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
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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.

Revised Law

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 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.
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.

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.

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.)

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. 252.103. 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. . . .

Revisor'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...
Revised Law
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).)

Source Law
(3) The road commissioner shall report to the commissioners court at each regular term under oath showing an itemized account of all money he has received to be expended on roads and bridges and what disposition he has made of the money, showing the condition of all roads, bridges, and culverts in his district, and stating other facts on which the court may desire information. He shall make other reports at such time as the court may desire.

Revised Law
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.
Reviser'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. 252.110. 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)
Source Law

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

Revised Law

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.)

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. 252.202. 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.

Reviser'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. . . .
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.

Source Law
(4) . . . The work at all times is subject to the general supervision of the commissioners court. . . .
Revised Law

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).)

Source Law

(4) . . . 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.

Revisor's Note

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).)

Source Law

(5) If the court so directs, each road districts of convenient size to be approved by the court and shall define the boundaries of the districts and shall designate the districts by number. The boundaries shall be recorded in the minutes of the commissioners court. He shall ascertain the names of all persons subject to road duty in each district and keep a record of the persons and report the record to the commissioners court.

Revised Law

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.

Revised Law
Sec. 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.

Revised Law
Sec. 252.213. CONTRACTS BY COMMISSIONERS COURT; PAYMENT.
(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).)

Reviser'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.
Reviser'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.

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. 252.216. 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).)

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
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 revisor'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) appoint for an indefinite term and remove the county road department's personnel, subject to the approval of the commissioners court; and

(2) authorize administrative personnel to employ and remove subordinates.

(c) Except for the purpose of inquiry, the commissioners court shall deal with the county road department's personnel through the county road engineer.

(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.

(e) The county road engineer shall:

(1) ensure that the policies of the commissioners court relating to county roads are faithfully executed;

(2) supervise the administration of the county road department;

(3) prepare detailed annual budget estimates for the construction and maintenance of the county roads and the operation of the county road department;

(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;

(5) serve as custodian of the equipment, materials, and supplies belonging to the county road department;

(6) prepare plans and specifications for county road construction and maintenance;

(7) maintain cost-accounting records of county road department expenditures;

(8) keep an inventory of county road department equipment, materials, and supplies; and

(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.
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).)

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.

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 any 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.)

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.

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
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
construction 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
ingineer 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

Revised Law

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.

Reviser'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.

Reviser'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)).

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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.

Revisor'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

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1 a branch, creek, or stream at the water's natural crossing.

2 (c) A culvert must be of sufficient size to allow water to
3 flow, at its natural rate at its normal peak level, from the side
4 of the road where the road intersects the natural channel to the
5 natural channel at the other side of the road. (V.A.C.S.
6 Art. 6702-1, Sec. 2.102(b) (part).)

7 Source Law

8 (b) ... However:
9 (1) a ditch may not be constructed without
10 off all water that may collect in the ditch; and
11 (2) a commissioners court or its employee
12 may not change the natural course of any branch, creek,
13 or stream; branches, creeks, or streams shall cross
14 public roads at the water's natural crossing; culverts
15 shall be of sufficient size to allow water to flow at
16 high tide from its intersection with the road across
17 its natural outflow at the opposite natural channel.

19 Revisor's Note

20 Section 2.102(b)(2), V.A.C.S. Article 6702-1,
21 provides certain restrictions on the actions of a
22 commissioners court "or its employee." The revised law
23 omits the reference to employee as unnecessary.
24 Restrictions on the authority of the commissioners
25 court apply to the county's employees when carrying out
26 the court's authority.

27 Revised Law

28 Sec. 254.007. PRIVATE DITCHES. An owner of real property
29 abutting a road or ditch or the owner of a tract of property that
30 is located wholly or partly within one mile of a road or ditch may
31 construct at the owner's cost lateral drainage ditches and may
32 connect those ditches with a main ditch constructed under this
33 chapter. (V.A.C.S. Art. 6702-1, Sec. 2.103.)

34 Source Law

35 Sec. 2.103. Any owner of land abutting on the
36 road or ditch or the owner of any tract of land lying
37 wholly or partially within one mile of the road or
38 ditch may construct at his own cost lateral drainage
39 ditches and connect the ditches with the main ditch or
40 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.)

Source Law

Sec. 2.1035. (a) This section applies only to a county with a population of 100,000 or less, according to the most recent federal census.

(b) In this section:

(1) "Ditch" means a ditch, drain, culvert, or watercourse.

(2) "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.

(c) The commissioners court of the county by order may:

(1) remove the blockage of a ditch on land
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.

The surveyor shall also prepare detailed specifications for the execution of the project.

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.

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.
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.)

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.
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.

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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.

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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.)

Source Law

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.

Reviser'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

Sec. 256.001. USE OF COUNTY ROAD AND BRIDGE FUND

Sec. 256.002. DISTRIBUTION OF COUNTY AND ROAD DISTRICT HIGHWAY FUND

Sec. 256.003. USE OF REVENUES FROM COUNTY AND ROAD DISTRICT HIGHWAY FUND

Sec. 256.004. DEPOSITS OF TAXES TO COUNTY FARM-TO-MARKET AND LATERAL ROAD FUND AND FLOOD CONTROL FUND

Sec. 256.005. USE OF FARM-TO-MARKET AND LATERAL ROAD FUND

Sec. 256.006. USE OF FLOOD CONTROL FUND

Sec. 256.007. TRANSFERS OF SURPLUS REGISTRATION FEE REVENUE

Sec. 256.008. STATE FUNDING OF FARM-TO-MARKET ROADS

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CHAPTER 256. FUNDS AND TAXES FOR COUNTY ROADS

SUBCHAPTER A. FUNDS USED FOR COUNTY ROADS

Revised Law

Sec. 256.001. 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 using the money for the purposes provided by this section. (V.A.C.S. Art. 6702-1, Sec. 4.003(b) (part).)

Source Law

(b) Money in the road and bridge fund may be spent only by order of the commissioners court, except when otherwise provided, and only for working public roads or building bridges. The court may make the necessary orders for utilizing the money . . . .

Revisor's Note

(1) Section 4.003(a), V.A.C.S. Article 6702-1, is omitted from the revision because the provision simply describes certain provisions of Section 9, Article VIII, Texas Constitution, 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
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
cars 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

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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 revisor'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.
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.

Reviser'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 reviser'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
district that issued the bonds shall impose taxes in an amount
sufficient to pay the principal of and interest on the bonds.

(b) The taxes shall be imposed in the manner provided by
Sections 51.502 through 51.506, Water Code. A reference in Chapter
257 of this code or in Article 726, Revised Statutes, to ad valorem
taxes applies to a tax levied by the commissioners court under this
section on a basis other than the ad valorem basis.

(c) Taxes for bonds issued on the full faith and credit of
the county shall be assessed and collected by the county
assessor-collector in the manner provided by law for the assessment
and collection of other county taxes.

(d) Taxes for bonds issued for and on the full faith and
credit of a precinct or road district shall be assessed and
collected by the county assessor-collector in the manner provided
for the assessment and collection of common school district taxes.

(e) The county assessor-collector shall pay taxes collected
under this section to the county treasurer in the manner that other
taxes are paid. (V.A.C.S. Art. 6702-1, Secs. 4.425, 4.426, 4.427,
4.428.)

Source Law

Sec. 4.425. Each year that bonds are
outstanding, taxes shall be levied sufficient to pay
the principal of and interest on the bonds. Taxes
shall be levied in accordance with the procedures for
taxation set forth in Sections 51.502 through 51.506,
Water Code. To the extent that the provisions of this
Act refer to ad valorem taxes, such provisions shall be
deemed to refer to taxes levied on any basis of
taxation for which provision is herein made if the
commissioners court determines to levy on a basis other
than an ad valorem basis.

Sec. 4.426. When the bonds are issued on the
faith and credit of the county, the taxes authorized by
this subchapter shall be assessed and collected in the
same manner as now provided by law for the assessment
and collection of other county taxes.

Sec. 4.427. When the bonds are issued for and on
the faith and credit of a political subdivision or road
district, the taxes shall be assessed and collected in
the same manner as for the assessment and collection of
common school district taxes.

Sec. 4.428. The tax assessor and tax collector
of the county in which the taxes have been levied shall
assess and collect the taxes in the manner and at the
time as other taxes, and when so collected, the tax
collector shall pay them to the county treasurer as
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.
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).)

(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

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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 SUE 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.

Reviser's Note

Section 4.435, V.A.C.S. Article 6702-1, refers to
a "political subdivision." For the reasons given in
Reviser'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) may include all construction costs, including engineering, legal, financing, and other expenses incident to the construction; and

(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 road 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.

Revisor'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.

Revisor's Note

Section 4.415, V.A.C.S. Article 6702-1, prohibits
inclusion of any portion of a preexisting road district
"[e]xcept 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.

Revisor'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 the 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.

Revisor'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

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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.

Revisor'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 protest 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
declared 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
(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.

Reviser'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.". vote.
(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.

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.)

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.

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 in 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.

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.
Revised Law

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. 4.468. The necessary expense incident to the issuance of the bonds may be paid out of the proceeds from the sale of the bonds. On the issuance and sale of the bonds provided for in this part, the commissioners court of each county or portion of a county may pass all orders that may be necessary, setting aside so much of the proceeds derived from the sale of the bonds as the ex officio directors of the road district may consider necessary to be used for the maintenance, repair, and upkeep of the roads of the district.

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. 4.468. The general laws relative to county road bonds authorized pursuant to Article III, Section 52, of the Texas Constitution, shall apply to the authorization, issuance, approval, certification, registration, sale, and payment of the bonds provided for in this part, except as otherwise provided...

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.

(V.A.C.S. Art. 6702-1, Sec. 4.474.)

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
taxes in payment of the bonds, the
canvas 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 ................. 788

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

Sec. 281.002. ACQUISITION OF PUBLIC INTEREST IN PRIVATE ROAD

Sec. 281.003. DEDICATION

Sec. 281.004. ADVERSE POSSESSION

Sec. 281.005. RESOLUTION OF COMMISSIONERS COURT

Sec. 281.006. NOTICE TO OWNER REQUIRED

Sec. 281.007. CONTEST

Revised Law

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.)

Source Law

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. 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.
(b) 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).)

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Source Law

(b) 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.

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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.

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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).)

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Source Law

(c) 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).)
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

(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
... 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

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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 . . . the holders of the bonds or any trustee . . . 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 . . .

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
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.
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.

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.

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:
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 revisor'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 revisor'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 revisor'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 revisor'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 revisor'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.

Revisor'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.

CHAPTER 284. CAUSEWAYS, BRIDGES, TUNNELS, TURNPIKES, AND HIGHWAYS IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

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Chapter 284. Causeways, Bridges, Tunnels, Turnpikes, and Highways
In Certain Counties

Subchapter A. General Provisions

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.)

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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Revisor'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
the State of Texas . . . .

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-l, 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 6696c, 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.
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).)
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. Article 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 hereinafore 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. ...

Revisor'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.
(V.A.C.S. Art. 6795b-1, Sec. 2 (part).)

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 Revisor'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).)
Source Law

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
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 Reviser'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."

Reviser'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 may be 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. 1. . . 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. . . .

Revisor's Note
(1) Section 1, V.A.C.S. Article 6795b-1, states, "If the Commissioners Court shall consider it desirable to acquire [ferry properties], through purchase or lease . . . ." Because the authority to acquire the property is discretionary, the revised law omits the quoted language as included within the phrase, "[t]he commissioners court may purchase or lease a ferry property . . . ."

(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.

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
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).)

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.

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.
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 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 may 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.

Revisor'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.

Reviser’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).)

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 "approving" 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).
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.

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(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 ... .

Revisor'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 . . . .

Revisor'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).)

Sec. 2.3015. (a) To promote the public safety,
the commissioners court of a county with a population

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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.

Reviser'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.
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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.)

Reviser'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.
Revised Law
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 expressiy 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).)

**(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, the 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.

Reviser'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 Reviser'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.
Revised Law

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.

Reviser'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 Reviser'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).)

(b) .. The county may not assert a lien against property which on the date the assessment is ordered is exempt by law from execution on a judgment for debt. A property owner may, however, waive an exemption to which he is entitled and voluntarily grant an assessment lien against his property in the same manner provided by law for granting a mechanic's lien for improvements to a homestead.

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.)
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.)

Source Law

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.

Revisor's Note

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).)
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.

(V.A.C.S. Art. 6711a, Sec. 7 (part); New.)

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.
Revisor's Note

(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
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.
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.)

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.)

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.

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]