

Source Law

Sec. 4. . . . and it shall be the mandatory duty of the county to impose such tolls and charges for use of the project as will be fully sufficient to operate and maintain the project, pay principal of and interest on the bonds when due and establish such reserve therefor as may be provided, and establish an adequate fund for depreciation and replacement. . . .

Revised Law

Sec. 283.104. OPERATION AND MAINTENANCE OF PROJECT. (a) The commission may:

(1) agree with a county to operate, maintain, or contribute to the maintenance costs of a project if the agreement is not inconsistent with the rights of the bondholders;

(2) lease a project from a county under terms that are agreed to by the county and that are not inconsistent with the bond instrument; and

(3) declare or operate all or part of a project as part of the state highway system only if the property and contract rights in the project and in the bonds are not unfavorably affected.

(b) The project shall become part of the state highway system and the commission shall maintain the project free of tolls when:

(1) the principal and interest due on the bonds are paid; or

(2) a sufficient reserve to pay the principal and interest due on the bonds until maturity has been deposited in an irrevocable trust fund for the benefit of the bondholders. (V.A.C.S. Art. 6795b, Sec. 8 (part).)

Source Law

Sec. 8. . . . provided however, that nothing in this Section shall be construed to prevent the State Highway Commission from operating and maintaining the project or contributing to the cost of such maintenance under such provisions not inconsistent with the rights.
of bondholders as may be agreed to by the county. The
State Highway Commission shall have authority without
further legislative enactment to make such provision
for and contributions toward maintenance of the project
as it may see fit, and to lease the project under such
terms not inconsistent with the provisions of the [bond
resolution or trust indenture] as may be agreed upon
with the county, and to declare the project or any part
thereof to be a part of the State Highway System and to
operate the project or such part thereof as a part of
the State Highway System, provided, however, that such
declaration may be made and such operation undertaken
only to the extent that property and contract rights in
the project and in the bonds are not unfavorably
affected thereby. When all of the bonds and interest
thereon shall have been paid, or a sufficient amount
for the payment of all bonds and the interest thereon
to maturity shall have been set aside in a trust fund
for the benefit of the bondholders and shall continue
to be held for that purpose, the project shall become a
part of the State Highway System and shall be
maintained by the State Highway Commission, free of
tolls.

Revisor's Note
Section 8, V.A.C.S. Article 6795b, refers to the
"State Highway Commission." The revised law
substitutes "commission" for "State Highway Commission"
for the reason stated in the revisor's note to Section
201.003 of this code.

Section 8 also refers to a "bond resolution or
trust indenture." The revised law substitutes the term
"bond instrument" for the reason stated in the
revisor's note to Section 283.102 of this code.
[Sections 283.105-283.200 reserved for expansion]

SUBCHAPTER C. PROVISIONS RELATING TO BONDS

Revised Law

Sec. 283.201. BOND PROCEEDS. (a) Except as provided in
Subsection (b), the proceeds of bonds issued under this chapter
shall be:

(1) used only to pay the cost of the project described
by Section 283.202; and

(2) disbursed consistent with the terms of the bond
instrument.
(b) Bond proceeds remaining after the cost of the project has been paid in full shall be used to pay interest on and retire the bonds.

(c) Unless otherwise provided in a bond instrument, if the bond proceeds are insufficient to pay the cost of the project, additional bonds may be issued up to the amount of the deficit and the bonds are:

(1) considered part of the same issue as the bonds first issued; and

(2) entitled to payment from the same fund without preference or priority of the bonds first issued. (V.A.C.S. Art. 6795b, Sec. 4 (part).)

Source Law
Sec. 4. . . . The proceeds of the bonds shall be used solely to pay the cost of the project as above defined, and shall be disbursed under such restrictions as may be provided in the [bond resolution or trust indenture] hereinafter mentioned . . . . Unless otherwise provided in [such resolution or indenture,] if the proceeds of the bonds prove insufficient to pay the cost of the project, additional bonds may be issued to the amount of the deficit and shall be deemed to be of the same issue and entitled to payment from the same fund without preference or priority of the bonds first issued. Any surplus remaining from bond proceeds after the cost of the project has been paid in full shall be used in paying interest on and retiring bonds. . . .

Reviser's Note
Section 4, V.A.C.S. Article 6795b, refers to a "bond resolution or trust indenture." The revised law substitutes the term "bond instrument" for the reason stated in the revisor's note to Section 283.102 of this code.

Revised Law
Sec. 283.202. COSTS AND EXPENSES. (a) The cost of the project may include:

(1) the cost of construction;

(2) the cost of all property used in the construction, acquisition, improvement, operation, or maintenance of the project;
(3) payment of the cost of condemning property, including the award, court costs, and attorney's fees;

(4) payment of all legal, fiscal, or engineering expenses incurred in the acquisition or construction of the project, the making of any preliminary survey or investigation, or the authorization and issuance of the bonds; and

(5) payment of interest on the bonds before construction, during construction, and for one year after construction of the project.

(b) Any preliminary expense paid from a county fund shall be repaid to the fund from the proceeds of the bonds when available.

(V.A.C.S. Art. 6795b, Sec. 1 (part).)

Source Law

Sec. 1. . . . . The cost of the project shall be considered to include the cost of construction, the cost of all property . . . used or useful in connection with the construction, acquisition, improvement, operation, and maintenance of the project; shall include the payment of the cost of condemning any such property, including both the payment of the award and the payment of the court costs and attorneys fees; shall include the payment of all legal, fiscal, and engineering expenses incurred in connection with the acquisition and construction of the project and the making of preliminary surveys and investigations and the authorization and issuance of the revenue bonds; and shall include the payment of interest on the bonds prior to and during the period occupied by the construction of the project and for one year thereafter. . . . Any preliminary expenses paid from county funds shall be repaid to such funds from the proceeds of the bonds when available . . . .

Revisor's Note

Section 1, V.A.C.S. Article 6795b, provides that acquiring ferry properties during the period of construction is included as a cost of the project payable from bond revenues. The revised law omits this provision as unnecessary because Section 1 provides that "[t]he cost of the project shall be considered to include . . . the cost of all property . . . used or useful in connection with the construction . . . of the project." The omitted law reads:
If the Commissioners Court shall consider it desirable to acquire, through purchase or lease, existing ferry properties for the purpose of operating such properties during the period of construction, over the route to be traversed by the project, such properties may be so acquired and the cost thereof paid from the proceeds of the bonds.

Revised Law

Sec. 283.203. SOURCE OF REPAYMENT. (a) A bond authorized by this chapter may be paid only from the revenues received from the operation of the project. 

(b) The bond is not a debt of the county. (V.A.C.S. Art. 6795b, Secs. 1 (part), 2 (part), 4 (part).)

Source Law

Sec. 1. . . . [revenue bonds] payable solely from the revenues to be derived from the operation thereof . . . .

Sec. 2. No bonds authorized hereunder shall ever be a debt of the county issuing them, but shall be solely a charge upon the revenues of the project and shall never be reckoned in determining the power of the county to issue any bonds for any purpose authorized by law. . . .

Sec. 4. . . . Such bonds shall be payable solely from the revenues to be derived from the operation of the project . . . .

Revisor's Note

Section 2, V.A.C.S. Article 6795b, provides that bonds authorized by this chapter "shall never be reckoned in determining the power of the county to issue any bonds for any purpose authorized by law." The revised law omits the quoted phrase as unnecessary because this chapter authorizes the issuance of revenue bonds for a specific, limited purpose as opposed to general obligation bonds payable from money raised by taxation. The power of a county to issue bonds is limited only indirectly by Section 9, Article VIII, Texas Constitution, which limits the ad valorem tax rate a county may impose. Because the bonds at issue
in this chapter are bonds payable solely from the revenue generated by the project and not payable from funds raised by taxation, issuance of bonds authorized by this chapter cannot limit the power of the county to issue bonds for another purpose.

Revised Law
Sec. 283.204. DEPOSITORY FOR PROCEEDS AND REVENUES. A bank or trust company in this state may:

(1) act as a depository of bond proceeds or revenues received from the operation of a project; and

(2) provide an indemnity bond or pledge securities required by the county. (V.A.C.S. Art. 6795b, Sec. 4 (part).)

Source Law
Sec. 4. ... It shall be lawful for any bank or trust company in this State to act as depository of the proceeds of the bonds or revenues derived from the operation of the project and to furnish such indemnity bonds or to pledge such securities as may be required by the county. ... .

Revised Law
Sec. 283.205. TRUST INDENTURE PERMITTED. (a) A bond authorized by this chapter may be secured by a trust indenture between the county and a corporate trustee that is a trust company or bank with the powers of a trust company.

(b) A trust indenture may pledge or assign revenues.

(c) A trust indenture may not convey or mortgage all or part of the project. (V.A.C.S. Art. 6795b, Sec. 4 (part).)

Source Law
Sec. 4. ... If so provided by the Commissioners Court, the bonds may be secured by a trust indenture by and between the county and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Texas. Such trust indenture may pledge or assign tolls and revenues but shall not convey or mortgage the project itself or any part thereof. ... .
Revisor's Note

Section 4, V.A.C.S. Article 6795b, refers to a trust company or bank having the powers of a trust company "within or outside of the State of Texas." The revised law omits the phrase "within or outside of the State of Texas" as unnecessary because the governing body may enter a trust agreement with a corporate trustee that is not located in the state in the absence of an express prohibition.

Section 4 also refers to "revenues" and "tolls."
The revised law omits the reference to "tolls" because "tolls" is included within the meaning of "revenues."

Revised Law

Sec. 283.206. BOND PROVISIONS. (a) A bond authorized by this chapter shall contain the following clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

(b) A bond instrument may contain provisions:

(1) that restrict individual rights of action of a bondholder;

(2) that detail the rights and remedies of a bondholder and a trustee;

(3) to protect and enforce as reasonable the rights and remedies of a bondholder, including covenants detailing the duties of the county in:

(A) acquiring property and constructing, maintaining, operating, repairing, and insuring the project; and

(B) maintaining custody of the bond proceeds and revenues and safeguarding and applying the funds; and

(4) to secure as reasonable a bondholder, including covenants detailing:

(A) an event that constitutes an event of default;
(B) terms and conditions that would or could
result in an acceleration of the bond maturity date; and
(C) rights, liabilities, powers, and duties that
arise because of a breach by the county. (V.A.C.S. Art. 6795b,
Secs. 2 (part), 4 (part).)

Source Law

Sec. 2. . . . Each such bond shall contain this
clause: "The holder hereof shall never have the right
to demand payment of this obligation out of any funds
raised or to be raised by taxation." . . .

Sec. 4. . . . Either the [resolution providing
for the issuance of the bonds or such trust indenture]
may contain such provisions for protecting and
enforcing the rights and remedies of the bondholders as
may be reasonable and proper and not in violation of
law, including covenants setting forth the duties of
the county in relation to the acquisition of properties
and the construction, maintenance, operation, repair,
and insurance of the project, and the custody,
safeguarding, and application of all moneys . . . .

[Such bond resolution or indenture] may set forth the
rights and remedies of the bondholders and of the
trustee and may restrict the individual rights of
action of the bondholders. In addition to the
foregoing, [such bond resolution or trust indenture]
may contain such other provisions as the Commissioners
Court may deem reasonable and proper for the security
of the bondholders including, but without limitation,
covenants prescribing all happenings or occurrences
which constitute events of default and the terms and
conditions upon which any or all of the bonds shall
become or may be declared to be due before maturity and
as to the rights, liabilities, powers, and duties
arising upon the breach by the county of any of its
duties or obligations.

Revisor's Note

Section 4, V.A.C.S. Article 6795b, refers to a
bond resolution or trust indenture. The revised law
substitutes the term "bond instrument" for the reason
stated in the reviser's note to Section 283.102 of this
code.

Section 4 also provides that a bond instrument
may contain provisions that are "not in violation of
law." The revised law omits the quoted phrase because
the commissioners court may never authorize illegal
terms.
Section 4 also provides that a bond instrument may contain provisions to secure a bondholder "[i]n addition to the foregoing" provisions. The revised law omits the quoted phrase as unnecessary because nothing in Section 4 indicates that the provisions that may be included in a bond instrument are mutually exclusive.

Section 4 also refers to "including, but without limitation." The revised law omits "but without limitation" as unnecessary because Section 311.005(13), Government Code (Code Construction Act), and Section 312.011(19), Government Code, provide that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

**Revised Law**

Sec. 283.207. BOND APPROVAL AND REGISTRATION. (a) A bond issued under this chapter may be presented to the attorney general for approval in the same manner and with like effect as is provided for the approval of a tax bond issued by a county.

(b) After approval by the attorney general, the comptroller shall register the bonds as in the case of other county bonds.

(V.A.C.S. Art. 6795b, Sec. 2 (part).)

**Source Law**

Sec. 2. ... Bonds issued hereunder may be presented to the Attorney General for his approval in the same manner and with like effect as is provided for the approval of tax bonds issued by counties. In such case the bonds shall be registered by the State Comptroller as in the case of other county bonds.

**Revised Law**

Sec. 283.208. RIGHTS OF BONDHOLDERS. (a) A bond issued under this chapter creates and grants a lien on bond proceeds in favor of a bondholder until the bond is paid.

(b) In addition to other legal remedies, a bondholder may enforce the bondholder's rights against:
(1) a county and its employees; and

(2) a board, including an agent or employee, created to operate the project.

(c) A bondholder's rights include the right to:

(1) require the county or board to:

(A) impose and collect sufficient tolls and other charges to carry out agreements in the bond instrument; and

(B) perform an agreement, covenant, or duty provided in the bond instrument; and

(2) apply for and obtain the appointment of a receiver for the project. (V.A.C.S. Art. 6795b, Secs. 4 (part), 5 (part).)

Source Law

Sec. 4. ... and there shall be and is hereby created and granted a lien upon such moneys until so applied in favor of [the holders of the bonds or any trustee] provided for in respect of such bonds. ...

Sec. 5. [Any holder or holders of bonds issued hereunder, including a trustee or trustees for such holders,] shall have the right in addition to all other rights by mandamus or other proceeding in any court of competent jurisdiction to enforce his or their rights against the county and its employees and against any board which may be created to operate the project and against the agents and employees thereof, including, but not limited to, the right to require the county and such board to impose and collect sufficient tolls and charges to carry out the agreements contained in the [bond resolution or trust indenture] and to perform all agreements and covenants therein contained and duties arising therefrom, and to apply for and obtain the appointment of a receiver for the project. ...

Revisor's Note

(1) Sections 4 and 5, V.A.C.S. Article 6795b, refer to a bondholder and a trustee for a bondholder. The revised law refers only to a bondholder because the definition of "bondholder," as provided in Section 283.001(1) of this code, includes a trustee of a bondholder.

(2) Section 5, V.A.C.S. Article 6795b, refers to a bond resolution or trust indenture. The revised law substitutes the term "bond instrument" for the reason...
stated in the reviser's note to Section 283.102 of this
code.

Section 5 also refers to "including, but not
limited to." The revised law omits "but not limited
to" for the reason stated in the reviser's note to
Section 283.206 of this code.

Revised Law

Sec. 283.209. RECEIVERSHIP. (a) A receiver appointed under
Section 283.208, acting in the same manner as the county, may:

(1) take possession of the project;
(2) maintain the project; and
(3) collect and receive revenues received from the
project.

(b) The receiver shall dispose of and apply revenues:

(1) according to the obligations of the county under
the bond instrument; and

(2) as directed by a court. (V.A.C.S. Art. 6795b,
Sec. 5 (part).)

Source Law

Sec. 5. . . . . If such receiver be appointed,
he may enter, and take possession of the project and
maintain the project and collect and receive all
revenues and tolls arising therefrom in the same manner
as the county itself might do and shall dispose of such
moneys and apply same in accordance with the
obligations of the county under the [bond resolution or
trust indenture] and as the Court may direct.

Revisor's Note

Section 5, V.A.C.S. Article 6795b, provides that
a receiver may "enter" and "take possession" of the
project. The revised law omits the reference to
"enter" for the reason stated in the reviser's note to
Section 283.101 of this code.

Section 5 also refers to "revenues" and "tolls."
The revised law omits the reference to "tolls" for the
reason stated in the reviser's note to Section 283.205
of this code.

Section 5 also refers to a "bond resolution or trust indenture." The revised law substitutes the term "bond instrument" for the reason stated in the reviser's note to Section 283.102 of this code.

Revised Law
Sec. 283.210. TAX STATUS OF BONDS. A bond issued under this chapter, the transfer of and income from the bond, and any profit made in the sale of the bond is exempt from taxation by this state or a political subdivision of this state. (V.A.C.S. Art. 6795b, Sec. 7 (part).)

Source Law
Sec. 7. . . . and the bonds issued hereunder and their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within this State.

Reviser's Note
(End of Chapter)
(1) Section 1, V.A.C.S. Article 6795b, provides:

Sec. 1. . . . and all engineering and fiscal contracts and agreements for such projects heretofore entered into are hereby validated and confirmed . . . .

The revised law omits as executed the referenced provision.

Section 1 also refers to property as:

. . . real, personal, and mixed, and all appurtenances, easements, contracts, franchises, pavements, and properties of every nature . . .

The revised law omits this definition as unnecessary because Section 311.005(4), Government Code (Code Construction Act), which applies to the revised law, defines property as "real and personal property." Personal property includes both tangible and intangible property. Accordingly, the definition in Section 311.005(4) is substantively identical to the definition
in this section, and the definition in this section may be omitted.

(2) Section 4, V.A.C.S. Article 6795b, provides various bond procedures for bonds issued under that article. The revised law omits these provisions because they are superseded by provisions contained in the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes). The omitted law reads:

Sec. 4. The Commissioners Court shall have full discretion in fixing the details of the bonds and in determining the manner of sale thereof, provided that the bonds shall not run more than forty (40) years from their date, and that the interest rate and sale price shall be such that the interest cost of the bonds shall not exceed six (6) per cent per annum, computed on average maturities according to standard tables of bond values. The bonds may be made redeemable prior to maturity in such manner and at such prices as may be determined by the Commissioners Court prior to the issuance of the bonds. All bonds issued hereunder shall and are hereby declared to have all of the qualifications and incidents of negotiable instruments under the Negotiable Instruments Law of Texas. Provision may be made for registration of such bonds as to principal or interest or both. Such bonds may be authorized and issued without any proceedings or the happening of any conditions or things or the publication of any proceedings or notices other than those specifically specified and required by this Act, and may be authorized and issued without regard to the requirements, restrictions, or procedural provisions contained in any other law. The resolution authorizing the bonds may provide that such bonds shall contain a recital that they are issued pursuant to this Act and such recital shall be conclusive evidence of their validity and the regularity of their issuance.

(3) Section 3, V.A.C.S. Article 6795b, provides that the commissioners court may award construction contracts with or without advertised notice for bids. The revised law omits this provision as impliedly repealed. This provision was added by Section 3, Chapter 509, Acts of the 47th Legislature, Regular Session, 1941. In 1985, the legislature adopted the
County Purchasing Act requiring competitive bidding for
certain county contracts. See Section 262.021 et seq.,
Local Government Code. The omitted law reads:

Sec. 3. . . . Construction contracts may be awarded with or without
advertised notice for bids in such manner
as may be deemed advisable by the
Commissioners Court.

Section 3 also provides that a county may
exercise the right of eminent domain to condemn
property for use in the project. The revised law omits
this provision as unnecessary because Section 261.001,
Local Government Code, authorizes a county to exercise
the right of eminent domain to condemn property for a
public purpose authorized by law. The omitted law
reads:

Sec. 3. . . . and if considered advisable [the county] may exercise the
right of eminent domain and may institute condemnation proceedings under the
provisions of any pertinent general law of Texas for the purpose of acquiring any
property to be used or useful in connection with the project.

Section 3 also provides that condemned property
shall be paid for only from proceeds derived from
selling revenue bonds. The revised law omits this
provision because Sections 1 and 4, V.A.C.S. Article
6795b (Sections 283.003 and 283.201 of the revised
law), provide that all costs are payable only from bond
proceeds. In addition, Section 7 of the Bond
Procedures Act of 1981 (Article 717k-6, Vernon's Texas
Civil Statutes), which applies to this chapter, limits
the use of bond proceeds to costs, which includes costs
associated with condemning property. The omitted law
reads:

Sec. 3. . . . The county shall be under no obligation to accept and pay for
any property condemned and shall in no
event pay for same except from the proceeds
derived from the sale of the revenue
bonds . . . .
Section 3 also provides that a court may issue just orders in a condemnation proceeding. The revised law omits this provision as unnecessary because a court may issue orders in a court proceeding as authorized by other law. The omitted law reads:

Sec. 3. ... and in any condemnation suit the Court having jurisdiction may make such orders as may be just to the county and to the owners of the property to be condemned.

(4) Section 7, V.A.C.S. Article 6795b, provides:

Sec. 7. ... and [the county] shall not be required to pay any tax or assessment on the project or any part thereof . . .

The revised law omits this provision as unnecessary because Section 11.11, Tax Code, provides that property owned by a county is exempt from taxation if the property is used for public purposes.

(5) Section 9, V.A.C.S. Article 6795b, authorizes issuance of refunding bonds and details procedures in connection with the issuance. The revised law omits these provisions as unnecessary because they are superseded by provisions contained in Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes). The omitted law reads:

Sec. 9. Subject to any restrictions which may appear in the aforesaid trust indenture or bond resolution, the Commissioners Court may by resolution provide for the issuance of bonds for the purpose of refunding any bonds issued under this Act and at the time outstanding. The issuance of such refunding bonds, the maturities and other terms thereof, the rights of the holders thereof, and the duties of the county in respect to the same, shall be governed by the foregoing provisions of this Act in so far as the same may be applicable, but no such refunding bonds shall be delivered unless delivered in exchange for the bonds authorized to be refunded thereby or unless
sold and delivered to provide funds for the
payment of matured or redeemable bonds
maturing or redeemable within three (3)
months.

(6) Section 10, V.A.C.S. Article 6795b,
provides:

Sec. 10. House Bill No. 9, Chapter
32, Acts, Fourth Called Session,
Forty-third Legislature, is hereby
repealed.

The revised law omits as executed the referenced
provision.

(7) The revised law omits Section 11, V.A.C.S.
Article 6795b, providing that the article is severable,
because that provision duplicates Section 311.032,
Government Code (Code Construction Act), applicable to
the revised law, 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. The omitted law reads:

Sec. 11. That if any clause,
sentence, paragraph, or part of this Act
shall for any reason be adjudged by any
Court of competent jurisdiction to be
invalid or ineffective, such judgment shall
not affect, impair, or invalidate the
remainder of this Act, but shall be
confined in its operation to the clause,
sentence, paragraph, or part thereof
directly involved in the controversy in
which such judgment has been rendered.

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CHAPTER 284. CAUSEWAYS, BRIDGES, TUNNELS, TURNPIKES, AND HIGHWAYS
IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law
Sec. 284.001. DEFINITIONS. In this chapter:
(1) "Bond instrument" means a bond trust indenture and a bond resolution.
(2) "Bond resolution" means an order or resolution of a commissioners court authorizing the issuance of bonds.
(3) "Project" means a causeway, bridge, tunnel, turnpike, highway, or any combination of those facilities, including:
(A) a necessary overpass, underpass, interchange, entrance plaza, toll house, service station, approach, fixture, and accessory and necessary equipment;
(B) necessary administration, storage, and other buildings; and
(C) all property rights, easements, and related interests acquired. (V.A.C.S. Art. 6795b-1, Sec. 1 (part); New.)

Source Law
Sec. 1 . . . a causeway, bridge, tunnel, turnpike, highway, or any combination of such facilities, including all necessary overpasses, underpasses, interchanges, entrance plazas, toll houses, service stations, approaches, fixtures, accessories, equipment, and administration, storage, and other necessary buildings, together with all property rights, easements, and interests acquired in connection therewith (all of which are hereinafter referred to as "the project") . . . .

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Reviser's Note

(1) The revised law adds the definition of "bond instrument" as a drafting convenience to avoid the revision of repetitious references to a trust indenture and bond resolution.

(2) The revised law adds the definition of "bond resolution" to avoid the revision of repetitious references to an order or resolution of the commissioners court authorizing bonds.

Revised Law

Sec. 284.002. APPLICABILITY TO CERTAIN COUNTIES AND LOCAL GOVERNMENT CORPORATIONS. (a) Except as provided by Subsection (b), this chapter applies only to a county that:

(1) has a population of 50,000 or more and borders the Gulf of Mexico or a bay or inlet opening into the gulf;
(2) has a population of 1.5 million or more; or
(3) is adjacent to a county that has a population of 1.5 million or more.

(b) A local government corporation created under Chapter 431 in a county to which this chapter applies has the same powers as a county acting under this chapter, except as provided by Chapter 362. (V.A.C.S. Art. 6795b-1, Secs. 1 (part), 1(A), 7 (part).)

Source Law

Sec. 1. Any county in the State of Texas which borders on the Gulf of Mexico or any bay or inlet opening thereinto and which has a population of fifty thousand (50,000) or more, according to the last Federal Census preceding the authorization of bonds hereunder . . . .

Sec. 1(A). A county with a population of 1,500,000 or more according to the last federal census or a county adjacent thereto is authorized to exercise all of the powers granted under Chapter 304, Acts of the 50th Legislature, Regular Session, 1947 (Article 6795b-1, Vernon's Texas Civil Statutes), and finance, acquire, construct, improve, operate, and maintain projects in accordance with the provisions of said Chapter 304, Acts of the 50th Legislature, Regular Session, 1947 (Article 6795b-1, Vernon's Texas Civil Statutes).

Sec. 7. Except as provided by Article 6674v-6, Revised Statutes, the powers herein granted may be
carried out by such counties or local government corporations created in such counties under the Texas Transportation Corporation Act (Article 15281, Vernon's Texas Civil Statutes) . . . .

Revisor's Note

(1) Section 1, V.A.C.S. Article 6795b-1, refers to "[a]ny county in the State of Texas . . . ." The revised law omits the phrase, "in the State of Texas," because it is understood that the law of this state applies only to counties located in the state.

(2) Sections 1 and 1(A), V.A.C.S. Article 6795b-1, describe population numbers that are to be determined according to the most recent federal census. The revised law omits the references to the federal census because the references are 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.

(3) Section 1(A), V.A.C.S. Article 6795b-1, refers to the county's authority to "exercise all of the powers granted under Chapter 304, Acts of the 50th Legislature, Regular Session, 1947 (Article 6795b-1, Vernon's Texas Civil Statutes), and finance, acquire, construct, improve, operate, and maintain projects in accordance with the provisions of said Chapter 304, Acts of the 50th Legislature, Regular Session, 1947 (Article 6795b-1, Vernon's Texas Civil Statutes)." The revised law omits the unnecessary reference to the specific powers to "finance, acquire, construct, improve, operate, and maintain projects" because those specific authorizations are within the meaning of "all of the powers granted under" V.A.C.S. Article 6795b-1. V.A.C.S. Article 6795b-1 is the source law for this
chapter. See Section 284.003 of this code for the grant of those powers.

(4) Section 7, V.A.C.S. Article 6795b-1, refers to "Article 6674v-6, Revised Statutes." That statute is codified in this code as part of Chapter 362, and the revised law is drafted accordingly.

(5) Section 7, V.A.C.S. Article 6795b-1, refers to "the Texas Transportation Corporation Act (Article 15281, Vernon's Texas Civil Statutes)." That statute is codified in this code as Chapter 431, and the revised law is drafted accordingly.

**Revised Law**

Sec. 284.003. PROJECT AUTHORIZED; CONSTRUCTION, OPERATION, AND COST. A county, acting through the commissioners court of the county, or a local government corporation, without state approval, supervision, or regulation, may:

(1) construct, acquire, improve, operate, maintain, or pool a project exclusively in the county or in the county and outside the county;

(2) issue tax bonds, revenue bonds, or combination tax and revenue bonds to pay the cost of the construction, acquisition, or improvement of a project; or

(3) impose tolls or charges as otherwise authorized by this chapter. (V.A.C.S. Art. 6795b-1, Secs. 1 (part), 7 (part).)

**Source Law**

Sec. 1. [Any county] . . . acting through its Commissioners Court, is hereby authorized and empowered to construct, acquire, improve, operate and maintain . . . ["the project"] . . . from one (1) point in said county to another, or from one (1) point in said county to a point in another county (regardless of the population of such other county), and to issue its tax bonds, revenue bonds, or combination tax and revenue bonds, to pay the cost of such construction, acquisition, or improvement. . . .

Sec. 7. . . . and the projects may be acquired, constructed, improved, maintained, operated, and pooled and tolls and charges fixed and maintained without the consent, approval, supervision, or regulation of any commission, department, bureau, agency, or officer of
Revisor's Note

(1) Section 1, V.A.C.S. Article 6795b-1, refers to a project extending "from one (1) point in said county to a point in another county (regardless of the population of such other county)." The revised law omits the reference to the population of the other county and substitutes the phrase "outside the county." The substituted phrase includes any county regardless of the county's population.

(2) Section 7, V.A.C.S. Article 6795b-1, refers to "any commission, department, bureau, agency, or officer of the State of Texas." The revised law omits the references to "commission, department, bureau, agency, or officer" because in the context of Section 7, the state cannot act except through such persons; therefore a reference to the state includes a reference to those persons.

(3) Section 7, V.A.C.S. Article 6795b-1, refers to "consent, approval, supervision, or regulation." The revised law omits the reference to "consent" because "consent" is included within the meaning of "approval."

Revised Law

Sec. 284.004. USE OF COUNTY PROPERTY. Notwithstanding any other law, a county may use any county property for a project under this chapter, regardless of when or how the property is acquired. (V.A.C.S. Art. 6795b-1, Sec. 4a (part).)

Source Law

Sec. 4a. Notwithstanding any other provision of law, the commissioners court may use any county land, rights-of-way, or other property, regardless of when or how the property is acquired, for the purposes of a project under this Act. . . .
Revisor's Note

Section 4a, V.A.C.S. Article 6795b-1, refers to "land, rights-of-way, or other property." The reference to "land, rights-of-way, or other" is omitted from the revised law because "land, rights-of-way, or other" is within the meaning of "property." Section 311.005(4), Government Code (Code Construction Act), defines "property" to include "real and personal property."

Revised Law

Sec. 284.005. CONVEYANCE TO COUNTY. The governing body of a political subdivision or agency of this state may convey title or right and easements to property needed by a county for a project under this chapter without advertisement. (V.A.C.S. Art. 6795b-1, Sec. 4a (part).)

Source Law

Sec. 4a. . . . The governing body of each political subdivision or agency of this state, without any form of advertisement, may convey title or right and easements to any property needed by a county for a project under this Act. . . .

Revised Law

Sec. 284.006. FEDERAL OR STATE AID. A county may:

(1) accept from the United States or this state assistance or a loan, gift, grant, or contribution to acquire, construct, improve, maintain, pool, or operate a project under this chapter; and

(2) enter into agreements with the United States or this state for the acquisition, construction, improvement, maintenance, pooling, or operation of the project. (V.A.C.S. Art. 6795b-1, Secs. 3 (part), 7(a).)

Source Law

Sec. 3. Any county proceeding hereunder may accept any loan, gift, or grant from the United States of America or the State of Texas, or any agency or instrumentality thereof, and may enter into any
agreement or agreements not prohibited by the
Constitution which may be necessary to obtain such
loan, grant, or gift. . . .

Sec. 7(a). The county is hereby authorized to
accept from the United States Government or any of its
departments or agencies or from the State of Texas or
any of its departments or agencies, any contributions
or assistance available from such source or sources in
connection with the acquisition, construction,
improvement, maintenance, pooling, and operation of
such project and to enter into agreements with one or
any of them in reference to the acquisition,
construction, improvement, maintenance, pooling, and
operation of the project.

Revisor's Note

Section 7(a), V.A.C.S. Article 6795b-1, states
that a county may accept a loan or grant from the
"United States Government or any of its departments or
agencies or from the State of Texas or any of its
departments or agencies . . . ." The revised law omits
the reference to agencies or departments of the United
States because under Section 311.005(9), Government
Code (Code Construction Act), they are included within
the meaning of "United States." The reference to
agencies or departments of the state is omitted because
in the context of Section 7(a) the state cannot act
except through such persons; therefore, a reference to
the state includes its agencies or departments.
Section 3, V.A.C.S. Article 6795b-1, refers to "the
United States of America or the State of Texas, or any
agency or instrumentality thereof." The revised law
omits the reference to "agency or instrumentality" for
these reasons.

Revised Law

Sec. 284.007. CONTRACTS FOR HISTORICALLY UNDERUTILIZED
BUSINESSES. (a) A county with a population of more than 2.4
million operating under this chapter shall set and make a good
faith effort to meet or exceed goals for awarding contracts or
subcontracts associated with a project it operates, maintains, or
constructs to historically underutilized businesses.

(b) The goals must equal or exceed:

(1) the federal requirement on federal money used in highway construction and maintenance; and

(2) the goals adopted by the department under Section 201.702.

(c) The goals apply to the total value of all contracts and subcontracts awarded, including contracts and subcontracts for construction, maintenance, operations, supplies, services, materials, equipment, professional services, the issuance of bonds, and bond counsel.

(d) In this section, "historically underutilized business" means:

(1) a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities is owned, managed, and in daily operations controlled by one or more persons who have been historically underutilized because of their identification as members of certain groups, including African Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans, who have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(2) a sole proprietorship formed for the purpose of making a profit that is 100 percent owned and in daily operations is controlled by a person described by Subdivision (1);

(3) a partnership formed for the purpose of making a profit in which at least 51 percent of the assets and interest in the partnership is owned by one or more persons described by Subdivision (1) who also have proportionate interest in the control, daily operations, and management of the partnership's affairs;

(4) a joint venture in which each entity in the joint venture is a historically underutilized business; or

(5) a supplier contract between a historically
underutilized business and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies or materials. (Secs. 7(a) (part), (b), (c), Ch. 586, Acts 73rd Leg., R.S., 1993.)

Source Law

Sec. 7. (a) This section applies to:

(2) a county with a population of more than 2.4 million, according to the most recent federal decennial census, operating under Chapter 304, Acts of the 50th Legislature, 1947 (Article 6795b-1, Vernon's Texas Civil Statutes).

(b) A local government corporation or county shall set and make a good faith effort to meet or exceed goals for awarding contracts and subcontracts associated with a project it operates, maintains, or constructs to historically underutilized businesses. The goals shall equal or exceed the federal requirement on federal money used in highway construction and maintenance and the goals adopted by the Texas Department of Transportation under Article 6669c, Revised Statutes. The goals shall apply to the total value of all contracts and subcontracts awarded, including contracts and subcontracts for construction, maintenance, operations, supplies, services, materials, equipment, professional services, the issuance of bonds, and bond counsel.

(c) In this section, "historically underutilized business" means:

(1) a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities is owned, managed, and in daily operations is controlled by one or more persons who have been historically underutilized because of their identification as members of certain groups, including African Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans, who have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control;

(2) a sole proprietorship formed for the purpose of making a profit that is 100 percent owned and in daily operations is controlled by a person described by Subdivision (1) of this subsection;

(3) a partnership formed for the purpose of making a profit in which at least 51 percent of the assets and interest in the partnership is owned by one or more persons described by Subdivision (1) of this subsection and who also have proportionate interest in the control, daily operation, and management of the partnership's affairs;

(4) a joint venture in which each entity in the joint venture is a historically underutilized business; or

(5) a supplier contract between a historically underutilized business and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the supplies or materials or otherwise
warehouses and ships the supplies or materials.

Revisor's Note
(1) Section 7(a)(2), Chapter 586, Acts of the 73rd Legislature, Regular Session, 1993, 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 for the reason stated in Revisor's Note (2) under Section 284.002.

(2) Section 7(b), Chapter 586, Acts of the 73rd Legislature, Regular Session, 1993, refers to Article 6669c, Revised Statutes. That statute is codified in this code as Section 201.702, and the revised law is drafted accordingly.

(3) Section 7(b), Chapter 586, Acts of the 73rd Legislature, Regular Session, 1993, refers to the Texas Department of Transportation. Section 201.001(2) defines, for the purposes of this title, "department" to mean the Texas Department of Transportation, and the revised law uses this definition.

Revised Law
Sec. 284.008. POWERS OF COMMISSION. (a) The commission may:

(1) provide for and contribute toward the acquisition, construction, improvement, operation, maintenance, or pooling of a project under this chapter and under terms to which the commission and the local government corporation or county agree that are consistent with the rights of bondholders or a person operating the project under a lease or other contract;

(2) lease a project under terms:
(A) to which the county or local government corporation acting under this chapter and the commission agree; and
(B) that are consistent with the bond instrument; and
(3) declare any part of a project under this chapter to be a part of the state highway system and operate any part of a project as part of the state highway system, to the extent that property and contract rights in the project and bonds are not affected unfavorably.

(b) Sections 222.031 and 284.003 do not limit the commission's authority to:

(1) operate or maintain a project under this chapter; or

(2) contribute to the cost of acquisition, construction, improvement, maintenance, operation, or pooling of a project as provided by Subsection (a).

(c) A project becomes a part of the state highway system and the commission shall maintain the project without tolls when:

(1) all of the bonds and interest on the bonds that are payable from or secured by revenues of the project have been paid; or

(2) a sufficient amount for the payment of all bonds and the interest on the bonds to maturity has been set aside in a trust fund held for the benefit of the bondholders. (V.A.C.S. Art. 6795b-1, Sec. 7 (part).)

Source Law

Sec. 7. ... provided, however, that nothing in Article 6672, Revised Statutes, or this Section shall be construed to prevent the Texas Transportation Commission from operating and maintaining the project or contributing to the cost of acquisition, construction, improvement, pooling, operation, and maintenance under such provisions as may be agreed to by the county or local government corporation and the Texas Department of Transportation which are not inconsistent with the rights of bondholders or the rights of any agency, person, firm, or corporation then operating the project under lease or contract with the county or local government corporation. The Texas Transportation Commission shall have authority without further legislative enactment to make such provision for and contributions toward acquisition, construction, improvement, pooling, operation, and maintenance of the project as it may see fit, and to lease the project under such terms not inconsistent with the provisions of the bond resolution or trust indenture as may be agreed upon with the county or local government corporation, and to declare the project or any part thereof to be a part of the State Highway System and to
operate the project or such part thereof as a part of
the State Highway System, provided, however, that such
declaration may be made and such operation undertaken
only to the extent that property and contract rights in
the project and in the bonds are not unfavorably
affected thereby. When all of the bonds and interest
thereon that are payable from or secured by revenues of
the project shall have been paid, or a sufficient
amount for the payment of all bonds and the interest
thereon to maturity shall have been set aside in a
trust fund for the benefit of the bondholders and
shall continue to be held for that purpose, the project
shall become a part of the State Highway System and
shall be maintained by the Texas Transportation
Commission, free of tolls.

Revisor's Note

(1) Section 7, V.A.C.S. Article 6795b-1, states
that the Texas Transportation Commission "shall have
authority without further legislative enactment" to
engage in certain activities. The revised law omits
the reference to further legislative enactment as
unnecessary because the statutory grant of authority is
sufficient to convey the authority without further
legislation.

(2) Section 7, V.A.C.S. Article 6795b-1, refers
to "Article 6672, Revised Statutes." That article is
codified in this code as Section 222.031, and the
revised law is drafted accordingly.

(3) Section 7, V.A.C.S. Article 6795b-1, refers
to the rights of any "agency, person, firm, or
corporation." The references to "agency," "firm," and
"corporation" are omitted from the revised law because
under Section 311.005(2), Government Code (Code
Construction Act), "person" is defined to include a
corporation or any other legal entity. That definition
applies to the revised law.

(4) Section 7, V.A.C.S. Article 6795b-1, refers
to the "bond resolution or trust indenture." The
revised law substitutes "bond instrument" because the
referenced terms are included in the definition of
"bond instrument" in Section 284.001 of this code.
[Sections 284.009-284.030 reserved for expansion]

SUBCHAPTER B. BOND PROVISIONS

Revised Law

Sec. 284.031. BONDS AUTHORIZED. (a) A county may issue bonds for a project under this chapter that are secured:

(1) solely by the pledge of the gross or net revenues of a project;

(2) by a pledge of:

(A) an ad valorem tax under Section 9, Article VIII, Texas Constitution; or

(B) an unlimited ad valorem tax authorized by Section 52, Article III, Texas Constitution;

(3) by designating part of the bonds to be secured solely by a pledge of project revenues and part of the bonds to be secured by pledge of the ad valorem tax; or

(4) by a combination of methods described by Subdivisions (1) and (2) with all of the bonds supported and secured by the ad valorem tax and the duty imposed on the county to collect tolls for use of the project facilities as long as the bonds are outstanding so that, as prescribed in the bond instrument, the amount of the tax may be reduced as the project revenues become sufficient to:

(A) meet the requirements for operation and maintenance; and

(B) provide money for the bonds.

(b) The commissioners court may secure bonds issued under this chapter through a trust indenture between the county and a corporate trustee. The corporate trustee may be any trust company or bank that has the powers of a trust company. The indenture may pledge or assign project tolls or revenues but may not convey or mortgage any part of the project.

(c) The bonds issued under this chapter may be authorized by
bond resolution at one time or from time to time and shall mature on or before the 40th anniversary of their date. (V.A.C.S. Art. 6795b-1, Secs. 2 (part), 4 (part).)

Source Law

Sec. 2. . . . But notwithstanding any limitations in this Act or in the law which it amends, any county proceeding hereunder after this amendatory Act becomes effective may issue bonds for such purpose secured by any one of the following methods:

(a) Solely by the pledge of revenues as prescribed hereinabove in this Section and elsewhere in Chapter 304, Acts of the Regular Session of the Fiftieth Legislature as amended; or

(b) A pledge of and payable from either an ad valorem tax levied under Article 8, Section 9 of the Constitution, or an unlimited ad valorem tax authorized under Article 3, Section 52 of the Constitution and laws enacted pursuant thereto; or

(c) A designated part of the bonds to be secured solely by a pledge of revenues as provided under sub-section (a) and a designated part of the bonds to be secured by pledges of such ad valorem tax as provided under sub-section (b) of this Section; or

(d) A combination of the methods prescribed under sub-sections (a) and (b) wherein all of the bonds are to be supported and secured by such ad valorem tax with the duty imposed on the County to collect tolls for use of the facilities so long as any of the bonds are outstanding so that in the manner to be prescribed in the bond resolution or the trust indenture the amount of the tax to be collected from time to time may be reduced or abated to the extent that the revenues from the operation of the facilities are sufficient to meet the requirements for operation and maintenance and to provide funds for the bonds as prescribed in the indenture.

Sec. 4. The bonds issued hereunder may be authorized by resolution or order at one time or from time to time. Bonds payable from gross or net revenues may be authorized by and issued under a resolution or order of the Commissioners Court of the county issuing the bonds, and no other authorization or approval is required. . . . shall mature not more than forty (40) years from their date. . . .

If so provided by the Commissioners Court, the bonds may be secured by a trust indenture by and between the county and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Texas. Such trust indenture may pledge or assign tolls and revenues but shall not convey or mortgage the project itself or any part thereof. . . .

Reviser's Note

(1) Section 4, V.A.C.S. Article 6795b-1, refers to "any trust company or bank having the powers of a
trust company within or outside of the State of Texas."
The revised law omits the reference to the location of
the trust company or bank because a county is not
prohibited from entering into an agreement with a trust
company or bank that is not located in this state.

(2) Section 4, V.A.C.S. Article 6795b-1, refers
to a "resolution or order" authorizing bonds. The
revised law omits the reference to "order" because that
term is included in the definition of "bond resolution"
in Section 284.001 of this code.

(3) Section 4, V.A.C.S. Article 6795b-1,
provides that a trust indenture "shall not convey or
mortgage the project itself or any part thereof." The
revised law omits the reference to "the project itself"
because the entire project is within the meaning of
"any part" of the project.

(4) Section 2, V.A.C.S. Article 6795b-1,
provides methods of securing bonds "[b]ut
notwithstanding any limitations in this Act or in the
law which it amends." The revised law omits the quoted
language as unnecessary because the "Act" to which the
section refers and the law that act amends, as codified
in this chapter, do not provide any inconsistent
limitation.

(5) Section 2, V.A.C.S. Article 6795b-1, refers
to the time "after this amendatory law becomes
effective." The revised law omits the reference to the
amendment's effective date because that provision is
executed.

(6) Section 2(a), V.A.C.S. Article 6795b-1,
provides for bonds "as prescribed hereinabove in this
Section and elsewhere in Chapter 304, Acts of the
Regular Session of the Fiftieth Legislature, as
amended." The revised law omits the quoted language as
unnecessary because the law cited is the source law for this chapter and this section of the chapter and there is no need to restate that other provisions of this chapter apply to bonds issued under this chapter.

(7) Section 2(b), V.A.C.S. Article 6795b-1, refers to certain provisions of the Texas Constitution authorizing certain ad valorem taxes and to the "laws enacted pursuant thereto." The quoted language is omitted from the revised law as unnecessary because a reference to the constitution is sufficient.

(8) Section 2(d), V.A.C.S. Article 6795b-1, refers to "reduced or abated." The reference to "abated" is omitted from the revised law because "abated" is within the meaning of "reduced."

(9) Section 2(d), V.A.C.S. Article 6795b-1, refers to the "bond resolution or the trust indenture." The revised law substitutes "bond instrument" because the referenced terms are included in the definition of "bond instrument" in Section 284.001 of this code.

Revised Law
Sec. 284.032. TAX BOND ELECTION. Bonds wholly or partly supported by an ad valorem tax may not be issued without an election at which the issuance of the bonds is authorized.

Source Law
Sec. 2. ... But no such bonds wholly or partially supported by an ad valorem tax shall be issued unless and until they shall have been authorized at an election at which the question of their issuance shall have been submitted.

Revised Law
Sec. 284.033. INTERIM BONDS. (a) A county may, before issuing definitive bonds, issue interim bonds, with or without coupons, exchangeable for definitive bonds.
(b) The interim bonds may be authorized and issued in accordance with this chapter, without regard to the requirements, restrictions, or procedural provisions contained in any other law.

(c) The bond resolution authorizing interim bonds may provide that the interim bonds must recite that the bonds are issued under this chapter. The recital is conclusive evidence of the validity and the regularity of the bonds' issuance. (V.A.C.S. Art. 6795b-1, Sec. 4 (part).)

Source Law

Sec. 4. Prior to the issuance of definitive bonds, interim bonds, with or without coupons, exchangeable for definitive bonds may be issued. Such bonds may be authorized and issued without any proceedings or the happening of any conditions or things or the publication of any proceedings or notices other than those specifically specified and required by this Act, and may be authorized and issued without regard to the requirements, restrictions, or procedural provisions contained in any other law. The resolution or order authorizing the bonds may provide that such bonds shall contain a recital that they are issued pursuant to this Act and such recital shall be conclusive evidence of their validity and the regularity of their issuance.

Reviser's Note

Section 4, V.A.C.S. Article 6795b-1, refers to the "resolution or order" authorizing the bonds. The revised law omits the reference to "order" because that term is included in the definition of "bond resolution" in Section 284.001 of this code.

Revised Law

Sec. 284.034. BOND SALE TO PAY OUTSTANDING BONDS. A county acting through its commissioners court that issues bonds payable from revenues from tolls collected for the use of a project under this chapter and also payable from an unlimited tax authorized under Section 52, Article III, Texas Constitution, may authorize, under that section, and issue and sell its bonds and use the proceeds to call, redeem, and pay off its outstanding tax and revenue bonds under the terms of the bonds and make the project
available for the free use of the public. (V.A.C.S. Art. 6795b-1, Sec. 8a.)

Source Law

Sec. 8a. When any county has heretofore issued or may hereafter issue bonds under authority of Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, 1947, as amended payable from the revenues derived from tolls collected for the use of a project and which bonds are also payable from an unlimited tax authorized under Article III, Section 52, of the Constitution, and laws enacted pursuant thereto, such county acting through its Commissioners Court may, after being duly authorized in the manner provided by Article III, Section 52, of the Constitution, and laws enacted pursuant thereto, authorize, issue, and sell its bonds and use the proceeds therefrom in an amount sufficient to call, redeem, and pay off its outstanding tax and revenue bonds pursuant to the terms of said bonds, and thereby remove the pledge of the revenues from such facility and the covenants in connection with said bonds and the operation of said project, and make such project available for the free use of the public.

Reviser's Note

(1) Section 8a, V.A.C.S. Article 6795b-1, refers to "Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, 1947, as amended." The statute referenced is V.A.C.S. Article 6795b-1 and is codified as this chapter. The revised law is drafted accordingly.

(2) Section 8a, V.A.C.S. Article 6795b-1, refers to Article III, Section 52, of the constitution, and "laws enacted pursuant thereto." The revised law omits the quoted language for the reason stated in Reviser's Note (7) under Section 284.032 of this code.

Revised Law

Sec. 284.035. BOND APPROVAL AND REGISTRATION. (a) Bonds under this chapter may be presented to the attorney general for approval in the same manner as provided for approval of tax bonds issued by a county. The attorney general's approval of the bonds has the same effect as approval of county tax bonds.

(b) The comptroller shall register in the manner other
county bonds are registered bonds the attorney general approves under this section. (V.A.C.S. Art. 6795b-1, Secs. 2 (part), 4 (part).)

Source Law

Sec. 2. . . . All bonds issued hereunder may be presented to the Attorney General for his approval in the same manner and with like effect as is provided for the approval of tax bonds issued by counties. In such case the bonds shall be registered by the State Comptroller as in the case of other county bonds. . . .

Sec. 4. . . . However, the bonds may be presented to the Attorney General as provided by Section 2 of this article. . . .

Revisor's Note

Section 2, V.A.C.S. Article 6795b-1, refers to the "State Comptroller." The revised law substitutes "comptroller" because Section 403.001, Government Code, defines "comptroller" in any state statute to mean the comptroller of public accounts.

Revised Law

Sec. 284.036. BONDS SECURED SOLELY BY REVENUE. Bonds secured solely by a pledge of project revenue:

(1) are not a debt of the county issuing the bonds but are solely a charge on project revenue;

(2) may not be considered in determining the power of the county to issue for any purpose bonds payable in whole or in part from taxes; and

(3) must state: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." (V.A.C.S. Art. 6795b-1, Sec. 2 (part).)

Source Law

Sec. 2. No bonds authorized pursuant to Subsection (a) of this section shall ever be a debt of the county issuing them, but shall be solely a charge upon the revenues of the project and shall never be reckoned in determining the powers of the county to issue any bonds, payable in whole or in part from...
taxes, for any purpose authorized by law. Each such
bond payable solely from the revenues of a project
shall contain this clause: "The holder hereof shall
never have the right to demand payment of this
obligation out of any funds raised or to be raised by
taxation." . . .

Revised Law

Sec. 284.037. REVENUE BOND ELECTION NOT REQUIRED. (a) The
issuance of bonds under this chapter that are payable solely from
revenues may be authorized without an election.
(b) If an election is not held, notice of intention to issue
the revenue bonds must be given as provided by Section 252.041,
Local Government Code.
(c) The authority to issue the revenue bonds is subject to
the right of referendum provided by Section 252.045, Local
Government Code. (V.A.C.S. Art. 6795b-1, Sec. 1 (part).)

Source Law

Sec. 1. . . . and provided, further, that no
election shall be necessary to authorize the issuance
of any bonds issued hereunder payable solely from
revenues, but in case no election is held, notice of
intention to issue such bonds shall be given as
provided in Sections 2 and 3 of the Bond and Warrant
Law of 1931, as amended, and the authority to issue
such bonds shall be subject to the right of referendum
provided in Section 4 of said Law. . . .

Revisor's Note

Section 1, V.A.C.S. Article 6795b-1, refers to
Sections 2, 3, and 4 of the Bond and Warrant Law of
1931. The relevant portions of Sections 2 and 3 were
codified in 1987 as Section 252.041, Local Government
Code, and Section 4 was codified as Section 252.045,
Local Government Code. The revised law is drafted
accordingly.

Revised Law

Sec. 284.038. REVENUE BONDS: AD VALOREM TAX FOR MAINTENANCE
AND OPERATION. (a) A county issuing bonds under this chapter that
are secured solely by a pledge of revenues may:
(1) by the bond resolution, authorize the payment of the principal of and premium, if any, and interest on the bonds from the gross revenues of the project; and

(2) impose a direct continuing ad valorem tax under Section 9, Article VII, or Section 52, Article III, Texas Constitution, and pledge the tax to pay maintenance and operating expenses of the project and to establish and maintain a reserve fund and a depreciation and replacement fund for the project, as a supplement to the pledge of revenues for those purposes or in lieu of a pledge of revenues, as provided by the bond resolution.

(b) The proceeds of a tax pledged under this section shall be used annually to the extent required by the bond resolution and for the purposes stated in Subsection (a)(2). The county may provide in the resolution that certain or all costs listed in the resolution will be paid by the county from the proceeds of the tax.

(V.A.C.S. Art. 6795b-1, Sec. 4 (part).)

Source Law
Sec. 4. . . . However, in connection with the issuance of bonds described in Subsection (a) of Section 2 of this article, the county may authorize, in the bond resolution or order, the payment of the principal of and premium, if any, and interest on the bonds from the gross revenues of the project, and the county may levy and pledge to the payment of maintenance and operating expenses of the project and to the establishment and maintenance of a reserve fund and a depreciation and replacement fund for the project, either as a supplement to the pledge of revenues for those purposes or in lieu of a pledge of revenues, a direct continuing ad valorem tax under Article VIII, Section 9, as amended, or Article III, Section 52, as amended, of the Texas Constitution and the laws enacted under those provisions, as may be provided in the resolution or order authorizing issuance of the bonds. The proceeds of a tax pledged under this section shall be utilized annually to the extent required by the resolution or order for such purposes, and the county may provide in the resolution or order that certain costs listed in the resolution or order or all of such costs will be paid by the county from the proceeds of the tax. . . .

Revisor's Note
(1) Section 4, V.A.C.S. Article 6795b-1, refers to "bonds described in Subsection (a) of Section 2 of
this article." The revised law substitutes for the quoted language a description of the bonds that Section 2(a) describes.

(2) Section 4, V.A.C.S. Article 6795b-1, refers to the bond "resolution or order" of the commissioners court. The revised law omits the reference to "order" because that term is included in the definition of "bond resolution" in Section 284.001 of this code.

(3) Section 4, V.A.C.S. Article 6795b-1, refers to certain constitutional provisions and the "laws enacted under those provisions." The quoted language is omitted for the reason stated in Reviser's Note (7) under Section 284.032 of this code.

Revised Law

Sec. 284.039. BONDS ARE SECURITIES. The bonds issued and delivered under this chapter and interest coupons on the bonds are a security under Chapter 8, Business & Commerce Code. (V.A.C.S. Art. 6795b-1, Sec. 4 (part).)

Source Law

Sec. 4. . . . All bonds issued hereunder, and any interest coupons pertaining to the bonds, on delivery shall be considered and construed to be "securities" within the meaning of Chapter 8, Business & Commerce Code . . . .

Revised Law

Sec. 284.040. EFFECT OF LIEN. (a) A lien on or a pledge of revenue from a project under this chapter or on a reserve, replacement, or other fund established in connection with a bond issued under this chapter:

(1) is enforceable at the time of payment for and delivery of the bond;

(2) applies to an item on hand or subsequently received;

(3) applies without physical delivery of an item or
other act; and

(4) is enforceable against any person having any claim, in tort, contract, or other remedy, against the county without regard to whether the person has notice of the lien or pledge.

(b) A bond resolution is not required to be recorded except in the regular records of the county. (V.A.C.S. Art. 6795b-1, Sec. 4b.)

Source Law

Sec. 4b. Each lien on or pledge of revenues derived from the project or on the reserve fund, depreciation and replacement fund, or other reserves or funds established in connection with bonds issued under this Act is valid and enforceable from the time of payment for and delivery of the bonds authorized by the resolution or order of the commissioners court creating or confirming the lien or pledge. Such a lien or pledge is fully effective as to items then on hand or subsequently received, and the items are subject to such a lien or pledge without physical delivery of the items or further act. The lien or pledge is valid and enforceable against any party having a claim of any kind in tort, contract, or otherwise against the county, regardless of whether the party has notice of the lien or pledge. Neither a resolution or order authorizing the issuance of bonds under this Act nor any other instrument by which the lien or pledge is created or confirmed need be filed or recorded except in the regular records of the county.

Revisor's Note

Section 4b, V.A.C.S. Article 6795b-1, refers to a bond "resolution or order." The revised law omits the references to "order" because that term is included in the definition of "bond resolution" in Section 284.001 of this code.

Revised Law

Sec. 284.041. REFUNDING BONDS. Subject to any restriction in a bond instrument, a refunding bond may not be delivered unless delivered in exchange for the bond authorized to be refunded or unless sold and delivered to provide money for the payment of a matured or redeemable bond maturing or redeemable within three months. (V.A.C.S. Art. 6795b-1, Sec. 8 (part).)
Sec. 8. Subject to any restrictions which may appear in the aforesaid trust indenture or bond resolution ... but no such refunding bonds shall be delivered unless delivered in exchange for the bonds authorized to be refunded thereby or unless sold and delivered to provide funds for the payment of matured or redeemable bonds maturing or redeemable within three (3) months.

Reviser's Note
(1) Section 8, V.A.C.S. Article 6795b-1, refers to a "trust indenture or bond resolution." The revised law substitutes "bond instrument" because the referenced terms are included in the definition of "bond instrument" in Section 284.001 of this code.

(2) Section 8, V.A.C.S. Article 6795b-1, generally provides for the issuance of refunding bonds. This provision is omitted from the revised law as unnecessary because Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes), by general law applicable to this chapter authorizes the issuance of refunding bonds. The omitted provision reads:

Sec. 8. ... the Commissioners Court may by resolution provide for the issuance of bonds for the purpose of refunding any bonds issued under this Act and at the time outstanding. The issuance of such refunding bonds, the maturities and other terms thereof, the rights of the holders thereof, and the duties of the county in respect to the same, shall be governed by the foregoing provisions of this Act in so far as the same may be applicable ... .

Revised Law
Sec. 284.042. USE OF BOND PROCEEDS; LIEN. (a) The proceeds of bonds issued under this chapter:

(1) may be used only to pay the costs of the project described by Section 284.043; and

(2) shall be disbursed under the restrictions the bond instrument provides.
(b) Project operating and maintenance costs to be paid from proceeds of bonds payable in whole or in part from project revenue may include only items expressly defined in the proceedings authorizing the bonds.

(c) Notwithstanding Subsection (a), bond proceeds that remain after the project costs are paid in full shall be used to pay interest on and retire the bonds, unless otherwise provided in the bond instrument.

(d) Unless otherwise provided in the bond instrument, if the bond proceeds are not sufficient to pay all the project costs, additional bonds may be issued up to the amount necessary to pay the same issue as the original bonds and are entitled to payment from the same fund, without preference for the bonds first issued.

(e) The bondholder or a bond trustee has a lien on the bond proceeds. (V.A.C.S. Art. 6795b-1, Sec. 4 (part).)

Source Law

Sec. 4. ... As to such bonds which are payable either in whole or in part from the revenues to be derived from the operation of a project, the operating and maintenance expenses of the project shall include only such items as are set forth and defined in the proceedings authorizing the issuance of such bonds. ... The proceeds of the bonds shall be used solely to pay the cost of the project as above defined, and shall be disbursed under such restrictions as may be provided in the bond resolution, order, or trust indenture hereinafter mentioned, and there shall be and is hereby created and granted a lien upon such moneys until so applied in favor of the holders of the bonds or any trustee provided for in respect of such bonds. Unless otherwise provided in such resolution, order, or indenture, if the proceeds of the bonds prove insufficient to pay the cost of the project, additional bonds may be issued to the amount of the deficit and shall be deemed to be of the same issue and entitled to payment from the same fund without preference or priority of the bonds first issued. Any surplus remaining from bond proceeds after the cost of the project has been paid in full shall be used in paying interest on and retiring bonds unless otherwise provided in the bond resolution, order, or trust indenture. ...
Revisor's Note

(1) Section 4, V.A.C.S. Article 6795b-1, refers to the "bond resolution, order, or indenture." The revised law substitutes "bond instrument" because the referenced terms are included in the definition of "bond instrument" in Section 284.001 of this code.

(2) Section 4, V.A.C.S. Article 6795b-1, refers to the "cost of the project as above defined." The revised law substitutes for the quoted language a reference to Section 284.043 of this code, which describes the allowed project costs.

(3) Section 4, V.A.C.S. Article 6795b-1, refers to "such moneys." The revised law substitutes "the bond proceeds" for the quoted language because the proceeds constitute the money to which Section 4 refers.

(4) Section 4, V.A.C.S. Article 6795b-1, refers to "any trustee provided for in respect of such bonds." The revised law substitutes the synonymous phrase "bond trustee" for the quoted language for brevity, clarity, and consistency with other references in this code.

Revised Law

Sec. 284.043. COSTS AND EXPENSES. (a) The cost of the project may include:

(1) the cost of construction;

(2) the cost of any property, appurtenance, easement, contract, franchise, or pavement used in the construction, acquisition, improvement, operation, or maintenance of the project;

(3) the cost of condemning property, including the award, court costs, and attorney's fees;

(4) all legal, fiscal, or engineering expenses incurred in the acquisition or construction of the project, the making of any preliminary survey or investigation, or the
authorization and issuance of the bonds; and

(5) payment of interest on the bonds and operating
expenses on the project before and during construction and before
the first anniversary after construction of the project is
completed.

(b) Any preliminary expense paid from a county fund shall be
repaid to the fund from the proceeds of the bonds when the proceeds
are available. (V.A.C.S. Art. 6795b-1, Sec. 1 (part).)

Source Law

Sec. 1. . . . Among other things, the cost of
the project may include the following: the cost of
construction; the cost of all property, real, personal,
and mixed, and all appurtenances, easements, contracts,
franchises, pavements, and properties of every nature,
used or useful in connection with the construction,
acquisition, improvement, operation, and maintenance of
the project; the payment of the cost of condemning any
such property, including both the payment of the award
and the payment of the court costs and attorneys fees;
the payment of all legal, fiscal, and engineering
expenses incurred in connection with the acquisition
and construction of the project and the making of
preliminary surveys and investigations and the
authorization and issuance of the bonds; and the
payment of interest on the bonds and operating expenses
on the project prior to and during the period occupied
by the construction of the project and for one (1) year
thereafter. . . . Any preliminary expenses paid from
county funds shall be repaid to such funds from the
proceeds of the bonds when available . . . .

Revisor's Note

(1) Section 1, V.A.C.S. Article 6795b-1, refers
to "[a]mong other things, the cost of the project may
include . . . ." The reference to "[a]mong other
things" is omitted from the revised law as unnecessary
because Section 311.005(13), Government Code (Code
Construction Act), and Section 312.011(19), Government
Code, provide that "includes" and "including" are terms
of enlargement and not of limitation and do not create
a presumption that components not expressed are
excluded.

(2) Section 1, V.A.C.S. Article 6795b-1, refers
to "all property, real, personal, and mixed" and
"properties of every nature." The revised law omits these references because they are included within the meaning of "any property" and Section 311.005(4), Government Code (Code Construction Act), defines "property" to mean "real and personal property."

(3) Section 1, V.A.C.S. Article 6795b-1, validated certain acts of a commissioners court taken in connection with engineering and fiscal contracts. The revised law omits the validation provision because it served its purpose on the day it took effect and, thus, is executed law. Section 311.031(a)(2), Government Code (Code Construction Act), applicable to the revised law, provides that the repeal of a statute does not affect any validation previously made under the statute. The omitted validation reads:

Sec. 1. ... and all engineering and fiscal contracts and agreements for such projects heretofore entered into are hereby validated and confirmed. . . .

Revised Law
Sec. 284.044. DEPOSITORY. A bank or trust company in this state may:

(1) act as depository of bond proceeds or revenues derived from the operation of the project; and

(2) provide indemnity bonds or pledge securities the county requires. (V.A.C.S. Art. 6795b-1, Sec. 4 (part).)

Source Law
Sec. 4. ... It shall be lawful for any bank or trust company in this State to act as depository of the proceeds of the bonds or revenues derived from the operation of the project and to furnish such indemnity bonds or to pledge such securities as may be required by the county. . . .

Revisor's Note
Section 4, V.A.C.S. Article 6795b-1, states, "[i]t shall be lawful for any bank or trust company in
this State to act as depository of the proceeds." The revised law substitutes "[a] bank or trust company in this state may . . . act as depository of the bond proceeds" for the quoted language because the authority granted by the term "may" makes the act lawful.

Revised Law
Sec. 284.045. BONDS TAX FREE. Bonds under this chapter and the transfer of and income from the bonds, including a profit made on the sale of the bonds, are exempt from taxation in this state. (V.A.C.S. Art. 6795b-1, Sec. 6 (part).)

Source Law
Sec. 6. . . . the bonds issued hereunder and their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within this State.

Revised Law
Sec. 284.046. BONDHOLDER RIGHTS. (a) In addition to all other rights by mandamus or other court proceeding, a holder or trustee of a bond issued under this chapter may enforce the holder's rights against the county, the county's employees, an operating board, or an agent or employee of the operating board and is entitled to:

(1) require the county and the board to impose and collect tolls and charges sufficient to carry out any agreement contained in the bond instrument; and

(2) apply for and obtain the appointment of a receiver for the project.

(b) A bond instrument may contain provisions for the protection and enforcement of a bondholder's rights and remedies, including covenants:

(1) establishing the county's duties relating to:

(A) the acquisition of property;

(B) the construction, maintenance, operation, and repair of, and insurance for, a project; and
(C) custody, safeguarding, and application of
money;

(2) prescribing events that constitute default;

(3) prescribing terms on which any or all of the bonds
become or may be declared due before maturity; and

(4) relating to the rights, powers, liabilities, or
duties that arise on the breach of a county's duty.

(c) A bond instrument may contain provisions restricting the
individual rights of action of the bondholder. (V.A.C.S.
Art. 6795b-1, Secs. 4 (part), 5 (part).)

Source Law

Sec. 4. ... Either the resolution or order
providing for the issuance of the bonds or such trust
indenture may contain such provisions for protecting
and enforcing the rights and remedies of the
bondholders as may be reasonable and proper and not in
violation of law, including covenants setting forth the
duties of the county in relation to the acquisition of
properties and the construction, maintenance,
operation, repair, and insurance of the project, and
the custody, safeguarding, and application of all
moneys. ... Such bond resolution, order, or
indenture may set forth the rights and remedies of the
bondholders and of the trustee and may restrict the
individual rights of action of the bondholders. In
addition to the foregoing, such bond resolution, order,
or trust indenture may contain such other provisions as
the Commissioners Court may deem reasonable and proper
for the security of the bondholders including, but
without limitation, covenants prescribing all
happenings or occurrences which constitute events of
default and the terms and conditions upon which any or
all of the bonds shall become or may be declared to be
due before maturity and as to the rights, liabilities,
powers and duties arising upon the breach by the county
of any of its duties or obligations.

Sec. 5. Any holder or holders of bonds issued
hereunder, including a trustee or trustees for such
holders, shall have the right in addition to all other
rights by mandamus or other proceeding in any Court of
competent jurisdiction to enforce his or their rights
against the county and its employees and against any
board which may be created to operate the project and
against the agents and employees thereof, including,
but not limited to, the right to require the county and
such board to impose and collect sufficient tolls and
charges to carry out the agreements contained in the
bond resolution or trust indenture and to perform all
agreements and covenants therein contained and duties
arising therefrom, and to apply for and obtain the
appointment of a receiver for the project. ...
Revisor's Note

(1) Sections 4 and 5, V.A.C.S. Article 6795b-1, refer to the "resolution or order . . . or such trust indenture." The revised law substitutes "bond instrument" because the referenced terms are included in the definition of "bond instrument" in Section 284.001 of this code.

(2) Section 4, V.A.C.S. Article 6795b-1, refers to provisions "as may be reasonable and proper and not a violation of law" and provisions the commissioners court "may deem reasonable and proper." The revised law omits the quoted language because it is presumed that the provisions must be reasonable, proper, and legal.

(3) Section 4, V.A.C.S. Article 6795b-1, refers to "including, but without limitation." The revised law omits the reference to "but without limitation" 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 limitation and do not create a presumption that components not expressed are excluded.

(4) Section 4, V.A.C.S. Article 6795b-1, refers to "terms and conditions." The reference to "conditions" is omitted from the revised law because "conditions" is within the meaning of "terms."

(5) Section 4, V.A.C.S. Article 6795b-1, refers to "duties or obligations." The revised law omits the reference to "obligations" because "obligations" is within the meaning of "duties."

(6) Section 5, V.A.C.S. Article 6795b-1, refers to a suit "in any Court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a
court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.0011, Government Code, for general jurisdiction of district courts.

(7) Section 5, V.A.C.S. Article 6795b-1, refers to "any board which may be created to operate the project." The revised law substitutes "operating board" for the quoted language because the creation of an operating board is authorized in Section 284.066 of this chapter.

(8) Section 5, V.A.C.S. Article 6795b-1, states that the rights of bondholders are "not limited to" the listed rights. The revised law omits the reference to "but not limited to" for the reason stated in Revisor's Note (3) under this section.

(9) Section 5, V.A.C.S. Article 6795b-1, states that a bondholder has the right to require the county to "carry out the agreements contained in the bond resolution or trust indenture and to perform all agreements and covenants therein contained and duties arising therefrom." The phrase "and to perform all agreements and covenants therein contained and duties arising therefrom" is omitted from the revised law because it is included within the meaning of "carry out any agreements contained in the bond instrument."

Revisor's Note
(End of Subchapter)

(1) Sections 1 and 4, V.A.C.S. Article 6795b-1, provide procedures related to issuing bonds or refunding bonds. The revised law omits these provisions as unnecessary because they duplicate or are superseded by certain provisions of the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil
Statutes), Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes). Articles 717k, 717k-3, and 717k-6 apply to bonds under this chapter by their own terms. The omitted provisions read:

Sec. 1. .. Bonds authorized to be issued under this law shall be sold in such manner, either at public or private sale, and for such price as the Commissioners Court of the county issuing the bonds may determine to be for the best interests of the county.

Sec. 4. .. The Commissioners Court shall have full discretion in fixing the details of the bonds authorized to be issued hereunder and in determining the manner of sale thereof, provided that the bonds, whether term, serial, or combination thereof .. The bonds may contain such mandatory or optional redemption provisions and may mature in such manner and at such prices as may be determined by the Commissioners Court prior to the issuance of the bonds. .. and the bonds are negotiable if they are issued in accordance with this Act. Provision may be made for registration of such bonds as to principal or interest or both. ..

(2) Section 7(b), V.A.C.S. Article 6795b-1, referring to the use of bonds as investments and security, is omitted from the revised law as unnecessary. That section duplicates Section 9, Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), which applies to those bonds. While Section 7(b), V.A.C.S. Article 6795b-1, lists "guardians" and Section 9, V.A.C.S. Article 717k-6, does not, the latter statute includes "fiduciaries," and a guardian is a fiduciary. The omitted provision reads:

Sec. 7(b). All bonds issued under this law before and after this amendment shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies,
fiduciaries, trustees, guardians, and for
the sinking funds of cities, towns,
villages, counties, school districts, or
other political corporations or
subdivisions of the State of Texas. Such
bonds shall be eligible to secure the
deposit of any and all public funds of the
State of Texas, and any and all public
funds of cities, towns, villages, counties,
school districts, or other political
corporations or subdivisions of the State
of Texas; and such bonds shall be lawful
and sufficient security for said deposits
to the extent of their value, when
accompanied by all unmatured coupons
appurtenant thereto.

[Sections 284.047-284.060 reserved for expansion]

SUBCHAPTER C. CONSTRUCTION AND OPERATION

Revised Law
Sec. 284.061. ACQUISITION OF PROPERTY. (a) To acquire
property useful in connection with a project, a county may enter on
any real property, water, or premises to make a survey, sounding,
or examination.
(b) A county may acquire by eminent domain property to use
in or useful for a project under this chapter.
(c) The county is entitled to immediate possession of
property subject to a condemnation proceeding brought by the county
after:
(1) a tender of a bond or other security in an amount
sufficient to secure the owner for damages; and
(2) the approval of the bond or security by the court.
(d) A county has full easements and rights-of-way through,
across, under, and over any property owned by this state that are
necessary or convenient to construct, acquire, or efficiently
operate a project under this chapter. (V.A.C.S. Art. 6795b-1, Sec.
3 (part).)

Source Law
Sec. 3. . . . Such county may enter on any
lands, waters, and premises for the purpose of making
surveys, soundings, and examinations, and if considered
advisable may exercise the right of eminent domain and
may institute condemnation proceedings under the
provisions of any pertinent General Law of Texas for
the purpose of acquiring any property to be used or
useful in connection with the project. In any
condemnation suit the Court having jurisdiction may
make such orders as may be just to the county and to
the owners of the property to be condemned. Upon the
institution of any such condemnation proceedings and
upon tender of a bond or other security in sufficient
sum to secure the owner or owners for damages and upon
approval of such bond or other security by the Court,
the county shall have the right to immediate possession
of the property which is the subject matter of the
condemnation proceedings and may enter thereon. The
State of Texas hereby expressly grants to any such
county full easements and right of ways through, across,
under, and over any lands or property owned by
the State which may be necessary or convenient to the
construction, acquisition or efficient operation of the
project.

Revisor's Note

(1) Section 3, V.A.C.S. Article 6795b-1,
provides that "[i]n any condemnation suit the Court
having jurisdiction may make such orders as may be just
to the county and to the owners of the property to be
condemned." The revised law omits the quoted language
because a court may not issue in a proceeding an
enforceable order that is not just.

(2) Section 3, V.A.C.S. Article 6795b-1, refers
to a county's right to immediate possession of the
property that is the subject of a condemnation
proceeding and the right to "enter thereon." The
reference to "and may enter thereon" is omitted from
the revised law because the reference is unnecessary.
The right to enter property is within the right to
possess property.

(3) Section 3, V.A.C.S. Article 6795b-1, refers
to "lands or property." The revised law omits the
reference to "lands" because "lands" is within the
meaning of "property." Section 311.005(4), Government
Code (Code Construction Act), defines "property" to
include "real and personal property."
Sec. 284.062. FERRY. The commissioners court may purchase or lease a ferry property and operate the property over the route to be traversed by a project under this chapter during the period that the project is being constructed. The cost of the purchase or lease of the ferry property may be paid from the proceeds of the bonds issued for the project. (V.A.C.S. Art. 6795b-1, Sec. 1 (part).)

Sec. 284.063. CONTRACT FOR PROJECT CONSTRUCTION. (a) A county may enter into an agreement with a political subdivision or agency of this state to construct, acquire, improve, operate, and maintain a project under this chapter. The agreement may provide for title to the project to be in one party to the agreement or for

Revisor's Note
(1) Section 1, V.A.C.S. Article 6795b-1, states, "If the Commissioners Court shall consider it desirable to acquire, through purchase or lease, existing ferry properties for the purpose of operating such properties during the period of construction, over the route to be traversed by the project, such properties may be so acquired and the cost thereof paid from the proceeds of the bonds. . . ."

(2) Section 1, V.A.C.S. Article 6795b-1, refers to the commissioners court's ability to acquire "existing ferry properties." The revised law omits the word "existing" because a ferry property must exist to be acquired.

Revised Law
joint ownership of the project.

(b) A county entering into an agreement under this section may issue bonds as provided by this chapter to pay all or a part of the cost of a project.

c) An agreement entered into under this section, in addition to other terms, may:

(1) extend for any agreed period; and

(2) provide that the agreement continues in effect until bonds specified in the agreement and refunding bonds issued in lieu of those bonds are paid.

d) A payment made under the agreement is an operating and maintenance expense of the project if the agreement so provides. Revenues derived from the operation of the project may be pledged to pay operating and maintenance expenses. (V.A.C.S. Art. 6795b-1, Sec. 3a (part).)

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Source Law

Sec. 3a. Notwithstanding anything contained herein to the contrary, any county proceeding hereunder may contract or agree with any other county, city, village, town, special district, or any other legally constituted political subdivision or agency of the State of Texas, or any combination of these, to construct, acquire, improve, operate, and maintain a project. Any such contract or agreement may provide for joint ownership of the project or for title to the project to be in any one of the contracting parties. In addition, any contracting county proceeding hereunder may issue its bonds, as authorized herein, for the purpose of paying all or any part of the cost of a project which said county is obligated to pay under any such contract or agreement. Any contract or agreement entered into under this section may contain any terms and extend for any period of time to which the parties can agree, and may provide that it will continue in effect until bonds specified in it and refunding bonds issued in lieu of those bonds are paid. If any such contract or agreement so provides, payments made thereunder shall be operating and maintenance expenses of the project, and the revenues derived from operation of such project may be pledged to such payment.

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Revisor's Note

(1) Section 3a, V.A.C.S. Article 6795b-1, states, "Notwithstanding anything contained herein to
the contrary, any county proceeding hereunder . . . ."

The reference to "[n]otwithstanding anything contained herein" is omitted from the revised law because there are no inconsistent provisions in the source law.

(2) Section 3a, V.A.C.S. Article 6795b-1, refers to a "legally constituted political subdivision." The reference to "legally constituted" is omitted from the revised law as unnecessary because a "political subdivision" is presumed to be "legally constituted"; therefore, a "legally constituted political subdivision" is within the meaning of "political subdivision."

(3) Section 3a, V.A.C.S. Article 6795b-1, refers to "contract or agree" and "contract or agreement." The references to "contract" are omitted from the revised law because the meaning of "contract" is within the meaning of "agreement."

(4) Section 3a, V.A.C.S. Article 6795b-1, refers to a "county, city, village, town, [or] special district." The revised law omits the reference because those entities are included within the meaning of "political subdivision."

(5) Section 3a, V.A.C.S. Article 6795b-1, refers to "payments made thereunder." The revised law substitutes "payments made under the agreement" for the quoted language because "thereunder" refers to payments made under the agreement.

Revised Law

Sec. 284.064. CONTRACT TO OPERATE. (a) A county may contract with another person for the person to operate all or part of a project under this chapter to the extent prescribed by the bond instrument.

(b) A contract made under this section must be for a
specified period that does not extend beyond the date of maturity of the last maturing bond.

(c) A contract made under this section may not interfere with the right of a bondholder to require proper operation and maintenance of the facilities and the payments for the benefit of the bond as prescribed in the bond instrument. (V.A.C.S. Art. 6795b-1, Sec. 5a.)

Source Law
Sec. 5a. Any county proceeding hereunder after this amendment becomes effective may, within the discretion of the Commissioners Court, to the extent prescribed by the bond resolution or the trust indenture or pursuant to the provisions thereof make a contract or lease agreement under which the facilities may be operated for a period fixed therein not extending beyond the date of the maturity of the last maturing bond, by another agency, person, firm, or corporation, provided that nothing in such contract or lease shall be so interpreted as to interfere with the right of the holders of the bonds or their representatives to require proper operation and maintenance of the facilities and the payments for the benefit of the bonds as prescribed in the bond resolution or in the trust indenture.

Revisor's Note
(1) Section 5a, V.A.C.S. Article 6795b-1, refers to "after this amendment becomes effective." The reference to "after this amendment becomes effective" is omitted from the revised law because that provision is executed.

(2) Section 5a, V.A.C.S. Article 6795b-1, refers to "agency, person, firm, or corporation." The revised law substitutes "person" for the quoted language because Section 311.005(2), Government Code (Code Construction Act), defines "person" to include an agency, corporation, or any other legal entity.

(3) Section 5a, V.A.C.S. Article 6795b-1, refers to "a contract or lease agreement" and a "contract or lease." The references to "lease agreement" and "lease" are omitted from the revised law because "lease
agreement" and "lease" are within the meaning of "contract."

(4) Section 5a, V.A.C.S. Article 6795b-1, refers to "the holders of the bonds or their representatives."
The revised law substitutes "bondholder" for the quoted language because that term has the same meaning as "holder[s] of the bonds" and because "their representatives" is within the meaning of "holders of the bonds."

(5) Section 5a, V.A.C.S. Article 6795b-1, refers to the "bond resolution" and "trust indenture."
The revised law substitutes "bond instrument" because the referenced terms are included in the definition of "bond instrument" in Section 284.001 of this code.

Revised Law

Sec. 284.065. POOLED PROJECTS. (a) A commissioners court of a county by resolution may pool two or more projects the county constructs under this chapter.

(b) An existing project may be pooled in whole or in part with a new project.

(c) A project may not be pooled more than once.

(d) The resolution of the commissioners court establishing a pooled project shall set a date when each of the projects being pooled will be available for the free use of the public. The date must be consistent with the bond instrument applicable to bonds for any of the pooled projects.

(e) Subject to the terms of a bond instrument, a county proceeding under this chapter may, from time to time, issue bonds, including bonds that are payable either in whole or in part from the revenues of a pooled project, to:

(1) pay all or a part of the cost of the pooled project or the cost of a part of the pooled project;

(2) pay the costs of constructing improvements,
extensions, or enlargements to all or part of a pooled project; or

(3) refund outstanding bonds issued for any part of a pooled project, including payment of a bond redemption premium and any interest to the date of redemption; and

(4) pay the cost of constructing improvements, extensions, and enlargements to any part of a pooled project for which any part of the bonds to be refunded were issued.

(f) Revenues of any part of a pooled project may be pledged to pay the bonds.

(g) Improvements, extensions, or enlargements to be paid from refunding bonds issued under this chapter may be constructed on any part of the pooled project without regard to the parts of the pooled project covered by the bonds to be refunded.

(h) The refunding bonds may be issued in exchange for outstanding bonds or may be sold and the proceeds used to redeem outstanding bonds.

(i) A county may, from time to time, amend the extent or component parts of a designated pooled project, consistent with the terms of related bond instruments.

(j) This chapter applies to a pooled project and an amended pooled project in the same manner that it applies to any other project. (V.A.C.S. Art. 6795b-1, Sec. 2a.)

Source Law
Sec. 2a. Any two or more projects constructed by a county proceeding hereunder may, upon the adoption of a resolution approving the same, duly passed by the Commissioners Court, be pooled and designated as a "pooled project." Any existing project or projects may be pooled in whole or in part with any new project or projects thereof. After being so designated, such "pooled project" shall become a "project" as used in Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, 1947, as amended. No project may be pooled more than once. Consistent with the resolution or order providing for the issuance of the bonds or the trust indenture securing the same, the resolution of the Commissioners Court shall set a date certain when each of the projects being authorized to be pooled shall be available for the free use of the public. Subject to the terms of any such bond resolution or trust indenture, any county proceeding hereunder is authorized to issue from time to time bonds of the county as hereinbefore authorized, including bonds which are payable either in whole or in
part from the revenues of a pooled project, for the 
purpose of (i) paying all or any part of the cost of 
such pooled project or the cost of any part of such 
pooled project, (ii) paying the costs of constructing 
improvements, extensions, or enlargements to all or any 
part of any pooled project, or (iii) refunding any 
bonds then outstanding issued on account of any pooled 
project or any part of any pooled project, including 
the payment of any redemption premium thereon and any 
interest accrued or to accrue to the date of redemption 
of such bonds, and, if deemed advisable by the 
Commissioners Court, paying the costs of constructing 
improvements, extensions, and enlargements to the 
pooled project or to any part of any pooled project in 
connection with which or in connection with any part of 
which bonds to be refunded shall have been issued. 
Revenues of all or any part of such pooled project may 
be pledged to the payment of such bonds. Improvements, 
extensions, or enlargements to be paid from refunding 
bonds issued hereunder are not restricted to and need 
not be constructed on any particular part of a pooled 
project in connection with which bonds to be refunded 
amay have been issued but may be constructed in whole or 
in part on other parts of the pooled project not 
covered by the bonds to be refunded. Within the 
discretion of the issuing county, refunding bonds 
issued hereunder may be issued in exchange for 
outstanding bonds or may be sold and the proceeds used 
for the purpose of redeeming outstanding bonds. Any 
county having previously designated a "pooled project" 
may from time to time, subject to the terms of any bond 
resolution or trust indenture, add to, delete from, or 
otherwise amend the extent or component parts of any 
pooled project, which pooled project as so amended 
shall be and become a project as used in Chapter 304, 
Acts of the Regular Session of the Fiftieth 
Legislature, Regular Session, 1947, as amended.

Reviser's Note

(1) Section 2a, V.A.C.S. Article 6795b-1, refers 
to a bond "resolution or order." The reference to 
"order" is omitted from the revised law because that 
term is included in the definition of "bond resolution" 
in Section 284.001 of this code.

(2) Section 2a, V.A.C.S. Article 6795b-1, refers 
to the "bond resolution" and "trust indenture." The 
revised law substitutes "bond instrument" because the 
referenced terms are included in the definition of 
"bond instrument" in Section 284.001 of this code.

Revised Law

Sec. 284.066. OPERATING BOARD. (a) A commissioners court 
may appoint an operating board if the commissioners court
determines that a project under this chapter could be developed, constructed, operated, and managed better and more efficiently by an operating board.

(b) Except as provided by Subsections (c) and (d), an operating board has the same authority as the commissioners court, including the power of eminent domain, regarding the development, construction, operation, and management of a project under this chapter.

(c) The operating board's authority is subject to the limitations prescribed by the commissioners court.

(d) An operating board may not:

(1) impose a tax or borrow money; or

(2) exercise the authority of the commissioners court under Section 284.071 except as provided by order of the commissioners court. (V.A.C.S. Art. 6795b-1, Secs. 5b (part), 8c(d).)

Source Law

Sec. 5b. Any county proceeding hereunder, upon a determination by the Commissioners Court thereof that a project could be developed, constructed, operated, and managed better and more efficiently by an operating board, may provide for the appointment of such an operating board. An operating board so appointed shall have and may exercise, subject to such limitations and restrictions as may be prescribed by the Commissioners Court, the same power and authority, including the power of eminent domain, as may be exercised by the Commissioners Court in regard to the development, construction, operation, and management of a project; provided, however, that an operating board appointed hereunder shall not have the power to tax or to borrow money.

[Sec. 8c]

(d) An operating board appointed under this Act may not exercise the authority of the commissioners court granted by this section except as provided by order of the commissioners court.

Revisor's Note

(1) Section 5b, V.A.C.S. Article 6795b-1, refers to the authority that the board "shall have and may exercise." The revised law omits the phrase "and may exercise" because the board "may exercise" any
authority the board has.

(2) Section 5b, V.A.C.S. Article 6795b-1, refers to "limitations and restrictions." The reference to "and restrictions" is omitted from the revised law because "restrictions" is within the meaning of "limitations."

(3) Section 5b, V.A.C.S. Article 6795b-1, refers to "power and authority." The reference to "power" is omitted from the revised law because "power" is within the meaning of "authority."

(4) Section 5b, V.A.C.S. Article 6795b-1, lists specific examples of the authority possessed by the appointed operating board. The list of examples of the authority possessed by the appointed operating board is omitted from the revised law because each of the examples specifically listed is within the meaning of "the same authority as the commissioners court." The omitted provision reads:

Without limiting the generality of the foregoing, such an operating board shall have the power and authority, subject to the restrictions and limitations prescribed by the Commissioners Court, to design the project, to acquire necessary lands or rights-of-way of other property for the project by purchase, condemnation, or otherwise, to establish and revise from time to time the rates and tolls charged for use of said project, to establish and prescribe the methods, systems, procedures, and policies for the operation, maintenance, and use of the project, and to employ consultants, attorneys, engineers, financial advisors, agents, and other employees or contractors in connection with the development, construction, operation, and management of the project.

(5) Section 8c(d), V.A.C.S. Article 6795b-1, refers to "this section." The pertinent part of Section 8c is codified as Section 284.071 of this code, and the revised law is drafted accordingly.
Sec. 284.067. PROJECTS EXTENDING INTO OTHER COUNTIES. (a) A county may not construct or acquire a project that is financed under this chapter and any part of which is in another county until the commissioners court of the other county adopts a resolution consenting to the construction or acquisition.

(b) A part of a project that has not been designated as part of the state highway system and that is not a turnpike project as defined in Chapter 361 is a part of the county road system of the county in which the part is located. A law relating to the maintenance and operation of a county road applies to a project constructed or acquired under this chapter to the extent the law does not conflict with this chapter.

(c) Each county into which the project extends, by condemnation or another method under general law, may acquire the property necessary for the project. The county issuing the bonds may use the bond proceeds to acquire property necessary for the project in any county into which the project extends.

(d) Payment of the purchase price, award, or other cost of the project may be on the terms to which the commissioners courts of the county issuing the bonds and the other county agree. Proceeds from bonds issued under this chapter may be used to pay a cost incurred under this section. (V.A.C.S. Art. 6795b-1, Sec. 1 (part).)

Source Law

Sec. 1. . . . Where any causeway, bridge, tunnel, turnpike, highway, or combination thereof constructed or acquired and financed hereunder extends from a point in the county issuing the bonds to a point in another county, it may be so constructed or acquired only after there shall have been adopted by the Commissioners Court of the county not issuing the bonds, a resolution approving and consenting to such construction or acquisition, and the Commissioners Court of any such county is hereby authorized to adopt such resolution. So long as and to the extent that the project, or part thereof, has not been designated as part of the State Highway System and is not considered a Turnpike Project, as defined in Chapter 410, Acts of the Fifty-Third Legislature, 1953, as amended, that part of the project (which has not been so designated and is not so considered) in each county shall be
considered a part of the county road system of such county, and all laws relating to the maintenance and operation of county roads are hereby made applicable to any project constructed or acquired hereunder in so far as they do not conflict with the provisions hereof; and each county into which the project extends may acquire necessary lands or right of ways or other property by purchase, condemnation or otherwise, under the General Laws of Texas, and the county issuing the bonds shall have such powers with respect to necessary lands or right of ways or other property in each county into which the project extends; provided that provision for the payment of the purchase price, award, or other costs may be upon such terms as may be agreed upon by the Commissioners Courts of the county issuing the bonds and the other county, and the proceeds of the bonds issued hereunder may be used for such purposes.

Revisor's Note

(1) Section 1, V.A.C.S. Article 6795b-1, refers to "a resolution approving and consenting to such construction." The revised law omits the reference to "approving" because "consenting" is within the meaning of "consenting."

(2) Section 1, V.A.C.S. Article 6795b-1, requires a resolution consenting to the construction or acquisition of a project to be adopted by the commissioners court of the county into which a project extends before the construction begins and authorizes the commissioners court to adopt such a resolution: "and the Commissioners Court of any such county is hereby authorized to adopt such resolution." The revised law omits the quoted language because the requirement for a resolution implies the authority of the commissioners court to adopt the resolution.

(3) Section 1, V.A.C.S. Article 6795b-1, refers to acquiring "necessary lands or right of ways or other property." The revised law omits the reference to "lands or right of ways or other" because "lands or right of ways" is within the meaning of "property" as defined by Section 311.005(4), Government Code (Code Construction Act).
(4) Section 1, V.A.C.S. Article 6795b-1, refers to "Chapter 410, Acts of the Fifty-Third Legislature, 1953, as amended" (V.A.C.S. Article 6674v). That statute is codified in this code as Chapter 361, and the revised law is drafted accordingly.

Revised Law

Sec. 284.068. RECONSTRUCTION OF CLOSED OR RELOCATED NONTOLL ROADS, STREETS, OR HIGHWAYS. If under this chapter a county closes or changes the location of a portion of a nontoll road, street, or highway, the county shall reconstruct the nontoll road, street, or highway at a location and in the manner the county determines will provide substantially the same access as the nontoll road, street, or highway being closed or relocated. (V.A.C.S. Art. 6795b-1, Sec. 4a (part).)

Source Law

Sec. 4a. ... If the county shall find it necessary to close or change the location of any portion of any nontoll road, street, or highway, it shall cause the nontoll road, street, or highway to be reconstructed at such a location and in such a fashion as the county shall determine will provide substantially the same access as the nontoll road, street, or highway being closed or relocated.

Revised Law

Sec. 284.069. TOLLS AND CHARGES. If bonds under this chapter are payable in whole or in part from project revenue, the county shall impose tolls and charges that are, together with other money or revenues available for the project, including ad valorem tax, sufficient to:

(1) pay the maintenance and operating expenses of the project;

(2) pay the principal of, premium of, if any, and interest on the bonds when due;

(3) establish a reserve for payment of bond principal, premium, and interest; and

(4) establish an adequate fund for project
depreciation and replacement. (V.A.C.S. Art. 6795b-1, Sec. 4 (part).)

Source Law

Sec. 4. ... If such bonds are payable in whole or in part from the revenues to be derived from the operation of the project, it shall be the mandatory duty of the county, which duty may be executed by an operating board appointed pursuant to Section 5b hereof, to impose such tolls and charges for the use of the project as will be fully sufficient, when taken with any other funds or revenues available for such purposes, including ad valorem taxes, to pay the maintenance and operating expenses of the project, to pay the principal of and premium, if any, and interest on the bonds when due, to establish such reserve therefor as may be provided, and to establish an adequate fund for depreciation and replacement. ... 

Revisor's Note

(1) Section 4, V.A.C.S. Article 6795b-1, states "it shall be the mandatory duty of the county ... to impose such tolls and charges ...." The reference to "the mandatory duty" is omitted from the revised law because "it shall be the mandatory duty of the county" is within the meaning of "the county shall." The word "shall" indicates a duty, and a duty is mandatory.

(2) Section 4, V.A.C.S. Article 6795b-1, refers to "to establish such reserve therefor as may be provided ...." The revised law substitutes the phrase "for payment of bond principal, premium, and interest" for "therefor" because the payment is the purpose of the reserve.

Revised Law

Sec. 284.070. NONPAYMENT OF TOLL; OFFENSE. (a) A person commits an offense if the person:

(1) operates a vehicle on a county project; and

(2) fails or refuses to pay a toll imposed under Section 284.069.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $100.
(c) The county may take and retain possession of a vehicle operated in violation of Subsection (a) until the amount of the toll and all charges in connection with the toll are paid.

(V.A.C.S. Art. 6795b-1, Sec. 8b.)

Source Law

Sec. 8b. A person commits an offense if the person operates a vehicle on a county project described in Section 1 of this Act and fails or refuses to pay a toll imposed as authorized by Section 4 of this Act. An offense under this section is punishable by a fine of not more than $100. In addition, the county may take and retain possession of the vehicle until the amount of the toll and all charges in connection with the toll are paid.

Revisor's Note

(1) Section 8b, V.A.C.S. Article 6795b-1, refers to a county project "described in Section 1 of this Act." The part of the statute referenced is codified in Section 284.001 of this chapter. The revised law omits the quoted language because the Section 1 description has been codified to define "project." That definition applies to the revised law.

(2) Section 8b, V.A.C.S. Article 6795b-1, refers to "Section 4 of this Act." The part of the statute referenced is codified in this chapter as Section 284.069, and the revised law is drafted accordingly.

Revised Law

Sec. 284.071. CONTROLLED ACCESS TO TOLL ROAD. (a) The commissioners court of a county by order may designate a toll road established for the county under this chapter as a controlled-access toll road.

(b) The commissioners court by order may:

(1) deny use of or access to or from the toll road by a motor vehicle, bicycle, or other vehicle or by a pedestrian;

(2) deny access to or from:

(A) the toll road;
(B) real property adjacent to the toll road; or
(C) a street, road, alley, highway, or other public or private way intersecting the toll road;

(3) designate locations on the toll road at which access to or from the toll road is permitted;

(4) control, restrict, and determine the type and extent of access permitted at a designated location of access to the toll road; or

(5) erect appropriate protective devices to preserve the utility, integrity, and use of the toll road. (V.A.C.S. Art. 6795b-1, Secs. 8c(a), (b), (c).)

Source Law
Sec. 8c. (a) In this section, "controlled access toll road" means a county toll road to or from which access is denied or controlled from or to abutting land or an intersecting street, road, highway, alley, or other public or private way.

(b) The commissioners court of a county operating under this Act may by order designate a toll road established for the county under this Act as a controlled access toll road.

(c) The commissioners court may by order:

(1) deny use or access to or from a controlled access toll road to motor vehicles, pedestrians, bicycles, and other vehicles, as determined by the commissioners court;

(2) deny access to or from a controlled access toll road, from or to real property adjacent to the toll road, and from or to a street, road, alley, highway, or other public or private way intersecting the toll road;

(3) designate points on the controlled access toll road at which access to or from the toll road is permitted;

(4) control, restrict, and determine the type and extent of access permitted at a designated point of access to the controlled access toll road; or

(5) erect appropriate protective devices to preserve the utility, integrity, and use of the controlled access toll road.

Revised Law
Sec. 284.072. PROMOTION OF TOLL ROADS. The commissioners court of a county may promote the use of a toll road operated under this chapter by appropriate means, including advertising or marketing as the commissioners court finds appropriate. (V.A.C.S. Art. 6795b-1, Sec. 8d.)
Sec. 8d. The commissioners court of a county operating under this Act may promote the use of toll roads by advertising, marketing, or any other means the commissioners court finds appropriate.

Sec. 284.073. POWERS AND DUTIES OF RECEIVER. (a) A receiver appointed for a project may enter, take possession of, and maintain the project.

(b) A receiver may collect all revenues and tolls from the project in the same manner as the county.

(c) A receiver shall dispose of the money collected in accordance with the obligations of the county under the bond instrument and as the court that appoints the receiver directs.

(V.A.C.S. Art. 6795b-1, Sec. 5 (part).)

Sec. 5. . . . If such receiver be appointed; he may enter and take possession of the project and maintain the project and collect and receive all revenues and tolls arising therefrom in the same manner as the county itself might do and shall dispose of such moneys and apply same in accordance with the obligations of the county under the bond resolution or trust indenture and as the Court may direct.

(1) Section 5, V.A.C.S. Article 6795b-1, states that a receiver may "collect and receive" revenues and tolls. The reference to "and receive" is omitted from the revised law because "receive" is within the meaning of "collect."

(2) Section 5, V.A.C.S. Article 6795b-1, refers to "shall dispose of such moneys and apply same in accordance with the obligations of the county." The reference to "and apply same" is omitted from the revised law because "and apply same" is within the meaning of "dispose of such moneys."

(3) Section 5, V.A.C.S. Article 6795b-1, refers
to a "bond resolution or trust indenture." The revised law substitutes "bond instrument" because the referenced term is included in the definition of "bond instrument" in Section 284.001 of this code.

Revised Law
Sec. 284.074. TAX AND ASSESSMENT EXEMPTION: PROJECTS. Each part of a project is exempt from taxation and assessment.

(V.A.C.S. Art. 6795b-1, Sec. 6 (part).)

Source Law
Sec. 6. ... the county ... shall not be required to pay any tax or assessment on the project or any part thereof...

Reviser's Note
Section 6, V.A.C.S. Article 6795b-1, contains reasons for the tax and assessment exemption granted by that section. These reasons are omitted from the revised law as unnecessary because an exemption needs no statutory justification. The exemption is entitled to a presumption of being constitutionally authorized, and a court is not limited to the reasons expressed to find justification for the exemption. The omitted provision reads:

Sec. 6. The accomplishment of the purposes stated in this Act being for the benefit of the people of this State and for the improvement of their commerce and property, the county in carrying out the purposes of this Act will be performing an essential governmental function and . . . .

Reviser's Note
(End of Subchapter)

Section 3, V.A.C.S. Article 6795b-1, provides in part that a county may award construction contracts without advertised notice for bids. The revised law omits this provision as impliedly repealed. Section 3 was enacted by Chapter 304, Acts of the 50th
Legislature, Regular Session, 1947. In 1985, the legislature adopted the County Purchasing Act, now Subchapter C, Chapter 262, Local Government Code, Sections 262.021 et seq., which requires competitive bids for certain contracts. The omitted provision reads:

Sec. 3. ... Construction contracts may be awarded with or without advertised notice for bids in such manner as may be deemed advisable by the Commissioners Court. ...

Revisor's Note
(End of Chapter)

(1) The revision omits Section 9, V.A.C.S. Article 6795b-1, providing that the article is severable, because that provision duplicates Section 311.032, Government Code (Code Construction Act), applicable to the revised law, 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. The omitted provision reads:

Sec. 9. If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any Court of competent jurisdiction to be invalid or ineffective, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment has been rendered.

(2) The revised law omits the following portion of Section 3a, V.A.C.S. Article 6795b-1, because the provision is executed:

Sec. 3a. ... If on the effective date of this amendment any agency of the State of Texas has expended funds in the amount of $75,000 or more for the purpose of conducting studies and surveys or making other investigations for the purpose of determining the feasibility and practicability of constructing a toll project, a county proceeding hereunder may not, without the consent of such state
agency, assume sole responsibility for the
construction, acquisition, improvement,
operation, and maintenance of the project
and thereby exclusively preempt the state
agency from constructing such project;
provided, however, that the foregoing
restriction set forth in this sentence
shall not apply to any county proceeding
hereunder if such county has given the
state agency written notice by certified
mail of its intention to proceed with
construction, acquisition, improvement,
operation, and maintenance of the project
and the state agency has failed or refused
for any reason within six months from the
date of such notice to issue its bonds in
the amount required to pay the cost of the
project.

CHAPTER 285. COUNTY REGULATION OF ROADSIDE VENDOR
AND SOLICITOR IN CERTAIN COUNTIES

Sec. 285.001. REGULATION OF ROADSIDE VENDOR AND SOLICITOR.

To promote the public safety, the commissioners court of a county
with a population of more than 1.4 million by order may regulate
the following if they occur on a public highway or road in the
unincorporated area of the county or in the right-of-way of the
highway or road:

(1) the sale of items by a vendor of food or
merchandise;

(2) the erection, maintenance, or placement of a
structure by a vendor of food or merchandise; and

(3) the solicitation of money. (V.A.C.S. Art. 6702-1,
Sec. 2.3015(a).)

Source Law

Sec. 2.3015. (a) To promote the public safety,
of more than 1.4 million, according to the most recent federal census, by order may regulate:

(1) the extent to which a vendor of food or merchandise of any kind may:
   (A) sell the items on a public highway or road in the unincorporated area of the county or in the right of way of the highway or road; and
   (B) erect, maintain, or place a structure on the highway or road or in the right of way; and

(2) the extent to which a person may solicit funds on a public highway or road in the unincorporated area of the county or in the right of way of the highway or road.

Revisor's Note

Section 2.3015(a), V.A.C.S. Article 6702-1, 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 the reference is unnecessary. Section 311.005(3), Government Code (Code Construction Act), and Section 312.011(20), Government Code, define "population" as population according to the most recent federal decennial census. That definition applies to the revised law.

Revised Law

Sec. 285.002. PERMIT; REMOVAL OF STRUCTURE. The commissioners court may:

(1) require a vendor or a person soliciting money to obtain a permit to sell the food or merchandise or to solicit money;

(2) charge a reasonable fee for the permit; and

(3) provide for the removal of a structure that is in violation of the regulations. (V.A.C.S. Art. 6702-1, Sec. 2.3015(b).)

Source Law

(b) As part of the regulations, the commissioners court may:

(1) require a vendor or a person soliciting funds to obtain a permit to sell the food or merchandise or to solicit the funds;
(2) charge a reasonable fee for the permit; and
(3) provide for the removal of any structure that is on a public highway or road or in a right of way of a public highway or road in violation of the regulations.

Revisor's Note

Section 2.3015(b)(3), V.A.C.S. Article 6702-1, provides that as part of the regulations adopted by the commissioners court, the court may provide for the removal of a structure "that is on a public highway or road or in a right of way of a public highway or road" in violation of the regulations. The revised law omits as unnecessary the phrase "that is on a public highway or road or in a right of way of a public highway or road" because Section 285.001 of this chapter provides that the commissioners court may regulate the erection, maintenance, or placement of a structure under this chapter only if the structure is on a public highway, road, or right-of-way.

Revised Law

Sec. 285.003. CONFLICT WITH STATUTE OR STATE AGENCY RULE. If a regulation adopted under this chapter conflicts with a statute or state agency rule, the statute or rule prevails to the extent of the conflict. (V.A.C.S. Art. 6702-1, Sec. 2.3015(c).)

Source Law

(c) If a regulation adopted under this section conflicts with a statute or a state agency rule, the statute or rule prevails to the extent of the conflict.

Revised Law

Sec. 285.004. VIOLATION OF REGULATION; OFFENSE. (a) A person commits an offense if the person knowingly:

(1) violates a regulation adopted under this chapter;

or

(2) obstructs or threatens to obstruct the removal of...
a structure that is in violation of a regulation adopted under this chapter.

(b) Each day a violation continues is a separate offense.

(c) An offense under this section is a Class C misdemeanor.

(V.A.C.S. Art. 6702-1, Sec. 2.3015(d).)

Source Law

(d) A person commits an offense if the person intentionally or knowingly violates a regulation adopted under this section or obstructs or threatens to obstruct the removal of a structure that is on a public highway or road or in the right of way of a public highway or road in violation of a regulation adopted under this section. Each day a violation continues constitutes a separate offense. An offense under this subsection is a Class C misdemeanor.

Revisor's Note

(1) Section 2.3015(d), V.A.C.S. Article 6702-1, refers to the offense of "intentionally or knowingly" violating certain regulations. The revised law omits the term "intentionally" because under Section 6.02, Penal Code, "intentionally" is a higher culpable mental state than "knowingly." For the purpose of prosecution of this offense, the higher degree of culpability is unnecessary.

(2) Section 2.3015(d), V.A.C.S. Article 6702-1, provides that a person commits an offense if the person obstructs or threatens to obstruct the removal of a structure "that is on a public highway or road or in the right of way of a public highway or road" in violation of a regulation of the commissioners court under Section 2.3015. The revised law omits as unnecessary the phrase "that is on a public highway or road or in the right of way of a public highway or road" for the reason stated in the revisor's note to Section 285.002 of this chapter.
CHAPTER 286. ROAD LAWS RELATING TO SPECIFIC COUNTIES

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CHAPTER 286. ROAD LAWS RELATING TO SPECIFIC COUNTIES

SUBCHAPTER A. ROAD IMPROVEMENTS AND ASSESSMENTS BY

GALVESTON OR CAMERON COUNTY COMMISSIONERS COURT

Revised Law

Sec. 286.001. APPLICABILITY. This subchapter applies only to Galveston County and Cameron County. (New.)

Revisor's Note

This section is added as a convenience to the reader because the source law for this subchapter, V.A.C.S. Article 6812f, applies only to Galveston County and Cameron County.
Sec. 286.002. ROAD IMPROVEMENT AND ASSESSMENT. (a) The commissioners court of the county may improve a county road in the county by:

(1) filling, grading, raising, paving, or repairing the road in a permanent manner;
(2) constructing, repairing, or realigning a curb, gutter, or sidewalk; or
(3) constructing a drain or culvert.

(b) The commissioners court by order may assess against property abutting the portion of the county road to be improved and against the owners of that property:

(1) all or part of the cost of constructing, repairing, or realigning a curb, gutter, or sidewalk; and
(2) not more than nine-tenths of the cost of any other improvement.

(c) The commissioners court may:

(1) determine the amount of the assessment and any other necessary matter;
(2) provide the terms of payment and default of the assessment;
(3) prescribe the interest rate on the assessment, not to exceed eight percent a year;
(4) make the assessment before, during, or after the construction of the improvement;
(5) make an assessment against several parcels of property in one assessment when the parcels are owned by the same person; and
(6) jointly assess property owned jointly.

(d) An assessment authorized by this section:

(1) does not mature before the county accepts the improvements for which the assessment is made;
(2) is collectable with interest, cost of collection, and reasonable attorney's fees, if incurred;
(3) is a personal liability and charge against the owner of the assessed property, regardless of whether the owner is named; and

(4) is a first and prior lien on the assessed property and superior to any other lien or claim on the property except county, school district, or municipal ad valorem taxes from the date the commissioners court orders the improvement of the road abutting the property. (V.A.C.S. Art. 6812f, Secs. 1, 3(a), 3(b) (part), 5(c), 6, 8(d) (part).)

Source Law

Art. 6812f
Sec. 1. The Commissioners Court of Galveston or Cameron County may cause to be improved any county road in the county, whether by filling, grading, raising, paving, or repairing in a permanent manner, or by constructing, reconstructing, repairing, or realigning curbs, gutters, and sidewalks, or by constructing drains and culverts.

Sec. 3. (a) The commissioners court by order may assess all or any part of the cost of constructing, reconstructing, repairing, or realigning curbs, gutters, and sidewalks, and not more than nine-tenths of the cost of any other improvements authorized by this Act, against property abutting on the portion of the county road to be improved, and against the owners of that property. The commissioners court may provide the time, terms, and conditions of payment and default of the assessments, and may prescribe the rate of interest on them, which may not exceed eight percent a year.

(b) Any assessment against abutting property is a first and prior lien on the property from the date improvements are ordered, and is a personal liability and charge against the owner or owners of the property, whether named or not. . . .

[Sec. 5]
(c) The assessments are collectable with interest, expense of collections, and reasonable attorney's fee, if any are incurred, and are a first and prior lien on the property assessed, superior to all other liens and claims except county, school district, and city ad valorem taxes, and are a personal liability and charge against owners of the property assessed.

Sec. 6. Assessments against several parcels of property may be made in one assessment when owned by the same person, firm, corporation, or estate, and property owned jointly may be assessed jointly.

[Sec. 8]
(d) The commissioners court . . . may determine the amount of assessments and all other matters necessary, and may levy the assessments before, during, or after the construction of the improvements, except no part of any assessment may be made to mature prior
to acceptance by the county of the improvements for which the assessment is levied.

Revisor's Note

(1) Section 3(a), V.A.C.S. Article 6812f, refers to the "time, terms, and conditions of payment." The references to "time" and "conditions" are omitted from the revised law because "time" and "conditions" are included within the meaning of "terms."

(2) Section 3(a), V.A.C.S. Article 6812f, refers to "constructing, reconstructing, repairing, or realigning curbs, gutters, and sidewalks . . . ." The reference to "reconstructing" is omitted from the revised law because "reconstructing" is included within the meaning of "constructing" and "repairing."

(3) Section 5(c), V.A.C.S. Article 6812f, refers to "city ad valorem taxes." The revised law substitutes the term "municipal" for "city" because "municipal" is the term used in the Local Government Code.

(4) Section 6, V.A.C.S. Article 6812f, refers to "person, firm, corporation, or estate." The reference to "firm, corporation, or estate" is omitted from the revised law because under Section 311.005(2), Government Code (Code Construction Act), a "person" is defined to include a corporation or any other legal entity. That definition applies to the revised law.

Revised Law

Sec. 286.003. ASSESSMENT LIMITED. (a) The commissioners court may not make an assessment against abutting property or the owners of the property in excess of the special benefit to the property and its owner in enhanced value caused by an improvement ordered under Section 286.002(a).

(b) A railroad right-of-way does not benefit from an
improvement described by Section 286.002(a), and the commissioners
court may not assess the cost of the improvement against a railroad
right-of-way. (V.A.C.S. Art. 6812f, Secs. 4 (part), 8(a) (part).)

Source Law

Sec. 4. . . . Provided, however, it is expressly found and determined that railroad
rights-of-way will not benefit from such improvements and may not be assessed therefor.

Sec. 8. (a) . . . no assessment may be made against any abutting property or owners of it in excess
of the special benefits to the property and owners resulting from the enhanced value of the property by
means of the improvement, as may be determined at the hearing.

Revised Law

Sec. 286.004. ASSESSMENT OF EXEMPT PROPERTY. (a) This subchapter does not authorize the commissioners court to create a
lien against an interest in property that is exempt from the lien of assessment at the time the commissioners court orders a county road to be improved.

(b) An owner of the exempt property is personally liable for an assessment related to the property, without regard to the exemption from the lien. (V.A.C.S. Art. 6812f, Sec. 3(b) (part).)

Source Law

(b) . . . Nothing in this Act empowers the commissioners court to fix a lien against any interest in property that is exempt at the time the improvements are ordered, but the owner or owners of the property are personally liable for any assessment in connection with the property.

Revised Law

Sec. 286.005. APPORTIONMENT OF COSTS. (a) The commissioners court shall apportion the part of the cost of an improvement assessed against abutting property among the parcels of the abutting property and the property's owners in accordance with the front foot rule.

(b) If, in the opinion of the commissioners court, application of the front foot rule would result in injustice or
inequity in a particular case, the commissioners court may apportion and assess the cost in the proportion the commissioners court determines just and equitable to produce a substantial equality of benefits received and burdens imposed. (V.A.C.S. Art. 6812f, Sec. 4 (part).)

Source Law

Sec. 4. The part of the cost of improvements on each portion of the county road ordered improved which is assessed against abutting property and owners of the property shall be apportioned among the parcels of abutting property and the owners thereof in accordance with the front foot plan or rule, except that if the application of this rule would, in the judgment of the commissioners court, in particular cases, result in injustice or inequity, the commissioners court may apportion and assess the costs against abutting property owners in a manner that the commissioners court determines is just and equitable, so as to produce a substantial equality of benefits received and burdens imposed. . . .

Revisor's Note

Section 4, V.A.C.S. Article 6812f, refers to "front foot plan or rule." The reference to "plan" is omitted from the revised law because in this context the terms "plan" and "rule" are synonymous and the latter is more commonly used.

Revised Law

Sec. 286.006. CHANGES IN IMPROVEMENT PROCEEDINGS; ABANDONMENT. (a) The commissioners court may change a plan, method, or contract relating to an improvement.

(b) The commissioners court may not make a change that substantially affects the nature or quality of an improvement unless the commissioners court, by a four-fifths vote, determines that it is impractical to proceed with the improvement as proposed and, after the vote, the commissioners court:

(1) obtains the consent of the person with whom the commissioners court has contracted for the construction of the improvements;

(2) obtains a new estimate of the cost of the
improvement; and

(3) holds a new hearing, with notice as required by
this subchapter.

(c) The commissioners court at any time may abandon an
improvement with the consent of a person who has contracted with
the commissioners court for the construction of the improvement.

(d) The commissioners court by order shall cancel an
assessment made for an abandoned improvement. (V.A.C.S.
Art. 6812f, Sec. 10.)

Source Law

Sec. 10. The commissioners court may provide for
any changes in plans, methods, or contracts for
improvements, but any change substantially affecting
the nature or quality of any improvements may be made
only after it is determined by a four-fifths vote of
the commissioners court that it is not practical to
proceed with the improvement as previously provided,
and following any such vote, the commissioners court
may make the substantial change only after first
obtaining the consent of the person, firm, or
corporation with which the commissioners court has
contracted for construction of the improvements, and
after obtaining a new estimate for the cost of the
improvements and holding a new hearing, together with
the issuance of proper notice as required by this Act.
The commissioners court may at any time abandon any
improvement with the consent of the person, firm, or
corporation constructing the improvements, and shall by
order cancel any assessments levied for abandoned
improvements.

Revisor's Note

Section 10, V.A.C.S. Article 6812f, refers to a
"person, firm, or corporation." The revised law omits
the reference to "firm or corporation" for the reason
stated in Revisor's Note (4) under Section 286.002 of
this code.

Revised Law

Sec. 286.007. NOTICE AND OTHER PREHEARING REQUIREMENTS. (a)
A commissioners court may make an assessment under Section 286.002
only after notice and an opportunity for a hearing is provided in
accordance with this subchapter.

(b) Notice of the hearing must be published at least three
times in a newspaper of general circulation in the county in which
the assessment is to be made. The first publication of the notice
must appear not later than the 21st day before the date of the
hearing.

(c) Notice of the hearing must be mailed with postage
prepaid to the address of the owner of the property that abuts the
county road to be improved, as determined from the current rendered
and unrendered county tax rolls. The notice must be mailed 14 days
before the date of the hearing.

(d) The mailed notice:

(1) is not required if the county tax rolls list the
owners of the property as unknown; and

(2) may be addressed to the estate if the tax rolls
show the owner of the property is an estate.

(e) To be sufficient and binding on a person who owns or
claims the property or an interest in the property, the mailed
notice must:

(1) generally describe the nature of the improvement
for which the assessment is to be made;

(2) describe the county road to be improved or the
portion of the county road to which the improvement is related;

(3) state the estimated cost per front foot proposed
to be assessed against the property or the property's owners;

(4) state the estimated total cost of the improvement;

and

(5) state the time and place of the hearing.

(f) The mailed notice may consist of a copy of the published
notice if the notice contains the information required by
Subsection (e). (V.A.C.S. Art. 6812f, Secs. 8(a) (part), (b).)

Source Law

Sec. 8. (a) No assessment may be made against
any abutting property or its owners until after notice
and opportunity for hearing has been provided in
accordance with this Act . . . .

(b) Notice shall be by advertisement inserted at
least three times in a newspaper of general circulation
in the county, the first publication to be made at
least 21 days before the date of the hearing. Additional written notice of the hearing shall be given by depositing in the United States mail, at least 14 days before the date of the hearing, postage prepaid, in an envelope addressed to the owners of the respective properties abutting the county road to be improved, as the names of the owners are shown on the then current rendered or unrendered tax rolls of the county, at the addresses listed there. To be sufficient and binding on any person owning or claiming the abutting property, or any interest in it, the mailed notice must describe in general terms the nature of the improvements for which assessments are to be levied, the county road or portion of it to be improved, the estimated cost per front foot proposed to be assessed against the property and the owner or owners of the property, the estimated total cost of the improvement or improvements, and the time and place of the hearing. The notice to be mailed may be a copy of the public notice, which must contain all of the information required for a mailed notice to be sufficient and binding. If the owner is listed on the county tax rolls as "unknown," no notice is required to be mailed. If the owner is shown on the county tax roll as an estate, the mailed notice may be addressed to the estate.

Revised Law

Sec. 286.008. HEARING. The commissioners court shall hold a hearing at which a person who owns an interest in property that abuts a county road that is to be improved under this subchapter may be heard on any matter relating to the improvement or a proposed assessment including:

1. the amount of the assessment;
2. the lien and liability created by the assessment;
3. the special benefit to the property and the property owner because of the improvement; and
4. the accuracy, sufficiency, regularity, and validity of a proceeding or contract related to the improvement or assessment. (V.A.C.S. Art. 6812f, Sec. 8(c).)

Source Law

(c) The commissioners court shall hold the hearing. Any person owning abutting property or any interest in it may be heard at the hearing on any matter relating to the improvement or assessment, including the amount of the proposed assessment or assessments, the lien and liability created by it, the special benefits to the abutting property and owners of the property by the improvements for which assessments are to be levied, and the accuracy, sufficiency, regularity, and validity of the proceedings and contract in connection with the improvements and
proposed assessments.

Revisor's Note

Section 8(c), V.A.C.S. Article 6812f, provides that a person who owns "property or any interest in it" may be heard at a hearing relating to the improvement or assessment. The revised law provides that a person who "owns an interest in" the property may be heard at the hearing because owning property is included within the meaning of owning "an interest in" property.

Revised Law

Sec. 286.009. APPEAL. (a) Not later than the 15th day after the date the commissioners court makes an assessment under Section 286.002, a person who owns or claims an interest in the assessed property may appeal the assessment in district court. The person may contest:

(1) the amount of the assessment;
(2) an inaccuracy, irregularity, invalidity, or insufficiency in a proceeding or contract related to the improvement or assessment; or
(3) any other matter that is not in the discretion of the commissioners court.

(b) A person who does not bring a suit within the time provided by Subsection (a):

(1) waives the right to contest a matter that might have been heard at the hearing; and
(2) is barred and estopped from contesting the assessment or any matter related to the assessment. (V.A.C.S. Art. 6812f, Sec. 9 (part).)

Source Law

Sec. 9. Any person owning or claiming any interest in any property assessed under the provisions of this Act, who desires to contest any assessment because of the amount of it or any inaccuracy, irregularity, invalidity, or insufficiency of the proceedings or contract with reference to it, or with reference to the improvements, or because of any matter
or thing not in the discretion of the commissioners court, may appeal to a district court in the county within 15 days after the time the assessment is levied. Any person who fails to institute suit within this time shall be held to have waived every matter that might have been heard at the hearing before the commissioners court, and shall be barred and estopped from contesting or questioning the assessment or any matter relating to it.

Revised Law

Sec. 286.010. DEFENSES TO ACTIONS FOR ASSESSMENTS. The only defenses to an assessment in a suit to enforce the assessment are that:

(1) the assessment exceeds the amount of the estimated assessment stated in the notice; or

(2) notice of the hearing:

(A) was not mailed, delivered, or published as required by Section 286.007; or

(B) did not contain the information required by Section 286.007. (V.A.C.S. Art. 6812f, Sec. 9 (part)).

Source Law

Sec. 9. ... the only defense to any assessment in a suit to enforce it is that the notice of hearing was not mailed or delivered as required by this Act, was not published, or did not contain the information required by this Act, or that the assessments exceeded the amount of the estimate.

Revised Law

Sec. 286.011. WORD OR ACT OF OFFICER OR EMPLOYEE. Nothing said or done by a county officer or employee or a member of the commissioners court affects this subchapter. (V.A.C.S. Art. 6812f, Sec. 9 (part)).

Source Law

Sec. 9. ... No words or acts of any officer or employee of the county, or any member of the commissioners court, shall in any way affect the force and effect of the provisions of this Act.

Revised Law

Sec. 286.012. CERTIFICATE OF ASSESSMENT. (a) The
commissioners court may issue an assignable certificate that:

(1) is evidence of an assessment made under this subchapter; and

(2) declares:

(A) the lien against the property assessed; or

(B) the liability of the true owner of the property assessed.

(b) The commissioners court may set the terms of the certificate.

(c) A recital in a certificate is prima facie evidence of the matter recited and further proof of the matter is not required if the certificate substantially states that:

(1) the proceedings referred to in the certificate were in compliance with the law; and

(2) the prerequisites to imposing the assessment lien against the property described in the certificate and the personal liability of the property owner have been performed.

(d) In a suit on an assessment or reassessment in evidence of which a certificate is issued under this subchapter, it is sufficient to allege the substance of the recitals in the certificate and that the recitals are true. Further allegations with reference to a proceeding relating to an original assessment or subsequent assessment are not necessary. (V.A.C.S. Art. 6812f, Secs. 5(a), (b).

Source Law

Sec. 5. (a) The commissioners court may order the issuance of assignable certificates in evidence of assessments levied, declaring the lien on the property and the liability of the true owner or owners of the property, and may fix the terms and conditions of the certificates. Any certificate that recites substantially that the proceedings referred to in it have occurred in compliance with law and that all prerequisites to the fixing of the assessment lien against the property described in the certificate and the personal liability of the owner or owners of the property have been performed, is prima facie evidence of all matters recited in the certificate, and no further proof of the matters is required.

(b) In any suit on an assessment or reassessment in evidence of which a certificate may be issued in accordance with the provisions of this Act, it is
sufficient to allege the substance of the recitals in the certificate and that the recitals are in fact true. Further allegations as to the proceedings relating to the assessment or reassessment are not necessary.

Revisor's Note

Section 5(a), V.A.C.S. Article 6812f, refers to the "terms and conditions of the certificates." The reference to "conditions" is omitted from the revised law for the reason stated in Revisor's Note (1) under Section 286.002 of this code.

Revised Law

Sec. 286.013. VALIDITY OF ASSESSMENT. An assessment related to the cost of an improvement that is to be constructed is not valid unless the commissioners court:

(1) makes or causes to be made an estimate of the cost of the improvement; and

(2) includes the estimate in a published or mailed notice required by Section 286.007. (V.A.C.S. Art. 6812f, Sec. 7.)

Source Law

Sec. 7. No assessment is valid unless the commissioners court makes or causes to be made an estimate of the cost of the improvement or improvements to be constructed, and the estimate is included in any published or mailed notice of the public hearing required by this Act.

Revised Law

Sec. 286.014. CORRECTION OF ASSESSMENT; SUBSEQUENT ASSESSMENT. (a) If an assessment is held or determined to be invalid or unenforceable, the commissioners court may correct:

(1) a deficiency in a proceeding relating to the assessment; or

(2) an error, inaccuracy, irregularity, or invalidity relating to the assessment.

(b) The commissioners court may make and impose a subsequent assessment after a notice and hearing that comply as nearly as possible with the requirements for the original notice and hearing.
(c) A recital in a certificate issued as evidence of a subsequent assessment has the same force as a recital in a certificate related to an original assessment. (V.A.C.S. Art. 6812f, Secs. 8(d) (part), 11.)

Source Law

[Sec. 8]
(d) The commissioners court may correct any errors, inaccuracies, irregularities, and invalidities, and may supply any deficiencies . . . .

Sec. 11. If any assessment is for any reason held or determined to be invalid or unenforceable, the commissioners court may supply any deficiency in proceedings and correct any mistake or irregularity relating to the assessment, and may at any time make and levy reassessments after notice and hearing as nearly as possible in the manner provided by this Act for the original improvements. Recitals in certificates issued in evidence of reassessments shall have the same force as provided for recitals relating to original assessments.

Revisor's Note
(End of Subchapter)

The revised law omits Section 2, V.A.C.S. Article 6812f, as unnecessary because the substance of the section is clear from the remaining sections of the article and from Section 9, Article VIII, Texas Constitution. The omitted section reads as follows:

Sec. 2. This Act is a local law relating to the maintenance of public roads authorized by Article VIII, Section 9, of the Texas Constitution.

[Sections 286.015-286.040 reserved for expansion]

SUBCHAPTER B. ROAD IMPROVEMENTS AND ASSESSMENTS BY LIVE OAK COUNTY COMMISSIONERS COURT

Revised Law

Sec. 286.041. APPLICABILITY. This subchapter applies only to Live Oak County. (V.A.C.S. Art. 6812g, Sec. 1.)

Source Law

Art. 6812g
Sec. 1. This Act applies only to Live Oak County.
Sec. 286.042. ASSESSMENT PROVISIONS. (a) The commissioners court of the county may finance all or part of the cost of improving a portion of the county road system located in a recorded subdivision and outside the limits of a municipality by imposing an assessment against real property that abuts the portion of the road that is to be improved and against the owners of the property.

(b) The commissioners court may:

(1) determine the terms of payment and default of the assessment;

(2) determine the rate of interest of the assessment, not to exceed 10 percent a year;

(3) make an assessment against several parcels of property in one assessment when the parcels are owned by the same person; and

(4) jointly assess property owned jointly.

(c) An assessment authorized by this section does not mature before the commissioners court accepts the improvement for which the assessment is made.

(d) An owner of an interest in property against which the commissioners court makes an assessment under this section is personally liable for the assessed amount. Each owner of property owned jointly is jointly and severally liable for the assessment.

(V.A.C.S. Art. 6812g, Secs. 2; 6(b), (c); 7(b) (part), (d).)

Source Law
Sec. 2. The commissioners court may provide for financing all or part of the cost of improving any portion of the county road system that is located in a recorded subdivision and outside the limits of an incorporated city or town by levying special assessments against real property abutting the portion of the road that is improved and against the owners of the property.

[Sec. 6]
(b) If several parcels of property are owned by the same person or entity, the commissioners court may make one assessment covering them all. If property is owned jointly, the commissioners court may assess the owners jointly.

(c) The commissioners court may determine the time, terms, conditions of payment and default, and
rate of interest, which may not exceed 10 percent a year, of the assessments levied.

[Sec. 7]

(b) The owner of an interest in property against which the commissioners court has levied an assessment for improvements is personally liable for the amount assessed. Liability for an assessment levied against property having more than one owner is joint and several. . . .

(d) No part of an assessment matures before the commissioners court accepts the improvements for which the assessment is levied.

Revisor's Note

(1) Section 2, V.A.C.S. Article 6812g, refers to the imposition of "special assessments" against certain real property. The revised law omits the designation of the assessment as "special" because that designation is unnecessary.

(2) Section 6(c), V.A.C.S. Article 6812g, refers to the "time, terms, conditions of payment and default." The references to "time" and "conditions" are omitted from the revised law for the reason stated in Revisor's Note (1) under Section 286.002 of this code.

(3) Section 2, V.A.C.S. Article 6812g, refers to an "incorporated city or town." The revised law omits "incorporated" because under the Local Government Code all municipalities must be incorporated. The revised law also substitutes the term "municipality" for "city or town" because that is the term used in the Local Government Code.

Revised Law

Sec. 286.043. ASSESSMENT LIEN. (a) The county has a lien on assessed property under this subchapter that takes effect on the date the assessment is made.

(b) The lien has the same priority as a lien for county ad valorem taxes. (V.A.C.S. Art. 6812g, Sec. 7(a).)
Sec. 7. (a) The county has a lien against property assessed under this Act from the date the assessment is levied. This lien has the same priority as a lien for county ad valorem taxes.

Revised Law

Sec. 286.044. ASSESSMENT LIENS ON CERTAIN EXEMPT PROPERTY.

(a) The county may not assess a lien against property that on the date the commissioners court orders the assessment is exempt by law from execution on a judgment for debt.

(b) A property owner may waive an exemption to which the owner is entitled and voluntarily grant an assessment lien against the property in the same manner provided by law for granting a mechanic's lien for a homestead improvement. (V.A.C.S. Art. 6812g, Sec. 7(b) (part).)

Revised Law

Sec. 286.045. APPORTIONMENT OF COSTS.

(a) The commissioners court shall apportion the assessed cost of improving a county road in accordance with the front foot rule which may vary among the assessed properties.

(b) To produce a substantial equality of burdens imposed in relation to benefits received, the commissioners court shall determine an assessment under this section in a just and equitable manner, keeping in mind the enhanced value to be gained by the abutting property and the property's owners because of the improvement.

(c) The commissioners court may not impose an assessment in excess of the enhanced value derived from the improvement by the
property or the property owner. (V.A.C.S. Art. 6812g, Sec. 6(a.).)

Source Law

Sec. 6. (a) The commissioners court shall apportion the cost of the improvements assessed against abutting property and property owners on a front footage basis, which may vary among the properties assessed. In order to produce a substantial equality of burdens imposed in relation to benefits received, the commissioners court shall determine assessments in a just and equitable manner, keeping in mind the enhanced value to be gained by the abutting property and property owners. The commissioners court may not levy an assessment in excess of the special benefit in enhanced value to the property or property owner.

Revised Law

Sec. 286.046. PLAN OF PROPOSED ROAD IMPROVEMENT. (a) The commissioners court shall prepare a plan of each proposed improvement that is to be financed by an assessment under Section 286.042.

(b) The plan must:

(1) specify the nature and location of the improvement;

(2) include an estimate of the total cost of the improvement;

(3) state the total amount of the costs to be financed by the assessment; and

(4) include an estimate of the cost for each front foot to be assessed against the property abutting the road to be improved.

(c) The plan must specify each variation if the estimate of the cost for each front foot is not uniform. (V.A.C.S. Art. 6812g, Sec. 3.)

Source Law

Sec. 3. The commissioners court shall prepare a plan of each proposed improvement to be financed by special assessments. The plan must specify the nature of the proposed improvement, the location of the improvement, an estimate of the total cost of the improvement, a statement of the total amount of the costs to be financed by special assessments, and an estimate of the cost per front foot to be assessed against property abutting the improvement. If the estimate of costs to be assessed per front foot is not
uniform, each variation must be specified in the plan.

Revised Law

Sec. 286.047. NOTICE AND ORDER FOR HEARING. (a) After preparing the plan required by Section 286.046, the commissioners court by order shall set a time, date, and place for a public hearing on the proposed improvement.

(b) The commissioners court shall publish notice of the hearing once a week for at least three consecutive weeks in a newspaper of general circulation in the area where the improvement is located. The first publication of the notice must appear not later than the 21st day before the date of the hearing.

(c) The commissioners court shall mail or personally deliver written notice of the hearing to the owner of each parcel of property subject to the proposed assessment. The commissioners court shall deliver or mail the notice not later than the 14th day before the date of the hearing. An owner is not entitled to notice under this subsection if the owner's name or address is not shown on the county tax roll.

(d) Notice provided under this section must contain:

(1) a general description of the proposed improvement that is to be financed by the assessment;

(2) an estimate of the proposed assessment for each front foot of abutting property;

(3) an estimate of the total cost of the proposed improvement to be made on each portion of road;

(4) the location of the proposed improvement; and

(5) the date, time, and place of the hearing.

(e) If the estimate of the proposed assessment for each front foot of abutting property is not uniform, the notice must specify each variation and identify the affected property.

(f) Notice required by this section is in addition to notice otherwise required by law. (V.A.C.S. Art. 6812g, Sec. 4.)
Sec. 4. (a) After preparing a plan of a proposed improvement as required by this Act, the commissioners court by order shall set a time, date, and place for a public hearing on the proposed improvement.

(b) In addition to notice otherwise required by law, the commissioners court shall publish notice of the hearing in a newspaper of general circulation in the area where the proposed improvement is located. The notice must be published once each week for at least three consecutive weeks. The first publication must appear no later than the 21st day before the date of the hearing.

(c) The commissioners court must also give written notice of the hearing to the owner of each parcel of property subject to assessment under the plan of the proposed improvement. For purposes of this section, the owner of a parcel of property is the owner as shown on the current county tax roll. An owner is not entitled to notice under this subsection if the owner's name or address is not listed on the current county tax roll. Notice under this subsection must be delivered personally or sent by the United States mail. The notice must be delivered or deposited in the mail not later than the 14th day before the date of the hearing.

(d) Notice under Subsection (b) or (c) of this section must contain the following information:

1. a general description of the proposed improvement which is to be financed by special assessments;
2. an estimate of the proposed assessment per front foot of abutting property;
3. an estimate of the total cost of the proposed improvement to be made on each portion of road;
4. the location of the proposed improvement; and
5. the date, time, and place of the hearing on the proposed improvement.

(e) If the estimate under Subsection (d)(2) of this section is not uniform, then the notice under Subsections (b) and (c) of this section must specify each variation and identify the property which is affected.

Sec. 286.048. HEARING. (a) The commissioners court shall hold a public hearing at which an owner of an interest in property that abuts a proposed improvement may contest:

1. the amount of the assessment; or
2. the accuracy, sufficiency, or validity of a proceeding or determination of the commissioners court related to the improvement or assessment.

(b) After correcting a deficiency or error in its proceeding
or determinations, the commissioners court by order may make an 
assessment against property that abuts the improvement. (V.A.C.S. 
Art. 6812g, Sec. 5.)

**Source Law**

Sec. 5. The commissioners court shall hold a 
public hearing at which any owner of an interest in 
property abutting a proposed improvement is entitled to 
contest the amount of the assessment as well as the 
accuracy, sufficiency, and validity of the proceedings 
and the determinations of the commissioners court 
related to the proposed improvement and assessment. 
After correcting any deficiencies or errors in its 
proceedings or determinations, the commissioners court 
by order may levy assessments against property abutting 
the proposed improvement.

**Revised Law**

Sec. 286.049. APPEAL. (a) Not later than the 15th day 
after the date the commissioners court makes an assessment under 
this subchapter, the owner of an interest in property against which 
the assessment has been made may file suit in district court to 
contest the:

(1) amount of the assessment; or
(2) accuracy or validity of a proceeding or 
determination related to the assessment or improvement.

(b) A property owner may file suit under this section not 
later than the 15th day after the date the property owner receives 
actual notice of the results of the public hearing if the owner 
shows by a preponderance of the evidence that notice of the hearing 
was not:

(1) mailed or delivered to the owner in the form or 
manner required by Section 286.047; or
(2) published in the form or manner required by 
Section 286.047.

(c) A person who does not file suit within the time stated 
in this section waives a complaint because of a determination or 
proceeding of the commissioners court related to an order for an 
improvement or an assessment. (V.A.C.S. Art. 6812g, Sec. 10.)

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Sec. 10. The owner of an interest in property against which an assessment for improvements has been levied may contest the amount of the assessment, or the accuracy or validity of the proceedings or determinations related to the assessment or the improvements, by filing a suit for that purpose in the district court not later than the 15th day after the date on which the assessment is ordered. The 15-day time limit begins on the day after the date on which the property owner receives actual notice of the results of the hearing if the property owner shows by a preponderance of the evidence that notice of hearing was not mailed or delivered to the owner or published in the form or manner required by this Act. A complaint based on a determination or proceeding of the commissioners court related to an order for improvements or an assessment is waived if not filed within the time prescribed.

Sec. 286.050. ENFORCEMENT OF ASSESSMENT OR LIABILITY. (a) A lien against assessed property and the personal liability of the owner may be enforced by suit in district court. An amount equal to the interest on the assessment and an amount equal to collection expenses, including attorney's fees, are included in the lien and may be recovered.

(b) In a suit brought to enforce an assessment, it is a defense that:

(1) notice of the hearing was not delivered or published in the form or manner required by Section 286.047; or

(2) the amount of the assessment exceeds the estimate given in the notice provided under Section 286.047. (V.A.C.S. Art. 6812g, Sec. 7(c).)

(c) The lien against assessed property and the personal liability of the owner of the property may be enforced by suit in the district court. Interest and the expenses of collection, including attorneys' fees, may also be recovered, and are included in the assessment lien. It is a defense to a suit brought to enforce the levy of an assessment that the notice of hearing was not delivered or published in the form or manner required, or that the amount of the assessment exceeded the estimate given in the notice.
Sec. 286.051. CERTIFICATE OF ASSESSMENT. (a) The commissioners court of the county may issue an assignable certificate in the county's name that:

(1) certifies an assessment imposed under this subchapter; and

(2) declares:

(A) the existence of a lien against the assessed property; or

(B) the personal liability of the property owner.

(b) The commissioners court may determine the terms of the certificate.

(c) The certificate is prima facie evidence of a recital in the certificate that states:

(1) a proceeding ordering the improvements referred to in the certificate was conducted in compliance with the law; and

(2) the prerequisites to creating the assessment lien against the property described in the certificate and the personal liability of the property owner have been met. (V.A.C.S. Art. 6812g, Sec. 8.)

Sec. 8. (a) The commissioners court may issue assignable certificates in the name of the county which evidence the assessments levied and which declare the existence of a lien against the assessed property and the personal liability of the property owner. The commissioners court may determine the terms and conditions of the certificates.

(b) If a certificate recites that the proceedings ordering the improvements referred to in the certificate were conducted in compliance with the law, and that all prerequisites to fixing the assessment lien against the property described in the certificate and the personal liability of the property owner have been met, the certificate is prima facie evidence of its recitals.

Section 8(a), V.A.C.S. Article 6812g, refers to the "terms and conditions" of the certificates. The
reference to "conditions" is omitted from the revised law for the reason stated in Reviser's Note (1) under Section 286.002 of this code.

Revised Law

Sec. 286.052. CORRECTION OF ASSESSMENT; SUBSEQUENT ASSESSMENT. (a) If an assessment is held invalid or unenforceable, the commissioners court may:

(1) correct an error related to the assessment; and

(2) after a notice and hearing, impose a subsequent assessment in the same manner provided for an original assessment.

(b) A person who owns or claims an interest in property against which a subsequent assessment has been imposed has the same right of appeal from the date the commissioners court orders the subsequent assessment as an original assessment.

(c) Sections 286.049(c) and 286.050(b) relating to waiver of appeal and limitation of defenses apply to a subsequent assessment. (V.A.C.S. Art. 6812g, Secs. 9(a), (b) (part).)

Source Law

Sec. 9. (a) If an assessment is held to be invalid or unenforceable, the commissioners court may correct any error related to the assessment, and make and levy a reassessment after notice and hearing in the manner provided for an original assessment.

(b) . . . Anyone owning or claiming an interest in property against which there has been a reassessment has the same right of appeal, from the date the reassessment is ordered, as is provided with regard to an original assessment. The provisions of this Act regarding waiver of appeal and limitation of defenses also apply to reassessments.

Revised Law

Sec. 286.053. SUBSEQUENT ASSESSMENT CERTIFICATE. (a) The commissioners court may issue a subsequent assessment certificate that reflects each modification of the original assessment.

(b) A subsequent assessment certificate has the same attributes and effect of an original certificate from the date the commissioners court orders the subsequent assessment. (V.A.C.S. Art. 6812g, Sec. 9(b) (part).)
(b) The commissioners court may issue a reassessment certificate which reflects each modification of the original assessment. A reassessment certificate has the same attributes and effect from the date a reassessment is ordered as an original certificate. . . .

[Sections 286.054-286.060 reserved for expansion]

SUBCHAPTER C. ROADS TO PUBLIC STREAMS AND LAKES AND OTHER PUBLIC WATER IN LEON AND MADISON COUNTIES

Sec. 286.061. APPLICABILITY. This subchapter applies only to Leon County and Madison County. (V.A.C.S. Art. 6711a, Sec. 10-a.)

Sec. 10-a. No provision of this Act shall be applicable to any other county in this State except to the Counties of Leon and Madison.

Sec. 286.062. DEFINITIONS. In this subchapter:

(1) "Public water" includes a public stream, river, bay, or lake.

(2) "Navigable stream" has the meaning assigned by Section 21.001, Natural Resources Code.

(3) "Public lake" means a lake in which the state owns the bed, or reserves for the state's residents the right of access to the lake for fishing, boating, hunting, or other recreation.

Sec. 7. . . . "Navigable streams," as that term is used herein, are defined to be statutory navigable streams of an average width of thirty (30) feet, and public lakes are defined to be those lakes in which the State owns the beds, or reserves the right of access for its citizens for fishing, boating, hunting or other recreation.
(1) The definition of "public water" is added to the revised law for drafting convenience and to eliminate unnecessary repetition of the substance of the definition.

(2) Section 7, V.A.C.S. Article 6711a, defines "navigable streams" to be "statutory navigable streams of an average width of thirty (30) feet." The revised law definition provides that the term has the meaning assigned by Section 21.001, Natural Resources Code, because that definition is substantively identical to the definition in Section 7 and because the definition in Section 7 is referring to that statutory definition.

(3) Section 7, V.A.C.S. Article 6711a, refers to "right of access for its citizens." 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.

Revised Law

Sec. 286.063. PUBLIC NECESSITY FOR ADDITIONAL ROADS; PURPOSE. (a) A public necessity for additional roads is created by the lack of adequate roads for general public access to a navigable stream, public lake, or the shore of a lake.

(b) There is a public necessity for a road under this subchapter if a bank or shore of public water is inaccessible to the general public.

(c) The purpose of this subchapter is to establish a road to make accessible to the general public a bank or shore of public water that is fenced in and inaccessible.

(d) A bank or shore of public water is inaccessible to the general public under this section if:

(1) the bank or shore extends for more than five miles without a public road to furnish access to the bank or shore; or
(2) there is an area of five or more miles on the bank or shore without a road to furnish public access to the bank or shore. (V.A.C.S. Art. 6711a, Secs. 7 (part), 8, 10.)

Source Law

Sec. 7. The lack of adequate roads for the purpose of public access to navigable streams or public lakes, or to shores of lakes or bays within tide water limits is hereby declared to create a public necessity for additional roads in the Counties of Leon or Madison, which will furnish a means of such access for the general public. . . .

Sec. 8. A public necessity for roads of the character herein defined is declared to exist where any existing public roads which furnish access to public rivers, lakes or bays are more than five (5) miles apart and/or where there is an area of at least five (5) miles on any such river, stream, lake or bay without a road to furnish public access to such stream, lake or bay.

Sec. 10. It is the purpose of this Act to make accessible public streams, bays, lakes and other bodies of public waters which are now fenced in and not accessible to the general public, by establishing roads and highways. Any bank of a stream and shore of a lake or bay which extends more than five (5) miles without a public highway furnishing access to the public, to said bank or shore of said stream, lake or bay is declared to be inaccessible and subject to be opened to public access under the terms of this Act.

Reviser's Note

Section 7, V.A.C.S. Article 6711a, refers to "bays within tide water limits." The reference is omitted because there are no tidewaters in Madison or Leon County.

Revised Law

Sec. 286.064. PUBLIC ROAD. The commissioners court may declare to be a public road to furnish access to public water a:

(1) line between parcels of real property having different owners;

(2) section line;

(3) survey line;

(4) survey subdivision line; or

(5) direct practicable route through an enclosure that
contains 500 or more acres of land. (V.A.C.S. Art. 6711a, Sec. 1.)

Source Law

Art. 6711a
Sec. 1. Any lines between different persons or
owners of land, any section line, any survey line, any
survey subdivision line or any direct practicable route
through an enclosure containing not less than five
hundred (500) acres of land that the Commissioners
Court or a majority thereof may agree to open in order
to furnish access to public streams, lakes and bays in
the Counties of Leon or Madison, may be declared public
highways upon the following conditions: . . .

Revisor's Note

Section 1, V.A.C.S. Article 6711a, refers to "a
majority thereof" in reference to the action of the
commissioners court. The reference is omitted because
the commissioners courts act by majority unless a law
provides another standard.

Revised Law

Sec. 286.065. APPLICATION FOR PUBLIC ROAD. (a) A person
who lives within an enclosure described by Section 286.064(5), or
10 residents of the county, may file a sworn application with the
commissioners court for an order to establish a public road for
access to a bank or shore of public water in the county.

(b) The application must:

(1) state the facts that show the necessity for the
highway;

(2) designate the line or route sought to be opened;
and

(3) designate the name and residence of each person or
owner of real property to be affected by the proposed road.

(V.A.C.S. Art. 6711a, Sec. 2.)

Source Law

Sec. 2. Ten (10) citizens of the county in which
such application is filed, or one or more persons
living within such an enclosure, who desire a means of
access to public streams, lakes or bays in the Counties
of Leon or Madison where there is a distance of at
least five (5) miles along the banks of said river or
stream, or a distance of five (5) miles on the shore of said lake or bay not now served by a public road or highway, may make sworn application to the Commissioners Court for an order establishing such road, designating the lines sought to be opened and the names and residence of the persons or owners to be affected by such proposed roads, and stating the facts which show the necessity for such road.

Revisor's Note

Section 2, V.A.C.S. Article 6711a, refers to "public road or highway." The revised law omits "highway" because "public road" and "highway" are synonymous, and "public road" is more commonly used.

Revised Law

Sec. 286.066. NOTICE OF APPLICATION. (a) On the filing of an application under Section 286.065, the county clerk shall issue to the sheriff or a constable a notice that commands the sheriff or constable to summon the property owners named in the notice to:

(1) appear at the next regular term of the commissioners court; and

(2) show cause why the line or route designated in the application should not be declared a public road.

(b) Notice under this section:

(1) must contain the substance of the application filed under Section 286.065; and

(2) shall be served and returned in the same manner and for the same length of time as provided for the service of citation in a civil action in justice court. (V.A.C.S. Art. 6711a, Sec. 3.)

Source Law

Sec. 3. Upon the filing of such application the clerk shall issue a notice reciting the substance thereof directed to sheriff or any constable of the county, commanding him to summons such land owners, naming them, to appear at the next regular term of the Commissioners Court and show cause why said line should not be declared public highways. Said notice shall be served in the manner and for the length of time provided for the service of citations in civil actions in Justice Courts, and shall be returned in like manner as such citation.
Revised Law

Sec. 286.067. OPENING OF ROAD TO PUBLIC WATER. (a) The commissioners court by order shall declare each line designated in the application or designated by the commissioners court to be a public road if the commissioners court determines, at a regular term of court and after service of notice required by Section 286.066, that:

(1) this subchapter applies to the proposed road; and

(2) the proposed road is of public importance.

(b) The order must direct the owner of each designated line to open the road and leave the road open for a space of 15 feet on each side of the line. A marked tree or other object used to designate a line and the corners of a survey may not be removed or defaced.

(c) Notice of the order must be served on the owner of the line immediately. Service and return of the notice shall be made as provided by Section 286.066. (V.A.C.S. Art. 6711a, Sec. 4.)

Source Law

Sec. 4. At a regular term of Court, after due service of such notice, if the Commissioners Court deems that the proposed road comes within the provisions of this Act and is of public importance it shall issue an order declaring the lines designated in the application, or lines fixed by the Commissioners Court, to be public highways, and direct the same to be opened by the owners thereof and left open for a space of fifteen (15) feet on each side of said line, but the marked trees and other objects used to designate said lines, and the corners of surveys shall not be removed or defaced. Notice of such order shall be immediately served upon such owners, and return made thereon, as before provided.

Revised Law

Sec. 286.068. ROADWORK. The commissioners court is not required to keep a road declared to be a public road under this subchapter worked by road hands. (V.A.C.S. Art. 6711a, Sec. 5.)

Source Law

Sec. 5. The Commissioners Court shall not be required to keep any such roads worked by the road hands as in the case of other public roads.
Revised Law

Sec. 286.069. DAMAGES AND COSTS. (a) A jury of freeholders shall assess any damage to a property owner under this subchapter in the manner provided for other public roads.

(b) The county shall pay all costs of a proceeding to open a public road if the commissioners court of the county grants the application. (V.A.C.S. Art. 6711a, Secs. 6, 9 (part).)

Source Law

Sec. 6. The damages to such land owners shall be assessed by a jury of freeholders, as for other public roads, and all cost attending the proceeding in opening neighborhood roads, if the application is granted, shall be paid by the county.

Sec. 9. . . . and compensation shall be made to the owners of said lands as provided for in Section 6 of this Act.

Revisor's Note

Section 6, V.A.C.S. Article 6711a, refers to "opening neighborhood roads." The revised law substitutes "public road" for "neighborhood road," because it is clear from the context of the source law that the term "neighborhood road" is intended to refer to a public road declared under this subchapter.

Revised Law

Sec. 286.070. OPENING ROAD PARALLEL TO NAVIGABLE STREAM.

(a) On the filing of an application in accordance with Sections 286.064 through 286.069, the commissioners court may issue an order that opens, in accordance with this subchapter, a public road that runs parallel and adjacent to the bank of a navigable stream for public access to the navigable stream and for camping purposes.

(b) The public road must be 60 feet wide and may extend any distance the commissioners court considers necessary. (V.A.C.S. Art. 6711a, Sec. 9 (part).)

Source Law

Sec. 9. On application being filed in accordance with Sections 1, 2, 3, 4, 5, and 6 of this Act, the
Commissioners Courts of Leon and Madison Counties may issue an order opening a public road sixty (60) feet in width running parallel with and adjacent to the bank of any statutory navigable stream of this State for such distance as the Court may deem necessary, said right of way to be used for access to said public streams, and for camping purposes. The opening of highways along and adjacent to the banks of said navigable streams shall be in accordance with the terms of this Act . . . .

[Sections 286.071-286.080 reserved for expansion]

SUBCHAPTER D. OPTIONAL COUNTY ROAD SYSTEM IN GREGG COUNTY

Revised Law

Sec. 286.081. ELECTION FOR COUNTY ROAD SYSTEM. (a) The commissioners court of Gregg County shall order an election on the question of the adoption of the optional county road system under Subchapter D, Chapter 252, if the commissioners court receives a petition signed by a number of registered voters residing in each commissioner precinct equal to at least 10 percent of the number of votes cast in the precinct for governor in the most recent general election at which that office was filled.

(b) The election shall be held on the first authorized uniform election date prescribed by Section 41.001, Election Code, that occurs at least 31 days after the date on which the petition is filed with the commissioners court.

(c) The ballot for the election shall be printed to permit voting for or against the proposition: "Adopting the Optional County Road System in Gregg County."

(d) If the majority of the votes cast in the election favor adoption, the optional county road system takes effect and Chapter 339, Acts of the 54th Legislature, Regular Session, 1955, has no effect.

(e) If a majority of the votes cast in the election do not favor adoption:

(1) Chapter 339, Acts of the 54th Legislature, Regular Session, 1955, remains in effect; and

(2) another election on the question of adopting the
optional county road system may not be held before the first anniversary of the most recent election on the proposition.

(V.A.C.S. Art. 6812j.)

**Source Law**

Art. 6812j

Sec. 1. (a) On the filing of a petition that meets the requirements of Subsection (b) of this section, the commissioners court of Gregg County shall order an election to be held in the county on the adoption of the optional county road system in accordance with Subchapter C, Chapter 3, County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes). The court shall order the election to be held on the next uniform election date authorized by Section 41.001, Election Code, that occurs after the 30th day after the date the petition is filed with the commissioners court. The ballot for the election shall be printed to provide for voting for or against the proposition: "Adopting the Optional County Road System in Gregg County."

(b) A petition for an election to be held under this article must be signed by a number of qualified voters residing in each commissioners precinct, equal to at least 10 percent of the number of votes cast in that precinct for governor in the most recent general election at which that office was filled.

Sec. 2. (a) If the majority of the votes cast at the election favor adoption, the optional county road system, as provided by Subchapter C, Chapter 3, County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes), becomes effective in the county with the official proclamation of the results of the election and Chapter 339, Acts of the 54th Legislature, Regular Session, 1955, has no effect.

(b) If the majority of the votes cast at the election disapprove adoption, an election for the same purpose may not be held earlier than the first anniversary of the most recent election on the proposition.

**Reviser's Note**

Section 1, V.A.C.S. Article 6812j, refers to Subchapter C, Chapter 3, County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes). That statute is codified in this code as Subchapter D, Chapter 252, and the revised law is drafted accordingly.

[Chapters 287-310 reserved for expansion]