REVISOR'S REPORT

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

VOLUME III

A NONSUBSTANTIVE REVISION
OF THE STATUTES RELATING TO
TRANSPORTATION

Including
Carriers
Aviation
Navigation
Roadways
Vehicles and Traffic

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

Austin, Texas
March 1995
Reviser's Note

(1) Section 4(f), V.A.C.S. Article 6674v-5, refers to a "city." The revised law substitutes the term "municipality" because the terms are synonymous and "municipality" is the term used in the Local Government Code to refer to a city.

(2) Section 4(f), V.A.C.S. Article 6674v-5, provides that the act does not authorize the commissioners court to issue an order or regulation in conflict with a city ordinance or a state agency rule or state or federal law or regulation and that the conflicting order or regulation is void. The revised law omits the reference to a state agency rule or state or federal law or regulation because a state or federal law constitutionally preempts a conflicting order of a commissioners court.

(3) Section 4(f), V.A.C.S. Article 6674v-5, refers to an order or regulation being "null and void." The revised law omits the term "null" because "null" is included within the meaning of "void."

CHAPTER 396. AUTOMOBILE WRECKING AND SALVAGE YARDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 396.001. DEFINITIONS .............................. 1438
Sec. 396.002. INJUNCTION .............................. 1440

Sec. 396.021. SCREENING REQUIREMENTS .......................... 1440
Sec. 396.022. LOCATION OF YARD .......................... 1443
Sec. 396.023. EFFECT OF LOCAL ORDINANCE ................ 1443
Sec. 396.024. PENALTY .................................. 1443

Sec. 396.041. COUNTY LICENSE ............................ 1444
Sec. 396.042. PUBLIC HEARING ........................................ 1446
Sec. 396.043. NOTICE OF HEARING ................................. 1446
Sec. 396.044. CONFLICT WITH OTHER LAW ....................... 1447
Sec. 396.045. PENALTY .............................................. 1447

CHAPTER 396. AUTOMOBILE WRECKING AND SALVAGE YARDS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 396.001. DEFINITIONS. In this chapter:

(1) "Automotive wrecking and salvage yard" means an outdoor place where a person stores three or more wrecked vehicles for the purpose of dismantling or wrecking the vehicles to remove parts for sale or for use in an automotive repair or rebuilding business.

(2) "Junk" means copper, brass, iron, steel, rope, rags, batteries, tires, or other material that has been discarded or sold at a nominal price by a previous owner of the material. The term does not include a wrecked vehicle.

(3) "Junkyard" means a place where a business that owns junk, and is operated to store, buy, or sell junk, keeps all or part of the junk outdoors until the business disposes of the junk.

(4) "Recycling business" means a business primarily engaged in the business of:

(A) converting metal or other material into raw material products that have:

(i) prepared grades; and

(ii) an existing or potential economic value;

(B) using raw material products described by Paragraph (A) in the production of new products; or

(C) obtaining or storing metal or other material for a purpose described by Paragraph (A) or (B).

(5) "Wrecked vehicle" means a discarded, junked,
damaged, or worn-out automotive vehicle that is not in a condition
to be lawfully operated on a public road. (V.A.C.S. Art. 2372dd-1,
Sec. 1.)

Source Law

Art. 2372dd-1
Sec. 1. In this Act:
(1) "Automotive wrecking and salvage yard"
means any person or business that stores three or more
wrecked vehicles outdoors for the purpose of
dismantling or otherwise wrecking the vehicles to
remove parts for sale or for use in an automotive
repair or rebuilding business.
(2) "Junk" means copper, brass, iron,
steel, rope, rags, batteries, tires, or other material
(other than a wrecked vehicle) that has been discarded
or sold at a nominal price by a previous owner of the
material.
(3) "Junkyard" means a business enterprise
that owns and is operated to store, buy, or sell junk,
all or part of which is kept outdoors until disposed
of.
(4) "Recycling business" means a business
enterprise that is primarily engaged in the business
of:
(A) converting ferrous or nonferrous
metals or other materials into raw material products
having prepared grades and having an existing or
potential economic value;
(B) using raw material products of
that kind in the production of new products; or
(C) obtaining or storing ferrous or
nonferrous metals or other materials for a purpose
described by Paragraph (A) or (B) of this subdivision.
(5) "Wrecked vehicle" means a discarded,
abandoned, junked, wrecked, or worn-out automotive
vehicle, including an automobile, truck,
tractor-trailer, or bus, that is not in a condition to
be lawfully operated on a public road.

Reviser's Note
(1) Section 1(1), V.A.C.S. Article 2372dd-1,
refers to a "person or business." The revised law
omits the term "business" because Section 311.005(2),
Government Code (Code Construction Act), defines the
term "person" to include a business.
(2) Section 1(4), V.A.C.S. Article 2372dd-1,
refers to "ferrous or nonferrous" metals. The revised
law omits the term "ferrous or nonferrous" as
unnecessary. "Ferrous or nonferrous" includes any
metal.
(3) Section 1(5), V.A.C.S. Article 2372dd-1, refers to an "automotive vehicle, including an automobile, truck, tractor-trailer, or bus." The revised law omits the reference to "automobile, truck, tractor-trailer, or bus" as unnecessary. An automotive vehicle includes any self-propelled vehicle.

Revised Law

Sec. 396.002. INJUNCTION. (a) A person is entitled to an injunction to prohibit a violation or threatened violation of this chapter or of a county ordinance adopted under this chapter.

(b) The venue for the injunction proceeding is in the county in which any part of the junkyard or automotive wrecking and salvage yard is located. (V.A.C.S. Art. 2372dd-1, Sec. 6.)

Source Law

Sec. 6. (a) Any person is entitled to appropriate injunctive relief to prevent a violation or threatened violation of this Act or of a county ordinance adopted under Section 5 of this Act from continuing or occurring.

(b) The venue for the injunction proceeding is in the county in which any part of the junkyard or the automotive wrecking and salvage yard is located.

Revisor's Note

Section 6, V.A.C.S. Article 2372dd-1, refers to "appropriate" injunctive relief. The revised law omits the reference to "appropriate" as unnecessary.

[Sections 396.003-396.020 reserved for expansion]

SUBCHAPTER B. SCREENING REQUIREMENTS AND LOCATION

Revised Law

Sec. 396.021. SCREENING REQUIREMENTS. (a) This section does not apply to:

(1) an automotive wrecking and salvage yard as defined by and subject to Chapter 397;

(2) a junkyard as defined by Section 391.001 and subject to Subchapter E, Chapter 391;
(3) a recycling business; or
(4) a junkyard or an automotive wrecking and salvage yard entirely in a municipality and regulated by the municipality.

(b) A person who operates a junkyard or an automotive wrecking and salvage yard shall screen the junkyard or automotive wrecking and salvage yard with a solid barrier fence at least eight feet high. The fence must be painted a natural earth tone color and may not have any sign appear on its surface other than a sign indicating the business name.

(c) A person who operates a junkyard or an automotive wrecking and salvage yard in a county with a population of 200,000 or less shall screen the junkyard or automotive wrecking and salvage yard to at least six feet in height along the portion of the junkyard or automotive wrecking and salvage yard that faces a public road or residence. The person may screen the yard by any appropriate means, including:

(1) a fence;
(2) natural objects; or
(3) plants. (V.A.C.S. Art. 2372dd-1, Secs. 2(a), 3.)

Source Law

Sec. 2. (a) The screening requirement established by Section 3 of this Act does not apply to:

(1) an automobile wrecking and salvage yard as defined by, and that is subject to, Chapter 886, Acts of the 68th Legislature, Regular Session, 1983 (Article 2372dd, Vernon's Texas Civil Statutes);
(2) a junkyard or automobile graveyard as defined by Article IV, Section 1, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes), and that is subject to Section 4.08 of that law;
(3) a recycling business; or
(4) a junkyard or an automotive wrecking and salvage yard that is located entirely within an incorporated city or town and that is subject to regulation in any manner by the city or town.

Sec. 3. (a) A person who operates a junkyard or an automotive wrecking and salvage yard in this state shall screen the junkyard or automotive wrecking and salvage yard with a solid barrier fence that is eight feet high. The fence must be painted a natural earthtone color and may not have any signs appear on its surface other than signage indicating the business name.

(b) A person who operates a junkyard or an automotive wrecking and salvage yard in this state in a
county with a population of 200,000 or less shall screen it by natural objects, plantings, fences, or other appropriate means so that the screen is at least six feet in height alongside that portion of the junkyard or automotive wrecking and salvage yard that faces a public road or family residence.

Reviser's Note

(1) Section 2(a)(1), V.A.C.S. Article 2372dd-1, refers to Chapter 886, Acts of the 68th Legislature, Regular Session, 1983 (Article 2372dd, Vernon's Texas Civil Statutes). That statute is codified in this code as Chapter 397, and the revised law is drafted accordingly.

(2) Section 2(a)(2), V.A.C.S. Article 2372dd-1, refers to the definitions section of Article IV, Section 1, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes), and to Section 4.08 of that law. The definitions section of that statute is codified in this code as Section 391.001 and Section 4.08 is codified in this code as Subchapter E, Chapter 391, and the revised law is drafted accordingly.

(3) Section 2(a)(2), V.A.C.S. Article 2372dd-1, refers to a "junkyard or automobile graveyard." The revised law omits the reference to "automobile graveyard" for the reason stated in the reviser's note to Section 391.002 of this code.

(4) Section 2(a)(4), V.A.C.S. Article 2372dd-1, refers to an "incorporated city." 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" because that is the term used in the Local Government Code.
Revised Law
Sec. 396.022. LOCATION OF YARD. (a) A junkyard or an automotive wrecking and salvage yard may not be located within 50 feet of the right-of-way of a public street, state highway, or residence.
(b) A person may not accumulate or stack materials associated with a junkyard or an automotive wrecking and salvage yard higher than eight feet above ground level.
(c) This section does not apply to a junkyard or an automotive wrecking and salvage yard used only for farm equipment.
(V.A.C.S. Art. 2372dd-1, Sec. 3A.)

Source Law
Sec. 3A. (a) A junkyard or an automotive wrecking and salvage yard, other than a junkyard or automotive wrecking and salvage yard used exclusively for farm equipment, may not be located within 50 feet of the right-of-way of a public street or state highway or a residence.
(b) Materials associated with a junkyard or an automotive wrecking and salvage yard, other than a junkyard or automotive wrecking and salvage yard used exclusively for farm equipment, may not be allowed to accumulate or be stacked to a height above eight feet from ground level.

Revised Law
Sec. 396.023. EFFECT OF LOCAL ORDINANCE. A person who operates a junkyard or an automotive wrecking and salvage yard, in screening the yard, shall comply, to the extent practicable, with an applicable ordinance adopted by a political subdivision.
(V.A.C.S. Art. 2372dd-1, Sec. 4.)

Source Law
Sec. 4. In screening a junkyard or an automotive wrecking and salvage yard, the person who operates it must comply, to the extent practicable, with all applicable ordinances adopted by a political subdivision.

Revised Law
Sec. 396.024. PENALTY. (a) A person commits an offense if the person knowingly violates Section 396.021 or 396.022.
(b) An offense under this section is a Class C misdemeanor.

(c) Each day a violation continues is a separate offense.

(V.A.C.S. Art. 2372dd-1, Secs. 7(a), (c) (part).)

Source Law

Sec. 7. (a) A person who knowingly or intentionally violates Section 3 or 3A of this Act commits an offense. An offense under this subsection is a Class C misdemeanor.

(c) A separate offense occurs under Subsection (a) of this section on each day on which all the elements of the offense exist.

Revisor's Note

Section 7(a), V.A.C.S. Article 2372dd-1, refers to "knowingly or intentionally" violating a section. The revised law omits the reference to "intentionally" because under Section 6.02, Penal Code, "intentionally" is a higher degree of culpability than "knowingly," and proof of the lowest required degree of culpability suffices to establish criminal responsibility.

[Sections 396.025-396.040 reserved for expansion]

SUBCHAPTER C. COUNTY REGULATION OF JUNKYARDS OR AUTOMOTIVE WRECKING AND SALVAGE YARDS

Revised Law

Sec. 396.041. COUNTY LICENSE. (a) This section does not apply to:

(1) a recycling business;

(2) a junkyard or automotive wrecking and salvage yard located entirely in a municipality and subject to regulation by the municipality; or

(3) a junkyard or automotive wrecking and salvage yard in operation before June 1, 1987.

(b) To protect the public health, safety, or welfare, the commissioners court of a county may by ordinance require a junkyard or automotive wrecking and salvage yard to be licensed by
(c) An ordinance may:

(1) impose a fee of $25 for the issuance or renewal of a license;

(2) condition the license on the operation of the junkyard or automotive wrecking and salvage yard only at a location approved by the commissioners court; or

(3) establish grounds for suspending or revoking a license if the junkyard or automotive wrecking and salvage yard is not screened.

(d) The county shall deposit each license fee received to the credit of the county general fund. (V.A.C.S. Art. 2372dd-1, Secs. 2(b); 5(a), (c).)

Source Law

[Sec. 2]

(b) The county licensing provisions of Section 5 of this Act do not apply to:

(1) a recycling business;

(2) a junkyard or an automotive wrecking and salvage yard that is located entirely within an incorporated city or town and that is subject to regulation in any manner by the city or town; or

(3) a junkyard or an automotive wrecking and salvage yard that begins operation before June 1, 1987.

Sec. 5. (a) To protect the public health, safety, or welfare, the commissioners court of a county may adopt ordinances that require a junkyard or an automotive wrecking and salvage yard to be licensed by the county. The ordinances may:

(1) impose a fee of $25 for the issuance or renewal of a license;

(2) condition the validity of a license on the operation of the junkyard or automotive wrecking and salvage yard only at a location approved by the commissioners court;

(3) establish grounds for suspending or revoking a license if not screened.

(c) Fees received by a county under the licensing program shall be deposited in the general fund of the county.

Revisor's Note

Section 2(b), V.A.C.S. Article 2372dd-1, refers to an "incorporated" city. The revised law omits "incorporated" and substitutes "municipality" for the
term "city" for the reasons stated in Revisor's Note
(3) under Section 396.021.

Revised Law
Sec. 396.042. PUBLIC HEARING. (a) Before adopting an
ordinance under Section 396.041, the commissioners court must hold
a public hearing.
(b) Any interested member of the public may appear and
testify at the hearing about the subject of the proposed ordinance.
(V.A.C.S. Art. 2372dd-1, Sec. 5(b) (part).)

Source Law
(b) Before adopting an ordinance under this
section, the commissioners court must hold a public
hearing at which interested members of the public may
appear and testify before the court about the general
subject to be covered by the proposed ordinance. . . .

Revised Law
Sec. 396.043. NOTICE OF HEARING. (a) The commissioners
court shall:
(1) post in a public place in the county courthouse a
notice of the time, place, and general subject of the public
hearing; and
(2) publish the notice in a newspaper of general
circulation in the county.
(b) The notice must be:
(1) posted for the 10 days preceding the date of the
public hearing; and
(2) published at least once a week for the three weeks
preceding the week the public hearing is held. (V.A.C.S.
Art. 2372dd-1, Sec. 5(b) (part).)

Source Law
(b) . . . The commissioners court shall post in
a public place in the county courthouse a notice of the
time, place, and general subject of the public hearing
and shall cause the notice to be published in a
newspaper of general circulation in the county. The
notice must be posted for the 10 days immediately
preceding the date of the public hearing and must be
published at least once a week for the three weeks
immediately preceding the week in which the public hearing is held.

Revisor's Note
Section 5(b), V.A.C.S. Article 2372dd-1, refers to "immediately preceding." The revision omits "immediately" as unnecessary. "Preceding" means "immediately preceding."

Revised Law
Sec. 396.044. CONFLICT WITH OTHER LAW. If a requirement, standard, or condition established under this subchapter conflicts with another law of this state, a rule adopted under state law, or a municipal ordinance, the stricter of the two provisions prevails. (V.A.C.S. Art. 2372dd-1, Sec. 5(d).)

Source Law
(d) If a requirement, standard, or condition established under this section conflicts with a state law, a rule adopted under a state law, or a municipal ordinance, the stricter of the two provisions prevails.

Revised Law
Sec. 396.045. PENALTY. (a) A person commits an offense if the person violates an ordinance adopted under this subchapter that defines an offense.
(b) An offense under this section is a Class C misdemeanor.
(c) Each day a violation continues is a separate offense.
(V.A.C.S. Art. 2372dd-1, Secs. 7(b), (c) (part).)

Source Law
(b) If a county ordinance adopted under Section 5 of this Act defines an offense for a violation of the ordinance, the offense is a Class C misdemeanor.
(c) A separate offense occurs under Subsection (b) of this section on each day on which all the elements of the offense exist.

CHAPTER 397. AUTOMOBILE WRECKING AND SALVAGE YARDS IN CERTAIN COUNTIES
Sec. 397.001. APPLICABILITY OF CHAPTER
Sec. 397.002. DEFINITIONS

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CHAPTER 397. AUTOMOBILE WRECKING AND SALVAGE YARDS IN CERTAIN COUNTIES

Revised Law

Sec. 397.001. APPLICABILITY OF CHAPTER. This chapter applies only to an automotive wrecking and salvage yard that:

(1) is in a county with a population of two million or more;

(2) is not located within a municipality in that county; and

(3) is established on or after September 1, 1983.

(V.A.C.S. Art. 2372dd, Secs. 2, 13 (part).)

Source Law

Sec. 2. (a) This Act applies only to counties with a population of two million or more, according to the most recent federal census.

(b) This Act does not apply to an automotive wrecking and salvage yard located within the limits of an incorporated city or town.

Sec. 13. This Act [takes effect September 1, 1983,] and applies only to an automotive wrecking and salvage yard established on or after that date.

Revisor's Note

(1) Section 2, V.A.C.S. Article 2372dd, describes a population number that is to be determined
according to the most recent federal census. The revised law omits the reference to the federal census because the reference is unnecessary. Section 311.005(3), Government Code (Code Construction Act) and Section 312.011(20), Government Code, define "population" as population according to the most recent federal decennial census. That definition applies to the revised law.

(2) Section 2, V.A.C.S. Article 2372dd, 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.

(3) Section 2, V.A.C.S. Article 2372dd, refers to a salvage yard located within the limits of a city or town. The revised law omits the reference to "the limits" as unnecessary. A yard that is within the limits of a municipality is within the municipality.

Revised Law

Sec. 397.002. DEFINITIONS. In this chapter:

(1) "Automotive wrecking and salvage yard" means a lot or tract of land on which three or more abandoned, discarded, junked, wrecked, or worn-out automotive vehicles are kept for the purpose of dismantling or wrecking to extract parts for use in an automotive repair or rebuilding business or for sale.

(2) "Person" means an individual, corporation, or association. (V.A.C.S. Art. 2372dd, Secs. 1(1), (2).)

Source Law

Art. 2372dd
Sec. 1. In this Act:
(1) "Person" means an individual, corporation, or association.
(2) "Automotive wrecking and salvage yard" means any lot or tract of land on which three or more
discarded, abandoned, junked, wrecked, or worn-out automotive vehicles, including autos, trucks, tractor-trailers, and buses, are kept or stored for the purpose of disassembling, dismantling, cutting up, stripping, or otherwise wrecking to extract parts, components, or accessories for sale or for use in an automotive repair or rebuilding business.

Revisor's Note

(1) Section 1(2), V.A.C.S. Article 2372dd, refers to "automotive vehicles, including autos, trucks, tractor-trailers, and buses." The revised law omits the reference to "autos, trucks, tractor-trailers, and buses" as unnecessary. An automotive vehicle includes any self-propelled vehicle.

(2) Section 1(2), V.A.C.S. Article 2372dd, refers to vehicles that are "kept or stored." The revised law omits the term "stored" because "stored" is included within the meaning of "kept."

(3) Section 1(2), V.A.C.S. Article 2372dd, refers to "disassembling, dismantling, cutting up, stripping, or otherwise wrecking" vehicles. The revised law omits the terms "disassembling," "cutting up," and "stripping" because those terms are included within the meaning of "dismantling."

(4) Section 1(2), V.A.C.S. Article 2372dd, refers to "parts, components, or accessories." The revised law omits the terms "components" and "accessories" because those terms are included within the meaning of "parts."

Revised Law

Sec. 397.003. FENCE REQUIRED. (a) An automotive wrecking and salvage yard shall be completely surrounded by a fence as provided by Subsection (b).

(b) A side of the yard that is generally parallel to and within 100 feet of a right-of-way of a public street shall be bounded by a fence at least eight feet in height. Other sides of
the yard shall be bounded by a fence at least six feet in height.

(V.A.C.S. Art. 2372dd, Sec. 4.)

Source Law

Sec. 4. An automotive wrecking and salvage yard shall be completely surrounded and enclosed by a solid fence or wall as follows:

(1) any side of the yard that extends generally parallel to and within 100 feet of any public street right-of-way shall be bounded by a solid fence or wall at least eight feet in height; and

(2) any other side of the yard shall be bounded by a solid fence or wall at least six feet in height.

Revisor's Note

(1) Section 4, V.A.C.S. Article 2372dd, refers to a salvage yard being completely "surrounded and enclosed." The revised law omits the term "enclosed" because "enclosed" is included within the meaning of "surrounded."

(2) Section 4, V.A.C.S. Article 2372dd, refers to a "solid fence or wall." The revised law omits "solid" and "or wall" because in Section 397.004 of this chapter, "solid" and "wall" are included within the meaning of "fence."

Revised Law

Sec. 397.004. CONSTRUCTION AND MAINTENANCE OF FENCE. (a) A fence required by Section 397.003 shall be constructed and maintained so that the outer surface is continuous and without spaces.

(b) The fence shall be constructed of wood, masonry, corrugated sheet metal, chain link, or a combination of those materials. Any one side of the fence may be constructed of only one of those materials.

(c) A chain link fence must be galvanized and have wood or metal slats or strips that run through all links of the fence. A properly constructed and maintained chain link fence with slats or strips complies with Subsection (a).
(d) The fence must extend downward to within three inches of the ground and must test plumb and square at all times.

(e) The fence shall be constructed in compliance with all applicable provisions of the building code of a municipality in which the fence is constructed. (V.A.C.S. Art. 2372dd, Secs. 1(3), 5.)

Source Law

Sec. 1. •••

(3) "Solid," as used in reference to a fence, wall, door, or gate, means constructed and maintained so that the outer surface is continuous and without interstices, gaps, spaces, or holes. For the purposes of this Act, a properly constructed and maintained chain link fence with strips or slats is a solid fence.

Sec. 5. A fence or wall required by this Act shall be constructed and maintained as follows:

(1) all fences shall be constructed of wood, masonry, corrugated sheet metal, chain link, or any combination, but any one side of an automotive wrecking and salvage yard may be bounded by a fence or wall constructed of only one of those materials;
(2) chain link fences shall be constructed of galvanized chain link fencing with wood or metal slats or strips run through all links of the chain link fence;
(3) all fences or walls shall extend downward to within three inches of the ground and shall test plumb and square at all times; and
(4) all fences or walls shall be constructed in compliance with all applicable provisions of the building code of any city in which the fence may be constructed.

Revisor's Note

(1) Section 1(3), V.A.C.S. Article 2372dd, refers to "interstices, gaps, spaces, or holes." The revised law omits the terms "interstices," "gaps," and "holes" because those terms are included within the meaning of "spaces."
(2) Section 1(3), V.A.C.S. Article 2372dd, refers to a "solid" fence and Section 5 of the article refers to a "fence or wall." The revised law omits "solid" and "or wall" because in this section "solid" and "wall" are included within the meaning of "fence."
Revised Law

Sec. 397.005. WALL OR DOOR AS PART OF FENCE. A fence required by Section 397.003 may consist in whole or in part of a wall and door of a completely enclosed building on the premises if the wall or door is constructed and maintained as required by this chapter for a fence. (V.A.C.S. Art. 2372dd, Sec. 6.)

Source Law

Sec. 6. Any part of a fence or wall required by this Act may consist in whole or in part of a solid wall and door, or walls and doors of any completely enclosed building on the premises, if that wall or door meets all construction requirements set forth in this Act.

Revisor's Note

The revised law omits the references to "solid" and "wall" in Section 6, V.A.C.S. Article 2372dd, for the reason stated in Revisor's Note (2) to Section 397.003 of this chapter.

Revised Law

Sec. 397.006. GATE REQUIRED. (a) Each opening in a fence that is necessary to permit reasonable access to an automotive wrecking and salvage yard shall be equipped with a gate. The gate shall be constructed and maintained in accordance with the requirements of this chapter for a fence.

(b) A gate shall be closed and securely locked at all times except during normal daytime business hours. (V.A.C.S. Art. 2372dd, Sec. 7.)

Source Law

Sec. 7. Openings in the prescribed enclosure that are necessary to permit reasonable access to an automotive wrecking and salvage yard shall be equipped with a solid gate or gates, constructed and maintained in accordance with the requirements for a fence or wall set forth in this Act. The gates shall be closed and securely locked at all times except during normal daytime business hours.
Revisor's Note

The revised law omits the references to "solid" and "wall" in Section 7, V.A.C.S. Article 2372dd, for the reason stated in Revisor's Note (2) to Section 397.003 of this chapter.

Revised Law

Sec. 397.007. DISPLAY OR WORK OUTSIDE FENCE PROHIBITED. An owner or operator of an automotive wrecking and salvage yard or that person's agent or employee may not display, store, or work on a junked or wrecked automotive vehicle or a part or junk from the vehicle outside or above the fence required by this chapter. (V.A.C.S. Art. 2372dd, Sec. 8.)

Source Law

Sec. 8. It is unlawful for the owner, operator, or his agents or employees, to display, store, or work on a junked or wrecked automotive vehicle, or the parts, accessories, or junk from a junked or wrecked automotive vehicle outside or above the fence or wall required by this Act.

Revisor's Note

(1) Section 8, V.A.C.S. Article 2372dd, refers to "parts, accessories, or junk" from a vehicle. The revised law omits the term "accessories" for the reason stated in Revisor's Note (4) under Section 397.002.

(2) The revised law omits the reference to "wall" in Section 8, V.A.C.S. Article 2372dd, for the reason stated in Revisor's Note (2) to Section 397.003 of this chapter.

Revised Law

Sec. 397.008. ACCESS FOR OFFICIALS. All automotive vehicles, parts, and other materials located on an automotive wrecking and salvage yard shall be arranged to allow reasonable access to and inspection of the yard by an authorized fire, health, police, or building official. (V.A.C.S. Art. 2372dd, Sec. 9.)

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Sec. 9. All automotive vehicles, parts, and other materials located in or on the premises of an automotive wrecking and salvage yard shall be arranged to allow reasonable access to, and inspection of, the premises by authorized fire, health, police, and building officials.

Sec. 397.009. REMOVAL OF GASOLINE. Gasoline in a fuel tank of a junked, wrecked, or abandoned automotive vehicle shall be completely removed before the vehicle is placed on an automotive wrecking and salvage yard. (V.A.C.S. Art. 2372dd, Sec. 3.)

Sec. 3. All gasoline from the fuel tank shall be completely drained and removed from any junked, wrecked, or abandoned automotive vehicle before the vehicle is placed in any automotive wrecking and salvage yard.

Section 3, V.A.C.S. Article 2372dd, refers to gasoline being completely "drained and removed." The revised law omits the term "drained" because "drained" is included within the meaning of "removed."

Sec. 397.010. DRAINAGE. Each portion of a lot or tract used in the operation of an automotive wrecking and salvage yard must have appropriate drainage. (V.A.C.S. Art. 2372dd, Sec. 10.)

Sec. 10. Any portions of a lot or tract of land used in the operation of an automotive wrecking and salvage yard must have appropriate drainage.

Sec. 397.011. LOCATION OF YARD. (a) Except as provided by Subsection (b), an automotive wrecking and salvage yard may not be established within 300 feet of an existing church, school, or residence. The distance is measured beginning at the wall of the...
church, school, or residence that is closest to the yard and ending at the fence required by this chapter.

(b) An automotive wrecking and salvage yard may be established within 300 feet of a residence if the same person owns the residence and the yard. (V.A.C.S. Art. 2372dd, Sec. 11.)

Source Law

Sec. 11. An automotive wrecking and salvage yard may not be established within 300 feet of an existing church, school, or residence, measured from the wall of the structure that is closest to the automotive wrecking and salvage yard to the fence or wall of the yard required under Section 4 of this Act unless both the residence and the automotive wrecking and salvage yard are owned by the same person.

Revisor's Note

The revised law omits the reference to "wall" in Section 11, V.A.C.S. Article 2372dd, for the reason stated in Revisor's Note (2) to Section 397.003 of this chapter.

Revised Law

Sec. 397.012. PENALTY. (a) A person commits an offense if the person operates an automotive wrecking and salvage yard in violation of this chapter.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day a violation continues is a separate offense.

(V.A.C.S. Art. 2372dd, Sec. 12(a).)

Source Law

Sec. 12. (a) A person who operates an automotive wrecking and salvage yard in violation of this Act commits an offense. An offense under this section is a Class C misdemeanor, and each day the violation continues is a separate offense.

Revised Law

Sec. 397.013. REVOCATION OF LICENSE. The appropriate municipal authority may revoke or refuse to issue or renew a person's municipal license to operate an automotive wrecking and salvage yard if the authority finds the person violated a provision
of this chapter. (V.A.C.S. Art. 2372dd, Sec. 12(b).)

Source Law
(b) In addition, any city license to operate the yard held by the violator may be revoked or its issuance or renewal refused if the appropriate municipal authority finds that a violation has occurred.

Revisor's Note
Section 12(b), V.A.C.S. Article 2372dd, refers to a city license. The revised law substitutes the term "municipal" for "city" because that is the term used in the Local Government Code.

Revisor's Note
(End of Chapter)
The revised law omits the portion of Section 13, V.A.C.S. Article 2372dd, that refers to the effective date of the act because that provision is executed. The pertinent part of Section 13 reads:

Sec. 13. [This Act] takes effect September 1, 1983 . . .
[Chapters 398-429 reserved for expansion]
CHAPTER 430. MISCELLANEOUS PROVISIONS
Sec. 430.001. ADVISORY SAFETY OR DIRECTIONAL SIGNS .......... 1457

CHAPTER 430. MISCELLANEOUS PROVISIONS

Revised Law
Sec. 430.001. ADVISORY SAFETY OR DIRECTIONAL SIGNS. (a) A political subdivision may place along a public right-of-way under the control of the political subdivision an advisory safety or useful directional sign that cannot be mistaken as an official sign.

(b) The political subdivision may not place the sign along a state highway for revenue purposes. (V.A.C.S. Art. 6697a.)

Source Law
Art. 6697a. A political subdivision may place advisory safety or useful directional information signs
of a type that cannot be mistaken as official signs along the public rights-of-way under their control other than State highway routes for revenue purposes.

Revisor's Note

(1) The source law refers to "directional information signs." The revision omits "information" as unnecessary. A directional sign is an informative sign.

(2) The source law refers to a "highway route." The revision omits "route" as unnecessary. A highway is a route.
SUBTITLE I. TRANSPORTATION CORPORATIONS

CHAPTER 431. TEXAS TRANSPORTATION CORPORATION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 431.001. SHORT TITLE ............................................. 1461
Sec. 431.002. PURPOSES; LIBERAL CONSTRUCTION .................. 1462
Sec. 431.003. DEFINITIONS ................................................. 1463
Sec. 431.004. OPEN MEETINGS ............................................. 1465
Sec. 431.005. OPEN RECORDS .............................................. 1466
Sec. 431.006. APPLICATION OF TEXAS NON-PROFIT CORPORATION ACT .................................................... 1467
[Sections 431.007-431.020 reserved for expansion]

SUBCHAPTER B. CREATION AND OPERATION OF CORPORATION

Sec. 431.021. PURPOSE OF CORPORATION ................................. 1467
Sec. 431.022. APPLICATION .................................................. 1468
Sec. 431.023. ADOPTION OF RESOLUTION .................................. 1469
Sec. 431.024. FORM OF CORPORATION ..................................... 1470
Sec. 431.025. ARTICLES OF INCORPORATION ............................ 1471
Sec. 431.026. DELIVERY AND FILING OF CERTIFICATE OF INCORPORATION ................................................ 1472
Sec. 431.027. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION ...................................................... 1473
Sec. 431.028. BOARD .............................................................. 1474
Sec. 431.029. ADVISORY DIRECTORS ...................................... 1475
Sec. 431.030. BYLAWS .......................................................... 1476
Sec. 431.031. QUORUM .......................................................... 1476
Sec. 431.032. INDEMNIFICATION ............................................ 1477
Sec. 431.033. EXEMPTION FROM TAXATION .............................. 1478
Sec. 431.034. INCOME OF TRANSPORTATION CORPORATION ........... 1479
[Sections 431.035-431.060 reserved for expansion]

SUBCHAPTER C. CORPORATE POWERS

Sec. 431.061. DEFINITIONS .................................................. 1480
Sec. 431.062. GENERAL POWERS ............................................. 1480
Sec. 431.063. PROMOTION AND DEVELOPMENT OF TRANSPORTATION FACILITIES AND SYSTEMS .............................................. 1482
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 431.064</td>
<td>ALIGNMENT STUDIES</td>
<td>1483</td>
</tr>
<tr>
<td>Sec. 431.065</td>
<td>CONTRIBUTIONS; EXPENSES</td>
<td>1483</td>
</tr>
<tr>
<td>Sec. 431.066</td>
<td>EMPLOYEES AND CONSULTANTS</td>
<td>1484</td>
</tr>
<tr>
<td>Sec. 431.067</td>
<td>PROMOTIONAL ACTIVITIES</td>
<td>1484</td>
</tr>
<tr>
<td>Sec. 431.068</td>
<td>CONSTRUCTION OR IMPROVEMENT CONTRACTS</td>
<td>1485</td>
</tr>
<tr>
<td>Sec. 431.069</td>
<td>LOCATION OF TRANSPORTATION PROJECTS</td>
<td>1487</td>
</tr>
<tr>
<td>Sec. 431.070</td>
<td>BONDS AND NOTES</td>
<td>1488</td>
</tr>
<tr>
<td>Sec. 431.071</td>
<td>APPROVAL OF BONDS AND NOTES BY ATTORNEY</td>
<td>1489</td>
</tr>
<tr>
<td>Sec. 431.072</td>
<td>LIMITATION TO FEDERAL OR STATE HIGHWAY</td>
<td>1490</td>
</tr>
<tr>
<td>Sec. 431.073</td>
<td>PROJECT IN COUNTY OF 1.5 MILLION OR MORE</td>
<td>1490</td>
</tr>
<tr>
<td></td>
<td>OR ADJACENT COUNTY</td>
<td></td>
</tr>
<tr>
<td></td>
<td>[Sections 431.074-431.100 reserved for expansion]</td>
<td></td>
</tr>
<tr>
<td>SUBCHAPTER D.</td>
<td>LOCAL GOVERNMENT CORPORATIONS</td>
<td></td>
</tr>
<tr>
<td>Sec. 431.101</td>
<td>CREATION OF LOCAL GOVERNMENT CORPORATION</td>
<td>1492</td>
</tr>
<tr>
<td>Sec. 431.102</td>
<td>APPLICATION OF CHAPTER 394, LOCAL GOVERNMENT</td>
<td>1493</td>
</tr>
<tr>
<td>Sec. 431.103</td>
<td>CONTRACTS WITH POLITICAL SUBDIVISIONS</td>
<td>1494</td>
</tr>
<tr>
<td>Sec. 431.104</td>
<td>ASSUMPTION OF POWERS AND DUTIES</td>
<td>1494</td>
</tr>
<tr>
<td>Sec. 431.105</td>
<td>CONTRACTUAL AUTHORITY</td>
<td>1495</td>
</tr>
<tr>
<td>Sec. 431.106</td>
<td>PUBLIC SAFETY RULES</td>
<td>1496</td>
</tr>
<tr>
<td>Sec. 431.107</td>
<td>INCOME OF LOCAL GOVERNMENT CORPORATION</td>
<td>1497</td>
</tr>
<tr>
<td>Sec. 431.108</td>
<td>GOVERNMENTAL FUNCTIONS</td>
<td>1497</td>
</tr>
<tr>
<td>Sec. 431.109</td>
<td>CONTRACTS FOR HISTORICALLY UNDERUTILIZED BUSINESSES</td>
<td>1498</td>
</tr>
<tr>
<td></td>
<td>[Sections 431.110-431.140 reserved for expansion]</td>
<td></td>
</tr>
<tr>
<td>SUBCHAPTER E.</td>
<td>AMENDMENT OR RESTATEMENT OF ARTICLES</td>
<td></td>
</tr>
<tr>
<td></td>
<td>OF INCORPORATION</td>
<td></td>
</tr>
<tr>
<td>Sec. 431.141</td>
<td>AMENDMENT</td>
<td>1501</td>
</tr>
<tr>
<td>Sec. 431.142</td>
<td>AMENDMENT BY BOARD OF DIRECTORS</td>
<td>1501</td>
</tr>
<tr>
<td>Sec. 431.143</td>
<td>AMENDMENT BY COMMISSION</td>
<td>1502</td>
</tr>
<tr>
<td>Sec. 431.144</td>
<td>CONTENTS OF ARTICLES OF AMENDMENT</td>
<td>1503</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td></td>
</tr>
<tr>
<td>431.145</td>
<td>EXECUTION AND VERIFICATION OF ARTICLES OF AMENDMENT</td>
<td></td>
</tr>
<tr>
<td>431.146</td>
<td>DELIVERY AND FILING OF ARTICLES OF AMENDMENT</td>
<td></td>
</tr>
<tr>
<td>431.147</td>
<td>SUITS NOT AFFECTED</td>
<td></td>
</tr>
<tr>
<td>431.148</td>
<td>RESTATEMENT OF ARTICLES</td>
<td></td>
</tr>
<tr>
<td>431.149</td>
<td>RESTATEMENT WITHOUT ADDITIONAL AMENDMENT</td>
<td></td>
</tr>
<tr>
<td>431.150</td>
<td>RESTATEMENT WITH ADDITIONAL AMENDMENT</td>
<td></td>
</tr>
<tr>
<td>431.151</td>
<td>CHANGE IN BOARD INFORMATION NOT AMENDMENT</td>
<td></td>
</tr>
<tr>
<td>431.152</td>
<td>EXECUTION AND VERIFICATION OF RESTATEMENT OF ARTICLES</td>
<td></td>
</tr>
<tr>
<td>431.153</td>
<td>DELIVERY AND FILING OF RESTATEMENT OF ARTICLES</td>
<td></td>
</tr>
<tr>
<td>[431.154-431.180 reserved for expansion]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>431.181</td>
<td>ALTERATION OR DISSOLUTION BY COMMISSION</td>
<td></td>
</tr>
<tr>
<td>431.182</td>
<td>DISSOLUTION BY BOARD ON COMPLETION OF PURPOSE</td>
<td></td>
</tr>
<tr>
<td>431.183</td>
<td>EXECUTION OF ARTICLES OF DISSOLUTION</td>
<td></td>
</tr>
<tr>
<td>431.184</td>
<td>DELIVERY AND FILING OF ARTICLES OF DISSOLUTION</td>
<td></td>
</tr>
<tr>
<td>431.185</td>
<td>EFFECT OF ISSUANCE OF CERTIFICATE OF DISSOLUTION</td>
<td></td>
</tr>
<tr>
<td>431.186</td>
<td>ASSETS ON DISSOLUTION</td>
<td></td>
</tr>
</tbody>
</table>

**SUBTITLE I. TRANSPORTATION CORPORATIONS**

**CHAPTER 431. TEXAS TRANSPORTATION CORPORATION ACT**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Revised Law**

Sec. 431.001. SHORT TITLE. This chapter may be cited as the Texas Transportation Corporation Act. (V.A.C.S. Art. 15281, Sec. 1.)

**Source Law**

Art. 15281

Sec. 1. This Act may be cited as the "Texas Transportation Corporation Act."

74C263 JD-D 1461
Sec. 431.002. PURPOSES; LIBERAL CONSTRUCTION. (a) The purposes of this chapter are:

(1) the promotion and development of public transportation facilities and systems by new and alternative means;

(2) the expansion and improvement of transportation facilities and systems;

(3) the creation of corporations to secure and obtain rights-of-way for urgently needed transportation systems and to assist in the planning and design of those systems;

(4) the reduction of burdens and demands on the limited funds available to the commission and an increase in the effectiveness and efficiency of the commission; and

(5) the promotion and development of transportation facilities and systems that are public, not private, in nature, although these facilities and systems may benefit private interests as well as the public.

(b) This chapter shall be liberally construed to give effect to the purposes of this chapter. (V.A.C.S. Art. 15281, Sec. 3.)

Sec. 3. It is hereby found, determined, and declared that:

(a) the present and prospective traffic congestion in many urban areas of this state and the limited availability of state funds require as a public purpose the promotion and development of public transportation facilities and systems by new and alternative means;

(b) the creation of transportation corporations by the State Highway and Public Transportation Commission is essential to the continued economic growth of this state, is in the public interest, and will promote the health, safety, and general welfare of the citizens of this state by securing for them expanded and improved transportation facilities and systems;

(c) the transportation corporations created pursuant to the terms and conditions of this Act will perform an essential governmental function by acting on behalf of the commission (and thereby, the state) to secure and obtain rights-of-way for urgently needed transportation systems and to assist in the planning and design of such systems;

(d) the transportation corporations created pursuant to this Act will perform many functions normally undertaken by the commission and thus will reduce the burdens and demands on the limited...
funds available to the commission, thereby increasing
the effectiveness and impact of those funds available
to the commission and increasing the efficiency of the
commission itself;
(e) the transportation corporations
created pursuant to this Act will act as an
instrumentality of the state in promoting and
developing public transportation facilities and systems
and will not act as the agent or instrumentality of any
private interests even though many private interests
may be benefitted by the transportation corporations,
as will the general public; and
(f) this Act shall be liberally construed
in conformance with the legislative findings and
purposes set forth herein.

Reviser's Note

Section 3, V.A.C.S. Article 15281, contains
certain legislative findings. The revised law omits as
nonsubstantive and executed those findings intended by
the legislature to be valid only as of the date of
their enactment.

Revised Law

Sec. 431.003. DEFINITIONS. In this chapter:
(1) "Board" means the board of directors of a
corporation organized under this chapter.
(2) "Corporation" means a corporation organized under
this chapter and includes a local government corporation.
(3) "Local government" means a municipality or county.
(4) "Local government corporation" means a corporation
incorporated as provided by Subchapter D to act on behalf of a
local government. (V.A.C.S. Art. 15281, Secs. 2(1), (3), (4),
5.)

Source Law

Sec. 2. Wherever used in this Act, unless a
different meaning appears in the context, the following
terms, whether singular or plural, shall mean as
follows:
(1) "Board of directors" shall mean the
board of directors of any corporation organized
pursuant to the provisions of this Act.
(3) "Corporation" shall mean any
corporation organized pursuant to the provisions of
this Act, including a local government corporation.
(4) "Local government" shall mean a
municipality or a county.
(5) "Local government corporation" shall mean a corporation incorporated pursuant to the provisions of Section 4A of this Act to act on behalf of one or more local governments.

Revisor's Note

(1) Section 2(2), V.A.C.S. Article 15281, defines "commission." The revised law omits this definition because Section 201.001 of this code defines "commission" to mean the Texas Transportation Commission (the successor to the State Highway Commission). That definition applies to this chapter. The omitted definition reads:

(2) "Commission" shall mean the State Highway and Public Transportation Commission.

(2) Section 2, V.A.C.S. Article 15281, states that the defined terms have the meanings defined unless the context requires a different meaning. This limitation is omitted from the revised law because the defined terms are used consistently in the revision in the context to which the definition applies.

(3) Section 2, V.A.C.S. Article 15281, defines certain terms and provides that the terms have their defined meanings "whether singular or plural." The revised law omits this language as unnecessary because Section 311.012(b), Government Code (Code Construction Act), provides that "[t]he singular includes the plural and the plural includes the singular."

(4) Section 2(6), V.A.C.S. Article 15281, defines "Texas Transportation Corporation Act." The revised law omits this definition as unnecessary because the short title to this chapter provides that the chapter may be cited as the Texas Transportation Act and because Section 1.003 of this code and Section 311.006, Government Code (Code Construction Act), provide that any reference to "this chapter" occurring
in this chapter means Chapter 431, Transportation Code.

The omitted definition reads:

(6) "Texas Transportation Corporation Act" shall mean the Texas Transportation Corporation Act (Article 15281, Vernon's Texas Civil Statutes).

(5) Section 2(5), V.A.C.S. Article 15281, refers to "Section 4A of this Act." The pertinent parts of that section are codified in this chapter as Subchapter D. The revised law is drafted accordingly.

**Revised Law**

Sec. 431.004. OPEN MEETINGS. (a) A corporation is subject to Chapter 551, Government Code.

(b) Except as provided by Subsection (c) or (d), the board shall file notice of each meeting of the board in the same manner and in the same location as is required of a state governmental body under Chapter 551, Government Code.

(c) If the commission designates an area of the state in which a corporation may act on behalf of the commission, the board shall file notice of each meeting of the board in the same manner and in the same location as is required of a governmental body under Section 551.053, Government Code.

(d) The board of a local government corporation shall file notice of each meeting of the board in the same manner and in the same location as is required of the governing body under Chapter 551, Government Code, of the one or more local governments that created the local government corporation. (V.A.C.S. Art. 15281, Secs. 4A(c), 10(c), 11(c), (d).)

**Source Law**

[Sec. 4A]

(c) A local government corporation is subject to the open meetings law (Article 6252-17, Vernon's Texas Civil Statutes). The board of directors of a local government corporation shall file notice of each meeting of the board in the same manner and in the same location as is required of the governing body or bodies of the local government or governments granting approval to the creation of the local government corporation.
[Sec. 10]
(c) The board of directors is subject to the open meetings act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes).

[Sec. 11]
(c) The board of directors shall file notice of each meeting of the board in the same manner and in the same location as is required of a state governmental body under the open meetings act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes).
(d) If the commission has designated an area or areas of the state in which the corporation may act on behalf of the commission, the board of directors shall file notice of each meeting of the board in the same manner and in the same locations as is required of a governmental body under Subsection (f) of Section 3A of the open meetings act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), notwithstanding the requirement of Subsection (c) of this section.

Revisor's Note
(1) Sections 4A(c), 10(c), and 11(c), V.A.C.S. Article 15281, refer to the open meetings act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes). That statute was codified in 1993 as Chapter 551, Government Code. The revised law is drafted accordingly.
(2) Section 11(d), V.A.C.S. Article 15281, refers to Section 3A(f) of the open meetings act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes). That statute was codified in 1993 as Section 551.053, Government Code. The revised law is drafted accordingly.

Revised Law
Sec. 431.005. OPEN RECORDS. The board is subject to Chapter 552, Government Code. (V.A.C.S. Art. 15281, Sec. 11(e).)

Source Law
(e) The board of directors is subject to the open records act, Chapter 424, Acts of the 63rd

Revisor's Note

Section 11(e), V.A.C.S. Article 15281, refers to the open records act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). That statute was codified in 1993 as Chapter 552, Government Code. The revised law is drafted accordingly.

Revised Law

Sec. 431.006. APPLICATION OF TEXAS NON-PROFIT CORPORATION ACT. The Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a corporation to the extent that the provisions of that Act are not inconsistent with this chapter. (V.A.C.S. Art. 15281, Sec. 22 (part).)

Source Law

... Specifically, provisions of the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), shall apply to any transportation corporation created pursuant to this Act where such provisions are not inconsistent with the provisions of this Act. ...

[Sections 431.007-431.020 reserved for expansion]

SUBCHAPTER B. CREATION AND OPERATION OF CORPORATION

Revised Law

Sec. 431.021. PURPOSE OF CORPORATION. The purpose of a corporation is limited to the promotion and development of public transportation facilities and systems. (V.A.C.S. Art. 15281, Sec. 4 (part).)

Source Law

... In all cases, the purpose or purposes of a corporation created hereunder shall be limited to the promotion and development of public transportation facilities and systems. ...
Sec. 431.022. APPLICATION. (a) Three or more individuals may file with the commission an application for the creation of a corporation within a designated area.

(b) Each of the individuals must be a qualified voter.

(c) The application must be in writing.

(d) The application must contain the articles of incorporation proposed to be used in organizing the corporation.

(e) The commission may not charge a filing fee for the application. (V.A.C.S. Art. 15281, Sec. 4 (part); New.)

Sec. 4. Any number of natural persons, not less than three, each of whom is at least 18 years of age and a qualified elector, may file with the commission a written application requesting [that] the [commission authorize and approve] creation of a corporation to act on behalf of the commission within a designated area. The commission may not charge a filing fee for the application.

Revisor's Note

(1) A portion of Section 4, V.A.C.S. Article 15281 (revised as Section 431.023 of this code), requires that the commission approve the proposed articles of incorporation if it grants the application for creation of a corporation. To promote clarity, the revised law makes explicit the requirement implied by Section 4 that the application for the creation of a corporation must contain the articles of incorporation proposed to be used in organizing the corporation.

(2) A portion of Section 4, V.A.C.S. Article 15281, provides that a person filing a written application with the commission must be "at least 18 years of age and a qualified elector." The revised law substitutes "qualified voter" for "qualified elector" because the terms are synonymous and the former is more commonly used. In addition, Section 11.002, Election
Code, and the 26th Amendment to the United States Constitution provide that a qualified voter be at least 18 years of age. For this reason, the revised law omits the reference to "at least 18 years of age."

Revised Law

Sec. 431.023. ADOPTION OF RESOLUTION. (a) A corporation may be created only if the commission adopts a resolution authorizing the creation of a corporation to act on behalf of the commission.

(b) A resolution must state that the commission:

(1) determines that creation of the corporation is advisable; and

(2) approves the articles of incorporation proposed to be used in organizing the corporation.

(c) The commission may designate the area of the state in which the corporation may act on behalf of the commission. The designated area may include the territory of more than one political subdivision of the state.

(d) The commission may authorize the creation of more than one corporation to act within the same designated area if the resolution authorizing each corporation specifies the public purpose of the corporation. (V.A.C.S. Art. 15281, Sec. 4 (part).)

Source Law

[Any number of natural persons . . . may file with the commission a written application requesting that] the commission authorize and approve creation of a corporation to act on behalf of the commission . . . .

If the commission by appropriate resolution finds and determines that it is advisable that the corporation be authorized and created and approves the articles of incorporation proposed to be used in organizing the corporation, [then the articles of incorporation for the corporation may be filed as hereinafter provided.]

The commission may determine and designate the area or areas of the state in which the corporation may act on behalf of the commission, and such area or areas may include territory within two or more political subdivisions of the state. The commission may authorize and approve creation of one or more corporations to act within the same designated area, provided that the resolution approving the creation of each corporation shall specify the public purpose or purposes which the corporation may further on behalf of
the commission. . . . No corporation may be formed unless the commission has properly adopted a resolution as herein described.

Revisor's Note

(1) Section 4, V.A.C.S. Article 15281, refers to an "appropriate" resolution. The revised law omits "appropriate" as unnecessary.

(2) Section 4, V.A.C.S. Article 15281, provides that the commission may "find and determine" that it is advisable that a corporation be created. The reference to "find" is omitted from the revised law because in this context "find" is included within the meaning of "determine."

(3) Section 4, V.A.C.S. Article 15281, provides that the commission may "determine and designate" the area of the state in which the corporation may act on behalf of the commission. The reference to "determine" is omitted from the revised law because in this context "determine" is included within the meaning of "designate."

(4) Section 4, V.A.C.S. Article 15281, provides that the commission may approve "one or more" corporations to act within the same designated area. Because it does not make grammatical sense to approve just one corporation to act within the same designated area, the revised law substitutes "more than one" for the quoted phrase.

Revised Law

Sec. 431.024. FORM OF CORPORATION. (a) A corporation is a nonmember, nonstock corporation.

(b) A corporation is nonprofit, and its earnings may not benefit a private interest.

(c) A corporation may be created as a perpetual corporation.

(V.A.C.S. Art. 15281, Secs. 5, 6 (part), 18 (part).)
Source Law

Sec. 5. The corporation shall be a nonmember, nonstock corporation.

Sec. 6. [The articles of incorporation shall set forth:] (3) the period of duration, which may be perpetual; . . . .

Sec. 18. The corporation shall be a nonprofit corporation, and no part of its earnings shall inure to the benefit of any private interests. . . .

Revised Law

Sec. 431.025. ARTICLES OF INCORPORATION. The articles of incorporation must state:

(1) the name of the corporation;

(2) that the corporation is a nonprofit corporation;

(3) the duration of the corporation;

(4) the specific purpose for which the corporation is organized on behalf of the commission;

(5) that the corporation does not have any members and is a nonstock corporation;

(6) the street address of the corporation's initial registered office and the name of its initial registered agent at that address;

(7) the number of directors of the initial board and the name and address of each director;

(8) the name and street address of each incorporator;

(9) any provision for the regulation of the internal affairs of the corporation, including any provision required or permitted by this chapter to be in the bylaws; and

(10) that the commission has:

(A) by resolution specifically authorized the corporation to act on its behalf to further the public purpose stated in the resolution and in the articles of incorporation; and

(B) approved the articles of incorporation.

(V.A.C.S. Art. 15281, Sec. 6 (part).)
Sec. 6. The articles of incorporation shall set forth:

1. the name of the corporation;
2. a statement that the corporation is a nonprofit corporation;
3. the period of duration . . .
4. the specific purpose or purposes for which the corporation is organized on behalf of the commission;
5. that the corporation has no members and is a nonstock corporation;
6. any provision not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws, for the regulation of the internal affairs of the corporation;
7. the street address of its initial registered office and the name of its initial registered agent at such street address;
8. the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;
9. the name and street address of each incorporator; and
10. a recital that the commission has specifically authorized the corporation by resolution to act on its behalf to further the public purpose or purposes stated in the resolution and in the articles of incorporation and has approved the articles of incorporation.

Reviser's Note

Section 6(6), V.A.C.S. Article 15281, provides that the articles of incorporation must include any provision for the regulation of the internal affairs of the corporation as long as the provision is "not inconsistent with law." The quoted language is omitted from the revised law as unnecessary because the corporation does not have the power to act in any manner that is inconsistent with law.

Revised Law

Sec. 431.026. DELIVERY AND FILING OF CERTIFICATE OF INCORPORATION. (a) After the commission adopts a resolution under Section 431.023, three originals of the articles of incorporation shall be delivered to the secretary of state. (b) The secretary of state shall determine whether the articles of incorporation conform to this chapter.
determination that the articles conform to this chapter and on
receipt of a $25 fee, the secretary of state shall:

(1) endorse on each original the word "filed" and the
date of the filing;

(2) file one of the originals in the secretary's
office;

(3) issue two certificates of incorporation;

(4) attach to each certificate an original of the
articles of incorporation; and

(5) deliver a certificate of incorporation and the
attached articles of incorporation to:

(A) each incorporator or its representative; and

(B) the commission. (V.A.C.S. Art. 15281, Secs.
4 (part), 7(a), (b).)

Source Law

Sec. 4. . . then the articles of incorporation
for the corporation may be filed as hereinafter
provided . . .

Sec. 7. (a) Triplicate originals of the
articles of incorporation shall be delivered to the
secretary of state. If the secretary of state finds
that the articles of incorporation conform to the
requirements of this Act, he shall, when a fee of $25
has been paid:

(1) endorse on each original the word
"filed" and the month, day, and year of the filing
thereof;

(2) file one of such originals in his
office; and

(3) issue two certificates of
incorporation to each of which he shall affix one of
such originals.

(b) A certificate of incorporation together with
an original of the articles of incorporation affixed
thereto by the secretary of state shall be delivered to
the incorporators or their representatives and to the
commission.

Revised Law

Sec. 431.027. EFFECT OF ISSUANCE OF CERTIFICATE OF
INCORPORATION. (a) A corporation's existence begins when its
certificate of incorporation is issued.

(b) After the issuance of the certificate of incorporation,
the incorporation may not be contested for any reason.
(c) A certificate of incorporation is conclusive evidence that:

(1) all conditions for incorporation required of the incorporators and the commission are satisfied; and

(2) the corporation is incorporated under this chapter. (V.A.C.S. Art. 15281, Sec. 7(c).)

Source Law

(c) Upon the issuance of the certificate of incorporation, the corporate existence shall begin. After the issuance of the certificate of incorporation, the incorporation of the corporation shall be incontestable for any cause, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators and by the commission have been complied with and that the corporation has been incorporated under this Act.

Revised Law

Sec. 431.028. BOARD. (a) A corporation must have a board in which the powers of the corporation reside.

(b) The board consists of three or more directors.

(c) The commission shall appoint each director for a term that may not exceed six years.

(d) The commission may remove a director for or without cause.

(e) A director serves without compensation but is entitled to reimbursement from the corporation for expenses incurred in the performance of the director's duties. (V.A.C.S. Art. 15281, Sec. 8(a).)

Source Law

Sec. 8. (a) The corporation shall have a board of directors in which all powers of the corporation shall be vested and which shall consist of any number of directors, not less than three, each of whom shall be appointed by the commission for a term of no more than six years, and each of whom shall be removable by the commission for cause or at will. The directors shall serve as such without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder.
Revisor's Note

Section 8(a), V.A.C.S. Article 15281, provides for reimbursement of "actual expenses incurred." The revised law omits "actual" as unnecessary. "Expenses" means "actual expenses."

Revised Law

Sec. 431.029. ADVISORY DIRECTORS. (a) The board may appoint any number of advisory directors.

(b) An advisory director advises and assists the directors in promoting and developing new and expanded transportation facilities and systems.

(c) An advisory director serves until the completion of a particular project or at the will of the directors.

(d) An advisory director does not have a vote in the affairs of the corporation.

(e) An advisory director serves without compensation. The corporation may not reimburse an advisory director for expenses incurred in the performance of the director's duties. (V.A.C.S. Art. 15281, Secs. 8(b), 16 (part).)

Source Law

[Sec. 8]

(b) The board of directors of the corporation may in turn appoint any number of advisory directors who may advise and assist the directors in the promotion and development of new and expanded transportation facilities and systems. The advisory directors may serve until the completion of a particular project or at the will of the directors, but advisory directors shall have no vote in the affairs of the corporation, shall not receive any compensation for their services, and shall not receive any reimbursement for expenses incurred by them.

Sec. 16. ... [(a) The corporation shall have all powers necessary to work directly with landowners, local and state governmental agencies, and elected officials to support those activities required to promote and develop the projects. These activities shall include:] ... (3) reviewing candidates for advisory directorships and adding such advisory directors as may be appropriate; ... . . .
Reviser's Note

Section 16, V.A.C.S. Article 15281, authorizes a corporation to appoint advisory directors and to review candidates for those advisory positions. The authority to review the candidates is omitted as unnecessary because the power to appoint advisory directors implies the power to review the prospective appointees.

Revised Law

Sec. 431.030. BYLAWS. (a) The board shall adopt the initial bylaws of a corporation. The commission, by resolution, must approve the initial bylaws.

(b) A corporation may change its bylaws only with the approval of the commission. (V.A.C.S. Art. 15281, Sec. 9.)

Source Law

Sec. 9. The initial bylaws of a corporation shall be adopted by its board of directors and approved by resolution of the commission. The bylaws of a corporation shall not be changed without approval of the commission.

Revised Law

Sec. 431.031. QUORUM. (a) A quorum of a board is the lesser of:

(1) a majority of:

(A) the membership of the board under the bylaws; or

(B) if the bylaws do not provide the membership of the board, the membership of the board under the articles of incorporation; or

(2) the number, which must be more than two, set as the quorum by the articles of incorporation or the bylaws.

(b) An act of the majority of the directors present at a meeting at which there is a quorum is an act of the board, unless the act of a greater number is required by the articles of incorporation or the bylaws. (V.A.C.S. Art. 15281, Secs. 10(a), 11.
Sec. 10. (a) A quorum for the transaction of business by the board of directors shall be whichever is less:
   (1) a majority of the number of directors fixed by the bylaws or in the absence of a bylaw fixing the number of directors a majority of the number of directors stated in the articles of incorporation; or
   (2) any number, not less than three, fixed as a quorum by the articles of incorporation or the bylaws.

(b) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

Revisor's Note
Section 10(a), V.A.C.S. Article 15281, refers to a "quorum for the transaction of business." The revised law omits the language "for the transaction of business" as unnecessary. A "quorum" means the number of persons or votes necessary for a body to act.

Revised Law
Sec. 431.032. INDEMNIFICATION. (a) A corporation may indemnify a director or officer of the corporation for necessary expenses and costs, including attorney's fees, incurred by the director or officer in connection with any claim asserted against the director or officer in a court action or otherwise for negligence or misconduct.

(b) If a corporation does not fully indemnify a director or officer as provided by Subsection (a), the court in a proceeding in which any claim against the director or officer is asserted or any court with jurisdiction of an action instituted by the director or officer on a claim for indemnity may assess indemnity against the corporation, its receiver, or trustee for the amount paid by the director or officer, including attorney's fees, to pay any judgment or settlement of the claim necessarily incurred by the director or officer in connection with the claim in an amount the court
considers reasonable and equitable only if the court finds that, in
close connection with the claim, the director or officer is not guilty of
negligence or misconduct.

(c) A court may not assess indemnity under Subsection (b)
for an amount paid by the director or officer to the corporation.

(d) In this section, "director or officer" includes a former
director or officer. (V.A.C.S. Art. 15281, Secs. 11(a), (b).)

Source Law

Sec. 11. (a) The corporation shall have the
to indemnify any director or officer or former
director or officer of the corporation for expenses and
costs (including attorney's fees) actually and
necessarily incurred by him in connection with any
claim asserted against him by action in court or
otherwise by reason of his being or having been guilty
of negligence or misconduct in respect of the matter in
which indemnity is sought.

(b) If the corporation has not fully indemnified
him, the court in the proceeding in which any claim
against such director or officer has been asserted or
any court having the requisite jurisdiction of an
action instituted by such director or officer on his
claim for indemnity may assess indemnity against the
corporation, its receiver, or trustee for the amount
paid by such director or officer (including attorney's
fees) in satisfaction of any judgment or in compromise
of any such claim (exclusive in either case of any
amount paid to the corporation), actually and
necessarily incurred by him in connection therewith to
the extent that the court shall deem reasonable and
equitable; provided, nevertheless, that indemnity may
be assessed under this section only if the court finds
that the person indemnified was not guilty of
negligence or misconduct in respect of the matter in
which indemnity is sought.

Reviser's Note

Section 11, V.A.C.S. Article 15281, refers to
expenses and amounts "actually and necessarily
incurred." The revised law omits the reference to
"actually" for the reason stated in the revisor's note
to Section 431.028 of this code.

Revised Law

Sec. 431.033. EXEMPTION FROM TAXATION. A corporation
affects all the people in its area by assuming to a material extent
what otherwise might be an obligation or duty of the commission and
is a purely public charity under Section 2, Article VIII, Texas Constitution. However, a corporation is exempt from the franchise tax under Chapter 171, Tax Code, only if the corporation is exempted by that chapter. (V.A.C.S. Art. 15281, Sec. 17.)

Source Law

Sec. 17. The legislature finds, determines, and declares that the activities of a corporation created and organized under the provisions of this Act affect all the people of the area designated by the commission by assuming to a material extent that which might otherwise become the obligation or duty of the commission, and therefore such corporation is an institution of purely public charity within the tax exemption of Article VIII, Section 2, of the Texas Constitution. However, a corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

Revised Law

Sec. 431.034. INCOME OF TRANSPORTATION CORPORATION. The commission has the unrestricted right at any time to receive any income earned by a corporation other than a local government corporation. (V.A.C.S. Art. 15281, Sec. 18 (part).)

Source Law

... Any income earned by the corporation shall accrue to the state by reason of the commission's unrestricted right at any time to receive any income earned by the corporation. ...

Reviser's Note

(1) Section 18, V.A.C.S. Article 15281, provides both that "[a]ny income earned by the corporation shall accrue to the state" and that the commission has an "unrestricted right at any time to receive any income earned by the corporation." The revised law omits the first phrase as unnecessary because its meaning is clearly included within the meaning of the second phrase.

(2) The revised law adds an exception for local government corporations because Section 4A(d), V.A.C.S. Article 15281, revised in this chapter as Section...
431.107, provides a different rule for local government corporations.  

[Sections 431.035-431.060 reserved for expansion]

SUBCHAPTER C. CORPORATE POWERS

Revised Law

Sec. 431.061. DEFINITIONS. In this subchapter:

(1) "Construction" includes improvement and landscaping.

(2) "Highway" includes an improvement to a highway.

Source Law

Sec. 16B. In Section 16A of this Act:

(1) "Construction" includes improvement, including landscaping.

(2) "Highway" includes improvements to a highway.

Revisor's Note

Section 16B, V.A.C.S. Article 15281, refers to "Section 16A of this Act." That statute is codified as Subchapter C of this chapter, and the revised law is drafted accordingly.

Revised Law

Sec. 431.062. GENERAL POWERS. (a) A corporation has the powers and privileges of a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(b) A corporation has the powers provided by this subchapter to promote and develop new and expanded transportation facilities and systems on behalf of the commission and powers incidental to or necessary for the performance of that purpose.

(c) A corporation may, at the request of the commission, perform any function not specified by this chapter to promote and
develop transportation facilities and systems.

(d) A corporation has the powers necessary to construct or improve transportation facilities and systems approved by the commission. (V.A.C.S. Art. 15281, Secs. 4A(b) (part), 16 (part), 16A (part).)

Source Law

[Sec. 4A]

(b) A local government corporation shall have all the powers of . . . and (2) a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01, et seq., Vernon's Texas Civil Statutes).

Sec. 16. The corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of this state to nonprofit corporations incorporated under the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); but to the extent that the provisions of the general laws are in conflict or inconsistent with this Act, this Act prevails. In addition, the corporation shall have the following powers with respect to the promotion and development of transportation facilities and systems (projects) together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

(a) . . . and (10) performing any other functions requested by the commission in order to promote and develop the projects.

(b) The corporation shall have all other powers of a like or different nature not prohibited by law which are available to nonprofit corporations in this state and which are necessary for the promotion and development of new and expanded transportation facilities and systems on behalf of the commission.

Sec. 16A. Without limiting the powers conferred by Section 16 of this Act, the corporation shall have all powers necessary to construct or improve transportation facilities and systems (projects) approved by the commission. . . .

Revisor's Note

(1) Section 16, V.A.C.S. Article 15281, refers to "rights, powers, privileges, authority, and functions." The references to "rights," "authority," and "functions" are omitted from the revised law because they are included within the meaning of "powers and privileges."

(2) Section 16, V.A.C.S. Article 15281, provides that a transportation corporation has the powers given
by the general laws of this state to nonprofit corporations incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), except "to the extent that the provisions of the general laws are in conflict or inconsistent with this Act [Article 15281], this Act prevails." This provision is omitted from the revised law because it is both unnecessary and potentially misleading. To the extent that it means that Article 15281 prevails over other law in existence at the time Article 15281 became effective and with which Article 15281 conflicts, it merely restates general rules of statutory construction. To the extent that it means that Article 15281 prevails over future enactments of the legislature that may conflict with it, it is misleading. It is a fundamental principle of statutory law that one session of the legislature may not through statutory means bind a future session of the legislature.

Revised Law
Sec. 431.063. PROMOTION AND DEVELOPMENT OF TRANSPORTATION FACILITIES AND SYSTEMS. A corporation may work directly with property owners, local and state governmental agencies, and elected officials to support an activity required to promote and develop a transportation facility or system. (V.A.C.S. Art. 15281, Sec. 16 (part).)

Source Law
... [In addition, the corporation shall have the following powers with respect to the promotion and development of transportation facilities and system (projects)] ... . The corporation shall have all powers necessary to work directly with landowners, local and state governmental agencies, and elected officials to support those activities required to promote and develop the projects. ...
Revised Law

Sec. 431.064. ALIGNMENT STUDIES. A corporation may perform a preliminary or final alignment study. (V.A.C.S. Art. 15281, Sec. 16 (part).)

Source Law

... (a) [The corporation shall have all powers necessary to work directly with landowners, local and state governmental agencies, and elected officials to support those activities required to promote and develop the projects.] These activities shall include: (1) performing preliminary and final alignment studies . . . .

Revised Law

Sec. 431.065. CONTRIBUTIONS; EXPENSES. (a) A corporation may receive:

(1) a contribution of real property for a right-of-way; and

(2) a cash donation for:

(A) the purchase of a right-of-way; or

(B) the design or construction of a transportation facility or system.

(b) A corporation may establish a formula to determine the amount of cash donations from affected property owners and others necessary to cover the cost of a service to be performed by the corporation or its consultants.

(c) A corporation may borrow money to meet any expense or need associated with the regular operation of the corporation or a particular transportation project. (V.A.C.S. Art. 15281, Sec. 16 (part).)

Source Law

... (a) [The corporation shall have all powers necessary to work directly with landowners, local and state governmental agencies, and elected officials to support those activities required to promote and develop the projects.] . . . (2) receiving contributions of land for rights-of-way and cash donations to be applied to the purchase of rights-of-way not donated and/or to be applied to the design or construction of the
projects . . . (6) establishing a formula for determining the amount of cash donations from affected landowners (and others) to cover the costs of the services to be performed by the corporation and appointed consultants; (7) borrowing money to meet any expenses or needs associated with the regular operations of the corporation or a particular project . . . .

Revised Law

Sec. 431.066. EMPLOYEES AND CONSULTANTS. (a) A corporation may employ an administrative staff.

(b) A corporation may retain legal, public relations, and engineering services required to develop a transportation facility or system.

(c) Through its staff and retained consultants, a corporation may prepare an exhibit, right-of-way document, environmental report, schematic, or preliminary or final engineering plan necessary to develop a transportation facility or system.

(d) A corporation may pay an employee or consultant from money donated to develop a transportation facility or system.

(V.A.C.S. Art. 15281, Sec. 16 (part).)

Source Law

... (a) [The corporation shall have all powers necessary to work directly with landowners, local and state governmental agencies, and elected officials to support those activities required to promote and develop the projects. These activities shall include:] . . . (4) retaining such administrative staffs, and legal, public relations, and engineering services as may be required for the development of the projects and paying such employees and consultants from funds donated for this purpose; (5) through staff and retained consultants, preparing such exhibits, right-of-way documents, environmental reports, schematics, preliminary and final engineering plans as may be necessary for the development of the projects . . . .

Revised Law

Sec. 431.067. PROMOTIONAL ACTIVITIES. (a) A corporation may make official presentations to the state and other affected agencies or groups concerning the development of a transportation
project.
(b) A corporation may issue a press release or other material to promote the activities of a transportation project.
(V.A.C.S. Art. 15281, Sec. 16 (part).)

Source Law

... (a) [The corporation shall have all powers necessary to work directly with landowners, local and state governmental agencies, and elected officials to support those activities required to promote and develop the projects. These activities shall include:] ... (8) making official presentations to the state and other affected agencies or groups concerning the development of the projects; (9) issuing press releases and other material to promote the activities of the projects . . . .

Revised Law

Sec. 431.068. CONSTRUCTION OR IMPROVEMENT CONTRACTS. (a) A corporation may contract with the commission to:

(1) construct or improve a transportation project designated by the commission; and

(2) sell the project or improvement to the commission.

(b) For a transportation project constructed by a corporation, the corporation may contract with the commission for the commission to:

(1) supervise the construction; or

(2) provide construction management services.

(c) A corporation and a county, a home-rule municipality, a county road district created under Chapter 257, or a road utility district created under Chapter 441 may contract to pay jointly the cost of a transportation project designated by the commission. The contract may obligate the corporation to design, construct, or improve the transportation project. (V.A.C.S. Art. 15281, Secs. 4A(b) (part), 16A (part).)

Source Law

[Sec. 4A]
(b) A local government corporation shall have all the powers of (1) a corporation approved for creation by the commission pursuant to this Act, including the power to contract with the commission and
any state agency . . .

[Sec. 16A]

. . . Specifically, these powers shall include, but not be limited to, the following:

(1) the corporation may enter into contracts with the commission pursuant to which the corporation may be obligated to construct and/or improve projects designated by the commission and sell the projects or improvements to the commission on such terms as may be set forth in the contracts;

(2) the corporation may enter into contracts with counties, home-rule cities, county road districts created under authority of the County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes), and road utility districts created under authority of the Road Utility District Act, Chapter 13, Acts of the 68th Legislature, 2nd Called Session (Article 6674r-1, Vernon's Texas Civil Statutes), for purposes of jointly paying the costs of projects designated by the commission and pursuant to which the corporation may be obligated to design, construct, and/or improve the projects on such terms and conditions as may be set forth in the contracts. Any county or home-rule city may contract with a corporation for the purposes set forth above;

(5) the corporation may enter into contracts with the commission pursuant to which the commission may be obligated to supervise the construction of and/or provide construction management services for any project being constructed by the corporation on such terms and conditions as may be set forth in the contracts . . . .

Reviser's Note

(1) Section 16A, V.A.C.S. Article 15281, refers to "including, but not limited to." "But not limited to" is omitted as unnecessary because Section 311.005(13), Government Code (Code Construction Act) and Section 312.011(19), Government Code, provide that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

(2) Section 16A, V.A.C.S. Article 15281, provides that a corporation may enter into contracts under which the corporation may be obligated to "construct and/or improve projects . . . and sell the projects . . . on such terms as may be set forth in the contracts . . . [...] to design, construct, and/or improve the projects on such terms and conditions as
may be set forth in the contracts...[, or] to supervise the construction of and/or provide construction management services for any project... on such terms and conditions as may be set forth in the contracts..." The references to "terms and conditions as may be set forth in the contracts" are omitted from the revised law as unnecessary because the authority to contract implies that the contract will contain terms relating to the subject of the contract.

(3) Section 16A(2), V.A.C.S. Article 15281, refers to a "city." The revised law substitutes the term "municipality" for "city" because that is the term used in the Local Government Code.

(4) Section 16A(2), V.A.C.S. Article 15281, refers to the County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes). That statute is codified in this code as Chapter 251, and the revised law is drafted accordingly.

(5) Section 16A(2), V.A.C.S. Article 15281, refers to the Road Utility District Act, Chapter 13, Acts of the 68th Legislature, 2nd Called Session (Article 6674r-1, Vernon's Texas Civil Statutes). That statute is codified in this code as Chapter 441, and the revised law is drafted accordingly.

Revised Law

Sec. 431.069. LOCATION OF TRANSPORTATION PROJECTS. A corporation may construct or improve a transportation project on real property, including a right-of-way acquired by the corporation, provided to the corporation for that purpose by the commission or a political subdivision of this state. (V.A.C.S. Art. 15281, Sec. 16A (part).)
Source Law

... (6) the projects to be constructed and/or improved pursuant to the powers conferred by this section may be located on land or rights-of-way acquired by the corporation or on land or rights-of-way provided to the corporation for such purpose by the commission or any county, county road district, road utility district, municipality, or any political subdivision of the State of Texas; and...

Reviser's Note

Section 16A, V.A.C.S. Article 15281, refers to "county, county road district, road utility district, municipality, or any political subdivision." The revised law refers to any "political subdivision" and omits the specific references to political subdivisions as redundant and unnecessary.

Revised Law

Sec. 431.070. BONDS AND NOTES. (a) A corporation may issue bonds and notes to carry out its purpose.

(b) The bonds and notes may be issued under any power or authority available to the corporation, including the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes).

(c) A bond or note must state on its face that it is not an obligation of the State of Texas. (V.A.C.S. Art. 15281, Sec. 16A (part).)

Source Law

... (3) the corporation may issue bonds and notes to carry out its corporate purpose. Such bonds and notes may be issued under any power or authority available to the corporation, including, but not limited to, the Bond Procedures Act of 1981, as now or hereafter amended (Article 717k-6, Vernon's Texas Civil Statutes). Such bonds or notes shall state on their face that they are not obligations of the State of Texas; ...
Reviser's Note

(1) Section 16A(3), V.A.C.S. Article 15281, refers to the Bond Procedures Act of 1981, "as now or hereafter amended." "As now or hereafter amended" is omitted as unnecessary because Section 311.027, Government Code (Code Construction Act) and Section 312.008, Government Code, provide that a reference to any statute applies to all reenactments, revisions, or amendments of the statute.

(2) Section 16A(3), V.A.C.S. Article 15281, refers to "power or authority." The reference to "authority" is omitted from the revised law because "authority" is included within the meaning of "power."

(3) Section 16A(3), V.A.C.S. Article 15281, refers to "including, but not limited to." "But not limited to" is omitted as unnecessary for the reason stated in Reviser's Note (1) to Section 431.068 of this code.

Revised Law

Sec. 431.071. APPROVAL OF BONDS AND NOTES BY ATTORNEY GENERAL. (a) A corporation shall submit a bond or note authorized under Section 431.070 and a contract supporting its issuance to the attorney general for examination.

(b) If the attorney general finds that the bond or note, and any supporting contract are authorized under this chapter, the attorney general shall approve them.

(c) After approval by the attorney general, a bond, note, or contract may not be contested for any reason. (V.A.C.S. Art. 15281, Sec. 16A (part).)

Source Law

(4) the corporation shall submit its bonds or notes and any contract supporting the issuance of such bonds or notes to the attorney general of the State of Texas for examination. If the attorney general finds that such bonds, notes, and/or contracts
are authorized under the terms of this Act, then the
attorney general shall approve them, and they shall be
incontestable for any cause;

Revised Law

Sec. 431.072. LIMITATION TO FEDERAL OR STATE HIGHWAY SYSTEM.
A corporation may plan, design, acquire, construct, improve,
extend, or maintain a transportation project only if the project:
(1) is intended by the commission to become part of
the federal or state highway system; and
(2) is not intended to:
(A) become a county road or municipal street; or
(B) be owned by a county road district or by a
road utility district. (V.A.C.S. Art. 15281, Sec. 16A (part).)

Source Law

... (7) the corporation may only plan, design,
acquire, construct, improve, and extend, or maintain
those projects which are intended by the commission to
become part of the federal or state highway system, and
may not be engaged in such activities on any project
which is intended to become a county road or city
street or to be owned by a county road district or by a
road utility district.

Revisor's Note
Section 16A(7), V.A.C.S. Article 15281, refers to
a "city street." The revised law substitutes the term
"municipal" for "city" because that is the term used in
the Local Government Code.

Revised Law

Sec. 431.073. PROJECT IN COUNTY OF 1.5 MILLION OR MORE OR
ADJACENT COUNTY. (a) This section applies only to a corporation
in existence on August 31, 1991, that was created by the state or
one or more counties or municipalities to implement a
transportation project in:
(1) a county with a population of 1.5 million or more;
or
Subdivision (1).

(b) A corporation has the powers, rights, and privileges of a corporation created under Chapter 11, Title 32, Revised Statutes, as that law existed on August 31, 1991, except that the required right-of-way of any highway, road, street, or turnpike may be of the width required or approved by the commission or each governing body creating the corporation. (V.A.C.S. Art. 15281, Sec. 16B, as added Acts 71st Leg., R.S., Ch. 1241, 1989.)

Source Law

Sec. 16B. A corporation created to act on behalf of or assist the state or one or more counties or cities on a project located in a county of 1,500,000 population or more according to the last preceding federal census or in a county adjacent thereto shall have all of the rights, powers, privileges, and authority given by the general laws of this state to corporations created pursuant to the provisions of Chapter 11, Title 32, Revised Statutes, as amended; provided, however, the required right-of-way of any highway, road, street, or turnpike may be of the width required or approved by the commission or governing body or bodies approving creation of the corporation.

Revisor's Note

(1) Section 16B, V.A.C.S. Article 15281, as added by Section 8, Chapter 1241, Acts of the 71st Legislature, Regular Session, 1989, refers to Chapter 11, Title 32, Revised Statutes. That chapter was repealed by Section 28(1), Chapter 766, Acts of the 72nd Legislature, Regular Session, 1991. Section 29 of the repealing act provides that the repeal of Chapter 11, Title 32, "does not affect the authority granted to a corporation under Section 16B, Texas Transportation Corporation Act . . . . A corporation to which that section applies may continue to exercise the rights and powers granted under that section before the repeal of Chapter 11, Title 32, Revised Statutes." Because it is clear from Section 29 that it was intended to apply only to transportation corporations then in existence,
the revised law includes a provision limiting its application to transportation corporations in existence on August 31, 1991 (the day before the effective date of the repeal of Chapter 11, Title 32).

(2) Section 16B, V.A.C.S. Article 15281, refers to "cities." The revised law substitutes the term "municipalities" for "cities" because that is the term used in the Local Government Code.

(3) Section 16B, V.A.C.S. Article 15281, 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.

(4) Section 16B, V.A.C.S. Article 15281, refers to "rights, powers, privileges, and authority." The reference to "authority" is omitted from the revised law because it is included in the meaning of "powers."

[Sections 431.074-431.100 reserved for expansion]

SUBCHAPTER D. LOCAL GOVERNMENT CORPORATIONS

Revised Law

Sec. 431.101. CREATION OF LOCAL GOVERNMENT CORPORATION. A local government corporation may be created to aid and act on behalf of one or more local governments. (V.A.C.S. Art. 15281, Sec. 4A(a) (part).)

Source Law

Sec. 4A. (a) A local government corporation may be created to aid, assist, and act on behalf of one or more local governments. . . .
Revisor's Note

Section 4A(a), V.A.C.S. Article 15281, provides that a local government corporation may be created to "aid" and "assist" a local government. The reference to "assist" is omitted from the revised law because "assist" is included within the meaning of "aid."

Revised Law

Sec. 431.102. APPLICATION OF CHAPTER 394, LOCAL GOVERNMENT CODE. (a) In the manner in which Chapter 394, Local Government Code, applies to a corporation created under that chapter, that chapter applies to:

(1) the manner in which a local government corporation is created and dissolved;

(2) the appointment of the board of a local government corporation and the members' terms of service;

(3) the manner and the conditions under which the board serves; and

(4) the form, execution, approval, filing, and amending of the articles of incorporation and bylaws of a local government corporation.

(b) The property of a local government corporation and a transaction to acquire the property is exempt from taxation in the same manner as a corporation created under Chapter 394, Local Government Code. (V.A.C.S. Art. 15281, Secs. 4A(a) (part), (f).)

Source Law

(a) . . . A local government corporation shall be created and dissolved and the board of directors shall be appointed and serve in the manner, for the term, and on the conditions as a nonprofit corporation created pursuant to the provisions of Chapter 394, Local Government Code. The articles of incorporation and bylaws of a local government corporation and any amendments thereto shall be in the form and shall be executed, approved, and filed in the manner prescribed by Chapter 394, Local Government Code.

(f) The property of a corporation and any transaction in which it is acquired shall have the same exemption from taxation as a corporation created pursuant to Chapter 394, Local Government Code.
Sec. 431.103. CONTRACTS WITH POLITICAL SUBDIVISIONS. A local government corporation may contract with a political subdivision of this state in the manner and to the same extent as any other corporation. (V.A.C.S. Art. 15281, Sec. 4A(b) (part).)

(b) A local government corporation shall have all the powers of (1) a corporation approved for creation by the commission pursuant to this Act, including the power to contract with . . . local government, road districts, road utility districts, or other political subdivisions in the manner and to the same extent as a corporation approved for creation by the commission . . . .

Reviser's Note
Section 4A(b), V.A.C.S. Article 15281, refers to "local government, road districts, road utility districts, or other political subdivisions." The revised law refers to any "political subdivision" and omits the specific instances of political subdivisions as redundant and unnecessary.

Sec. 431.104. ASSUMPTION OF POWERS AND DUTIES. (a) The governing body of a local government may assume for the local government the powers and duties of a local government corporation created by the local government.

(b) A local government that assumes the powers and duties of a local government corporation assumes the assets and liabilities of the corporation.

(c) The powers and duties of a local government corporation created by more than one local government may be assumed only if each local government that created the corporation agrees to the assumption. (V.A.C.S. Art. 15281, Sec. 4A(g).)

(g) The governing body of a local government may assume for the local government the powers and duties of a local government corporation that has been created
by the local government. A local government that
assumes the powers and duties of a local government
corporation also assumes all of the assets and
liabilities of the corporation. The powers, duties,
assets, and liabilities of a local government
corporation created by more than one local government
may be assumed by a local government only if each
creating local government so agrees.

Revised Law

Sec. 431.105. CONTRACTUAL AUTHORITY. (a) A state agency,
including the commission, or a political subdivision may contract
with a local government corporation to accomplish a governmental
purpose of the sponsoring local government in the same manner and
to the same extent that it:

(1) may contract with any other corporation created
under this chapter; and

(2) is authorized to contract under Subchapter A,
Chapter 472.

(b) A local government may contract with a corporation to
accomplish the purposes of the sponsoring local government in the
manner provided under Subchapter C, Chapter 224. (V.A.C.S.
Art. 15281, Sec. 4A(e).)

Source Law

(e) The commission, state agencies, local
governments, road districts, road utility districts,
and other political subdivisions shall have the power
to contract with a local government corporation to
accomplish a governmental purpose of the sponsoring
local government in the same manner and to the same
extent as such entities have to contract with a
corporation approved for creation by the commission and
as authorized by Article 6702-3, Revised Statutes. A
local government also has authority to contract with a
corporation to carry out a governmental purpose of the
sposting local government in the manner prescribed by
Article 6674r-2, Revised Statutes.

Revisor's Note

(1) Section 4A(e), V.A.C.S. Article 15281,
refers to Article 6702-3, Revised Statutes. Chapters
891 (S.B. 314) and 1241 (H.B. 2485), Acts of the 71st
Legislature, Regular Session, 1989, each added an
Article 6702-3, Revised Statutes. It is clear that the
reference in Section 4A(e), V.A.C.S. Article 15281, is to Article 6702-3, Revised Statutes, as added by Section 2, Chapter 1241, Acts of the 71st Legislature, Regular Session, 1989. Chapter 1241 contains amendments that add both Article 6702-3, Revised Statutes, and Section 4A(e), V.A.C.S. Article 15281. The reference in Section 4A(e) to Article 6702-3, Revised Statutes, is to a statute being added in the very same legislative enactment.

Article 6702-3, Revised Statutes, as added by Section 2, Chapter 1241, Acts of the 71st Legislature, Regular Session, 1989, is codified in this code as Subchapter A, Chapter 472, and the revised law is drafted accordingly.

(2) Section 4A(e), V.A.C.S. Article 15281, refers to Article 6674r-2, Revised Statutes. That statute is codified in this code as Subchapter C, Chapter 224, and the revised law is drafted accordingly.

(3) Section 4A(e), V.A.C.S. Article 15281, refers to "local governments, road districts, road utility districts, and other political subdivisions." The revised law refers to any "political subdivision" and omits the specific references to political subdivisions as redundant and unnecessary.

Revised Law
Sec. 431.106. PUBLIC SAFETY RULES. A local government that creates a local government corporation may establish and enforce traffic and other public safety rules on a toll road, toll bridge, or turnpike of the corporation. Local governments that jointly create a local government corporation may jointly establish and enforce those rules. (V.A.C.S. Art. 15281, Sec. 4A(i).)
(i) The local government that creates a local government corporation may establish and enforce traffic and other public safety rules on a toll road, toll bridge, or turnpike of the corporation. If more than one local government creates a local government corporation, the local governments may jointly establish and enforce traffic and other public safety rules.

Revised Law

Sec. 431.107. INCOME OF LOCAL GOVERNMENT CORPORATION. (a) A local government creating a local government corporation is entitled at any time to receive any income earned by the local government corporation that is not needed to pay the corporation's expenses or obligations.

(b) The earnings of a local government corporation may not benefit a private interest. (V.A.C.S. Art. 15281, Sec. 4A(d) (part).)

Sec. 431.108. GOVERNMENTAL FUNCTIONS. (a) A local government corporation is a governmental unit as that term is used in Chapter 101, Civil Practice and Remedies Code.

(b) The operations of a local government corporation are governmental, not proprietary, functions. (V.A.C.S. Art. 15281, Sec. 4A(h).)

(h) A local government corporation is a governmental unit within the meaning of Subdivision (2), Section 101.001, Civil Practice and Remedies Code, and the operations of a local government corporation are governmental and not proprietary functions.
Sec. 431.109. CONTRACTS FOR HISTORICALLY UNDERUTILIZED BUSINESSES. (a) This section applies only to a local government corporation serving a county with a population of more than 2.4 million.

(b) A local government corporation 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.

(c) 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.

(d) 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.

(e) 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 operation 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 are owned by one or more persons described by
Subdivision (1) 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. (Sec. 7
(part), Acts 73rd Leg., R.S., Ch. 586, 1993.)

Source Law

Sec. 7. (a) This section applies to:
(1) a local government corporation created
under the Texas Transportation Corporation Act (Article
15281, Vernon's Texas Civil Statutes) serving a county
with a population of more than 2.4 million, according
to the most recent federal decennial census . . . .
(b) A local government corporation . . . shall
set and make a good faith effort to meet or exceed
goals for awarding contracts and subcontracts
associated with a project it operates, maintains, or
constructs to historically underutilized businesses.
The goals shall equal or exceed the federal requirement
on federal money used in highway construction and
maintenance and the goals adopted by the Texas
Department of Transportation under Article 6669c,
Revised Statutes. The goals shall apply to the total
value of all contracts and subcontracts awarded,
including contracts and subcontracts for construction,
maintenance, operations, supplies, services, materials,
equipment, professional services, the issuance of
bonds, and bond counsel.
(c) In this section, "historically underutilized
business" means:
(1) a corporation formed for the purpose
of making a profit in which at least 51 percent of all
classes of the shares of stock or other equitable
securities is owned, managed, and in daily operations
is controlled by one or more persons who have been
historically underutilized because of their
identification as members of certain groups, including
African Americans, Hispanic Americans, women, Asian
Pacific Americans, and Native Americans, who have
suffered the effects of discriminatory practices or
similar insidious circumstances over which they have no
control;
(2) a sole proprietorship formed for the
purpose of making a profit that is 100 percent owned
and in daily operations is controlled by a person
described by Subdivision (1) of this subsection;
(3) a partnership formed for the purpose
of making a profit in which at least 51 percent of the
assets and interest in the partnership is owned by one
or more persons described by Subdivision (1) of this
subsection and who also have proportionate interest in
the control, daily operation, and management of the
partnership's affairs;
(4) a joint venture in which each entity
in the joint venture is a historically underutilized
business; or
(5) a supplier contract between a
historically underutilized business and a prime
contractor under which the historically underutilized
business is directly involved in the manufacture or
distribution of the supplies or materials or otherwise
warehouses and ships the supplies or materials.

Revisor's Note

(1) Section 7(a)(1), 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 because the
reference is unnecessary. Section 311.005(3),
Government Code (Code Construction Act), and Section
312.011(20), Government Code, define "population" as
population according to the most recent federal
decennial census. That definition applies to the
revised law.

(2) Section 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 defines,
for the purposes of this title, "department" to mean
the Texas Department of Transportation, and the revised
law uses this definition.

[Sections 431.110-431.140 reserved for expansion]
SUBCHAPTER E. AMENDMENT OR RESTATEMENT OF ARTICLES OF INCORPORATION

Revised Law

Sec. 431.141. AMENDMENT. The articles of incorporation of a corporation created under this chapter may be amended only as provided by this subchapter. (V.A.C.S. Art. 15281, Sec. 12(a) (part).)

Source Law

Sec. 12. (a) The articles of incorporation may . . . be amended . . . as hereinafter provided.

Revised Law

Sec. 431.142. AMENDMENT BY BOARD OF DIRECTORS. (a) The board at any time may file with the commission a written application requesting that the commission approve an amendment to the articles of incorporation.

(b) The application must specify the proposed amendment.

(c) The board shall amend the articles if the commission by resolution:

(1) determines that it is advisable to adopt the proposed amendment;

(2) authorizes the adoption of the amendment; and

(3) approves the form of the amendment. (V.A.C.S. Art. 15281, Sec. 12(a) (part).)

Source Law

(a) [The articles of incorporation may] at any time and from time to time [be amended], provided that the board of directors files with the commission a written application requesting that the commission approve such amendment to the articles of incorporation, specifying in such application the amendment or amendments proposed to be made. If the commission by appropriate resolution finds and determines that it is advisable that the proposed amendment be made, authorizes the same to be made, and approves the form of the proposed amendment, the board of directors shall proceed to amend the articles . . . .
Revisor's Note

(1) Section 12(a), V.A.C.S. Article 15281, provides that the articles of incorporation may "at any time and from time to time" be amended. The reference to "from time to time" is omitted from the revised law because "from time to time" is included within the meaning of "at any time."

(2) Section 12(a), V.A.C.S. Article 15281, refers to a resolution that "finds and determines" whether a certain thing is advisable. The reference to "find" is omitted from the revised law because in this context "find" is included within the meaning of "determine."

Revised Law

Sec. 431.143. AMENDMENT BY COMMISSION. The commission, at its sole discretion, may amend the articles of incorporation at any time by:

(1) adopting the amendment by resolution; and

(2) delivering the articles of amendment to the secretary of state. (V.A.C.S. Art. 15281, Sec. 12(b).)

Source Law

(b) The articles of incorporation may also be amended at any time by the commission at its sole discretion by adopting an amendment to the articles of incorporation of the corporation by resolution of such governing body and delivering the articles of amendment to the secretary of state as hereinafter provided.

Revisor's Note

Section 12(b), V.A.C.S. Article 15281, provides that the commission must deliver the amended articles to the secretary of state as "hereinafter provided." The quoted reference is omitted as unnecessary because the subsequent provisions of the revised law apply without further reference.
The articles of amendment must:

1. state the name of the corporation;
2. if the amendment alters a provision of the articles of incorporation, identify by reference or describe the altered provision and include its text as it is amended;
3. if the amendment is an addition to the articles of incorporation, state that fact and include the text of each provision added; and
4. state that the amendment was adopted or was approved by the commission and give the date the commission adopted or approved the amendment.

(Revised Law, Sec. 431.144.)

Source Law

Sec. 13. The articles of amendment ... shall set forth:

1. the name of the corporation;
2. if the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as it is amended to read; if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added; and
3. the fact that such amendment was adopted or approved by the commission and the date of the meeting at which the amendment was adopted or approved by the commission.

(Revised Law, Sec. 431.145.)

Revisor's Note

Section 13(2), V.A.C.S. Article 15281, refers to "original or amended" articles. The quoted references are omitted as unnecessary because "articles" refers to the current articles--the original articles as amended by any amendments or as restated.

(Revised Law, Sec. 431.145.)

Execution and Verification of Articles of Amendment.

(a) Articles of amendment adopted by the board shall
be executed by:

(1) the president or vice-president of the corporation; and

(2) the secretary or assistant secretary of the corporation.

(b) Articles of amendment adopted by the commission shall be executed by:

(1) the presiding officer of the commission; and

(2) the secretary or clerk of the commission.

(c) One of the officers signing the articles shall verify each of the articles of amendment. (V.A.C.S. Art. 15281, Sec. 13 (part).)

Source Law

Sec. 13. [The articles of amendment] shall be executed in duplicate by the corporation by its president or by a vice-president and by its secretary or an assistant secretary or by the presiding officer and the secretary or clerk of the commission, shall be verified by one of the officers signing such articles, and . . . .

Revisor's Note

Section 13, V.A.C.S. Article 15281, provides that the corporation shall execute the articles of amendment in "duplicate." However, Section 14(a) of that article, codified in Section 431.146 of this code, provides for delivery of the articles in "triplicate." The reference to "duplicate" is omitted from the revised law to avoid this inconsistency in relation to the requirement that the delivery of the articles be in "triplicate."

Revised Law

Sec. 431.146. DELIVERY AND FILING OF ARTICLES OF AMENDMENT.

(a) Three originals of the articles of amendment shall be delivered to the secretary of state.

(b) The secretary of state shall determine whether the
articles of amendment conform to this chapter. On determination that the articles conform to this chapter and on receipt of a $25 fee, the secretary of state shall:

(1) endorse on each original the word "filed" and the date of the filing;

(2) file one of the originals in the secretary's office;

(3) issue two certificates of amendment;

(4) attach to each certificate one of the originals; and

(5) deliver a certificate of amendment and the attached articles of amendment to:

(A) the corporation or its representative; and

(B) the commission.

(c) On the issuance of the certificate of amendment, the amendment is effective and the articles of incorporation are amended accordingly. (V.A.C.S. Art. 15281, Secs. 14(a), (b), (c)).

Source Law
Sec. 14. (a) Triplicate of originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to the requirements of this Act, he shall, when a fee of $25 has been paid:

(1) endorse on each of such originals the word "filed" and the month, day, and year of the filing thereof;

(2) file one of such originals in his office; and

(3) issue two certificates of amendment to each of which he shall affix an original.

(b) A certificate of amendment together with an original of the articles of amendment affixed thereto by the secretary of state shall be delivered to the corporation or its representative and to the commission.

(c) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

Revised Law
Sec. 431.147. SUITS NOT AFFECTED. (a) An amendment to the
(a) Articles of incorporation does not affect:

(1) any existing cause of action in favor of or against the corporation;

(2) any pending suit to which the corporation is a party; or

(3) the existing rights of any person.

(b) If an amendment to the articles of incorporation changes the name of the corporation, a suit brought by or against the corporation under its former name does not abate for that reason.

(V.A.C.S. Art. 15281, Sec. 14(d).)

Source

(d) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending suit to which such corporation shall be a party or the existing rights of persons other than members; and in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

Revisor's Note

Section 14(d), V.A.C.S. Article 15281, refers to the rights of "persons other than members" of the corporation. Because Section 6 of that article, codified in Section 431.025 of this code, provides that the articles of incorporation must state that a corporation does not have any members, the revised law omits as unnecessary the reference to "members."

Revised Law

Sec. 431.148. RESTATEMENT OF ARTICLES. A corporation, by following the procedure to amend the articles of incorporation in this subchapter, including obtaining the approval of the commission, may authorize, execute, and file restated articles of incorporation as provided by this subchapter. (V.A.C.S. Art. 15281, Sec. 15(a) (part).)

Source

Sec. 15. (a) A corporation may, by following
the procedure to amend the articles of incorporation
provided by this Act including obtaining the approval
of the commission, authorize, execute, and file
restated articles of incorporation...

Revised Law
Sec. 431.149. RESTATEMENT WITHOUT ADDITIONAL AMENDMENT. (a)
A corporation may, without making any additional amendment, restate
the entire text of the articles of incorporation as amended or
supplemented by all certificates of amendment previously issued by
the secretary of state.

(b) The introductory paragraph of a restatement under this
section must contain a statement that the restatement:

(1) accurately copies the articles of incorporation
and all amendments to the articles that are in effect; and

(2) does not contain any additional amendments to the
articles. (V.A.C.S. Art. 15281, Secs. 15(a) (part), (b) (part).)

Source Law
(a) [A corporation may] . . . [authorize, execute, and file restated articles of incorporation]
which may restate either:

(1) the entire text of the articles of incorporation as amended or supplemented by all
certificates of amendment previously issued by the secretary of state; or

(b) If the restated articles of incorporation
restate the entire articles of incorporation as amended
and supplemented by all certificates of amendment previously issued by the secretary of state without
making any further amendment thereof, the introductory
paragraph shall contain a statement that the instrument
accurately copies the articles of incorporation and all
amendments thereto that are in effect to date and that
the instrument contains no change in the provisions
thereof . . . .

Revised Law
Sec. 431.150. RESTATEMENT WITH ADDITIONAL AMENDMENT. (a) A
corporation may:

(1) restate the entire text of the articles of
incorporation as amended or supplemented by all certificates of
amendment previously issued by the secretary of state; and

(2) as part of the restatement, make additional
amendments to the articles.

(b) A restatement under this section must:

(1) state that any additional amendment to the articles of incorporation conforms to this chapter;

(2) contain any statement required by this subchapter for articles of amendment except that the full text of any additional amendment is not required to be presented other than in the restatement itself;

(3) contain a statement that:

(A) the restatement is an accurate copy of the articles of incorporation and all amendments to the articles that are in effect and all additional amendments made to the articles; and

(B) the restatement does not contain any other change; and

(4) restate the text of the entire articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state and as additionally amended by the restated articles of incorporation.

(V.A.C.S. Art. 15281, Secs. 15(a) (part), (c) (part).)

Source Law

(a) [A corporation may . . . authorize, execute, and file restated articles of incorporation which may restate either:]

(2) the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation.

(c) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation, the instrument containing such articles shall:

(1) set forth for any amendment made by such restated articles of incorporation a statement that each such amendment has been effected in conformity with the provisions of this Act and shall further set forth the statements required by this Act to be contained in articles of amendment, provided that the full text of such amendments need not be set forth except in the restated articles of incorporation as so
amended;
(2) contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and as further amended by such restated articles of incorporation and that the instrument contains no other change in any provision thereof; . . . and
(3) restate the text of the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by the restated articles of incorporation.

Revised Law

Sec. 431.151. CHANGE IN BOARD INFORMATION NOT AMENDMENT.
For the purposes of Sections 431.149 and 431.150, substituting in the restated articles of incorporation the number, names, and addresses of the directors for the initial board or omitting the name and address of each incorporator is not an amendment or change in the articles of incorporation. (V.A.C.S. Art. 15281, Secs. 15(b) (part), (c) (part).)

Source Law

(b) . . . provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the name and address of each incorporator may be omitted.
(c) . . . provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the names and addresses of each incorporator may be omitted . . . .

Revised Law

Sec. 431.152. EXECUTION AND VERIFICATION OF RESTATEMENT OF ARTICLES. (a) Originals of the restated articles of incorporation shall be executed by:
(1) the president or vice-president of the corporation; and
(2) the secretary or assistant secretary of the corporation.
(b) One of the officers signing the restated articles shall
verify each of the restated articles. (V.A.C.S. Art. 15281, Sec. 15(d) (part).)

Source Law
(d) Such restated articles of incorporation shall be executed in triplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall be verified by one of the officers signing such articles. . . .

Revised Law
Sec. 431.153. DELIVERY AND FILING OF RESTATEMENT OF ARTICLES. (a) Three originals of the restated articles of incorporation shall be delivered to the secretary of state.
(b) The secretary of state shall determine whether the restated articles conform to this chapter. On a determination that the restated articles conform to law and on receipt of a $50 fee, the secretary of state shall:
(1) endorse on each original the word "filed" and the date of the filing;
(2) file one of the originals in the secretary's office;
(3) issue two restated certificates of incorporation;
(4) attach to each certificate one of the original restated articles; and
(5) deliver a restated certificate of incorporation and the attached restated articles to:
(A) the corporation or its representative; and
(B) the governing body of the entity that created the corporation.
(c) On the issuance of the restated certificate of incorporation, the original articles of incorporation and all amendments to the original articles are superseded. The restated articles of incorporation become the articles of incorporation of the corporation. (V.A.C.S. Art. 15281, Secs. 15(d) (part), (e), (f).)
(d) . . . Triplicate originals of the restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to law, he shall, when a fee of $50 has been paid:

1. endorse on each of such originals the word "filed" and the month, day, and year of the filing thereof;
2. file one of such originals in his office; and
3. issue two related certificates of incorporation to each of which he shall affix one of such originals.

(e) A restated certificate of incorporation together with a triplicate original of the restated articles of incorporation affixed thereto by the secretary of state shall be delivered to the corporation or its representative and to the governing body of the unit under whose auspices the corporation was created.

(f) Upon the issuance of the restated certificate of incorporation by the secretary the original articles of incorporation and all amendments thereto shall be superseded and the restated articles of incorporation shall be deemed to be articles of incorporation of the corporation.

[Sections 431.154-431.180 reserved for expansion]

SUBCHAPTER F. ALTERATION OR DISSOLUTION OF CORPORATION

Revised Law

Sec. 431.181. ALTERATION OR DISSOLUTION BY COMMISSION. (a)

At any time the commission in its sole discretion may:

1. alter the structure, organization, programs, or activities of a corporation; or
2. dissolve a corporation.

(b) The authority of the commission under this section is limited only by:

1. any law of this state prohibiting the impairment of a contract entered into by a corporation; and
2. any provision of this subchapter relating to alteration or dissolution.

(c) The commission must make an alteration or dissolution under this section by a written resolution. (V.A.C.S. Art. 15281, Sec. 19.)
Sec. 19. At any time the commission may in its sole discretion alter the structure, organization, programs, or activities of the corporation or terminate and dissolve the corporation, subject only to any limitation provided by the constitution and laws of the state on the impairment of contracts entered into by the corporation. Such alteration or dissolution shall be made by written resolution of the commission and as hereinafter provided.

Revisor's Note
(1) Section 19, V.A.C.S. Article 15281, provides that the commission may "terminate and dissolve" a transportation corporation. The reference to "terminate" is omitted from the revised law because "terminate" is included within the meaning of "dissolve."

(2) Section 19, V.A.C.S. Article 15281, provides that the commission may alter or dissolve a corporation "subject only to any limitation provided by the constitution and laws of this state ...." The reference to the constitution is omitted from the revision as unnecessary because the constitution is included as a law of this state. Furthermore, a constitutional limitation may not be abrogated by statute.

Revised Law
Sec. 431.182. DISSOLUTION BY BOARD ON COMPLETION OF PURPOSE. The board, with the approval by written resolution of the commission, shall dissolve the corporation as provided by this subchapter if the board by resolution determines that:

(1) the purposes for which the corporation was formed have been substantially fulfilled; and

(2) all obligations of the corporation have been fully paid. (V.A.C.S. Art. 15281, Sec. 20.)

Source Law
Sec. 20. Whenever the board of directors of the
corporation by resolution shall determine that the
purposes for which the corporation was formed have been
substantially complied with and that all obligations of
the corporation have been fully paid, the members of
the board of directors of the corporation shall, with
the approval by written resolution of the commission,
thereupon dissolve the corporation as hereinafter
provided.

Revised Law

Sec. 431.183. EXECUTION OF ARTICLES OF DISSOLUTION.

Articles of dissolution shall be executed by:

(1) the president or vice-president of the corporation
and the secretary or assistant secretary of the corporation; or

(2) any two members of the commission. (V.A.C.S.
Art. 15281, Sec. 21(a) (part).)

Source Law

Sec. 21. (a) Articles of dissolution shall be
executed in triplicate by the corporation by its
president or a vice-president and by its secretary or
an assistant secretary or by any two members of the
commission.

Revised Law

Sec. 431.184. DELIVERY AND FILING OF ARTICLES OF DISSOLUTION. (a) Three originals of the articles of dissolution
shall be delivered to the secretary of state.

(b) The secretary of state shall determine whether the
articles of dissolution conform to this chapter. On a
determination that the articles conform and on receipt of a $50
fee, the secretary of state shall:

(1) endorse on each original the word "filed" and the
date of the filing;

(2) file one of the originals in the secretary's
office;

(3) issue two certificates of dissolution;

(4) attach to each certificate an original of the
articles of dissolution; and

(5) deliver a certificate and the attached articles of
dissolution to:
(A) the representative of the dissolved corporation; and

(B) the commission. (V.A.C.S. Art. 15281, Secs. 21(a) (part), (b) (part).)

Source Law

(a) . . . Triplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to the requirements of this Act, he shall, when a fee of $50 has been paid:

(1) endorse on each of such originals the word "filed" and the month, day, and year of the filing thereof;

(2) file one of such originals in his office; and

(3) issue two certificates of dissolution to each of which he shall affix an original.

(b) A certificate of dissolution together with an original of the articles of dissolution affixed thereto by the secretary of state shall be returned to the representative of the dissolved corporation and to the commission. . . .

Revised Law

Sec. 431.185. EFFECT OF ISSUANCE OF CERTIFICATE OF DISSOLUTION. The corporate existence ends on the issuance of the certificate of dissolution except for:

(1) the purpose of any ongoing suit or other proceeding; and

(2) corporate action by a director or officer under this chapter. (V.A.C.S. Art. 15281, Sec. 21(b) (part).)

Source Law

. . . Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in this Act.

Revisor's Note

Section 21(b), V.A.C.S. Article 15281, refers to corporate action by "members." The revised law omits the reference to "members" for the reason stated in the revisor's note to Section 431.147 of this chapter.
Sec. 431.186. ASSETS ON DISSOLUTION. On dissolution or liquidation of a corporation, the title to all assets, including funds and property, shall be transferred to the commission unless the corporation is a local government corporation, in which case the title shall be transferred to the local governments that created the corporation. (V.A.C.S. Art. 15281, Secs. 4A(d) (part), 18 (part), 21(c).)

Source Law

[Sec. 4A] (d) ... In the event of dissolution or liquidation of a local government corporation, all assets shall be turned over to the local government or governments authorizing creation of the corporation.

Sec. 18. ... In the event of dissolution or liquidation of the corporation, all assets shall be turned over to the commission.

[Sec. 21] (c) Whenever dissolution occurs, whether instituted by the commission or by the board of directors of the corporation, the dissolution proceedings shall transfer the title to all funds and properties then owned by the corporation to the commission.

Revisor's Note
(End of Chapter)

(1) The first part of the first sentence of Section 22, V.A.C.S. Article 15281, relating to the cumulative effect of that article, is omitted by the revised law as unnecessary. An accepted general principle of statutory construction requires a statute to be given cumulative effect with other statutes unless it provides otherwise or unless the statutes are in conflict. The general principle applies to this revision.

That part of the first sentence of Section 22, V.A.C.S. Article 15281, that provides that the article is sufficient authority for the creation of transportation corporations is omitted by the revised
law as unnecessary. The operative provisions of the chapter are fully effective on their own terms.

Part of the first sentence of Section 22, V.A.C.S. Article 15281, provides that in case of certain conflicts between Article 15281 and other law, Article 15281 prevails. This provision is omitted from the revised law because it is both unnecessary and potentially misleading. To the extent that it means that Article 15281 prevails over other law in existence at the time Article 15281 became effective and with which Article 15281 conflicts, it merely restates general rules of statutory construction. To the extent that it means that Article 15281 prevails over future enactments of the legislature that may conflict with it, it is misleading. It is a fundamental principle of statutory law that one session of the legislature may not through statutory means bind a future session of the legislature.

The latter part of the first sentence of Section 22, V.A.C.S. Article 15281, provides that a corporation may use other laws to carry out any power or authority granted by the article. This provision is omitted from the revised law as unnecessary because the statement duplicates general rules of statutory construction.

The omitted sentence reads:

Sec. 22. This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the creation of the corporations authorized herein and all actions by such corporations authorized hereby without reference to any other general or special laws or specific acts or any restrictions or limitations contained therein; and in any case, to the extent of any conflict or inconsistency between any provisions of this Act and any other provisions of law, this Act shall prevail and control; provided, however, any corporation shall have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to carry out
any power or authority, express or implied, granted by this Act.

(2) The first sentence of the second paragraph of Section 22, V.A.C.S. Article 15281, provides that any act done under the provisions of the article must conform to the state and federal constitutions. This provision is omitted from the revised law as unnecessary because the statement duplicates general rules of statutory construction. The omitted sentence reads:

Nothing in this Act shall be construed to violate any provision of the federal or state constitution, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not.

(3) The second sentence of the second paragraph of Section 22, V.A.C.S. Article 15281, provides that if a court finds that any procedure carried out under this article violates either the state or federal constitution, the corporation has the power by resolution to provide an alternative procedure that remedies the violation. To the extent that this sentence merely means that the corporation can take measures to rectify its violative behavior, it is unnecessary; clearly, the corporation may at any time change its procedures to conform to the state or federal constitution. To the extent that this sentence attempts to shield the corporation from any sanction that a court may impose under the authority of the state or federal constitution, it violates the inherent constitutional authority of the judiciary to interpret and apply constitutional provisions. Accordingly, the revised law omits the sentence. The omitted sentence reads:

Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the corporation shall have the power by resolution to provide an
alternative procedure conformable with such constitutions.

(4) The third sentence of the second paragraph of Section 22, V.A.C.S. Article 15281, provides that the article is severable. This provision is omitted from the revised law because it duplicates Section 311.032, Government Code (Code Construction Act), applicable to the revised law, and Section 312.013, Government Code. These sections of the Government Code state that a provision of a statute is severable from each other provision of the statute that can be given effect. The omitted sentence reads:

If any provisions of this Act should be invalid, such fact shall not affect the validity of any other provisions of this Act, and the legislature hereby declares that it would have enacted the valid provisions of this Act notwithstanding the invalidity of any other provision or provisions hereof.

[Chapters 432-440 reserved for expansion]

SUBTITLE J. ROAD UTILITY DISTRICTS

CHAPTER 441. ROAD UTILITY DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 441.001. DEFINITIONS ........................................ 1522
Sec. 441.002. COMMISSION RULES .................................. 1525

[Sections 441.003-441.010 reserved for expansion]

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 441.011. CREATION; PURPOSE .................................. 1526
Sec. 441.012. TERRITORY ............................................ 1526
Sec. 441.013. SUBMISSION OF PRELIMINARY PLAN .................... 1526
Sec. 441.014. REVIEW OF PRELIMINARY PLAN ......................... 1527
Sec. 441.015. GRANTING OR DENYING APPROVAL OF PRELIMINARY PLAN .................................................. 1527
Sec. 441.016. APPROVAL OF MULTIPLE GOVERNMENTAL ENTITIES .... 1528
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 441.017.</td>
<td>APPROVAL OF PRELIMINARY PLAN FOR ROAD FACILITY IN MUNICIPALITY OR MUNICIPALITY'S EXTRATERRITORIAL JURISDICTION</td>
</tr>
<tr>
<td>Sec. 441.018.</td>
<td>PETITION REQUIRED</td>
</tr>
<tr>
<td>Sec. 441.019.</td>
<td>CONTENTS OF PETITION</td>
</tr>
<tr>
<td>Sec. 441.020.</td>
<td>FILING OF PRELIMINARY PLAN AND APPROVAL STATEMENT</td>
</tr>
<tr>
<td>Sec. 441.021.</td>
<td>PETITION FEE</td>
</tr>
<tr>
<td>Sec. 441.022.</td>
<td>HEARING REQUIRED</td>
</tr>
<tr>
<td>Sec. 441.023.</td>
<td>NOTICE OF HEARING</td>
</tr>
<tr>
<td>Sec. 441.024.</td>
<td>GRANTING OR DENYING PETITION</td>
</tr>
<tr>
<td>Sec. 441.025.</td>
<td>GROUNDS REQUIRING GRANTING OF PETITION</td>
</tr>
<tr>
<td>Sec. 441.026.</td>
<td>GROUNDS REQUIRING DENIAL OF PETITION</td>
</tr>
<tr>
<td>Sec. 441.027.</td>
<td>OTHER CONSIDERATIONS IN GRANTING OR DENYING PETITION</td>
</tr>
<tr>
<td>Sec. 441.028.</td>
<td>ADJUSTMENT OF BOUNDARIES</td>
</tr>
<tr>
<td>Sec. 441.029.</td>
<td>TEMPORARY DIRECTORS</td>
</tr>
<tr>
<td>Sec. 441.030.</td>
<td>CONFIRMATION ELECTION</td>
</tr>
<tr>
<td>Sec. 441.031.</td>
<td>NOTICE OF CONFIRMATION ELECTION</td>
</tr>
<tr>
<td>Sec. 441.032.</td>
<td>BALLOT FOR CONFIRMATION ELECTION</td>
</tr>
<tr>
<td>Sec. 441.033.</td>
<td>CANVASS</td>
</tr>
<tr>
<td>Sec. 441.034.</td>
<td>EFFECT OF CONFIRMATION ELECTION</td>
</tr>
<tr>
<td>Sec. 441.035.</td>
<td>INCLUDING BOND PROPOSITION AT ELECTION</td>
</tr>
</tbody>
</table>

[Sections 441.036-441.050 reserved for expansion]  
**SUBCHAPTER C. ACQUISITION OF DISTRICT POWERS BY CONSERVATION AND RECLAMATION DISTRICT**  
Sec. 441.051. | PETITION TO ACQUIRE POWERS |
Sec. 441.052. | ELECTION ON ACQUISITION OF ROAD UTILITY DISTRICT POWERS |
Sec. 441.053. | APPLICATION OF LAW FOLLOWING ADOPTION OF ROAD UTILITY DISTRICT POWERS |

[Sections 441.054-441.070 reserved for expansion]  
**SUBCHAPTER D. GOVERNANCE**  
Sec. 441.071. | BOARD OF DIRECTORS |
Sec. 441.072. BOARD OF DIRECTORS IN CERTAIN DISTRICTS  .... 1549
Sec. 441.073. ELECTION OF DIRECTORS  ......................... 1550
Sec. 441.074. TERM; TAKING OFFICE  .......................... 1551
Sec. 441.075. COMPENSATION  ................................ 1552
Sec. 441.076. VACANCY  ..................................... 1552
Sec. 441.077. OFFICERS  ..................................... 1553
Sec. 441.078. GENERAL MANAGER  ............................. 1553
Sec. 441.079. OTHER OFFICERS  .............................. 1554
Sec. 441.080. PERSONNEL  .................................... 1554
Sec. 441.081. OFFICER'S, EMPLOYEE'S, OR CONTRACTOR'S BOND ... 1555
Sec. 441.082. MEETINGS  ..................................... 1555
Sec. 441.083. VOTE REQUIRED FOR ACTION  .................... 1556
Sec. 441.084. RECORDS  ...................................... 1556
Sec. 441.085. OFFICE  ......................................... 1557
Sec. 441.086. SEAL  ........................................... 1558
[Sections 441.087-441.100 reserved for expansion]

SUBCHAPTER E. POWERS AND DUTIES
Sec. 441.101. GENERAL POWERS AND DUTIES  ..................... 1559
Sec. 441.102. RULES  ....................................... 1561
Sec. 441.103. SUIT AND JUDGMENT  ............................ 1561
[Sections 441.104-441.110 reserved for expansion]

SUBCHAPTER F. ROAD FACILITIES
Sec. 441.111. CONSTRUCTION, ACQUISITION, OR IMPROVEMENT OF
ROAD FACILITY .............................................. 1562
Sec. 441.112. PROGRESS PAYMENTS  ............................ 1563
Sec. 441.113. JOINT PROJECT  ................................ 1564
Sec. 441.114. COMPETITIVE BIDS  .............................. 1565
Sec. 441.115. CONTRACTOR BOND  .............................. 1565
Sec. 441.116. CHANGES TO ROAD FACILITIES  ................... 1566
Sec. 441.117. MONITORING WORK  .............................. 1567
[Sections 441.118-441.130 reserved for expansion]

SUBCHAPTER G. CONVEYANCE OF ROAD FACILITY
Sec. 441.131. HEARING ON FINAL APPROVAL  .................... 1569
Sec. 441.132. DECISION ON APPROVAL  ........................ 1570
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>441.133</td>
<td>CONVEYANCE REQUIRED</td>
<td>1571</td>
</tr>
<tr>
<td>441.134</td>
<td>COMMISSION CONVEYANCE ORDER</td>
<td>1571</td>
</tr>
<tr>
<td>441.135</td>
<td>TRANSFER OF OWNERSHIP AND RESPONSIBILITY</td>
<td>1573</td>
</tr>
<tr>
<td>441.136</td>
<td>EFFECT OF CONVEYANCE ON INDEBTEDNESS</td>
<td>1574</td>
</tr>
<tr>
<td>441.137</td>
<td>PARTIAL CONVEYANCE</td>
<td>1575</td>
</tr>
<tr>
<td>441.138-441.150</td>
<td>[Sections reserved for expansion]</td>
<td></td>
</tr>
<tr>
<td>441.151</td>
<td>FISCAL YEAR</td>
<td>1575</td>
</tr>
<tr>
<td>441.152</td>
<td>BUDGET</td>
<td>1575</td>
</tr>
<tr>
<td>441.153</td>
<td>AUDIT</td>
<td>1576</td>
</tr>
<tr>
<td>441.154</td>
<td>DEPOSITORY</td>
<td>1577</td>
</tr>
<tr>
<td>441.155</td>
<td>PAYMENT OF EXPENSES</td>
<td>1577</td>
</tr>
<tr>
<td>441.156</td>
<td>AUTHORIZED INVESTMENTS</td>
<td>1578</td>
</tr>
<tr>
<td>441.157</td>
<td>INVESTMENT REPRESENTATIVE</td>
<td>1582</td>
</tr>
<tr>
<td>441.158</td>
<td>BORROWING MONEY</td>
<td>1582</td>
</tr>
<tr>
<td>441.159-441.170</td>
<td>[Sections reserved for expansion]</td>
<td></td>
</tr>
<tr>
<td>441.171</td>
<td>ISSUANCE OF BONDS</td>
<td>1583</td>
</tr>
<tr>
<td>441.172</td>
<td>TAX BOND ELECTION</td>
<td>1584</td>
</tr>
<tr>
<td>441.173</td>
<td>FORM AND PROVISIONS OF BONDS</td>
<td>1586</td>
</tr>
<tr>
<td>441.174</td>
<td>EXAMINATION</td>
<td>1588</td>
</tr>
<tr>
<td>441.175</td>
<td>REFUNDING BONDS</td>
<td>1588</td>
</tr>
<tr>
<td>441.176</td>
<td>TAX EXEMPTION</td>
<td>1589</td>
</tr>
<tr>
<td>441.177</td>
<td>BONDHOLDER MANDAMUS</td>
<td>1589</td>
</tr>
<tr>
<td>441.178</td>
<td>USE OF BOND PROCEEDS</td>
<td>1591</td>
</tr>
<tr>
<td>441.179</td>
<td>DISPOSITION OF PROCEEDS</td>
<td>1591</td>
</tr>
<tr>
<td>441.180</td>
<td>MANNER OF REPAYMENT</td>
<td>1592</td>
</tr>
<tr>
<td>441.181-441.190</td>
<td>[Sections reserved for expansion]</td>
<td></td>
</tr>
<tr>
<td>441.191</td>
<td>IMPOSITION OF TAXES</td>
<td>1594</td>
</tr>
<tr>
<td>441.192</td>
<td>MAINTENANCE TAX</td>
<td>1594</td>
</tr>
<tr>
<td>441.193</td>
<td>TAX RATE</td>
<td>1595</td>
</tr>
<tr>
<td>441.194</td>
<td>APPOINTMENT OF TAX ASSESSOR-COLLECTOR</td>
<td>1595</td>
</tr>
<tr>
<td>441.195</td>
<td>IMPOSITION OF TAXES DURING FIRST YEAR</td>
<td>1596</td>
</tr>
</tbody>
</table>
Sec. 441.196. ALL PROPERTY TAXED .................................... 1596
Sec. 441.197. FEES ...................................................... 1596
Sec. 441.198. BOND ANTICIPATION NOTES ............................ 1598

[Sections 441.199-441.210 reserved for expansion]

SUBCHAPTER K. ANNEXATION

Sec. 441.211. PETITION FOR ANNEXATION ............................. 1600
Sec. 441.212. BOARD DECISION ...................................... 1600
Sec. 441.213. COMMISSION APPROVAL ................................ 1600
Sec. 441.214. RECORDING PETITION .................................. 1601
Sec. 441.215. ASSUMPTION OF DEBT SHARE ........................... 1601
Sec. 441.216. UNISSUED BONDS ....................................... 1602

[Sections 441.217-441.230 reserved for expansion]

SUBCHAPTER L. DISSOLUTION

Sec. 441.231. PETITION FOR DISSOLUTION ............................. 1603
Sec. 441.232. COMMISSION DISSOLUTION ORDER ........................ 1603
Sec. 441.233. TRANSFER OF DISTRICT MONEY .......................... 1604

SUBTITLE J. ROAD UTILITY DISTRICTS
CHAPTER 441. ROAD UTILITY DISTRICTS
SUBCHAPTER A. GENERAL PROVISIONS

Revised Law
Sec. 441.001. DEFINITIONS. In this chapter:

(1) "Approval statement" means a statement that a governmental entity issues to a petitioner under Section 441.015.

(2) "Bonds" includes notes, warrants, or other evidence of indebtedness.

(3) "District" means a road utility district.

(4) "Governmental entity" means a municipality, a county, or the department.

(5) "Road" means a graveled or paved road or turnpike that serves or is intended to serve as an arterial or main feeder road under standards the commission prescribes.

(6) "Road facility" means:

(A) a road constructed, acquired, or improved by
a district; or

(B) property, an easement, or works constructed, acquired, or improved by a district and necessary or appropriate for or in aid of the improvement of a river, creek, or stream to prevent overflow or the construction and maintenance of a pool, lake, reservoir, dam, canal, or waterway for the purpose of drainage, if the property, easement, or works is related to or in furtherance of the construction, acquisition, or improvement of a road. (V.A.C.S. Art. 6674r-1, Sec. 2 (part).)

Source Law

Sec. 2. In this Act:

(2) "District" means a road utility district.

(4) "Roads" means macadamized, graveled, or paved roads and turnpikes which serve or are intended to serve as arterial or main feeder roads under such standards as may be prescribed by the commission.

(5) "Governmental entity" means a city, county, or the State Department of Highways and Public Transportation.

(6) "Approval statement" means the written statement issued to a petitioner by a governmental entity under Subsection (d) of Section 4 of this Act.

(7) "Drainage works" means any property, easements, facilities, or works necessary or appropriate for the improvement of rivers, creeks, and streams to prevent overflows or for the construction and maintenance of pools, lakes, reservoirs, dams, canals, and waterways for the purpose of drainage, or in aid of these purposes, if the property, easements, facilities, or works are related to or in furtherance of the construction, acquisition, or improvement of roads.

(8) "Facilities" means roads or drainage works constructed, acquired, or improved by the district.

(9) "Bonds" means bonds, notes, warrants, or other evidence of indebtedness.

Revisor's Note

(1) The revised law omits the definition of "person" contained in Section 2(1), V.A.C.S. Article 6674r-1, because it is substantively identical to the definition provided by Section 311.005(2), Government Code (Code Construction Act), applicable to the revised law. The omitted law reads:
(1) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal entity.

(2) Section 2(3), V.A.C.S. Article 6674r-1, defines "commission." The revised law omits this definition because Section 201.001 defines "commission" to mean the Texas Transportation Commission (the successor to the State Highway and Public Transportation Commission). That definition applies to this chapter. The omitted law reads:

(3) "Commission" means the State Highway and Public Transportation Commission.

(3) Section 2(4), V.A.C.S. Article 6674r-1, refers to the "macadamized, graveled, or paved roads." The reference to "macadamized" is omitted from the revised law because "macadamized" is included within the meaning of "paved."

(4) Section 2(5), V.A.C.S. Article 6674r-1, refers to "a city." The revised law substitutes the term "municipality" for "city" because that is the term used in the Local Government Code.

(5) Section 2(5), V.A.C.S. Article 6674r-1, refers to the State Department of Highways and Public Transportation. The revised law substitutes "department" for "State Department of Highways and Public Transportation" because Section 201.001 defines "department" to mean the Texas Department of Transportation (the successor to the State Department of Highways and Public Transportation). That definition applies to this chapter.

(6) Section 2, V.A.C.S. Article 6674r-1, includes a definition of "drainage works." The only other use of that term in Article 6674r-1 is in the
definition of "facilities." For this reason, the revised law omits the separate definition of "drainage works" and incorporates the substance of that definition into the revised law's definition of "road facility." The definition also refers to "property, easements, facilities, or works." The reference to "facilities" is omitted from the revised law because "facilities" is included within the meaning of "property" or "works."

**Revised Law**

Sec. 441.002. COMMISSION RULES. The commission may adopt rules to implement this chapter. (V.A.C.S. Art. 6674r-1, Sec. 10(a).)

**Source Law**

Sec. 10. (a) The commission may adopt reasonable rules to carry out its powers and duties under this Act.

**Revisor's Note**

Section 10(b), V.A.C.S. Article 6674r-1, provides that a commission order shall be enforced as provided by Section 19A, Administrative Procedure and Texas Register Act (now Section 2001.202, Government Code). The revised law omits Section 10(b) because Section 2001.202, Government Code, by its own terms applies to that order, and it is unnecessary to restate that application in this chapter. The omitted law reads:

(b) An order of the commission issued under this Act shall be enforced in the same manner and subject to the same procedure as provided by Section 19A, Administrative Procedure and Texas Register Act, as added (Article 6252-13a, Vernon's Texas Civil Statutes).

[Sections 441.003-441.010 reserved for expansion]
SUBCHAPTER B. CREATION OF DISTRICT

Revised Law

Sec. 441.011. CREATION; PURPOSE. A district may be created under Section 52, Article III, Texas Constitution, to construct, acquire, improve, and provide financing for a road facility as provided by this chapter. (V.A.C.S. Art. 6674r-1, Secs. 1, 32.)

Source Law

Art. 6674r-1
Sec. 1. A road utility district may be created pursuant to Article III, Section 52, of the Texas Constitution, as provided by this Act.

Sec. 32. A district created under this Act is created for the purpose of constructing, acquiring, and improving facilities and providing financing for facilities as provided by this Act.

Revised Law

Sec. 441.012. TERRITORY. A district may contain all or part of one or more counties. (V.A.C.S. Art. 6674r-1, Sec. 3.)

Source Law

Sec. 3. A district created under this Act may be composed of all or part of one or more counties of this state.

Revised Law

Sec. 441.013. SUBMISSION OF PRELIMINARY PLAN. Before submitting a petition to create a district under Section 441.018, a person must submit a preliminary plan for each road facility the district is to construct, acquire, or improve to each governmental entity to which the road facility is to be conveyed. (V.A.C.S. Art. 6674r-1, Sec. 4(a).)

Source Law

Sec. 4. (a) Before submitting a petition to the commission under Section 5 of this Act, a person who desires to create a district must submit to the governmental entity to which he proposes to convey district facilities a copy of all preliminary plans for the facilities to be constructed, acquired, or improved by the district.
Sec. 441.014. REVIEW OF PRELIMINARY PLAN. (a) Not later than the 120th day and not earlier than the 90th day after the date a preliminary plan is submitted under Section 441.013, the governmental entity shall determine whether:

(1) the plan meets the governmental entity's requirements; and

(2) to approve the plan and accept the conveyance of the road facilities as provided by this chapter.

(b) The governmental entity shall consult with the person submitting the plan and, with that person's agreement, make changes necessary to make the plan comply with the governmental entity's requirements. The governmental entity's requirements may include specific designations of the characters of title to be required on conveyance. (V.A.C.S. Art. 6674r-1, Secs. 4(b), (c).)

(b) The governmental entity shall have not less than 90 days and not more than 120 days to review the preliminary plans before making a decision on whether the plans meet the requirements of the governmental entity and whether the governmental entity approves the preliminary plans and will accept the conveyance of the facilities as provided by this Act.

(c) The governmental entity shall consult with any person who submits preliminary plans under this Act and, with the agreement of the person who submits the preliminary plans, shall make necessary changes so that the preliminary plans will comply with requirements of the governmental entity. The requirements of the governmental entity may include specific designations of character of title that will be required on conveyance.

Sec. 441.015. GRANTING OR DENYING APPROVAL OF PRELIMINARY PLAN. (a) The governing body of a governmental entity that approves a preliminary plan and is willing to accept conveyance of the road facilities on acquisition or completion of construction or improvement shall:

(1) issue an order approving the plan; and

(2) give the person who submitted the plan a written
approval statement.

(b) An approval statement must state that the governmental entity approves the preliminary plan and will accept conveyance of the road facilities on acquisition or on completion of construction or improvement.

(c) If the governmental entity does not approve the plan and is not willing to accept a conveyance of the road facilities, the governing body of the governmental entity shall issue an order denying approval of the preliminary plan and refusing conveyance of the road facilities. (V.A.C.S. Art. 6674r-1, Secs. 4(d), (e).)

Source Law

(d) On completion of its review, if a governmental entity approves the preliminary plans and is willing to accept a conveyance of the proposed facilities on acquisition or on completion of construction or improvement, the governing body of the governmental entity shall issue an order approving the preliminary plans and shall issue to the person submitting the preliminary plans a written document known as an approval statement that states that the governmental entity approves the preliminary plans and that the governmental entity will accept conveyance of the facilities on acquisition or on completion of construction or improvement.

(e) If the governmental entity does not approve the preliminary plans and is not willing to accept a conveyance of the facilities, the governing body of the governmental entity shall issue an order denying approval of the preliminary plans and refusing conveyance of the facilities to the governmental entity.

Revised Law

Sec. 441.016. APPROVAL OF MULTIPLE GOVERNMENTAL ENTITIES.

(a) If road facilities constructed, acquired, or improved by a district are to be conveyed to more than one governmental entity, each governmental entity must:

(1) approve the plans for the road facilities to be conveyed to it; and

(2) issue an approval statement for those road facilities.

(b) The procedures in this chapter relating to approval and conveyance of a road facility to a governmental entity apply to
each governmental entity to which a road facility is to be conveyed. (V.A.C.S. Art. 6674r-1, Sec. 4(g).)

Source Law

(g) A district may be created in which the facilities to be constructed, acquired, or improved by the district will be conveyed to more than one governmental entity provided that each governmental entity approves the plans for the facilities for which it is to accept the transfer and issues an approval statement for those facilities. The procedures in this Act relating to approval and conveyance of facilities to a governmental entity apply to all the governmental entities to which facilities are to be conveyed.

Revised Law

Sec. 441.017. APPROVAL OF PRELIMINARY PLAN FOR ROAD FACILITY IN MUNICIPALITY OR MUNICIPALITY'S EXTRATERRITORIAL JURISDICTION.

(a) This section applies only to a district that:

(1) is located in whole or part in a municipality or the extraterritorial jurisdiction of a municipality; and

(2) constructs, acquires, or improves a road facility that is to be:

(A) located in a municipality or a municipality's extraterritorial jurisdiction; and

(B) conveyed to the county under Section 441.133.

(b) A county may not approve a preliminary plan or issue an approval statement for a road facility to which this section applies unless the person who seeks the approval agrees in writing to comply with the municipality's requirements for construction, acquisition, or improvement of a road facility in the municipality or the municipality's extraterritorial jurisdiction. The county shall consult the municipality to ensure that the preliminary plan complies with those requirements.

(c) Not later than the 55th day after the date the plan is filed with the county, a municipality must complete its review of the plan and issue to the county and the person who submitted the plan a written statement approving the plan as complying with the
municipality's requirements. Except as provided by Subsection (d):

(1) the county may not issue an approval statement
under Section 441.015 until it receives the written statement from
each municipality; and

(2) the person petitioning for creation of the
district must submit the municipality's written statement in
addition to other required documents.

(d) If a municipality does not timely file its statement
with the county:

(1) the municipality waives its right to review and
approve the plan;

(2) the county may issue the approval statement
without the municipality's statement;

(3) the person who submitted the plan may petition for
creation of the district without the municipality's statement; and

(4) the county shall issue to the person who submitted
the plan a letter explaining that the municipality's statement was
not timely filed, and the person shall submit the letter with the
petition to the commission. (V.A.C.S. Art. 6674r-1, Sec. 4(f)
(part).)

Source Law

(f) If all or part of a proposed district is
located within one or more cities or the
extraterritorial jurisdiction of one or more cities,
but the facilities to be constructed, acquired, or
improved by the district in the extraterritorial
jurisdiction are to be conveyed to the county under
Section 40 of this Act, the county may not issue a
valid approval statement and approve the preliminary
plans submitted to it for approval under this section
unless the person who seeks the approval agrees in
writing to comply with the requirements adopted by the
city or cities for construction, acquisition, and
improvement of facilities within their city limits or
extraterritorial jurisdiction as appropriate. The
county shall consult with each city in whose city
limits or extraterritorial jurisdiction the facilities
are to be located to assure that the preliminary plans
comply with each city's requirements for those
facilities, and each city must complete its review of
the preliminary plans and must issue a written
statement approving the plans as in compliance with its
requirements to the county and to the person submitting
the preliminary plans not more than 55 days from the
date the preliminary plans are filed with the county
for review. The county may not issue the approval
statement under Subsection (d) of this section until it receives the written statement from each city. If a city does not file its statement with the county within the 55-day period provided by this subsection, the city waives any right to review the plans and to approve the plans; the county may proceed to issue the approval statement without that written statement, and the person submitting the plans may proceed to petition for creation of the district without obtaining the city's written statement. In addition to the other documents that must be submitted to the commission by a person petitioning to create a district, the person must submit each written statement issued to the petitioner under this subsection if such a statement is required by this subsection and if a city has provided its written statement within the 55-day period required by this subsection. If a city fails to provide the written statement within the 55-day period, the county shall issue to the petitioner a letter explaining that the written statement was not timely filed, and the petitioner shall submit this letter with his petition to the commission.

Revisor's Note

(1) Section 4(f), V.A.C.S. Article 6674r-1, refers to a county issuing a valid approval statement. The revised law omits "valid" as unnecessary because an approval statement that is invalid has no effect.

(2) Section 4(f), V.A.C.S. Article 6674r-1, refers to "a city." The revised law substitutes the term "municipality" for "city" for the reason stated in Revisor's Note (4) to Section 441.001 of this code.

(3) Although the introductory clause of the first sentence of Section 4(f), V.A.C.S. Article 6674r-1, which states the conditions under which that section applies, refers only to facilities located in a municipality's extraterritorial jurisdiction, the prohibition stated in that sentence refers to facilities in the municipality as well as its extraterritorial jurisdiction. The second sentence of that section, which requires consultation with certain municipalities, again refers to facilities in both the municipality and its extraterritorial jurisdiction. A reading of the section as a whole indicates that the section applies to facilities in both the municipality
and its extraterritorial jurisdiction, notwithstanding the reference in the introductory clause to only the extraterritorial jurisdiction. The revised law is drafted accordingly.

**Revised Law**

Sec. 441.018. PETITION REQUIRED. To create a district a person must file with the commission a petition requesting creation of the district. (V.A.C.S. Art. 6674r-1, Sec. 5(a).)

**Source Law**

Sec. 5. (a) To create a district, a petition requesting creation of the district must be filed with the commission.

**Revised Law**

Sec. 441.019. CONTENTS OF PETITION. (a) The petition must include:

(1) the district's name;

(2) the name of each county in which the district will be located;

(3) a description of the district's boundaries;

(4) each petitioner's name;

(5) a statement that the petitioners hold title to all real property in the district, as shown on county tax rolls;

(6) the names of suggested temporary directors;

(7) a brief description of any road facility that the district is to construct, acquire, or improve;

(8) the amount of bonds estimated to be necessary to finance the proposed construction, acquisition, or improvement;

(9) the current appraised value of all real property in the district;

(10) the name of each governmental entity to which the district will convey a road facility; and

(11) other information that the commission considers necessary.
(b) The petition must be signed by the persons holding title to all real property in the district, as shown on county tax rolls.

(V.A.C.S. Art. 6674r-1, Secs. 5(b), 6(a).)

Source Law

[Sec. 5]
(b) The petition must be signed by holders of title to all of the land within the proposed district as indicated by the county tax rolls.

Sec. 6. (a) The petition to create a district must include:

(1) the name of the proposed district;
(2) the county or counties in which the proposed district is to be located;
(3) the boundaries of the proposed district;
(4) the names of petitioners and a statement that they are holders of title to all of the land within the proposed district as indicated by the county tax rolls;
(5) a list of persons suggested to serve as temporary directors for the district;
(6) a brief description of the proposed facilities for which construction, acquisition, and improvement are to be accomplished by the district;
(7) the amount of bonds estimated to be necessary to finance the proposed construction, acquisition, and improvement;
(8) the current appraised valuation of all real property located within the proposed district;
(9) the governmental entity to which the district is committed to convey, free of any outstanding indebtedness, any facilities on acquisition or on completion of construction and improvement; and
(10) any other information that the commission considers necessary.

Revisor's Note

Section 6(a)(9), V.A.C.S. Article 6674r-1, refers to conveyance of facilities "free of any outstanding indebtedness" and "on acquisition or on completion of construction and improvement." The revised law omits these references because the requirement of conveyance and the requirement that the conveyance be free of indebtedness are established by Section 441.133 of this code.

Revised Law

Sec. 441.020. FILING OF PRELIMINARY PLAN AND APPROVAL STATEMENT. (a) The petition must be accompanied by a copy of:
the preliminary plan for any road facility the
district is to construct, acquire, and improve; and
(2) each required approval statement.
(b) The commission may not consider a petition or approve a
district unless each required approval statement for the district
is filed with the commission. (V.A.C.S. Art. 6674r-1, Secs. 6(b),
(c).)

(b) The person filing the petition with the
commission also must file a copy of the preliminary
plans for facilities to be constructed, acquired, and
improved by the district and a copy of the approval
statement.
(c) The commission may not consider a petition
and approve a district under this Act unless an
approval statement for the district is filed with the
commission.

Sec. 441.021. PETITION FEE. (a) The petition must be
accompanied by a reasonable fee in an amount determined by the
commission not to exceed $5,000. The commission may not refund the
fee or any part of the fee.
(b) The commission shall use the fee to pay costs of
processing the petition. (V.A.C.S. Art. 6674r-1, Sec. 5(c).)

(c) A petition filed with the commission must be
accompanied by a reasonable fee determined by the
commission not to exceed $5,000 for use by the
commission to pay costs of processing the petition. No
part of the fee may be refunded.

Sec. 441.022. HEARING REQUIRED. (a) As soon as practicable
after the petition, preliminary plan, and each required approval
statement is filed with the commission, the commission shall call
and hold a hearing on the petition and preliminary plan.
(b) The hearing may be in Travis County or in a county in
which all or part of the district is to be located. (V.A.C.S.
Art. 6674r-1, Sec. 7(a) (part).)
Sec. 7. (a) As soon as practicable after a petition, preliminary plans, and approval statement are filed with the commission, the commission shall call and hold a hearing on the petition and preliminary plans . . . . The commission may hold a hearing under this subsection in Travis County or in any county in which the proposed district or part of the proposed district is to be located.

Sec. 441.023. NOTICE OF HEARING. (a) In addition to the notice requirements of Chapter 2001, Government Code, and not later than the 10th day before the date of the hearing, the commission shall give written notice of the hearing to:

(1) the commissioners court of each county in which all or part of the district is to be located; and

(2) the governing body of each municipality in which or in the extraterritorial jurisdiction of which the district is to be located.

(b) Once a week for two consecutive weeks the commission shall publish notice of the hearing in a newspaper of general circulation in each county in which the district is to be located. The first publication must be not later than 30 days before the date of the hearing.

(c) Not later than 30 days before the date of the hearing, the commission shall mail notice of the hearing by first class mail to each owner of real property to be included in the district, as shown on the county tax rolls.

(d) A county, municipality, or property owner receiving notice under Subsection (a) or (c) may appear at the hearing through an official representative or in person and may present testimony and evidence relating to the district. (V.A.C.S. Art. 6674r-1, Secs. 7(a) (part), (b), (c), (d), (e)).
Statutes), the commission shall give written notice of the hearing to the commissioners court of each county in which all or part of the district is to be located and to the governing body of each city in which or within the extraterritorial jurisdiction of which any of the land in the proposed district is located. This notice must be given to each county and city not later than the 10th day immediately preceding the date on which the hearing is to be held.

(c) Notice of the hearing shall be published in a newspaper with general circulation in the county or counties in which the proposed district is to be located one time each week for two consecutive weeks. The first publication shall be at least 30 days before the date set for the hearing.

(d) Notice of the hearing shall be mailed by first class mail to each owner of land to be included in the district as indicated by the county tax rolls. The notice shall be deposited in the mail at least 30 days before the date set for the hearing.

(e) A county or city receiving notice under Subsection (b) of this section or a landowner receiving notice under Subsection (d) of this section may appear at the hearing through its official representatives or in person, as appropriate, and may present testimony and evidence relating to the proposed district.

Reviser's Note

(1) Section 7, V.A.C.S. Article 6674r-1, refers to "a city." The revised law substitutes the term "municipality" for "city" for the reason stated in Reviser's Note (4) to Section 441.001 of this code.

(2) Section 7(b), V.A.C.S. Article 6674r-1, refers to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). That statute was codified in 1993, in pertinent part, as Chapter 2001, Government Code. The revised law is drafted accordingly.

(3) Section 7(b), V.A.C.S. Article 6674r-1, refers to the 10th day "immediately preceding" the date of the hearing. The revised law omits "immediately" as unnecessary because "preceding" means "immediately preceding."

Revised Law

Sec. 441.024. GRANTING OR DENYING PETITION. As soon as practicable after conclusion of the hearing, the commission shall
adopt an order:

(1) granting the creation of the district and approving the plan; or

(2) denying the petition and disapproving the plan.

(V.A.C.S. Art. 6674r-1, Sec. 8(a).)

Source Law

Sec. 8. (a) As soon as practicable after the conclusion of the hearing, the commission shall issue an order either granting the creation of the district and approving the plans or denying the petition and disapproving the plans.

Revised Law

Sec. 441.025. GROUNDS REQUIRING GRANTING OF PETITION. The commission shall grant the creation of the district and approve the plan if it finds that:

(1) the creation of the district will benefit the real property in the district;

(2) each proposed road facility is feasible, practicable, and necessary and will benefit the district and the real property in the district;

(3) each governmental entity to which a road facility is to be conveyed has approved the preliminary plan for the road facility;

(4) the person seeking approval has agreed in writing to comply with the requirements of each municipality in which or extraterritorial jurisdiction of which a road facility is to be located, if the road facility is to be conveyed to a county;

(5) each governmental entity to which a road facility is to be conveyed has agreed, by issuing an approval statement, to accept the conveyance; and

(6) the district will be financially able to issue and pay its bonds. (V.A.C.S. Art. 6674r-1, Sec. 8(b).)

Source Law

(b) The commission shall grant the creation of the district and shall approve the plans if it finds that:
(1) the proposed facilities are feasible, practicable, and necessary and would be a benefit to land included in the district;
(2) the land to be included in the proposed district will be benefitted by the creation of the district;
(3) the preliminary plans for any facilities in the district have been approved by the governmental entity to which the facilities are to be conveyed on acquisition or on completion of construction or improvement and, in the case of facilities to be conveyed to a county that are located within one or more cities or the extraterritorial jurisdiction of one or more cities, the person seeking such approval has agreed in writing to comply with the requirements of the city or cities in whose city limits or extraterritorial jurisdiction the facilities are to be located;
(4) the governmental entity to which the facilities are to be conveyed has agreed to accept the conveyance of the facilities through issuance of an approval statement;
(5) the district will be financially able to issue and pay bonds of the district; and
(6) the facilities constructed, acquired, or improved are necessary and will benefit the district.

Reviser's Note

(1) Section 8(b), V.A.C.S. Article 6674r-1, refers to conveyance of facilities "on acquisition or on completion of construction or improvement." The revised law omits this reference for the reason stated in the reviser's note to Section 441.019 of this code.
(2) Section 8(b), V.A.C.S. Article 6674r-1, refers to "a city." The revised law substitutes the term "municipality" for "city" for the reason stated in Reviser's Note (4) to Section 441.001 of this code.

Revised Law
Sec. 441.026. GROUNDS REQUIRING DENIAL OF PETITION. The commission shall refuse to authorize creation of the district if the commission:

(1) finds that creation of the district will benefit none of the real property to be included in the district; or
(2) is unable to make any of the findings listed in Sections 441.025(2)-(6). (V.A.C.S. Art. 6674r-1, Secs. 8(c) (part), (d).)
Source Law

(c) . . . If the commission finds that none of the land to be included in the proposed district will be benefitted by creation of the district, the commission shall refuse to authorize creation of the district.

(d) If the commission is unable to make any of the findings stated in Subdivision (1), (3), (4), (5), or (6), Subsection (b), of this section, the commission shall refuse to authorize creation of the district.

Revised Law

Sec. 441.027. OTHER CONSIDERATIONS IN GRANTING OR DENYING PETITION. Before the commission adopts an order under Section 441.024, it may:

(1) consult with each governmental entity that has submitted an approval statement regarding suggested changes in the plan;

(2) suggest or direct that the petitioners change the plan for a district road facility, including deleting a road facility, so as to make the plan acceptable to the commission; and

(3) consider the environmental effects of the proposals in the preliminary plan. (V.A.C.S. Art. 6674r-1, Secs. 8(e), (f).)

Source Law

(e) Before the commission makes its decision to issue its order, it may consult with any governmental entity that has submitted an approval statement regarding suggested changes in the plans, suggest to the petitioners changes in the plans for district facilities including deletion of certain facilities that will make plans submitted with the petition acceptable to the commission, and direct the petitioners to make those changes in the plans before the commission will issue an order authorizing creation of the district and approving the final plans.

(f) In making its decision under this section, the commission may consider the environmental effects of the proposals in the preliminary plans.

Revised Law

Sec. 441.028. ADJUSTMENT OF BOUNDARIES. If the commission finds that not all of the real property proposed to be included in the district will be benefitted by the creation of the district, the commission shall:
1. make a finding on the lack of benefit;
2. exclude from the district real property that will not be benefitted by creation of the district; and
3. redefine the proposed district's boundaries according to the commission's changes. (V.A.C.S. Art. 6674r-1, Sec. 8(c) (part.).)

**Source Law**

(c) If the commission finds that not all of the land to be included in the proposed district will be benefitted by the creation of the district, the commission shall make this finding, shall exclude from the district all land that will not be benefitted by creation of the district, and shall redefine the proposed district's boundaries accordingly.

**Revised Law**

Sec. 441.029. TEMPORARY DIRECTORS. (a) If the commission authorizes the creation of the district, it shall appoint five persons from those suggested in the petition to serve as temporary directors of the district. Not later than the 10th day after the date of appointment, a temporary director shall take the oath of office.

(b) Temporary directors serve until the directors are elected and have qualified for office.

(c) If a person appointed by the commission fails to qualify or if a vacancy occurs in the office of temporary director, the commission shall appoint another person to serve as temporary director. (V.A.C.S. Art. 6674r-1, Sec. 9.)

**Source Law**

Sec. 9. (a) If the commission authorizes the creation of the district, the commission shall appoint five persons from the list in the petition to serve as temporary directors of the district who shall serve until the initially elected directors are elected and have qualified for office.

(b) Within 10 days after appointment, each temporary director shall take the oath of office.

(c) If a temporary director appointed by the commission fails to qualify or if a vacancy occurs in the office of temporary director, the commission shall appoint another person to serve as temporary director.
Sec. 441.030. CONFIRMATION ELECTION. (a) Not later than the 15th day after the date that all temporary directors have been appointed and have qualified, the temporary directors shall meet and order an election in the boundaries of the proposed district to confirm the creation of the district and elect the directors of the district.

(b) Section 41.001, Election Code, does not apply to an election under this section. (V.A.C.S. Art. 6674r-1, Sec. 11(a).)

Sec. 11. (a) Within 15 days after all temporary directors have been appointed and have qualified, the temporary directors of the proposed district shall meet and shall call an election to be held within the boundaries of the proposed district to confirm the creation of the district and to elect the initial regular directors for the district. The general law requiring elections to be held on uniform or specified election dates does not apply to an election ordered under this section.

Revisor's Note
Section 11(a), V.A.C.S. Article 6674r-1, refers to the "general law requiring elections to be held on uniform or specified election dates." The revised law substitutes "Section 41.001, Election Code," the citation to that general law.

Sec. 441.031. NOTICE OF CONFIRMATION ELECTION. (a) Not later than the 36th day before the date of the confirmation election, the temporary directors shall publish notice of the election once in one or more newspapers of general circulation in the proposed district.

(b) The notice must state:

(1) the date and places for holding the election;

(2) the proposition to be voted on; and

(3) the candidates for director. (V.A.C.S. Art. 6674r-1, Sec. 11(b).)
(b) Notice of the confirmation and directors' election shall state the day and places for holding the election, the proposition to be voted on, and the candidates for director. The temporary board shall publish the notice of the election one time in one or more newspapers of general circulation in the proposed district. The notice must be published at least 35 days before the date set for the election.

Revised Law

Sec. 441.032. BALLOT FOR CONFIRMATION ELECTION. (a) To have a person's name printed on the ballot as a candidate for director, the person must file a petition with the temporary directors not later than the 31st day before the date of the election.

(b) The ballot for the election shall be printed to provide for voting for or against the creation of the district and include the names of the persons who have filed as candidates for director.

(c) A voter is entitled to vote for five candidates for director. (V.A.C.S. Art. 6674r-1, Secs. 11(c), (d).)

(c) A person who desires to have his name printed on the ballot as a candidate for director of the district shall file a petition with the temporary directors before the 30th day preceding the date of the election.

(d) The ballot for the election shall be printed to provide for voting for or against the creation of the district. Also, the ballot shall have the names of the persons who have filed as candidates for director of the district. A voter is entitled to vote for five candidates for director.

Revised Law

Sec. 441.033. CANVASS. The temporary directors shall canvass the returns and declare the results. (V.A.C.S. Art. 6674r-1, Sec. 11(e).)

(e) Immediately after the confirmation and directors' election is held, the presiding judge of each polling place shall return the results of the election to the temporary board, and the temporary board shall canvass the returns and declare the results.
Revisor's Note

Section 11(e), V.A.C.S. Article 6674r-1, provides that "immediately after the confirmation and directors' election is held, the presiding judge of each polling place shall return the results of the election to the temporary board." The revised law omits this provision because it is superseded by the Election Code provisions governing the time of the canvass and the custody of ballots. See Title 6, Election Code.

Revised Law

Sec. 441.034. EFFECT OF CONFIRMATION ELECTION. (a) If the majority of the votes received in the election favor creation of the district, the temporary directors shall declare the district created. If the majority of the votes received in the election are against the creation of the district, the temporary directors shall declare the district defeated. The temporary directors shall enter the results in their minutes and file a copy of the results with the commission.

(b) If the district is created, the temporary directors shall declare the five candidates who received the highest number of votes to be elected as the directors of the district. If two or more candidates tie for the fifth highest number of votes, the temporary directors shall select the fifth director by lot from those tying for that position.

(c) The two directors elected with the fewest votes serve until the qualification of two directors elected at the next regular directors' election. The three other directors serve until the qualification of three directors elected at the second regular directors' election.

(d) If the district is defeated, another election may not be held to create the district, except that owners of the real property in the proposed district may petition the commission again for creation of a district. (V.A.C.S. Art. 6674r-1, Secs. 11(f),
(g), (h).

**Source Law**

(f) If a majority of the votes cast at the election favor creation of the district, the temporary board shall declare the district created and shall enter the results in its minutes. If a majority of the votes cast at the election are against the creation of the district, the temporary board shall declare that the district was defeated and shall enter the results in its minutes. The temporary board shall also file a copy of the election results with the commission.

(g) If a majority of the voters at the election approve the creation of the district, the temporary board shall declare the five candidates for director who received the highest number of votes to be elected as the directors of the district. If two or more candidates tie for the fifth highest number of votes for a director’s position, the temporary board shall select the fifth director by lot from those tying for the position. The two directors elected with the fewest number of votes shall serve until the qualification of the two new directors elected at the next regular directors’ election, and the three remaining directors shall serve until the qualification of the three directors elected at the second regular directors’ election.

(h) If a majority of the voters at the election vote against the creation of the district, no further elections may be held to create the district. This subsection does not prohibit holders of title to land in a proposed district that is not approved from petitioning the commission again for creation of a district.

**Revised Law**

Sec. 441.035. INCLUDING BOND PROPOSITION AT ELECTION.  (a) At the election, the temporary directors may include a separate ballot proposition to approve the issuance by the district of bonds payable from ad valorem taxes.

(b) If a bond proposition is to be included, the election notice under Section 441.031 must state the bond proposition.

(c) The bond proposition shall be printed to provide for voting for or against the issuance of bonds and the imposition of ad valorem taxes for payment of the bonds.

(d) The temporary directors shall file a copy of the bond election results in their records and with the commission.

(V.A.C.S. Art. 6674r-1, Sec. 11(i) (part).)
(i) At the confirmation and directors' election, the temporary board may include a separate ballot proposition to approve the issuance by the district of bonds payable from ad valorem taxes. The notice of the election under Subsection (b) of this section must state the bond proposition that is to appear on the ballot. The proposition shall be printed to provide for voting for or against the issuance of bonds and the levy of ad valorem taxes for payment of the bonds. . . . The temporary board shall file a copy of the bond election results in its records and with the commission.

Revisor's Note

Section 11(i), V.A.C.S. Article 6674r-1, provides that a two-thirds majority vote is required to approve the issuance of bonds. This provision is omitted from the revision because the provision is substantively identical to Section 52(b), Article III, Texas Constitution. The policy of the legislative council's statutory revision program is to omit from the revised codes the duplicating statutory provisions because a statute that tracks the language of the constitution is not only superfluous but may foster the erroneous belief that a constitutional requirement is merely statutory and subject to amendment through the ordinary legislative process. The omitted statutory provision reads:

If a two-thirds majority of the qualified voters voting on the proposition approve the proposition, the district may issue the bonds. If a two-thirds majority of the qualified voters voting on the proposition do not approve the proposition, the district may not issue the bonds.

[Sections 441.036-441.050 reserved for expansion]

SUBCHAPTER C. ACQUISITION OF DISTRICT POWERS BY CONSERVATION AND RECLAMATION DISTRICT

Revised Law

Sec. 441.051. PETITION TO ACQUIRE POWERS. (a) A conservation and reclamation district that operates under Chapter
54, Water Code, and that has the power to impose taxes may petition
the commission, by order of its governing board, to acquire the
powers of a road utility district under this chapter. Before
filing the petition, the conservation and reclamation district must
have received the written consent of the property owners within its
boundaries and approval of the Texas Natural Resource Conservation
Commission.

(b) As soon as practicable after the petition is filed, the
commission shall hold a hearing and issue an order as provided by
Sections 441.022-441.028. (V.A.C.S. Art. 6674r-1, Sec. 5(d).)

Source Law

(d) By order of its governing board, which has
received the written consent of the landowners within
its boundaries, a conservation and reclamation
district, operating pursuant to Chapter 54, Water Code,
and which has the power to levy taxes, may, with the
approval of the Texas Water Commission, petition the
commission to acquire the powers granted in this Act to
a road utility district, under the authority of Article
III, Section 52, Texas Constitution. As soon as
practicable after such petition by the conservation and
reclamation district has been filed with the
commission, the commission shall conduct a hearing in
accordance with Section 7 of this Act and shall issue
an order in accordance with Section 8 of this Act
either approving or denying such petition by the
conservation and reclamation district.

Reviser's Note

(1) Section 5(d), V.A.C.S. Article 6674r-1,
refers to the "Texas Water Commission." In 1991, the
name of the agency was changed by amendment to Chapter
5, Water Code (Chapter 3, Acts of the 72nd Legislature,
1st Called Session, 1991), to the Texas Natural
Resource Conservation Commission. The revised law
makes that change.

(2) Section 5(d), V.A.C.S. Article 6674r-1,
refers to a road utility district "under the authority
of Article III, Section 52, Texas Constitution." The
revised law omits the quoted language because Section
441.011 of this code already provides that a road
utility district operates under that constitutional provision.

(3) Section 5(d), V.A.C.S. Article 6674r-1, requires the commission to hold a hearing and issue an order as provided by Sections 7 and 8 (revised as Sections 441.022-441.028 of this code). The section also requires the commission to approve or deny a petition. The revised law omits the requirement of approval or denial of the petition because that requirement is already established by Sections 7 and 8.

**Revised Law**

Sec. 441.052. ELECTION ON ACQUISITION OF ROAD UTILITY DISTRICT POWERS. (a) After the petition under Section 441.051 is granted and before the conservation and reclamation district exercises road utility district powers, the district shall order and hold an election on whether the conservation and reclamation district should exercise road utility district powers.

(b) If the majority of the voters residing in the conservation and reclamation district who vote at the election approve the exercise of road utility district powers, the conservation and reclamation district has the powers of a road utility district provided by general law. (V.A.C.S. Art. 6674r-1, Sec. 5(e).)

**Source Law**

(e) After the commission grants the conservation and reclamation district's petition to acquire road utility district powers, but before the exercise of road utility district powers by the conservation and reclamation district, the conservation and reclamation district shall call and hold an election on the question of whether said conservation and reclamation district should exercise road utility district powers. Upon the majority vote of the resident electors of said conservation and reclamation district voting in such election, the conservation and reclamation district, now and hereafter, shall exercise all road utility district powers, now and hereafter conferred by the general laws of this state.
Reviser's Note

(1) The revised law substitutes "voter" for "elector" because the terms are synonymous and the former is more commonly used.

(2) Section 5(e), V.A.C.S. Article 6674r-1, refers to a conservation and reclamation district "now and hereafter" exercising the powers "now and hereafter" conferred on a road utility district. The revised law omits the quoted language because it merely restates accepted rules of statutory construction.

Revised Law

Sec. 441.053. APPLICATION OF LAW FOLLOWING ADOPTION OF ROAD

UTILITY DISTRICT POWERS. This chapter and commission rules applicable to a road utility district apply to a conservation and reclamation district adopting road utility district powers, except that if this chapter conflicts with the Water Code or other general law applicable to the conservation and reclamation district, that code or other law prevails. (V.A.C.S. Art. 6674r-1, Sec. 5(f).)

Source Law

(f) Such conservation and reclamation district shall conform to the rules applicable to the creation and administration of road utility districts as provided by this Act and as provided by the commission, except as otherwise provided in Subsections (d) and (e) of this section. In the event of any conflict between the provisions of the Water Code and the general laws of this state applicable to the conservation and reclamation district and the provisions of this Act, the provisions of the Water Code and the general laws of this state applicable to the conservation and reclamation district shall prevail.

[Sections 441.054-441.070 reserved for expansion]

SUBCHAPTER D. GOVERNANCE

Revised Law

Sec. 441.071. BOARD OF DIRECTORS. Except as provided by Section 441.072, a district is governed by a board of directors composed of five members elected as provided by this chapter.
Sec. 12. (a) A district shall be governed by a board of directors composed of five members, who are elected as provided by this Act, except as otherwise provided in Subsection (b) of this section.

Revised Law
Sec. 441.072. BOARD OF DIRECTORS IN CERTAIN DISTRICTS. (a) The governing body of a governmental entity to which a road facility has been conveyed under Section 441.133 is the ex officio board of directors of the district making the transfer if:
(1) all district road facilities are conveyed only to that governmental entity;
(2) all construction, acquisition, and improvement of road facilities provided for in the plan approved by the commission have been completed;
(3) the board of directors consents to the transfer of powers and duties to the governing body of the governmental entity;
(4) the governing body of the governmental entity consents to assuming the administrative powers and duties of the district; and
(5) the commission approves the transfer of the powers and duties.

(b) On the effective date of the transfer of the powers and duties, the board of directors from whom the transfer is made is dissolved. On and after that date the administrative powers and duties transferred are the powers and duties of the governing body of the governmental entity. (V.A.C.S. Art. 6674r-1, Secs. 12(b), (c).)

Source Law
(b) If completed district facilities are to be conveyed to only one governmental entity, then the board of directors shall be the governing body of the governmental entity to whom completed facilities have been conveyed pursuant to Section 40 of this Act, acting in an ex officio capacity, if (i) all construction, acquisition, and improvement of facilities provided in the plans approved by the
commission have been completed, (ii) the existing board of directors consent to the transfer of duties and powers to the governing body of the governmental entity, (iii) the governing body of the governmental entity consents to assuming the administrative powers and duties of the district, and (iv) the commission approves such transfer of administration of the district.

(c) From and after the effective date of the transfer of governance of a district in accordance with Subsection (b) of this section, the governing board of the governmental entity to whom completed facilities have been conveyed pursuant to Section 40 of this Act, shall serve as the ex officio board of directors of the district. The existing board of directors from whom such transfer of administrative powers and duties of the district have been effectuated pursuant to this section shall be dissolved upon the effective date of said transfer of administrative powers and duties and such administrative powers and duties shall vest and become a part of the powers and duties of the governing body of the governmental entity to whom completed facilities have been conveyed.

Revised Law

Sec. 441.073. ELECTION OF DIRECTORS. (a) In each year on a uniform election date as provided by Chapter 41, Election Code, an election shall be held in the district to elect the appropriate number of directors.

(b) To have a person's name printed on the ballot at a directors' election as a candidate for director, the person must file a petition with the secretary of the district not later than the 36th day before the date of the election. (V.A.C.S. Art. 6674r-1, Sec. 15.)

Source Law

Sec. 15. (a) On the first Saturday in April in each year, an election shall be held in the district to elect the appropriate number of directors to the board.

(b) A person who desires to have his name printed on the ballot at a directors' election as a candidate for director shall file a petition with the secretary of the district before the 35th day preceding the date of the election.

(c) Notwithstanding the election date prescribed by this section, an election held under this section shall be held on a uniform election date as provided by law.

Revisor's Note

Section 15, V.A.C.S. Article 6674r-1, refers to a uniform election date "as provided by law."
revised law substitutes "Chapter 41, Election Code,"
the citation to that law.

Revisted Law
Sec. 441.074. TERM; TAKING OFFICE. (a) A director serves a
two-year term.
(b) A director takes office at the first regular meeting of
the board after the director's election. (V.A.C.S. Art. 6674r-1,
Secs. 14, 16.)

Source Law
Sec. 14. Except for the initial directors
elected under Section 11 of this Act, a director shall
hold office for a term of two years and shall serve
until his successor is elected and has qualified.

Sec. 16. A director shall take office at the
first regular meeting of the board in April following
his election to the board.

Revisor's Note
(1) Section 14, V.A.C.S. Article 6674r-1,
contains an exception to its length of term provision
for initial directors elected under Section 11 of that
article, revised as Sections 441.030-441.035 of this
code. The revised law omits this exception because
Section 11(g) of that article, revised in Section
441.034 of this code, provides unique terms for those
initial directors and is clearly an exception to the
law revised in this section.

(2) The revised law omits as unnecessary the
provision in Section 14, V.A.C.S. Article 6674r-1, that
refers to directors serving until their successors are
elected and qualified. Under Section 17, Article XVI,
Texas Constitution, an officer in the state is to
continue to perform the officer's official duties until
a successor has qualified.

(3) Section 16, V.A.C.S. Article 6674r-1, refers
to a director taking office at the first meeting in
April following the director's election. The revised law omits the reference to April because it was based on a law requiring the directors' election to be held in that month. That law has been superseded by a provision requiring the election to be on a uniform election date, which can be in any of several months, none of which is April.

Revised Law
Sec. 441.075. COMPENSATION. A director is entitled to receive for the director's services:

(1) not more than $25 a day for each meeting of the board that the director attends; and

(2) reimbursement for expenses incurred while engaged in the director's duties for the district as approved by the board.

(V.A.C.S. Art. 6674r-1, Sec. 19.)

Source Law
Sec. 19. Each director is entitled to receive for his services not more than $25 a day for each meeting of the board that he attends plus reimbursement for actual expenses incurred while engaged in his duties for the district as approved by the board.

Revisor's Note
Section 19, V.A.C.S. Article 6674r-1, refers to "actual expenses incurred." The revised law omits "actual" as unnecessary. "Expenses incurred" means "actual expenses."

Revised Law
Sec. 441.076. VACANCY. A vacancy on the board shall be filled for the unexpired term by a person appointed by the remaining directors. (V.A.C.S. Art. 6674r-1, Sec. 17.)

Source Law
Sec. 17. A vacancy on the board shall be filled by appointment of the remaining members of the board for the unexpired term.
Revised Law

Sec. 441.077. OFFICERS. (a) After each directors' election, the board shall hold a regular meeting at a district office and elect from the directors a presiding officer, assistant presiding officer, secretary, and treasurer. A person elected under this subsection serves until the first regular board meeting following the next directors' election, and shall perform the duties and may exercise the powers specifically provided by this chapter or the board's orders.

(b) The presiding officer shall preside over board meetings. If the presiding officer is absent, the assistant presiding officer shall preside. (V.A.C.S. Art. 6674r-1, Sec. 20.)

Source Law

Sec. 20. (a) After each directors' election, the board shall hold a regular meeting at a district office and shall organize by electing from the members of the board one person to serve as chairman, one person to serve as vice-chairman, one person to serve as secretary, and one person to serve as treasurer.

(b) A person elected to serve as chairman, vice-chairman, secretary, or treasurer shall serve until the first regular meeting of the board in April following the next directors' election.

(c) The chairman shall preside over meetings of the board, and in his absence, the vice-chairman shall preside.

(d) The chairman, vice-chairman, secretary, and treasurer shall perform the duties and may exercise the powers specifically given them by this Act or by orders of the board.

Revisor's Note

Section 20, V.A.C.S. Article 6674r-1, refers to the board's first meeting in April following a directors' election. The revised law omits the reference to April for the reason stated in Revisor's Note (3) to Section 441.074 of this code.

Revised Law

Sec. 441.078. GENERAL MANAGER. The board may employ a general manager and delegate to the general manager full authority to manage and operate the affairs of the district, subject only to
board orders. The general manager is the chief administrative officer of the district. (V.A.C.S. Art. 6674r-1, Sec. 23.)

Source Law

Sec. 23. The board may employ a general manager who will be the chief administrative officer of the district and may delegate to him full authority to manage and operate the affairs of the district subject only to orders of the board.

Revised Law

Sec. 441.079. OTHER OFFICERS. The board may appoint or employ an engineer, attorney, or accountant. A person appointed or employed under this section is entitled to compensation provided by the district's budget. (V.A.C.S. Art. 6674r-1, Sec. 22.)

Source Law

Sec. 22. (a) The board may appoint or employ persons to serve as engineer, attorney, and accountant for the district. (b) The persons appointed under this section are entitled to the compensation provided by the district's budget.

Revised Law

Sec. 441.080. PERSONNEL. (a) The board or the general manager, if the district has a general manager, may:

(1) employ persons necessary to carry out the business and operation of the district; and

(2) employ or contract with personnel necessary to carry out this chapter.

(b) The board shall determine the employees' terms of employment and compensation.

(c) A majority of the members of the board or the general manager, if the district has a general manager, may dismiss an employee. (V.A.C.S. Art. 6674r-1, Secs. 24(a), (b), (c).)

Source Law

Sec. 24. (a) The board or the general manager, if the district has a general manager, may employ other persons necessary for the proper handling of the business and operation of the district and may employ or contract with personnel who are necessary to carry out this Act.
(b) The board shall determine the terms of employment and the compensation to be paid to employees under this section.
(c) A majority of the members of the board, or the general manager, if the district has a general manager, may dismiss an employee of the district.

Revised Law
Sec. 441.081. OFFICER'S, EMPLOYEE'S, OR CONTRACTOR'S BOND.
(a) The board shall require each officer, employee, or person under contract to the district who collects, pays, or handles district money to furnish a bond.
(b) The bond must be:
   (1) payable to the district;
   (2) for an amount sufficient to protect the district from financial loss resulting from the person's actions; and
   (3) conditioned on the faithful performance of the person's duties and on accounting for all district money and other property under the person's control.
(c) The district shall pay for the bond. (V.A.C.S. Art. 6674r-1, Sec. 24(d).)

Source Law
(d) The board shall require each officer, employee, or person under contract to the district who collects, pays, or handles any funds of the district to furnish a bond, payable to the district, for an amount sufficient to protect the district from financial loss resulting from actions of the officer, employee, or other person. Each bond shall be conditioned on the faithful performance of the officer's, employee's, or person's duties and on accounting for all money and property of the district in his hands. The district shall pay for each bond.

Revised Law
Sec. 441.082. MEETINGS. (a) The board shall hold regular meetings on dates established by board order.
(b) The board may hold special meetings at the call of the presiding officer or on request of three members of the board.
(V.A.C.S. Art. 6674r-1, Sec. 26.)

Source Law
Sec. 26. The board shall hold regular meetings on dates established by order of the board. The board
may hold special meetings at the call of the chairman or on request of three members of the board.

Revised Law
Sec. 441.083. VOTE REQUIRED FOR ACTION. An action of the board requires the affirmative vote of a majority of the board members. (V.A.C.S. Art. 6674r-1, Sec. 21.)

Source Law
Sec. 21. A majority of the members of the board constitute a quorum for the transaction of business of the district, and no official action of the board is valid without the affirmative vote of a majority of the members of the board.

Revisor's Note
Section 21, V.A.C.S. Article 6674r-1, states that a majority of the members of the board constitutes a quorum for the transaction of business. This provision is omitted as duplicative of general law. Section 312.015, Government Code, applicable to civil statutes, provides that a majority of a board or commission constitutes a quorum. The revised law also omits the phrase "for the transaction of business" as unnecessary. "Quorum" means the number of persons necessary for a body to act.

Revised Law
Sec. 441.084. RECORDS. The district shall keep a complete written account of all of its proceedings and securely maintain district records. (V.A.C.S. Art. 6674r-1, Sec. 27(a) (part).)

Source Law
Sec. 27. (a) The board shall keep a complete written account of all its proceedings and shall maintain the records of the district in a secure manner.

Revisor's Note
(1) Section 27(a), V.A.C.S. Article 6674r-1, provides that district records are governed by Subtitle
C, Title 6, Local Government Code. The revised law omits this provision because that subtitle states that it applies to records of a special-purpose district, which would include a road utility district, and thus applies to the district's records without an express statement to that effect. The omitted law reads:

The preservation, microfilming, destruction, or other disposition of the records of the district is subject to the requirements of Subtitle C, Title 6, Local Government Code, and rules adopted under that subtitle.

(2) Section 27(b), V.A.C.S. Article 6674r-1, states that district records are property of the district. The revised law omits this provision because in absence of a contrary provision the records would be district property without an express statement to that effect. Section 27(b) also states that district records are subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). The open records law is now Chapter 552, Government Code. The revised law omits this provision as unnecessary because Section 552.021, Government Code, states that information collected, assembled, or maintained by a governmental body is public information. As such, it is subject to the open records law without an express statement to that effect. The omitted law reads:

(b) Minutes, contracts, records, plans, notices, accounts, audits, receipts, and other records are the property of the district and are subject to Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes).

Revised Law

Sec. 441.085. OFFICE. The board shall maintain one or more offices for conducting district business. (V.A.C.S. Art. 6674r-1,
Sec. 25. The board shall maintain one or more offices for conducting the business of the district.

Sec. 441.086. SEAL. The board shall adopt a seal for the district. (V.A.C.S. Art. 6674r-1, Sec. 31.)

Sec. 31. The board shall adopt a seal for the district.

Revisor's Note
(End of Subchapter)

(1) Section 13, V.A.C.S. Article 6674r-1, provides that a district director must be at least 18 years old. The revised law omits this provision because it duplicates Section 141.001, Election Code, which provides the minimum age for a public officer. The omitted law reads:

Sec. 13. To serve as a director, a person must be at least 18 years old.

(2) Section 18, V.A.C.S. Article 6674r-1, which requires a director to take the constitutional oath of office, is omitted from the revision because the provision is substantively identical to Section 1, Article XVI, Texas Constitution. The policy of the legislative council's statutory revision program is to omit from the revised codes the duplicating statutory provisions because a statute that tracks the language of the constitution is not only superfluous but may foster the erroneous belief that a constitutional requirement is merely statutory and subject to amendment through the ordinary legislative process. The omitted statutory provision reads:

Sec. 18. Each director shall take the constitutional oath of office required of state officers.
[Sections 441.087-441.100 reserved for expansion]

SUBCHAPTER E. POWERS AND DUTIES

Revised Law

Sec. 441.101. GENERAL POWERS AND DUTIES. (a) A district may:

(1) acquire a road facility, acquire property for a road facility, and construct or improve a road facility, inside or outside district boundaries, as provided by this chapter;

(2) provide financing for a road facility or for construction, acquisition, or improvement of a road facility from money available to the district under this chapter;

(3) advise any person and consult, cooperate, or enter an agreement with any person;

(4) apply for, accept, receive, and administer a gift, grant, loan, or money available from any source;

(5) reimburse a private entity for money spent to construct a road or improvement that has been or will be dedicated or otherwise transferred to public use, or purchase a road or improvement constructed by a private entity, regardless of whether the construction occurs before or after the creation of the district; and

(6) exercise other powers and duties to accomplish the purposes for which the district was created.

(b) The board may contract with any person to carry out the powers and duties under this chapter. The board shall execute the contract in the name of the district.

(c) The district may assume a contract or other obligation of a previous owner of a road facility or property acquired by the district and perform the contract or obligation in the same manner as any other purchaser or assignee, if the contract or obligation was created as provided by the competitive bidding requirements of Subchapter B, Chapter 271, Local Government Code. (V.A.C.S. Art. 6674r-1, Secs. 28, 33.)
Sec. 28. The board may enter into contracts to carry out the powers and duties under this Act, and those contracts shall be executed by the board in the name of the district.

Sec. 33. A district may:

1. acquire facilities, whether inside or outside of district boundaries, and property for facilities, whether inside or outside of district boundaries, and may construct or improve facilities, whether inside or outside of district boundaries, as provided by this Act;
2. provide financing for facilities and their construction, acquisition, and improvement from money available to the district under this Act;
3. advise, consult, contract, cooperate with, and enter into agreements with the federal government and its agencies, the state and its agencies, local governments, persons, and private entities;
4. apply for, accept, receive, and administer gifts, grants, loans, and other funds available from any source;
5. assume the contracts and obligations of previous owners of facilities and property acquired by the district and perform the contracts and obligations to the same extent that any other purchaser or assignee would be bound; provided, however, only if such contracts and obligations of previous owners were created pursuant to the competitive bidding requirements provided within Chapter 770, Acts of the 66th Legislature, Regular Session, 1979 (Article 2368a.3, Vernon's Texas Civil Statutes);
6. reimburse 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 purchase roads or improvements constructed by a private individual or entity, whether such construction occurs prior to or after the creation of the district;
7. contract with any person for construction, acquisition, and improvement of facilities; and
8. exercise such authority, powers, rights, duties, and other functions which will permit accomplishment of the purposes for which the district was created.

Revisor's Note

(1) Section 33(3), V.A.C.S. Article 6674r-1, allows the district to "contract" and "enter into agreements." The reference to "contract" is omitted from the revised law because "contract" is included within the meaning of "enter into agreements."

(2) Section 33(3), V.A.C.S. Article 6674r-1, refers to the "federal government and its agencies, the
state and its agencies, local governments, persons, and private entities." The revised law replaces this list with "any person," because under Section 311.005(2), Government Code (Code Construction Act), "person" includes all of those entities.


(4) Section 33(6), V.A.C.S. Article 6674r-1, refers to an "individual or entity." The reference to "individual" is omitted from the revised law because "individual" is included within the meaning of "entity."

(5) Section 33(8), V.A.C.S. Article 6674r-1, refers to "authority, powers, rights, duties, and other functions." The references to "authority," "rights," and "other functions" are omitted from the revised law because they are included within the meaning of "powers and duties."

Revised Law

Sec. 441.102. RULES. After notice and hearing, the board shall adopt rules to carry out this chapter, including rules providing procedures for giving notice and holding hearings before the board. (V.A.C.S. Art. 6674r-1, Sec. 29.)

Source Law

Sec. 29. After notice and hearing, the board shall adopt rules to carry out this Act, including rules providing procedures for giving notice and holding hearings before the board.

Revised Law

Sec. 441.103. SUIT AND JUDGMENT. (a) A district, through
its board and in the name of the district, may sue and be sued in a
state court. Process in a suit may be served on the presiding
officer of the board.

(b) A state court shall take judicial notice of the creation
of the board.

(c) A state court that renders a money judgment against a
district may require the board to pay the judgment from money in
the district depository that is not dedicated to the payment of
district indebtedness. (V.A.C.S. Art. 6674r-1, Sec. 30.)

Source Law
Sec. 30. (a) The district may, through its
board, sue and be sued in any court of this state in
the name of the district. Service of process in a suit
may be had by serving the chairman of the board.
(b) The courts of this state shall take judicial
notice of the creation of the district.
(c) A court of this state that renders a money
judgment against the district may require the board to
pay the judgment from money in the district depository
that is not dedicated to the payment of any
indebtedness of the district.

[Sections 441.104-441.110 reserved for expansion]

SUBCHAPTER F. ROAD FACILITIES

Revised Law
Sec. 441.111. CONSTRUCTION, ACQUISITION, OR IMPROVEMENT OF
ROAD FACILITY. (a) A district shall construct, acquire, and
improve a road facility included in the plan the commission
approves so that the road facility meets the requirements of the
plan.

(b) A district may not construct, acquire, or improve a road
facility outside the district boundaries unless:

(1) the district presents to the commission sufficient
evidence that the construction, acquisition, or improvement is of
benefit to the district; and

(2) the commission and the governmental entity to
which the road facility is to be conveyed approve the construction,
acquisition, or improvement. (V.A.C.S. Art. 6674r-1, Sec. 34.)
Sec. 34. (a) The district shall construct, acquire, and improve facilities included in the plans submitted to and approved by the commission.
(b) A facility that is constructed, acquired, or improved by the district shall be constructed, acquired, or improved so that it meets the requirements of the plans approved by the commission.
(c) A facility that is to be constructed, acquired, or improved outside of district boundaries shall not be constructed, acquired, or improved unless the district presents sufficient evidence to the commission to show that such construction, acquisition, or improvement is of benefit to the district.
(d) Construction, acquisition, or improvement of a facility outside district boundaries requires approval by the commission and the governmental entity to whom completed facilities will be conveyed.

Reviser's Note
Section 34, V.A.C.S. Article 6674r-1, refers to "plans submitted to and approved by the commission."
The revised law omits the reference to "submitted to" because under Section 441.020 of this code, the plans may not be approved unless they are submitted.

Revised Law
Sec. 441.112. PROGRESS PAYMENTS. A contract of the district for the construction or improvement of a road facility may include a procedure for paying for the construction or improvement as work progresses. (V.A.C.S. Art. 6674r-1, Sec. 36.)

Source Law
Sec. 36. The district shall pay for the construction or improvement of facilities by the district as provided by the contract for construction or improvement and may include in the contract a procedure for paying for construction or improvement work as it progresses.

Reviser's Note
Section 36, V.A.C.S. Article 6674r-1, provides that the district shall pay for a construction or improvement as provided by the contract for the construction or improvement. The revised law omits this provision because the requirement that the
district perform its contracts according to their terms
is established by common law.

Revised Law
Sec. 441.113. JOINT PROJECT. (a) A district contract with
a state agency, a political subdivision, or a corporation created
by the commission under Chapter 431 may:
(1) provide for joint payment of the costs of a
project; and
(2) require the state agency, political subdivision,
or corporation to design, construct, or improve, including
landscape, a project as provided by the contract.
(b) The district may issue bonds to pay all or part of the
costs of the project and any other payments required under the
contract. (V.A.C.S. Art. 6674r-1, Secs. 34A, 34B.)

Source Law
Sec. 34A. A district may enter into contracts
with transportation corporations created by the State
Highway and Public Transportation Commission under
authority of the Texas Transportation Corporation Act
(Article 15281, Vernon's Texas Civil Statutes) or with
state agencies, counties, or political subdivisions for
purposes of jointly paying the costs of a project and
pursuant to which the transportation corporation, the
state agency, the county, or the political subdivision
may be obligated to design, construct, and/or improve
the projects on such terms and conditions as may be set
forth in the contracts. Payments required to be made
under such a contract may be made out of bond proceeds,
and a district may issue bonds for the purpose of
paying all or any part of the costs of a particular
project.
Sec. 34B. In Section 34A of this Act,
"construction" includes improvement, including
landscaping.

Revisor's Note
(1) Section 34A, V.A.C.S. Article 6674r-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.
(2) Section 34A, V.A.C.S. Article 6674r-1,
refers to "state agencies, counties, or political subdivisions." The reference to "counties" is omitted from the revised law because "counties" is included within the meaning of "political subdivisions."

Revised Law
Sec. 441.114. COMPETITIVE BIDS. A district may enter a construction or improvement contract requiring an expenditure of more than $15,000 only after competitive bidding as provided by Subchapter B, Chapter 271, Local Government Code. (V.A.C.S. Art. 6674r-1, Sec. 35.)

Source Law
Sec. 35. Construction or improvement contracts requiring an expenditure of more than $15,000 may be made only after competitive bidding as provided by Subchapter B, Chapter 271, Local Government Code.

Revised Law
Sec. 441.115. CONTRACTOR BOND. A contractor shall execute a bond for the amount of the contract price. The bond must be payable to and approved by the board and conditioned on:

(1) faithful performance of the contract obligations;

and

(2) payment to the district of damages resulting from any default. (V.A.C.S. Art. 6674r-1, Sec. 37.)

Source Law
Sec. 37. A contractor shall execute a bond for the amount of the contract price, payable to the board and approved by the board, conditioned on the faithful performance of the obligations, agreements, and covenants in the contract and on payment to the district of damages sustained as a result of any default.

Revisor's Note
Section 37, V.A.C.S. Article 6674r-1, refers to "obligations, agreements, and covenants in the contract." The references to "agreements" and "covenants" are omitted from the revised law because
those terms are within the meaning of "obligations."

Revised Law

Sec. 441.116. CHANGES TO ROAD FACILITIES. (a) Before a road facility is conveyed to a governmental entity, a district may make a change to the road facility that is not included in the plan approved by the commission if:

(1) the board determines that the change is necessary to:

(A) comply with the requirements of the governmental entity to which the road facility is to be conveyed;

(B) comply with the requirements of each municipality in which or extraterritorial jurisdiction of which the road facility is to be located, if the road facility is to be conveyed to a county;

(C) provide an adequate and efficient road system for travelers in the district; or

(D) adjust to circumstances or requirements that did not exist when the commission approved the original plan; and

(2) the commission approves the change in writing.

(b) Before approving the change, the commission shall consult the governmental entity to which the road facility is to be conveyed regarding the proposed change.

(c) Before making a change, a district to which Section 441.017 applies must receive written permission from the governmental entity assuming maintenance and any municipality in the extraterritorial jurisdiction of which the district is located.

(d) The commission shall adopt rules of procedure for:

(1) filing a request for a change; and

(2) approving a change. (V.A.C.S. Art. 6674r-1, Secs. 4(f) (part), 38.)

Source Law

[Sec. 4] (F) ... Prior to making changes or additions under Section 38 of this Act, the district must receive written permission from the governmental entity
assuming maintenance and any city in whose extraterritorial jurisdiction part of the district lies.

Sec. 38. (a) Before facilities are conveyed to the governmental entity that is to assume possession on acquisition or on completion of construction or improvement, the district with written permission from the commission may make changes in or additions to facilities that are not included in the plans approved by the commission if the board determines that the changes or additions are necessary to:

(1) comply with the requirements of that governmental entity to which the facilities are to be conveyed and, in the case of facilities to be conveyed to a county that are located within one or more cities or within the extraterritorial jurisdiction of one or more cities, comply with the requirements of the city or cities in whose city limits or extraterritorial jurisdiction the facilities are to be located;

(2) provide the traveling public with an adequate and efficient road system within the district; or

(3) adjust to circumstances or requirements that did not exist at the time the original plans for the facilities were approved by the commission.

(b) The commission shall adopt rules of procedure for filing plan changes with the commission and for receiving written approval of those changes from the commission.

(c) Before the commission gives its written approval, it shall consult with the governmental entity that is to accept conveyance of the facilities regarding the proposed changes.

Reviser's Note

(1) Section 38, V.A.C.S. Article 6674r-1, refers to "changes and additions" to plans. The reference to "additions" is omitted from the revised law because "additions" is included within the meaning of "changes."

(2) Section 38, V.A.C.S. Article 6674r-1, refers to a "city." The revised law substitutes the term "municipality" for "city" for the reason stated in Reviser's Note (4) to Section 441.001 of this code.

Revised Law

Sec. 441.117. MONITORING WORK. (a) The board controls the construction, acquisition, and improvement of a district road facility until it is conveyed under Section 441.133. The board shall monitor a contractor's work as it is performed on the road.
facilities and shall immediately act as necessary to ensure compliance with the contract. The board may use inspectors, engineers, or other district personnel as monitors.

(b) The board shall adopt a procedure for periodic reporting by the monitors.

(c) On completion of construction, acquisition, or improvement of the road facility, the monitors shall submit a written report to the board and the governmental entity to which the road facility is to be conveyed. The report must show whether the road facility complies with:

1. the district's plan approved by the commission;
2. the contract; and
3. the requirements of the governmental entity to which the road facility is to be conveyed. (V.A.C.S. Art. 6674r-1, Sec. 39.)

Source Law

Sec. 39. (a) The board has control of the construction, acquisition, and improvement of facilities of the district before they are conveyed to another governmental entity under Section 40 of this Act and shall monitor a contractor's work on the facilities as it is being done to assure that the district's contract is being fulfilled. (b) The board may have the contractor's work monitored by inspectors, engineers, or other personnel of the district.

(c) The board shall adopt a procedure for periodic reporting by the inspectors, engineers, or other personnel of the district who are monitoring the work and shall take immediate and necessary action to assure compliance with the contract.

(d) On completion of construction, acquisition, or improvement of facilities, the inspectors, engineers, or other personnel of the district who are responsible for inspections shall submit to the board and to the governmental entity to which the facilities are to be conveyed a written report that includes information that shows whether the completed facilities comply with:

1. the district's plan approved by the commission;
2. the contract requirements; and
3. the requirements of the governmental entity to which the facilities are to be conveyed.

[Sections 441.118-441.130 reserved for expansion]
SUBCHAPTER G. CONVEYANCE OF ROAD FACILITY

Revised Law
Sec. 441.131. HEARING ON FINAL APPROVAL. (a) After receiving the report under Section 441.117(c), the board shall give notice of and hold a public hearing to determine whether a road facility:

(1) is complete as required by the district's plans and the contract; and

(2) should be conveyed to the governmental entity.

(b) At the hearing, the board may require the presentation of additional information or testimony necessary to make a determination.

(c) A representative of the governing body of the governmental entity to which the road facility is to be conveyed may present information and testimony that the governmental entity considers necessary.

(d) If the road facility is to be conveyed to a county, a representative of any municipality in which or extraterritorial jurisdiction of which the road facility is located may present information and testimony that the municipality considers necessary. (V.A.C.S. Art. 6674r-1, Secs. 40(a), (b), (c)).

Source Law
Sec. 40. (a) On receiving the final monitoring report, the board shall give notice and schedule a public hearing to determine whether the facilities are complete as specified in the district's plans and the contract and should be conveyed to the governmental entity.

(b) At the hearing, the board may require the presentation of any additional information or testimony necessary to make a determination, and the governing body of the governmental entity that is to accept conveyance of the facilities may have its representative attend the hearing and present any information and testimony that the governmental entity considers necessary.

(c) In the case of a facility to be conveyed to a county that is located within a city or cities or within the extraterritorial jurisdiction of one or more cities, the city or cities may have their representatives attend the hearing, and present any information and testimony that the city or cities consider necessary.
Revisor's Note

Section 40(c), V.A.C.S. Article 6674r-1, refers to a "city." The revised law substitutes the term "municipality" for "city" for the reason stated in Revisor's Note (4) to Section 441.001 of this code.

Revised Law

Sec. 441.132. DECISION ON APPROVAL. (a) If the board determines at the end of a hearing under Section 441.131 that the work on the road facility is complete and the road facility should be conveyed to the governmental entity, the board shall order the conveyance subject to the requirements of this chapter. The board shall file with the commission a copy of the order and the proposed conveyance instrument.

(b) If the board determines that the work on the road facility has not been completed satisfactorily, the board shall act as necessary to complete the road facility as required by the district's plans and the contract. The district shall follow the procedures and requirements of Sections 441.117 and 441.131 before conveying the road facility to the governmental entity. (V.A.C.S. Art. 6674r-1, Secs. 40(d), (f).)

Source Law

(d) At the conclusion of the hearing, if the board determines that the work on the facilities is complete and that the facilities should be conveyed to the governmental entity, the board shall proceed to issue an order to convey the facilities to the governmental entity subject to the requirements of this Act and to file a copy of the order with the commission together with the proposed instrument of conveyance.

(f) If the board determines that the work on the facilities has not been completed satisfactorily, the board shall take necessary actions to have the facilities completed as required by the district's plans and the contract. The district shall follow the procedures and requirements provided by this section and Section 39 of this Act before issuing an order to convey facilities to the governmental entity.
Reviser's Note

Section 40(f), V.A.C.S. Article 6674r-1, refers to "Section 39 of this Act." That section is codified in this code as Section 441.117, and the revised law is drafted accordingly.

Revised Law

Sec. 441.133. CONVEYANCE REQUIRED. (a) A district shall convey a road facility to the governmental entity designated in the district's petition to the commission on completion and approval by the board of the construction, acquisition, or improvement and on approval by the commission.

(b) The district shall convey the road facility free and clear of district indebtedness and may not convey a road that is encumbered. (V.A.C.S. Art. 6674r-1, Secs. 40(e), 41(a).)

Source Law

[Sec. 40]

(e) A conveyance of facilities to a governmental entity as provided by this Act shall be made free and clear of all indebtedness of the district.

Sec. 41. (a) Each facility that is constructed, acquired, or improved by a district under this Act, on completion and approval of the construction, acquisition, or improvement by the board and notification and approval by the commission, shall be conveyed to the governmental entity that is designated in the district's petition to the commission provided the facilities are not encumbered by outstanding indebtedness.

Reviser's Note

Section 41(a), V.A.C.S. Article 6674r-1, refers to "notification and approval by the commission." The revised law omits the reference to "notification" because the commission cannot give its approval unless it is notified.

Revised Law

Sec. 441.134. COMMISSION CONVEYANCE ORDER. (a) Except as provided by Subsections (b) and (c), the commission by order shall
authorize the conveyance of a road facility to a governmental entity not later than the 15th day after the date that it receives a board's order to convey.

(b) The commission by order shall delay the conveyance until the district complies with the plans and written commission approvals if:

(1) the commission considers the road facility not to be completed according to the plans and written commission approvals;

(2) the governmental entity to which the road facility is being conveyed files a written protest; or

(3) a municipality in which or extraterritorial jurisdiction of which the road facility is located, if the road facility is being transferred to a county, files a written protest.

(c) An order under Subsection (b) must be issued not later than the 15th day after the later of the date that the commission receives the board's conveyance order or the date a protest is filed.

(d) The commission is not required to hold a hearing before making an order under this section. (V.A.C.S. Art. 6674r-1, Sec. 41(e).)

Source Law

(e) Within 15 days after receiving a board's order to convey a facility to a governmental entity, the commission shall issue an order authorizing the conveyance unless the commission considers the facility not to be completed according to the plans and written approvals of the commission or unless a written protest is filed by the governmental entity to which the facility is being conveyed, or, in the case of a facility that is being conveyed to a county and that is located within one or more cities or the extraterritorial jurisdiction of one or more cities, by one or more such cities. If the commission does not consider the facility being conveyed to be completed according to the plan and other written approvals of the commission or if a written protest is filed with the commission in accordance with this subsection, the commission shall issue an order, within 15 days after receiving the board's conveyance order or within 15 days after receiving the written protest, whichever is later, delaying the facility conveyance until the district fully complies with the plans and written approvals. The commission does not have to give notice or hold a hearing before issuing an order under this...
subsection.

Reviser's Note

Section 41(e), V.A.C.S. Article 6674r-1, refers to "cities." The revised law substitutes the term "municipality" for the reason stated in Reviser's Note (4) to Section 441.001 of this code.

Revised Law

Sec. 441.135. TRANSFER OF OWNERSHIP AND RESPONSIBILITY. (a)
The governmental entity to which a road facility is conveyed is the owner of and has jurisdiction and sole control over the road facility.

(b) After the conveyance, the governmental entity is responsible for all maintenance of the road facility and the district is not responsible for the road facility or its maintenance.

(c) This section does not affect the governmental entity's authority to alter, relocate, close, or discontinue maintenance of the road facility as provided by law. (V.A.C.S. Art. 6674r-1, Secs. 41(b), (c).)

Source Law

(b) A governmental entity to which a facility is conveyed shall take jurisdiction of and become the owner of the facility and shall be responsible for all future maintenance and upkeep, and the district will have no further responsibility for the facility. This subsection does not limit or modify the authority of the governmental entity to alter, relocate, close, or discontinue maintenance of any facility as provided by law.

(c) On conveyance of a facility to a governmental entity under this Act, the district is no longer responsible for the facility or its maintenance or upkeep, and the control over the facility is solely in the governmental entity to which it is conveyed.

Reviser's Note

Sections 41(b) and (c), V.A.C.S. Article 6674r-1, refer to the "maintenance and upkeep" of a facility. The reference to "upkeep" is omitted from the revised
law because "upkeep" is included within the meaning of "maintenance."

Revised Law

Sec. 441.136. EFFECT OF CONVEYANCE ON INDEBTEDNESS. Conveyance of a road facility to a governmental entity under this subchapter does not affect:

(1) the sole responsibility of the district to pay in full the principal of and interest and any premium on any outstanding district bonds or other indebtedness; or

(2) the district's responsibility to perform the obligations provided by the orders or resolutions authorizing the bonds or other indebtedness. (V.A.C.S. Art. 6674r-1, Sec. 41(d).)

Source Law

(d) Conveyance of a facility to a governmental entity under this section does not affect the duties and responsibilities of the district to pay in full the principal of and the premium, if any, and interest on any outstanding bonds or other indebtedness of the district and to observe and perform the covenants, obligations, or conditions provided by the orders or resolutions authorizing the bonds or other indebtedness. Notwithstanding the conveyance of facilities to a governmental entity under this section, the district is solely responsible and liable for payment in full of the principal of and the premium and interest on any bonds or other indebtedness of the district.

Revisor's Note

Section 41(d), V.A.C.S. Article 6674r-1, refers to the "duties and responsibilities" of the district. The reference to "duties" is omitted from the revised law because "duties" is included within the meaning of "responsibilities." That section also refers to "covenants, obligations, or conditions" in an order or resolution. The references to "covenants" and "conditions" are omitted from the revised law because those terms are included within the meaning of "obligations." That section also requires a district to "observe and perform" obligations. The reference to
"observe" is omitted from the revised law because "observe" is included within the meaning of "perform."

Finally, the section refers to a district being "responsible and liable" for the payment of indebtedness. The reference to "liable" is omitted from the revised law because "liable" is included within the meaning of "responsible."

Revised Law
Sec. 441.137. PARTIAL CONVEYANCE. This chapter does not prevent conveyance of part of the road facilities that a district constructs in stages. (V.A.C.S. Art. 6674r-1, Sec. 41(f).)

Source Law
(f) This Act may not be construed as preventing the conveyance of a portion of the facilities proposed to be constructed by a district if the district's facilities are constructed in stages.

[Sections 441.138-441.150 reserved for expansion]

SUBCHAPTER H. FINANCIAL PROVISIONS

Revised Law
Sec. 441.151. FISCAL YEAR. (a) The board shall establish a fiscal year for the district.
(b) The board may not change the fiscal year more than once in a 24-month period. (V.A.C.S. Art. 6674r-1, Sec. 42.)

Source Law
Sec. 42. (a) The district shall be operated on the basis of a fiscal year established by the board.
(b) The fiscal year may not be changed more than once in a 24-month period.

Revised Law
Sec. 441.152. BUDGET. (a) The board shall prepare and approve an annual budget.
(b) The budget must contain a complete financial statement, including a statement of:
(1) the outstanding obligations of the district;
The board shall prepare and approve an annual budget. The budget shall contain a complete financial statement, including a statement of:

1. The outstanding obligations of the district;
2. The amount of cash on hand to the credit of each fund of the district;
3. The amount of money received by the district from all sources during the previous year;
4. The amount of money available to the district from all sources during the ensuing year;
5. The balances expected at the end of the year in which the budget is being prepared;
6. The estimated revenue and balances available to cover the proposed budget; and
7. The estimated tax rate that will be required.

(c) The board may amend the budget after adoption.

(d) Money may not be spent for an expense not included in the budget or an amendment to it unless the board by order declares the expense to be necessary. (V.A.C.S. Art. 6674r-1, Secs. 44, 45, 46.)

Source Law

Sec. 44. (a) The board shall prepare and approve an annual budget.
(b) The budget shall contain a complete financial statement, including a statement of:
1. The outstanding obligations of the district;
2. The amount of cash on hand to the credit of each fund of the district;
3. The amount of money received by the district from all sources during the previous year;
4. The amount of money available to the district from all sources during the ensuing year;
5. The balances expected at the end of the year in which the budget is being prepared;
6. The estimated amount of revenue and balances available to cover the proposed budget; and
7. The estimated tax rate that will be required.

Sec. 45. After the annual budget is adopted, it may be amended on the board's approval.

Sec. 46. Money may not be spent for an expense not included in the annual budget or an amendment to it unless the board by order declares the expense to be necessary.

Revised Law

Sec. 441.153. AUDIT. The board shall have an annual audit made of the district's financial condition. (V.A.C.S. Art. 6674r-1, Sec. 43.)
Source Law

Sec. 43. Annually, the board shall have an audit made of the financial condition of the district.

Revised Law

Sec. 441.154. DEPOSITORY. (a) The board shall name one or more banks to serve as depository for district money.

(b) The district shall deposit money, other than money transmitted to a bank of payment for district bonds, with the depository bank as received. The money shall remain on deposit, except that this section does not limit the board's power to invest district money as provided by Section 441.156.

(c) The district may not deposit money in a bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation unless the bank executes a bond or provides other security in an amount sufficient to secure from loss district money that exceeds the amount secured by the Federal Deposit Insurance Corporation. (V.A.C.S. Art. 6674r-1, Sec. 47.)

Source Law

Sec. 47. (a) The board shall name one or more banks to serve as depository for district funds.

(b) District funds, other than those transmitted to a bank of payment for bonds issued by the district, shall be deposited as received with the depository bank and shall remain on deposit. This section does not limit the power of the board to invest the district's funds as provided by Section 48 of this Act.

(c) Before the district deposits funds in a bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation, the bank must execute a bond or provide other security in an amount sufficient to secure from loss the district's funds that exceed the amount secured by the Federal Deposit Insurance Corporation.

Revised Law

Sec. 441.155. PAYMENT OF EXPENSES. (a) The district's directors may pay:

(1) costs and expenses necessarily incurred in the district's creation, organization, and operation;

(2) legal fees; and

(3) other incidental expenses.
(b) The district's directors may reimburse a person for money advanced for a purpose under Subsection (a).

(c) A payment may be made from the proceeds of district bonds, taxes, fees, or other district revenue. (V.A.C.S. Art. 6674r-1, Sec. 49.)

Source Law

Sec. 49. (a) The district's directors may pay all costs and expenses necessarily incurred in the creation, organization, and operation of the district, legal fees, and other incidental expenses and may reimburse any person for money advanced for those purposes.

(b) Payments may be made from money obtained from the sale of bonds issued by the district or out of taxes, fees, or other revenues of the district.

Revised Law

Sec. 441.156. AUTHORIZED INVESTMENTS. (a) The board may invest the district's money in:

(1) a direct obligation of or obligation guaranteed directly or indirectly by the United States;

(2) an obligation, debenture, note, or other evidence of indebtedness issued or guaranteed directly or indirectly by the Association for Cooperatives, Federal Home Loan Association System, Export-Import Association of the United States, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Farmers' Home Administration, Tennessee Valley Authority, Farm Credit System, or Government National Mortgage Association, or by successor agencies;

(3) an obligation issued by a public agency or municipality and fully secured as to the payment of principal and interest by a pledge of annual contributions under an annual contributions contract with the United States;

(4) a temporary note, preliminary loan note, or project note issued by a public agency or municipality that is fully secured as to the payment of principal and interest by a requisition or payment agreement with the United States;

(5) a direct or general obligation of or obligation
guaranteed by this state if the payment of the principal and
interest is a general obligation of this state;

(6) a demand deposit or interest-bearing time deposit,
certificate of deposit, or other similar banking arrangement that
is made with a member of the Federal Deposit Insurance Corporation,
if the deposit, to the extent not insured to its full amount, is
fully secured by obligations of the types specified by Subdivision
(1), (2), (3), (4), (5), (9), or (10) that have a fair market value
at least equal at all times to the amount of the deposit;

(7) a repurchase agreement with a bank that is a
member of the Federal Deposit Insurance Corporation or with a
member of the Public Securities Association, if the underlying
securities are of the type described by Subdivision (1) or (2) and
each is fully secured at all times by obligations of the same type
that have a fair market value, including accrued interest, at least
equal to the amount of the repurchase agreement including accrued
interest;

(8) an interest-bearing time deposit or repurchase
agreement with an agency or intermediary of the United States and
that is described by Subdivision (1) or (2);

(9) an obligation of this state, another state of the
United States, a nonprofit corporation, or an instrumentality of
this state, another state, or a nonprofit corporation, if at the
time of its purchase under the indenture, the obligation is rated
in one of the two highest letter-rating categories by a nationally
recognized securities credit rating agency; and

(10) an obligation issued by a political subdivision
of this state, another state of the United States, a nonprofit
corporation, or an instrumentality of this state, another state, or
a nonprofit corporation, that is rated in one of the two highest
letter-rating categories by a nationally recognized securities
credit rating agency.

(b) The board may place the district's money in a
certificate of deposit of a state or national bank or state or
federal savings and loan association in this state if the money is
secured in the manner required for security of the money of a
county of this state. (V.A.C.S. Art. 6674r-1, Secs. 48(a) (part),
(b).)

Source Law

Sec. 48. (a) Funds of the district may be
invested and reinvested by the board . . . in the
following:

(1) direct obligations of or obligations
guaranteed directly or indirectly by the United States;
(2) obligations, debentures, notes, or
other evidence of indebtedness issued or guaranteed
directly or indirectly by the Association for
Cooperatives, Federal Intermediate Credit Banks,
Federal Home Loan Association System, Export-Import
Association of the United States, Federal Land Banks,
Federal National Mortgage Association, Federal Home
Loan Mortgage Corporation, Farmers' Home
Administration, Tennessee Valley Authority, Federal
Farm Credit System, the Government National Mortgage
Association, or successor agencies;
(3) obligations issued by public agencies
or municipalities and fully secured as to the payment
of both principal and interest by a pledge of annual
contributions under an annual contributions contract or
contracts with the United States, or temporary notes,
preliminary loan notes, or project notes issued by
public agencies or municipalities that are fully
secured as to the payment of both principal and
interest by a requisition or payment agreement with the
United States;
(4) direct and general obligations of or
obligations guaranteed by the state the payment of the
principal of and interest on which is a general
obligation of the State of Texas;
(5) demand deposits or interest-bearing
time deposits, certificates of deposit, or other
similar banking arrangements that are made with a
member of the Federal Deposit Insurance Corporation, or
any savings and loan association that is a member of
the Federal Savings and Loan Insurance Corporation,
provided those time deposits or certificates of
deposit, to the extent not insured to their full
amount, are fully secured by obligations of the types
specified in Subdivision (1), (2), (3), (4), (8), or
(9) of this subsection that have a fair market value at
least equal at all times to the amount of such
deposits;
(6) repurchase agreements with banks that
are members of the Federal Deposit Insurance
Corporation and with members of the Association of
Primary Dealers in United States Government Securities,
the underlying securities of which are of the type
described in Subdivisions (1) and (2) of this
subsection and each of which is fully secured at all
times by obligations of the same type that have a fair
market value, including accrued interest, at least
equal to the amount of the repurchase agreement
including accrued interest;
(7) interest-bearing time deposits or
repurchase agreements with agencies or intermediaries
of the federal government of the United States that are...
described in Subdivisions (1) and (2) of this subsection;
(8) obligations of this state, any other state within the United States, any nonprofit corporation, or any instrumentality of this state, any other state, or any nonprofit corporation, provided that at the time of their purchase under the indenture, those obligations are rated in one of the two highest letter-rating categories by a nationally recognized securities credit rating agency; and
(9) obligations issued by political subdivisions or municipalities of this state, any other state within the United States, any nonprofit corporation, or any instrumentality of this state, any other state, or any nonprofit corporation, that are rated in one of the two highest letter-rating categories by a nationally recognized securities credit rating agency.

(b) Funds of the district may be placed in certificates of deposit of state or national banks or state or federal savings and loan associations within the state provided that the funds are secured in the manner required for the security of the funds of counties of the state.

Revisor's Note

(1) Section 48(a)(2), V.A.C.S. Article 6674r-1, refers to investment in an evidence of indebtedness guaranteed by the "Federal Intermediate Credit Banks" and the "Federal Land Banks." Under the Agricultural Credit Act of 1987 (Pub. L. No. 100-233), each of the 12 federal intermediate credit banks was merged with a federal land bank to create 12 farm credit banks. See 12 U.S.C. Section 2011. The revised law is drafted accordingly.

(2) Section 48(a)(5), V.A.C.S. Article 6674r-1, refers to "a member of the Federal Deposit Insurance Corporation, or any savings and loan association that is a member of the Federal Savings and Loan Insurance Corporation." The revised law omits the reference to the "Federal Savings and Loan Insurance Corporation" because that agency has been abolished and its duties have been transferred to the Federal Deposit Insurance Corporation. Currently, if a savings and loan corporation has federal insurance, it is a member of the Federal Deposit Insurance Corporation.
(3) Section 48(a)(6), V.A.C.S. Article 6674r-1, refers to the "Association of Primary Dealers in United States Government Securities." The revised law substitutes the "Public Securities Association," which succeeded the former association in 1983.

(4) Section 48(a)(9), V.A.C.S. Article 6674r-1, refers to "political subdivisions or municipalities." The reference to "municipalities" is omitted from the revised law because "municipalities" is included within the meaning of "political subdivisions."

Revised Law

Sec. 441.157. INVESTMENT REPRESENTATIVE. The board by resolution may provide that an authorized representative of the district may invest the district's money and provide for money to be withdrawn from the appropriate accounts of the district for investment on terms the board considers advisable. (V.A.C.S. Art. 6674r-1, Secs. 48(a) (part), (c).)

Source Law

(a) [Funds of the district may be invested ... by the board] or its authorized representative ... .

(c) The board by resolution may provide that an authorized representative of the district may invest and reinvest the funds of the district and provide for money to be withdrawn from the appropriate accounts of the district for investments on such terms as the board considers advisable.

Revised Law

Sec. 441.158. BORROWING MONEY. The district may borrow money for any purpose authorized under this chapter. (V.A.C.S. Art. 6674r-1, Sec. 50.)

Source Law

Sec. 50. The district may borrow money for any purpose authorized under this Act or any combination of those purposes.

[Sections 441.159-441.170 reserved for expansion]
SUBCHAPTER I. BONDS

Revised Law
Sec. 441.171. ISSUANCE OF BONDS. The board may issue and sell bonds in the name of the district to construct, acquire, or improve district road facilities as provided by this chapter. (V.A.C.S. Art. 6674r-1, Sec. 51 (part).)

Source Law
Sec. 51. The board may issue and sell bonds in the name of the district . . . to construct, acquire, and improve facilities as provided by this Act.

Revisor's Note
Section 51, V.A.C.S. Article 6674r-1, provides a limit on the amount of bonds that the board may issue based on the value of real property in the district. This provision is omitted from the revision because the provision is substantively identical to Section 52(b), Article III, Texas Constitution. The policy of the legislative council's statutory revision program is to omit from the revised codes the duplicating statutory provisions because a statute that tracks the language of the constitution is not only superfluous but may foster the erroneous belief that a constitutional requirement is merely statutory and subject to amendment through the ordinary legislative process. Section 51 also provides that to determine one-fourth of the assessed valuation of the real property, the assessed value is the market value recorded by the chief appraiser of the central appraisal district. This provision is omitted because it duplicates Section 1.04(9), Tax Code, which applies to road utility districts. The omitted statutory provisions read:

... in an amount not to exceed one-fourth of the assessed valuation of the real property of the district . . . . In order to determine one-fourth of the assessed valuation of the real property, the
assessed value of the property shall be the
market value recorded by the chief
appraiser of the central appraisal
district.

Revised Law

Sec. 441.172. TAX BOND ELECTION. (a) The district may not
issue bonds secured by taxes unless the issuance of the bonds is
approved at an election ordered by the board within the district
boundaries for that purpose.

(b) The district may issue bonds not secured by taxes
without an election.

(c) In addition to the requirements of the Election Code,
the order shall state:

(1) the nature of the election;
(2) the hours during which polls will be open;
(3) the location of polling places;
(4) the amount of the bonds to be authorized; and
(5) the maximum maturity of the bonds.

(d) Notice of the election must be given as provided by
Section 441.031 for a confirmation and directors' election.

(e) The ballot at the election must be printed to provide
for voting for or against the issuance of the bonds and the
imposition of ad valorem taxes for payment of the bonds. (V.A.C.S.
Art. 6674r-1, Secs. 53(a) (part), (b), (c), (d), (f).)

Source Law

Sec. 53. (a) Bonds secured by taxes may not be
issued by the district until authorized . . . at an
election called for that purpose.

(b) The board may order a bond election, and the
order calling the election shall state the nature and
the date of the election, the hours during which the
polls will be open, the location of the polling places,
the amount of bonds to be authorized, and the maximum
maturity of the bonds.

(c) Notice of a bond election must be given as
provided by Subsection (b) of Section 11 of this Act
for the confirmation and directors' election.

(d) At an election to authorize bonds, the
ballots must be printed to provide for voting for or
against the issuance of bonds and the levy of ad
valorem taxes for payment of the bonds.

(f) Bonds that are not secured by taxes may be
issued without authorization at an election.
(1) Sections 53(a) and (e), V.A.C.S. Article 6674r-1, provide that a two-thirds majority vote is required to approve the issuance of bonds. This provision is omitted from the revision because the provision is substantively identical to Section 52(b), Article III, Texas Constitution. The policy of the legislative council's statutory revision program is to omit from the revised codes the duplicating statutory provisions because a statute that tracks the language of the constitution is not only superfluous but may foster the erroneous belief that a constitutional requirement is merely statutory and subject to amendment through the ordinary legislative process.

The omitted statutory provisions read:

[(a) Bonds secured by taxes may not be issued by the district until authorized] by a two-thirds majority vote of individuals qualified to vote and actually voting in the area within the boundaries of the district . . . .

[(e)] . . . If a two-thirds majority of the votes cast at the election favor the issuance of the bonds, the bonds may be issued by the board, but if a two-thirds majority of the votes cast at the election do not favor issuance of the bonds, the bonds may not be issued.

(2) Section 53(b), V.A.C.S. Article 6674r-1, provides that the election order shall state "the date of the election." The revised law omits this provision as unnecessary because it duplicates Section 3.006, Election Code.

(3) Section 53(e), V.A.C.S. Article 6674r-1, requires the board to "canvass the returns and declare the results of the election." The revised law omits this provision as unnecessary because it duplicates requirements of Chapter 67, Election Code. The omitted law reads:

(e) The board shall canvass the
returns and declare the results of the election.

Revised Law
Sec. 441.173. FORM AND PROVISIONS OF BONDS. (a) The district may issue the bonds in various series or issues. The bonds may mature serially or otherwise not more than 50 years after their date. The bonds may be made redeemable before maturity at the option of the district or may contain a mandatory redemption provision.

(b) An order or resolution of the board authorizing the issuance of the bonds, including refunding bonds, may:

(1) provide for the management of money;
(2) provide for the establishment and maintenance of an interest and sinking fund, a reserve fund, and other funds;
(3) prohibit further issuance of bonds or other obligations payable from pledged fees or reserve the right to issue additional bonds secured by a pledge of and payable from the fees on a parity with or subordinate to the pledge in support of the bonds being issued; and
(4) contain other covenants and provisions as the board determines.

(c) The board may adopt and have executed other proceedings or instruments necessary and convenient in connection with the issuance of bonds. (V.A.C.S. Art. 6674r-1, Secs. 54, 55.)

Source Law
Sec. 54. (a) The district may issue its bonds in various series or issues.
(b) Bonds may mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate or rates permitted by the constitution and laws of this state.
(c) The district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8 of the Business & Commerce Code and may be issued registrable as to principal or as to both principal and interest or may be issued in book entry form and may be made redeemable before maturity at the option of the district or may contain a mandatory redemption provision.
(d) The district's bonds may be issued in the form, denominations, and manner and under the terms, conditions, and details and shall be signed and
executed as provided by the board in the resolution or
order authorizing their issuance.

Sec. 55. (a) In the orders or resolutions
authorizing the issuance of bonds, including refunding
bonds, the board may provide for the flow of funds, the
establishment and maintenance of the interest and
sinking fund, the reserve fund, and other funds and may
make additional covenants with respect to the bonds and
the pledged fees.

(b) The orders or resolutions of the board
authorizing the issuance of bonds may also prohibit the
further issuance of bonds or other obligations payable
from the pledged fees or may reserve the right to issue
additional bonds to be secured by a pledge of and
payable from the fees on a parity with or subordinate
to the pledge in support of the bonds being issued.

(c) The orders or resolutions of the board
issuing bonds may contain other provisions and
covenants as the board may determine.

(d) The board may adopt and have executed any
other proceedings or instruments necessary and
convenient in connection with the issuance of bonds.

Revisor's Note

Section 54, V.A.C.S. Article 6674r-1, contains
several provisions that are omitted from the revised
law as unnecessary because they duplicate provisions of
the Bond Procedures Act of 1981 (Article 717k-6,
Vernon's Texas Civil Statutes), which applies to bonds
issued under this chapter. Section 54(b) provides that
the bonds "shall bear interest at any rate or rates
permitted by the constitution and laws of this state,"
duplicating Section 3 of the bond procedures act.
Section 54(c) provides that the "district's bonds and
interest coupons, if any, are investment securities
under the terms of Chapter 8 of the Business & Commerce
Code," duplicating Section 9 of the bond procedures
act. Section 54(c) also provides that the bonds "may
be issued registrable as to principal or as to both
principal and interest," duplicating Section 4 of the
bond procedures act. Also in Section 54(c) is a
provision that the bonds "may be issued in book entry
form," duplicating Section 5(b) of the bond procedures
act. Finally, Section 54(d) allows the board to
determine certain provisions and procedures in
connection with the bonds, duplicating Section 3 of the bond procedures act.

Revised Law
Sec. 441.174. EXAMINATION. District bonds and the records relating to their issuance shall be submitted to the attorney general for examination. (V.A.C.S. Art. 6674r-1, Sec. 56(a).)

Source Law
Sec. 56. (a) Bonds issued by the district and the records relating to their issuance must be submitted to the attorney general for examination.

Revisor's Note
Sections 56(b) and (c), V.A.C.S. Article 6674r-1, relating to approval and registration of bonds, are omitted from the revised law as unnecessary because they duplicate Section 2, Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), which applies to bonds issued under this chapter. The omitted law reads:

(b) If the attorney general finds that the bonds have been authorized in accordance with law, he shall approve them, and they shall be registered by the comptroller of public accounts.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.

Revised Law
Sec. 441.175. REFUNDING BONDS. The district may issue refunding bonds. (V.A.C.S. Art. 6674r-1, Sec. 57.)

Source Law
Sec. 57. Refunding bonds may be issued for the purposes and in the manner provided by general law including Chapter 503, Acts of the 54th Legislature, Regular Session, 1955, as amended (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).
Revisor's Note
Section 57, V.A.C.S. Article 6674r-1, provides that refunding bonds are subject to V.A.C.S. Articles 717k and 717k-3. The revised law omits this provision because those articles by their own terms apply to those refunding bonds.

Revised Law
Sec. 441.176. TAX EXEMPTION. District bonds, a transaction relating to the bonds, and a profit made in the sale of the bonds are exempt from state or local taxation. (V.A.C.S. Art. 6674r-1, Sec. 65.)

Source Law
Sec. 65. Since a district created under this Act is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are free from taxation by the state or by any city, county, special district, or other political subdivision of the state.

Revisor's Note
Section 65, V.A.C.S. Article 6674r-1, provides a tax exemption under that section "[s]ince a district created under this Act is a public entity performing an essential public function." The revised law omits the quoted language as unnecessary. The validity of the tax exemption is not dependent on the legislative statement.

Revised Law
Sec. 441.177. BONDHOLDER MANDAMUS. A holder of a district bond is entitled, in addition to any other right or remedy provided by state law, to a writ of mandamus requiring the district and its officials to perform any obligation that:

(1) is provided by the order or resolution authorizing issuance of the bond; and

(2) the district fails to perform, including:
(A) defaulting in the payment of principal, interest, or redemption price on the bond when due; and

(B) failing to make payment into any fund created in the order or resolution. (V.A.C.S. Art. 6674r-1, Sec. 60.)

Source Law

Sec. 60. In addition to all other rights and remedies provided by the laws of the state, in the event the district defaults in the payment of principal, interest, or redemption price on its bonds when due or in the event it fails to make payments into any fund or funds created in the orders or resolutions authorizing the issuance of the bonds or defaults in the observation or performance of any other covenants, conditions, or obligations set forth in the orders or resolutions authorizing the issuance of its bonds, the owners of any of the bonds shall be entitled to a writ of mandamus issued by a court of competent jurisdiction compelling and requiring the district and its officials to observe and perform the covenants, obligations, or conditions prescribed in the orders or resolutions authorizing the issuance of the district's bonds.

Revisor's Note

(1) Section 60, V.A.C.S. Article 6674r-1, refers to a writ of mandamus issued by "a court of competent jurisdiction." The revised law omits the quoted language as unnecessary because such a writ may only be issued by a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

(2) Section 60, V.A.C.S. Article 6674r-1, refers to "compelling and requiring" certain actions. The reference to "compelling" is omitted from the revised law because "compelling" is included within the meaning of "requiring."

(3) Section 60, V.A.C.S. Article 6674r-1, refers to the "covenants, conditions, or obligations." The references to "covenants" and "conditions" are omitted
from the revised law because those terms are included within the meaning of "obligations."

(4) Section 60, V.A.C.S. Article 6674r-1, requires the district to "observe and perform" certain duties. The reference to "observe" is omitted from the revised law because "observe" is included within the meaning of "perform."

Revised Law

Sec. 441.178. USE OF BOND PROCEEDS. The district may use bond proceeds to:

(1) construct, acquire, or improve a road facility;
(2) pay an expense related to the road facility;
(3) pay, or establish a reasonable reserve to pay, not more than three years' interest on the district's bonds; and
(4) pay an expense related to issuance and sale of bonds as provided by the bond orders or resolutions. (V.A.C.S. Art. 6674r-1, Sec. 62.)

Source Law

Sec. 62. A district may use bond proceeds to construct, acquire, or improve facilities, to pay any expenses related to those facilities, to pay or establish a reasonable reserve to pay not more than three years' interest on the bonds and notes of the district, and to pay expenses related to issuance and sale of bonds as provided by the bond orders or resolutions.

Reviser's Note

Section 62, V.A.C.S. Article 6674r-1, refers to the "bonds and notes" of a district. The reference to "notes" is omitted from the revised law because notes are included within the definition of bonds under Section 441.001(2) of this code.

Revised Law

Sec. 441.179. DISPOSITION OF PROCEEDS. The district shall deposit the part of the purchase money of bonds that represents
capitalized interest in a special account in the district
depository and use that money to pay interest that comes due on
bonds. Money remaining in that account after payment of the costs
of issuance of the bonds shall be transferred to the credit of the
regular account of the district in the district depository.
(V.A.C.S. Art. 6674r-1, Sec. 63.)

Source Law

Sec. 63. The portion of the purchase money of
bonds and notes that represents capitalized interest
shall be placed in a special account in the district
depository to be used to pay interest that comes due on
the bonds or bond anticipation notes, and any money
remaining in that account after payment of the costs of
issuance of the bonds or bond anticipation notes shall
be transferred and deposited in the regular account of
the district in the district depository.

Reviser's Note

Section 63, V.A.C.S. Article 6674r-1, refers to
the "bonds and notes" and "bonds and bond anticipation
notes" of a district. The references to "notes" and
"bond anticipation notes" are omitted from the revised
law because notes are included within the definition of
bonds under Section 441.001(2) of this code.

Revised Law

Sec. 441.180. MANNER OF REPAYMENT. (a) The board may
provide for the payment of the principal of and interest on the
bonds by one or more of the following methods:
(1) imposition and collection of ad valorem taxes;
(2) adoption of a plan of taxation authorized by
Sections 51.502-51.506, Water Code, as provided by those sections;
or
(3) pledging all or part of the fees under Section
441.197.
(b) In this chapter, a reference to ad valorem taxes
includes a reference to any other tax the board imposes as provided
by this chapter. (V.A.C.S. Art. 6674r-1, Sec. 52.)
Sec. 52. The board may provide for the payment of the principal of and interest on the bonds in any one of the following manners:

(1) from the levy and collection of ad valorem taxes or by complying with the procedures set forth in Sections 51.502 through 51.506, Water Code, adopting any other plan of taxation authorized therein. 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 board determines to levy on a basis other than the ad valorem basis;

(2) by pledging all or any part of the fees assessed under Section 71 of this Act; or

(3) from a combination of the sources listed in Subdivisions (1) and (2) of this section.

Revisor's Note

(End of Subchapter)

(1) Sections 58 and 59, V.A.C.S. Article 6674r-1, referring to the use of bonds as investments and security, are omitted from the revised law as unnecessary. The sections duplicate Section 9, Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), which applies to those bonds. While Section 58, V.A.C.S. Article 6674r-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 law reads:

Sec. 58. District bonds are legal
and authorized investments for:
(1) banks;
(2) savings banks;
(3) trust companies;
(4) savings and loan associations;
(5) insurance companies;
(6) fiduciaries;
(7) trustees;
(8) guardians; and
(9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Sec. 59. District bonds are eligible to secure deposits of public funds of the state and cities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.
Section 61, V.A.C.S. Article 6674r-1, states that district bonds are covered by Chapter 845, Acts of the 67th Legislature, Regular Session, 1981, titled the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes). The revised law omits this section because the bond procedures act by its own terms applies to those bonds. The omitted law reads:

Sec. 61. Bonds of the district are considered bonds under Chapter 845, Acts of the 67th Legislature, Regular Session, 1981, as amended (Article 717k-6, Vernon's Texas Civil Statutes), and that law applies to district bonds.

[Sections 441.181-441.190 reserved for expansion]

SUBCHAPTER J. TAXES

Revised Law

Sec. 441.191. IMPOSITION OF TAXES. The board may annually impose taxes to pay the principal of and interest on district bonds and the expense of assessing and collecting taxes. (V.A.C.S. Art. 6674r-1, Sec. 66.)

Source Law

Sec. 66. The board may annually levy taxes to pay the principal of and interest on bonds issued by the district and the expense of assessing and collecting taxes.

Revised Law

Sec. 441.192. MAINTENANCE TAX. (a) A district may impose a maintenance tax to pay the district's operating expenses if, at an election in the district ordered for that purpose, a majority of the votes received favor the imposition of the tax.

(b) The amount of the tax may not exceed 25 cents on each $100 of assessed valuation of property in the district.

(c) The election shall be held as provided for a confirmation and directors' election under Sections 441.030-441.035. (V.A.C.S. Art. 6674r-1, Sec. 67.)
Sec. 67. Upon approval of a majority of the voters in the district at an election called for that purpose, the district may levy and collect a maintenance tax in an amount not to exceed 25 cents on each $100 of assessed valuation of property in the district to pay operating expenses of the district. The maintenance tax election shall be held in the manner provided by Section 11 of this Act for the confirmation and directors' election.

Revised Law

Sec. 441.193. TAX RATE. In setting a tax rate, the board shall consider the district's income from sources other than taxation. On determination of the amount of tax needed to be imposed, the board shall adopt a tax rate. (V.A.C.S. Art. 6674r-1, Sec. 69.)

Source Law

Sec. 69. In setting the tax rate, the board shall take into consideration the income of the district from sources other than taxation. On determination of the amount of tax required to be levied, the board shall make the levy and certify it to the tax assessor-collector.

Revisor's Note

Section 69, V.A.C.S. Article 6674r-1, requires a board that adopts a tax to "make the levy and certify it to the tax assessor-collector." The revised law substitutes "adopt a tax rate" for the quoted language because that language is superseded by Section 26.05(a), Tax Code, which requires a taxing unit that imposes an ad valorem tax to certify the tax rate to the assessor-collector.

Revised Law

Sec. 441.194. APPOINTMENT OF TAX ASSESSOR-COLLECTOR. The board may appoint a tax assessor-collector. (V.A.C.S. Art. 6674r-1, Sec. 70(b) (part).)

Source Law

(b) The board may provide for the appointment of a tax assessor-collector for the district.

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Revisor's Note

Section 70(b), V.A.C.S. Article 6674r-1, provides in part that the board of directors of a road utility district may contract for the assessment and collection of taxes as provided by the Tax Code. The revised law omits this provision as unnecessary because Section 6.24, Tax Code, authorizes a taxing unit to contract for assessment and collection. The omitted law reads:

[The board] may contract for the assessment and collection of taxes as provided by the Tax Code.

Revised Law

Sec. 441.195. IMPOSITION OF TAXES DURING FIRST YEAR. The board may impose taxes for the entire year in which the district is created. (V.A.C.S. Art. 6674r-1, Sec. 68(a).)

Source Law

Sec. 68. (a) The board may levy taxes for the entire year in which the district is created.

Revised Law

Sec. 441.196. ALL PROPERTY TAXED. The board shall impose taxes on all property in the district subject to taxation. (V.A.C.S. Art. 6674r-1, Sec. 68(b).)

Source Law

(b) The board shall levy taxes on all property within the boundaries of the district subject to district taxation.

Revised Law

Sec. 441.197. FEES. (a) A district may adopt and enforce fees in addition to taxes to provide the district revenue to operate the district and secure district bonds.

(b) A district may file a suit to recover an unpaid fee under this section. The suit must be filed in a county in which the district is located.

(c) Except as provided by Section 365.040, a fee may not be
imposed on or collected for travel on a road constructed, acquired,
or improved by the district.

(d) A road facility may not be encumbered by a district fee.

(V.A.C.S. Art. 6674r-1, Sec. 71.)

Source Law

Sec. 71. (a) A district may adopt and enforce fees in addition to taxes to provide for operation of the district and to secure bonds of the district issued to finance the construction, acquisition, and improvement of facilities.

(b) A district may file suit in a court of competent jurisdiction within any county in which the district is located to recover any unpaid fees under this section.

(c) Fees imposed and collected under this section are revenues of the district.

(d) Fees authorized by this section may not be imposed on or collected from the traveling public for the use of roads constructed, acquired, or improved by the district, and no facilities may be encumbered by district fee.

Revisor's Note

(1) Section 71(b), V.A.C.S. Article 6674r-1, refers to a suit brought "in a court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may be brought only in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

(2) Section 71(d), V.A.C.S. Article 6674r-1, provides in part that a road utility district may not impose a fee for the use of a road constructed by the district. Section 71(d) was impliedly amended by the 1989 addition of Section 12A to V.A.C.S. Article 6674r-1, relating to toll roads of road districts. Section 12A(d)(1), which is revised as Section 365.040 of this code, provides authority for a road utility district to impose a toll for use of a road. The
revised law is drafted accordingly.

Revised Law

Sec. 441.198. BOND ANTICIPATION NOTES. (a) A district may issue bond anticipation notes:

(1) for any purpose for which district bonds have been previously voted; or

(2) to refund previously issued bond anticipation notes.

(b) A district may contract with purchasers of bond anticipation notes that the proceeds from the sale of bonds that are issued to refund the bond anticipation notes shall be used only to pay the principal of or interest or redemption price on the bond anticipation notes.

(c) A district may secure the repayment of the principal of and interest and redemption premium on the bond anticipation notes from any source available for that repayment, including a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitment to purchase bond anticipation notes, purchase or sale agreement, or another agreement authorized and approved by the district in connection with the authorization, issuance, security, or repayment of bond anticipation notes.

(V.A.C.S. Art. 6674r-1, Secs. 64(a), (c), (d).)

Source Law

Sec. 64. (a) The district may issue bond anticipation notes for any purpose for which bonds of the district may have been voted previously or to refund previously issued bond anticipation notes.

(c) The district may covenant with the purchasers of the bond anticipation notes that the proceeds from the sale of any bonds issued to refund the bond anticipation notes will be for that purpose, in which case the proceeds received from the sale of those bonds must be used to pay the principal of or interest or redemption price on the bond anticipation notes.

(d) The district may secure the repayment of the principal of and interest and redemption premium on the bond anticipation notes from any source or sources legally available for the repayment of those bond anticipation notes including a credit agreement. As
used in this subsection, "credit agreement" means a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitments to purchase bond anticipation notes, purchase or sale agreements, or commitments or other contracts or agreements authorized and approved by the district in connection with the authorization, issuance, security, or payment of bond anticipation notes.

**Revisor's Note**

Section 64(b), V.A.C.S Article 6674r-1, is omitted from the revised law as unnecessary. The limit contained in that section on the bond anticipation notes' interest rates merely duplicates Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), which applies to those notes. The provisions of that section referring to denominations and payment times duplicate Section 3, Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), which also applies to those notes. The omitted law reads:

(b) Bond anticipation notes may bear interest at a rate or rates not to exceed the limitations provided by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes), and may be issued in the denominations and may be made payable at times considered the most expedient, as stated in the orders or resolutions authorizing their issuance.

**Revisor's Note**

(End of Subchapter)

Section 70(a), V.A.C.S. Article 6674r-1, provides that the Tax Code applies to certain procedures relating to district taxes. The revised law omits Section 70(a) as unnecessary because Section 1.02, Tax Code, provides that Title 1 of that code, relating to property taxes, applies to any taxing unit created by state law. Section 70(a) reads:

Sec. 70. (a) The Tax Code governs the appraisal, assessment, and collection of district taxes.
SUBCHAPTER K. ANNEXATION

Revised Law

Sec. 441.211. PETITION FOR ANNEXATION. (a) Any property owner may file with the board a petition requesting that the real property be annexed to the district. The property is not required to be contiguous to the district.

(b) The petition must:

(1) describe the property by metes and bounds, or if there is a recorded plat of the property, by lot and block number; and

(2) be executed as provided by law for the conveyance of real property. (V.A.C.S. Art. 6674r-1, Secs. 33.1(a), (c)).

Source Law

Sec. 33.1. (a) The owner or owners of land contiguous to the district or otherwise may file with the board a petition 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.

(c) The petition of the landowner or landowners to add land to the district shall be signed and executed in the manner provided by law for the conveyance of real estate.

Revised Law

Sec. 441.212. BOARD DECISION. The board shall hear and consider the petition and may annex the real property to the district if the board considers the annexation to be to the district's advantage. (V.A.C.S. Art. 6674r-1, Sec. 33.1(d)).

Source Law

(d) The board 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 of the district.

Revised Law

Sec. 441.213. COMMISSION APPROVAL. A board order annexing
real property to the district is final only on written consent of
the commission after the commission consults with the governmental
entity to which the completed road facility will be conveyed.
(V.A.C.S. Art. 6674r-1, Sec. 33.1(f).)

Source Law

(f) Before any order of the board adding land to
the district is final, written consent of the
commission to such addition of land is necessary.
Prior to granting such approval, the commission shall
consult with the governmental entity to whom completed
district facilities will be conveyed.

Revised Law

Sec. 441.214. RECORDING PETITION. The board shall record a
petition that is granted in the office of the county clerk of each
county in which annexed real property is located. (V.A.C.S.
Art. 6674r-1, Sec. 33.1(g).)

Source Law

(g) A petition which is granted adding land to
the district shall be filed for record and shall be
recorded in the office of the county clerk of the
county or counties in which the land is located.

Revised Law

Sec. 441.215. ASSUMPTION OF DEBT SHARE. The board may
require each petitioner to:
(1) assume the petitioner's share of any outstanding
district bonds or voted but unissued bonds; and
(2) authorize the board to impose a tax on the
petitioner's property in each year that any of those bonds are
outstanding. (V.A.C.S. Art. 6674r-1, Sec. 33.1(b).)

Source Law

(b) 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 board may 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 board 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 to pay their share of the
indebtedness.
Reviser's Note

(1) Section 33.1(b), V.A.C.S. Article 6674r-1, refers to the "bonds, notes, or other obligations" of a district. The references to "notes" and "other obligations" are omitted from the revised law because those terms are included within the definition of bonds under Section 441.001(2) of this code.

(2) Section 33.1(b), V.A.C.S. Article 6674r-1, refers to "bonds payable in whole or in part from taxes which have been voted but are unissued." The revised law omits the reference to the bonds being payable from taxes because only bonds payable from taxes must be voted.

Revised Law

Sec. 441.216. UNISSUED BONDS. The board may issue bonds that have been voted but not issued at the time of an annexation, regardless of the alteration of the district boundaries after the bond's authorization, if each petitioner assumes the debt and authorizes the tax under Section 441.215. (V.A.C.S. Art. 6674r-1, Sec. 33.1(e).)

Source Law

(e) If the district has bonds payable in whole or in part from taxation which are voted but unissued at the time of an annexation, and the petitioner or petitioners assume the bonds and authorize the district to levy a tax on their property to pay bonds, then the board may issue the voted but unissued bonds even though the boundaries of the district have been altered since the authorization of the bonds.

Reviser's Note

Section 33.1(e), V.A.C.S. Article 6674r-1, refers to "bonds payable in whole or in part from taxation which are voted but unissued." The revised law omits the reference to the bonds being payable from taxation for the reason stated in Reviser's Note (2) to Section 441.215 of this code.
SUBCHAPTER L. DISSOLUTION

Revised Law
Sec. 441.231. PETITION FOR DISSOLUTION. (a) A district shall submit to the commission a petition for dissolution of the district after:

(1) the district has completed each construction, acquisition, and improvement of a road facility provided in the plan approved by the commission;

(2) the district has conveyed each road facility to a governmental entity; and

(3) all bonds and other district indebtedness are paid in full.

(b) The district shall submit with the petition evidence that the commission by rule or order requires to show that each proposal in the plan has been completed and all bonds and other district indebtedness have been paid in full. (V.A.C.S. Art. 6674r-1, Sec. 72(a).)

Source Law
Sec. 72. (a) After a district has completed all construction, acquisition, and improvement of facilities provided in the plans approved by the commission and conveyed those facilities to a governmental entity and after all bonds and other indebtedness of the district are paid in full, the district shall submit to the commission a petition for dissolution accompanied by such evidence as the commission requires in its rules or by order to show that the proposals in the plans have been completed and all bonds and other indebtedness have been paid in full.

Revised Law
Sec. 441.232. COMMISSION DISSOLUTION ORDER. (a) The commission shall order the district dissolved if, after considering the petition and the accompanying evidence, the commission finds that:

(1) the work is completed according to the plan;
(2) each road facility has been conveyed; and
(3) all bonds and other indebtedness have been paid in full.

(b) If the commission finds that one or more of these conditions has not been met, the commission shall adopt an order that will ensure that that condition is met. On compliance with this order, the commission shall order the district dissolved.

(c) On issuance of the commission's dissolution order, the dissolved district ceases as a governmental entity, and the board continues in existence only to transfer district money and dispose of district assets. (V.A.C.S. Art. 6674r-1, Secs. 72(b), (d).)

Source Law

(b) After considering the petition and the accompanying evidence, if the commission finds that the work is completed according to the plans and the facilities have been conveyed and that all bonds and other indebtedness have been retired, the commission shall order the district dissolved. If the commission finds that the work has not been completed according to the plans, that all facilities have not been conveyed, or that all bonds and other indebtedness have not been retired, the commission shall issue an order that will ensure that the work is completed by the district, all conveyances are made, and all debt will be retired, and on compliance with this order shall issue an order dissolving the district.

(d) On the issuance of the order of dissolution by the commission, the dissolved district ceases to exist as a governmental entity, and the board shall continue in existence only for the purpose of transferring district funds and disposing of district assets.

Revised Law

Sec. 441.233. TRANSFER OF DISTRICT MONEY. (a) On dissolution of the district, the board shall transfer the district's money to the governmental entity to which the road facility was conveyed. If road facilities were conveyed to more than one governmental entity, the board shall distribute the money among those governmental entities in proportion to the proceeds of all indebtedness that the district incurred to construct, purchase, or improve the road facilities conveyed to each respective governmental entity.
(b) A governmental entity shall use the money to maintain the road facility. (V.A.C.S. Art. 6674r-1, Sec. 72(c).)

Source Law

(c) If at the time that a district is dissolved, the district has any surplus funds in any of its accounts, the board shall transfer those funds to the governmental entity that assumes jurisdiction over the facilities conveyed by the district, and the governmental entity receiving the funds shall use those funds to maintain the facilities conveyed. If more than one governmental entity assumes jurisdiction over district facilities, the board shall transfer the funds to each governmental entity based on the proportion of the proceeds of all indebtedness incurred by the district to construct or to purchase and improve the facilities conveyed to that governmental entity.

[Chapters 442-450 reserved for expansion]

SUBTITLE K. MASS TRANSPORTATION

CHAPTER 451. METROPOLITAN RAPID TRANSIT AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 451.001. DEFINITIONS .................................................. 1611
Sec. 451.002. LIBERAL CONSTRUCTION .................................. 1616
Sec. 451.003. CHAPTER NOT APPLICABLE TO BICOUNTY AREA ...... 1616

[Sections 451.004-451.050 reserved for expansion]

SUBCHAPTER B. POWERS OF AUTHORITIES

Sec. 451.051. POWERS APPLICABLE TO CONFIRMED AUTHORITY ...... 1617
Sec. 451.052. NATURE OF AUTHORITY .................................. 1617
Sec. 451.053. RESPONSIBILITY FOR CONTROL OF AUTHORITY ....... 1619
Sec. 451.054. GENERAL POWERS OF AUTHORITY ....................... 1620
Sec. 451.055. CONTRACTS; GRANTS AND LOANS ......................... 1622
Sec. 451.056. OPERATION OF TRANSIT AUTHORITY SYSTEM ............ 1622
Sec. 451.057. ACQUISITION OF PROPERTY BY AGREEMENT ............... 1625
Sec. 451.058. USE AND ACQUISITION OF PROPERTY OF OTHERS ....... 1625
Sec. 451.059. EMINENT DOMAIN PROCEEDINGS .......................... 1628
Sec. 451.060. AGREEMENT WITH UTILITIES, CARRIERS ................ 1630
Sec. 451.061. FARES AND OTHER CHARGES .................................. 1630
Sec. 451.062. POWER TO ENTER REAL PROPERTY ....................... 1633
Sec. 451.063. TAX EXEMPTION ............................................ 1634
Sec. 451.064. PARKING AREAS: CERTAIN AUTHORITIES ................ 1634