REVISOR'S REPORT

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

VOLUME IV

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
omitted portion reads:

Sec. 26. If any word, phrase, clause, paragraph, sentence, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, or provision. . . .

CHAPTER 453. MUNICIPAL TRANSIT DEPARTMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 453.001. DEFINITIONS .................................................. 1977
Sec. 453.002. EXCLUDED MUNICIPALITIES ................................. 1979
Sec. 453.003. CONTINUING APPLICATION OF CHAPTER ...................... 1980
[Sections 453.004-453.050 reserved for expansion]

SUBCHAPTER B. CREATION AND ADMINISTRATION OF TRANSIT DEPARTMENT

Sec. 453.051. CREATION OF TRANSIT DEPARTMENT .......................... 1981
Sec. 453.052. ADMINISTRATION OF TRANSIT DEPARTMENT .................. 1982
Sec. 453.053. BOARD ...................................................... 1982
Sec. 453.054. BOARD MEETINGS ............................................ 1983
Sec. 453.055. CONFLICTS OF INTEREST: TRANSIT DEPARTMENT EMPLOYEES ............................................... 1983
Sec. 453.056. TRANSFER OF MUNICIPAL RESOURCES TO TRANSIT DEPARTMENT ........................................... 1984
Sec. 453.057. INVESTMENTS ................................................. 1985
Sec. 453.058. ACCOUNTS AND DEPOSIT OF MONEY; DEDICATION OF MONEY .................................................. 1986
Sec. 453.059. LIABILITY OF CREATING MUNICIPALITY ........................ 1986
[Sections 453.060-453.100 reserved for expansion]

SUBCHAPTER C. POWERS OF TRANSIT DEPARTMENT

Sec. 453.101. POWERS APPLICABLE TO TRANSIT DEPARTMENT HAVING TAX .................................................. 1987
Sec. 453.102. ACQUIRING AND DISPOSING OF PROPERTY ..................... 1987
Sec. 453.103. TRANSIT DEPARTMENT SYSTEM ................................ 1989
Sec. 453.104. FARES AND OTHER CHARGES .................................. 1991
Sec. 453.105. AGREEMENT WITH UTILITIES, CARRIERS .......... 1992
Sec. 453.106. CONTRACTS; ACQUISITION OF PROPERTY BY AGREEMENT ........................................ 1992
Sec. 453.107. USE AND ACQUISITION OF PROPERTY OF OTHERS .... 1993
Sec. 453.108. ROUTES ........................................ 1995
Sec. 453.109. TORT LIABILITY AND GOVERNMENTAL IMMUNITY ...... 1995
Sec. 453.110. TAX EXEMPTION .................................. 1995

[Sections 453.111-453.150 reserved for expansion]

Sec. 453.151. BOARD TO ORDER TAX ELECTION .................... 1996
Sec. 453.152. NOTICE OF ELECTION .............................. 1997
Sec. 453.153. BALLOT PROPOSITION .............................. 1998
Sec. 453.154. RESULTS OF ELECTION .............................. 1998

[Sections 453.155-453.200 reserved for expansion]

SUBCHAPTER E. SPECIAL TRANSPORTATION PROGRAMS

Sec. 453.201. TRANSPORTATION FOR JOBS PROGRAM PARTICIPANTS .. 1999

[Sections 453.203-453.250 reserved for expansion]

SUBCHAPTER F. ALTERNATIVE FUELS USE PROGRAM

Sec. 453.251. PURCHASE AND PERCENT OF VEHICLES USING ALTERNATIVE FUELS .................................. 2001
Sec. 453.252. ALTERNATIVE FUELS USE PROGRAM: EXCEPTIONS .... 2003
Sec. 453.253. ALTERNATIVE FUELS EQUIPMENT AND FACILITIES .... 2004
Sec. 453.254. ALTERNATIVE FUELS USE PROGRAM: VEHICLES COVERED AND SAFETY .................................. 2005
Sec. 453.255. ALTERNATIVE FUELS USE PROGRAM: REPORTS ...... 2006

[Sections 453.256-453.300 reserved for expansion]

SUBCHAPTER G. BONDS

Sec. 453.301. DEFINITION ....................................... 2007
Sec. 453.302. POWER TO ISSUE BONDS ............................. 2007
Sec. 453.303. BOND TERMS ..................................... 2008
Sec. 453.304. SALE ............................................ 2009
Sec. 453.305. APPROVAL; REGISTRATION .......................... 2009
Sec. 453.306. INCONTESTABILITY ................................ 2010

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Sec. 453.001. DEFINITIONS. In this chapter:

(1) "Board" means the governing body of a transit department.

(2) "Mass transit" means the transportation of passengers and hand-carried packages or baggage of a passenger by any means of surface, overhead, or underground transportation, other than an aircraft or taxicab.

(3) "Transit department" means a mass transit department created under this chapter or under former Article 1118z, Revised Statutes, enacted by Section 34, Article 1, Chapter 10, Acts of the 69th Legislature, 3rd Called Session, 1986.

(4) "Transit department system" means:

(A) property owned or held by a municipality and
used by a transit department for mass transit purposes; and

(B) facilities necessary or convenient for:

(i) the use of or access to mass transit by persons or vehicles; or

(ii) the protection or environmental enhancement of mass transit. (V.A.C.S. Art. 1118z, Secs. 1(1), 4), (5), (6).)

Source Law

Art. 1118z
Sec. 1. In this article:
(1) "Board" means the body that governs a mass transit department.

(4) "Department" means a mass transit department created under this article.

(5) "Mass transit" means the transportation of passengers and their hand-carried packages or baggage by any means of surface, overhead, or underground transportation except aircraft or taxicab.

(6) "System" means all real and personal property owned or held by an incorporated city or town and operated by a department for mass transit purposes, including land, easements, rights-of-way, all municipal streets and the general construction, reconstruction, or maintenance of them, other interests in land, franchises, rail and bus lines, stations, platforms, terminals, garages, shops, control houses, other buildings and structures, rolling stock, signals, other equipment, supplies, and other facilities necessary or convenient for the use of or access to mass transit by persons or vehicles or for the protection or environmental enhancement of mass transit.

Revisor's Note

(1) Section 1(6), V.A.C.S. Article 1118z, refers to an "incorporated city or town." This revision substitutes "municipality" for "city or town" because that is the term used in the Local Government Code. "Incorporated" is omitted as unnecessary because all municipalities are incorporated.

(2) Section 1(6), V.A.C.S. Article 1118z, defines "system." The revised law substitutes "transit department system" for "system" to avoid an artificial definition of a term that is commonly understood to mean more than the restricted definition. That section
also refers to "real and personal" property. The reference to "real and personal" is omitted as unnecessary because Section 311.005(4), Government Code (Code Construction Act), defines "property" as meaning real and personal property. Section 1(6) also contains a nonrestrictive listing of property that is included in the meaning of "property." The listing is omitted because all of the listed examples are clearly property and do not add to the understanding of the term.

(3) Section 1(2), V.A.C.S. Article 1118z, defines "city council." The definition is omitted as misleading and unnecessary. In this revision the phrase "governing body of a municipality" is substituted for "city council" because not all cities are required to have a "city council" and because that phrase is more descriptive of the terms intended. The omitted definition reads:

(2) "City council" means the legislative body of an incorporated city or town.

(4) The definition of "comptroller" in Section 1(3), V.A.C.S. Article 1118z, is omitted because "comptroller" is defined by Section 403.001, Government Code, to mean the comptroller of public accounts. The definition in Section 403.001 applies to this revision. The omitted provision reads:

(3) "Comptroller" means the state comptroller of public accounts.

Revised Law

Sec. 453.002. EXCLUDED MUNICIPALITIES. (a) This chapter does not apply to a municipality any part of which is located in:

(1) a county that contains territory within the corporate limits of a principal municipality that is a part of an authority operating under Chapter 451 or 452; or

(2) a federal metropolitan statistical area or primary
metropolitan statistical area that contains a principal
municipality that is a part of an authority operating under Chapter
451 or 452.
(b) For the purpose of this section "principal municipality"
has the meaning assigned by Section 451.001 or 452.001. (V.A.C.S.
Art. 1118z, Sec. 2(a) (part).)

Source Law

(a) . . . This article does not apply to a city
or town that is located wholly or partly either in a
county that contains territory within the corporate
limits of a "principal city," or within a federal
metropolitan statistical area or primary metropolitan
statistical area that contains a "principal city," as
that term is defined by Chapter 141, Acts of the 63rd
Legislature, Regular Session, 1973 (Article 1118x,
Vernon's Texas Civil Statutes), or Chapter 683, Acts of
the 66th Legislature, Regular Session, 1979 (Article
1118y, Vernon's Texas Civil Statutes), if the
"principal city" is included within the boundaries of a
transit authority created under either of those Acts.

Revisor's Note

Section 2(a), V.A.C.S. Article 1118z, refers to
Chapter 141, Acts of the 63rd Legislature, Regular
Session, 1973 (Article 1113x, Vernon's Texas Civil
Statutes), and Chapter 683, Acts of the 66th
Legislature, Regular Session, 1979 (Article 1118y,
Vernon's Texas Civil Statutes). Those statutes are
codified in this code as Chapters 451 and 452,
respectively, and the revised law is drafted
accordingly.

Revised Law

Sec. 453.003. CONTINUING APPLICATION OF CHAPTER. The
continuation of a transit department created in compliance with,
and for which a tax has been approved under, this chapter is not
affected by a later failure of the municipality that created the
transit department to meet a requirement of Section 453.002(a) or
453.051(a)(2). (V.A.C.S. Art. 1118z, Sec. 2(b).)
(b) When an incorporated city or town to which this article applies has created a department for which a tax has been approved under this article, the city or town and the department remain within the coverage of this article regardless of any requirement of Subsection (a) of this section.

[Sections 453.004-453.050 reserved for expansion]

SUBCHAPTER B. CREATION AND ADMINISTRATION OF TRANSIT DEPARTMENT

Sec. 453.051. CREATION OF TRANSIT DEPARTMENT. (a) The governing body of a municipality, by ordinance or resolution, may create a transit department if:

(1) the municipality operates a mass transportation system;

(2) the municipality has a population of 56,000 or more; and

(3) the governing body determines that the creation of a transit department and operation of a transit department system would be in the public interest and of benefit to persons residing in the municipality.

(b) The jurisdiction of a transit department is coextensive with the territory of the municipality that creates the transit department. (V.A.C.S. Art. 1118z, Secs. 2(a) (part), 3(a), (c).)
Revisor's Note

(1) Section 2(a), V.A.C.S. Article 1118z, 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 3(a), V.A.C.S. Article 1118z, refers to a "system." The revised law refers to the "transit department system" to conform to the definitions contained in Section 453.001 of this code.

Revised Law

Sec. 453.052. ADMINISTRATION OF TRANSIT DEPARTMENT. The board of a transit department shall administer and operate the transit department. (V.A.C.S. Art. 1118z, Sec. 4(a).)

Source Law

Sec. 4. (a) The board is responsible for the general administration and operation of the department.

Revised Law

Sec. 453.053. BOARD. (a) The board of a transit department consists of the members of the governing body of the municipality that creates the transit department.

(b) Service as a member of the board is an additional duty of the office of a member of the governing body and is without compensation.

(c) The presiding officers of the governing body of the municipality that creates a transit department are the presiding officers of the board. (V.A.C.S. Art. 1118z, Secs. 3(b), 4(b) (part).)
Source Law

[Sec. 3]
(b) Members of a city council that creates a department serve as members of the board of the department. A member serves without compensation for service on the board and as an additional duty arising from the member's service on the city council.

[Sec. 4]
(b) The presiding officers of a city council that creates a department are the presiding officers of the board. . . .

Revised Law

Sec. 453.054. BOARD MEETINGS. (a) The board shall hold at least one regular meeting each month for the purpose of transacting business of the transit department.

(b) The presiding officer may call a special meeting of the board. (V.A.C.S. Art. 1118z, Sec. 4(b) (part).)

Source Law

(b) . . . The board shall hold at least one regular meeting each month for the purpose of transacting business of the department. The presiding officer may call special meetings of the board. . . .

Revisor's Note

Section 4(b), V.A.C.S. Article 1118z, provides a quorum requirement that is the same as the requirement stated in Section 311.013, Government Code (Code Construction Act), applicable to the revised law. The requirement is omitted as unnecessary. The omitted provision reads:

(b) . . . A majority of the members is a quorum.

Revised Law

Sec. 453.055. CONFLICTS OF INTEREST: TRANSIT DEPARTMENT EMPLOYEES. An employee of a transit department may not have a pecuniary interest in, or receive a benefit from, an agreement to which the transit department is a party. (V.A.C.S. Art. 1118z, Sec. 4(d).)
(d) A board member or employee of a department may not be pecuniarily interested in or benefitted by any contract or agreement to which the department is a party.

Revisor's Note

Section 4(d), V.A.C.S. Article 1118z, refers to a "board member." The reference is omitted from the revised law because Section 4(d) is a restatement of the common law rule on conflicts of interest, and Chapter 171, Local Government Code, governs conflicts of interest of local public officials. Section 171.001 of that code defines "local public official" to include members of governing bodies of local governmental entities. Section 171.007 of that code preempts the common law rules relating to conflicts of interest.

Revised Law

Sec. 453.056. TRANSFER OF MUNICIPAL RESOURCES TO TRANSIT DEPARTMENT. (a) The governing body of a municipality may transfer to a transit department created by the municipality:

(1) property and employees of a division of the municipality that before the creation of the transit department was responsible for municipal public transportation; and

(2) municipal funds that may be used for mass transit.

(b) The governing body may abolish or change the functions of the municipal division formerly responsible for municipal public transportation.

(c) If a transit department is required to be dissolved under this chapter, the board, on dissolution of the transit department, shall transfer to the municipality the funds, property, and employees that were transferred to the transit department under this section. The governing body of the municipality may then recreate or change the duties of any municipal division abolished
or changed as a result of transfers made under this section.

(V.A.C.S. Art. 1118z, Secs. 4(e) (part), 5(e) (part).)

Source Law

[Sec. 4]
(e) A city council that creates a department may transfer to the department real or personal property or municipal employees of any division of the city or town that had responsibility for municipal public transportation before the date the department was created and may abolish or change the functions of that division. The city council may transfer to the department municipal funds not prohibited by law from being used for mass transit purposes. . . .

[Sec. 5]
(e) . . . If a department is required to be dissolved under this section or Section 11 of this article, the board on dissolution shall transfer back to the city or town any funds, property, or employees transferred to the department as provided by Subsection (e) of Section 4 of this article. The city council may then recreate or change the duties of any division of municipal government abolished or changed as a result of transfers made as provided by Subsection (e) of Section 4 of this article.

Revised Law

Sec. 453.057. INVESTMENTS. (a) A board may invest transit department funds in any obligation, security, or evidence of indebtedness in which the municipality for which the transit department was created may invest municipal funds.

(b) In making an investment of transit department funds, a board shall exercise the judgment and care, under the circumstances prevailing at the time of making the investment, that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs in making a permanent and nonspeculative disposition of their funds, considering the probable income from the disposition and the probable safety of their capital. (V.A.C.S. Art. 1118z, Sec. 4(c) (part).)

Source Law

(c) The board may invest and reinvest funds of the department in any obligation, security, or evidence of indebtedness in which the city or town whose city council created the department may invest other municipal funds. In making investments of departmental funds, a board shall exercise the judgment and care, under the circumstances prevailing at the time of investment, that persons of ordinary prudence,
discretion, and intelligence exercise in the management of their own affairs, not in speculation but when making a permanent disposition of their funds, considering the probable income from the disposition and the probable safety of their capital.

Revised Law

Sec. 453.058. ACCOUNTS AND DEPOSIT OF MONEY; DEDICATION OF MONEY. (a) The board shall deposit all transit department money, other than money invested as provided by Section 453.057, with the treasurer of the creating municipality to the credit of the accounts described by Subsection (b).

(b) All money received from the collection of the sales and use tax under Subchapter H shall be credited to an account separate from an account to which all other money governed by Subsection (a) shall be credited.

(c) Sales and use tax collections under Subchapter H may be used only for mass transit.

(d) The board may transfer money credited to the account that does not contain sales and use tax collections back to the municipality. (V.A.C.S. Art. 1118z, Secs. 4(c) (part), (e) (part), 8(f).)

Source Law

[Sec. 4]
(c) The board shall deposit all funds of the department except funds invested as provided by this subsection with the city treasurer for deposit in two separate accounts for the department.

(e) The board shall deposit those funds as provided by Subsection (c) of this section in an account separate from an account for funds collected as provided by Section 8 of this article and may transfer the funds back to the city or town at any time.

[Sec. 8]
(f) The board shall deposit taxes remitted to the department under this section as provided by Subsection (c) of Section 4 of this article in an account separate from an account for funds as provided by Subsection (e) of Section 4 of this article. Taxes collected under this section may be used only for mass transit purposes.

Revised Law

Sec. 453.059. LIABILITY OF CREATING MUNICIPALITY.
1 municipality that creates a transit department is liable for an
2 expense the transit department incurs before the date a sales and
3 use tax is approved for the transit department under Subchapter D,
4 including the costs of holding the election. (V.A.C.S. Art. 1118z,
5 Sec. 4(f).)

6 Source Law
7 (f) A city or town whose city council creates a
8 department is liable for all expenses of the department
9 incurred before the date a tax is approved for the
10 department at an election held as provided by Section 5
11 of this article, including the costs of holding the
12 election.

[Sections 453.060-453.100 reserved for expansion]

13 SUBCHAPTER C. POWERS OF TRANSIT DEPARTMENT

14 Revised Law
15 Sec. 453.101. POWERS APPLICABLE TO TRANSIT DEPARTMENT HAVING
16 TAX. Except for the administration of assets transferred under
17 Section 453.056, this subchapter applies only to a transit
18 department that has a local sales and use tax approved under
19 Subchapter D. (V.A.C.S. Art. 1118z, Sec. 6(a).)

20 Source Law
21 Sec. 6. (a) Except for the administration of
22 assets transferred under Subsection (e) of Section 4 of
23 this article, the powers of a department enumerated in
24 this section may be exercised only after a tax has been
25 approved under Section 5 of this article.

26 Revisor's Note
27 Section 6(a), V.A.C.S. Article 1118z, refers to
28 Section 4(e) and to Section 5 of that article. Those
29 sections are codified in this code as Section 453.056
30 and Subchapter D, respectively, and the revised law is
31 drafted accordingly.

32 Revised Law
33 Sec. 453.102. ACQUIRING AND DISPOSING OF PROPERTY. (a) A
34 transit department may acquire, hold, use, sell, lease, or dispose
of property, including licenses, patents, rights, and other
interests, necessary, convenient, or useful for the full exercise
of any of its powers under this chapter.

(b) The transit department may acquire property described in
Subsection (a) in any manner, including by gift or devise.

(c) An acquisition made or other action taken under
Subsection (a) shall be in the name of the municipality that
created the transit department.

(d) A transit department may dispose of, by sale, lease, or
other conveyance:

(1) any property of the transit department not needed
for the efficient operation and maintenance of the transit
department system; and

(2) any surplus property not needed for its
requirements or for the purpose of carrying out its powers under
this chapter.

(e) The lease of unneeded property under Subsection (c) must
be consistent with the efficient operation and maintenance of the
transit department system. (V.A.C.S. Art. 1118z, Secs. 6(b),
(h).)

Source Law

(b) A department may acquire, in the name of the
city or town whose council created it, by grant,
purchase, gift, devise, lease, or otherwise and may
hold, use, sell, lease, or dispose of in the name of
the city or town real and personal property, licenses,
patents, rights, and interests necessary, convenient,
or useful for the full exercise of any of its powers
under this article.

(h) A department may sell, lease, convey, or
otherwise dispose of any of its rights, interests, or
properties held in the name of the city or town and not
needed for or, in the case of leases, not inconsistent
with the efficient operation and maintenance of the
system. It may sell, lease, or otherwise dispose of,
at any time, any surplus materials or personal or real
property not needed for its requirements or for the
purpose of carrying out its powers under this article.

Revisor's Note

(1) Section 6(b), V.A.C.S. Article 1118z, refers
to the acquisition of property by "grant, purchase . . . lease, or otherwise." The reference to "grant, purchase . . . lease" is omitted from the revised law as unnecessary because an acquisition "in any manner" includes those methods of acquiring property.

(2) Sections 6(b) and (h), V.A.C.S. Article 1118z, refer to "real and personal" property. The references to "real and personal" are omitted as unnecessary because under Section 311.005(4), Government Code (Code Construction Act), applicable to this code, "property" means "real and personal property."

(3) Section 6(h), V.A.C.S. Article 1118z, refers to "surplus materials or . . . property." "Materials" is omitted as unnecessary because the term is included in the meaning of "property."

(4) Section 6(h), V.A.C.S. Article 1118z, refers to a "system." The revised law refers to the "transit department system" to conform to the definitions contained in Section 453.001 of this code.

Revised Law
Sec. 453.103. TRANSIT DEPARTMENT SYSTEM. (a) A transit department may in the municipality creating the transit department:

(1) acquire, construct, own, operate, and maintain a transit department system;

(2) use any public way; and

(3) construct, repair, and maintain a municipal street, as authorized by the governing body of the municipality.

(b) In the exercise of a power under Subsection (a), a transit department may relocate or reroute, or alter the construction of, any public or private property, including:

(1) an alley, road, street, or railroad;
(2) an electric line and facility;
(3) a telegraph and telephone property and facility;
(4) a pipeline and facility; and
(5) a conduit and facility. (V.A.C.S. Art. 1118z, Secs. 4(g), 6(c).)

Source Law

[Sec. 4]
(g) The board, if authorized by the city council, may expend money for and supervise the construction, reconstruction, or general maintenance of all municipal streets as a lawful mass transit purpose.

[Sec. 6]
(c) A department may acquire, construct, own, operate, and maintain a system within the city or town, including but not limited to the construction, reconstruction, or general maintenance of all municipal streets of the city or town. A department may use the streets, alleys, roads, highways, and other public ways within the city or town. In the construction, reconstruction, repair, maintenance, or operation of a system, a department may relocate, raise, reroute, change the grade of, or otherwise alter the construction of any:
(1) street, alley, highway, road, or railroad;
(2) electric lines and facilities;
(3) telegraph and telephone properties and facilities;
(4) pipelines and facilities;
(5) conduits and facilities; or
(6) other property whether publicly or privately owned.

Revisor's Note

(1) Section 6(c), V.A.C.S. Article 1118z, refers to a "system." The revised law refers to the "transit department system" to conform to the definitions contained in Section 453.001 of this code.

(2) Section 6(c), V.A.C.S. Article 1118z, refers to the power of a transit department to "relocate, raise, reroute, change the grade of, or otherwise alter the construction of any . . . street . . . ." "Raise" and "change the grade of" are omitted as unnecessary because those terms are included in the meaning of "alter the construction of."
Revised Law

Sec. 453.104. FARES AND OTHER CHARGES. The board shall, after a public hearing, impose reasonable and nondiscriminatory fares, tolls, charges, rents, or other compensation for the use of the transit department system sufficient to produce revenue, together with receipts from taxes imposed by the transit department, in an amount adequate to:

(1) pay all the expenses necessary to operate and maintain the transit department system;

(2) pay when due the principal of and interest on, and sinking fund and reserve fund payments agreed to be made with respect to, all bonds that are issued by the board and payable in whole or part from the revenue; and

(3) fulfill the terms of any other agreement with the holders of bonds described by Subdivision (2) or with a person acting on behalf of the bondholders. (V.A.C.S. Art. 1118z, Sec. 6(f).)

Source Law

(f) The board of a department shall, after a public hearing, establish and maintain rates, fares, tolls, charges, rents, or other compensation for the use of the facilities of the system acquired, constructed, operated, regulated, or maintained by the department that are reasonable and nondiscriminatory and, together with receipts from taxes levied by the department, are sufficient to produce revenues adequate:

(1) to pay all expenses necessary to the operation and maintenance of the properties and facilities of the department;

(2) to pay the interest on and principal of all bonds issued by the board under this article payable in whole or in part from the revenues, as they become due and payable;

(3) to pay all sinking fund and reserve fund payments agreed to be made in respect to any bonds, and payable out of taxes and revenues, as they become due and payable; and

(4) to fulfill the terms of any agreements made with the holders of bonds or with any person in their behalf.

Revisor's Note

Section 6(f), V.A.C.S. Article 1118z, refers to a "system." The revised law refers to the "transit..."
department system" to conform to the definitions contained in Section 453.001 of this code.

**Revised Law**

Sec. 453.105. AGREEMENT WITH UTILITIES, CARRIERS. A transit department may agree with a public or private utility, communication system, common carrier, or transportation system for:

1. the joint use of the property of the agreeing entities in the municipality; or
2. the establishment of through routes, joint fares, or transfers of passengers. (V.A.C.S. Art. 1118z, Sec. 6(e).)

**Source Law**

(e) A department may enter into agreements with any other public utility, private utility, communication system, common carrier, or transportation system for the joint use of its facilities, installations, or properties within the city or town and may establish through routes, joint fares, or transfer of passengers.

**Revised Law**

Sec. 453.106. CONTRACTS; ACQUISITION OF PROPERTY BY AGREEMENT. (a) A transit department may contract with any person and may accept a grant or loan from any person.

(b) A transit department may acquire rolling stock or other property under a contract or trust agreement, including a conditional sales contract, lease, and equipment trust certificate. (V.A.C.S. Art. 1118z, Sec. 6(g) (part).)

**Source Law**

(g) A department may make contracts, leases, and agreements with, and accept grants and loans from the United States of America, its departments and agencies, the state, its agencies and political subdivisions, and public or private corporations and persons and may generally perform all acts necessary for the full exercise of the powers vested in it. A department may acquire rolling stock or other property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement...
Revisor's Note

(1) Section 6(g), V.A.C.S. Article 1118z, refers to "the United States of America, its departments and agencies, the state, its agencies and political subdivisions, and public or private corporations and persons." The revised law substitutes "persons" because Section 311.005(2), Government Code (Code Construction Act), defines "person" as including all of these omitted entities. That definition applies to this code. See Chapter 1 of this code.

(2) Section 6(g), V.A.C.S. Article 1118z, refers to the power to make "contracts, leases, and agreements." The references to "leases" and "agreements" are omitted from the revised law as unnecessary because in the context of this provision the authority to make a contract includes the authority to make a lease and enter into an agreement.

(3) Section 6(g), V.A.C.S. Article 1118z, authorizes a transit department to "perform all acts necessary for the full exercise of the powers vested in it." This authority is omitted from the revised law because a political entity given powers has the authority to carry out its powers.

Revised Law

Sec. 453.107. USE AND ACQUISITION OF PROPERTY OF OTHERS.

(a) A transit department may not alter or damage any property of this state or a political subdivision of this state or owned by a person rendering public services and may not disrupt services being provided by others or inconvenience in any other manner an owner of property, without first having obtained:

(1) the written consent of the owner; or

(2) the right from the governing body of the municipality to take the action under the municipality's power of
(b) A transit department may agree with an owner of property to provide for:

1. a necessary relocation or alteration of property by the owner or a contractor chosen by the owner; and
2. the reimbursement by the transit department to the owner of the costs incurred by the owner in making the relocation or alteration.

(c) The transit department shall pay the cost of any relocation, rerouting, or other alteration in the construction made under this chapter and is liable for any damage to property occurring because of the change. (V.A.C.S. Art. 1118z, Sec. 6(d).)

Source Law

(d) A department may not alter or damage the property or facilities of the state, its agencies, or political subdivisions or of owners rendering public services, or may not disrupt services being provided by others or otherwise inconvenience the owners of property or facilities, without having first obtained the written consent of the owners or having first obtained from the city council the right to take the action under the municipality's power of eminent domain. A department may enter into agreements providing for the necessary relocations or alterations of property or facilities by the owners or contractors chosen by the owners or for the reimbursement by the department to owners of the costs incurred by the owners in making the relocations or alterations or in causing them to be made. A department shall pay the cost of any relocation, raising, lowering, rerouting, changes in grade or other alterations in the construction made under this section and is liable for any damage to property occurring because of the change.

Revisor's Note

Section 6(d), V.A.C.S. Article 1118z, refers to "raising, lowering . . . changes in grade or other alterations in . . . construction." The references to "raising," "lowering," and "changes in grade" are omitted from the revised law for the reason stated in the revisor's note to Section 453.103 of this code.
Sec. 453.108. ROUTES. A transit department shall determine each route, including route changes, as the board considers advisable. (V.A.C.S. Art. 1118z, Sec. 6(i).)

Sec. 453.109. TORT LIABILITY AND GOVERNMENTAL IMMUNITY. (a) A transit department is a separate governmental unit for purposes of Chapter 101, Civil Practice and Remedies Code, and operations of a transit department are essential governmental functions and not proprietary functions for all purposes, including the purposes of that chapter. (b) This chapter does not create or confer any governmental immunity or limitation of liability on any entity that is not a governmental unit, governmental entity or authority, or public agency or a subdivision of one of those persons. In this subsection "governmental unit" has the meaning assigned by Section 101.001, Civil Practice and Remedies Code. (V.A.C.S. Art. 1118z, Secs. 6(j), 10.)

Sec. 10. A department is a separate governmental unit for purposes of the Texas Tort Claims Act (Chapter 101, Civil Practice and Remedies Code), and operations of a department are considered essential governmental functions and not proprietary functions for all purposes, including the purposes of that Act.

Sec. 453.110. TAX EXEMPTION. The assets of a transit department shall determine each route, including route changes, as the board considers advisable. (V.A.C.S. Art. 1118z, Sec. 6(i).)
department are exempt from any tax of the state or a state taxing authority. (V.A.C.S. Art. 1118z, Sec. 12 (part).)

Source Law

Sec. 12. The property, revenues, and other assets of a department ... are exempt from all taxes levied by the state or by any taxing authority of the state.

Revisor's Note

Section 12, V.A.C.S. Article 1118z, refers to "property, revenues, and other assets of a department." The references to "property" and "revenues" are omitted from the revised law as unnecessary because the terms are included in the meaning of "assets."

[Sections 453.111-453.150 reserved for expansion]

SUBCHAPTER D. TRANSIT DEPARTMENT TAX ELECTION

Revised Law

Sec. 453.151. BOARD TO ORDER TAX ELECTION. (a) If the board determines that implementation of a mass transit plan developed by the transit department is feasible, the board shall order an election to approve a local sales and use tax at the rate determined by the board under Section 453.401 unless the municipality that created the transit department imposes an additional sales and use tax under Section 321.101(b), Tax Code.

(b) The board may not order an election under this section to be held on the same day as an election held by the creating municipality to approve an additional sales and use tax under Section 321.101(b), Tax Code. (V.A.C.S. Art. 1118z, Sec. 5(a).)

Source Law

Sec. 5. (a) When the board considers implementation of a mass transit plan developed by the department to be feasible, the board shall, unless an additional sales and use tax has been imposed within the city under Section 321.101(b), Tax Code, call an election to establish a source of continuing revenue for mass transit in the form of an additional local sales and use tax in an amount determined by the board as provided by Subsection (a) of Section 8 of this article. An election under this section may not be
scheduled or held on the same day as an election held under Section 321.101(b), Tax Code, by the city.

Revisor's Note

Section 5(a), V.A.C.S. Article 1118z, states that the election is to establish "a source of continuing revenue for mass transit." This reference is omitted from the revised law as unnecessary because Section 8(f), V.A.C.S. Article 1118z, codified as Section 453.058 of this code, dedicates the sales and use tax revenue to mass transit purposes.

Revised Law

Sec. 453.152. NOTICE OF ELECTION. (a) Notice of the election must include a description of the nature and rate of the proposed tax.

(b) The board shall send a copy of the notice to the Texas Department of Transportation and to the comptroller. (V.A.C.S. Art. 1118z, Sec. 5(b) (part).)

Source Law

(b) . . . Notice of the election must include a description of the nature and rate of any proposed tax. The board shall send copies of the notice to the State Department of Highways and Public Transportation and to the comptroller.

Revisor's Note

Section 5(b), V.A.C.S. Article 1118z, contains a provision requiring the election notice and the conduct of the election to comply with state election laws. This provision is omitted as duplicative of Section 1.002, Election Code, which provides for the applicability of the Election Code to all elections in this state. The omitted provision reads:

(b) Except as provided by this section, notice and conduct of an election under this section must comply with state election laws. . . .

74C263 JD-D 1997
Sec. 453.153. BALLOT PROPOSITION. At an election under this subchapter, the ballots shall be prepared to provide for voting for or against the proposition: "Levy of a proposed local sales and use tax at the rate of [insert appropriate rate] percent."

(V.A.C.S. Art. 1118z, Sec. 5(c).)

(c) At an election under this section, the ballots shall be prepared to provide for voting for or against the proposition: "Levy of a proposed local sales and use tax at the rate of [insert appropriate rate] percent."

Revisor's Note

Section 5(d), V.A.C.S. Article 1118z, requires the precinct officers to return the ballots to the board and the board to canvass the returns and declare the results of the election. This subsection is omitted as partially repealed and partially duplicative of Chapter 67, Election Code, which applies to all elections in this state. The omitted provision reads:

(d) Immediately after the election, the presiding judge of each municipal election precinct shall return the results to the board, and the board shall canvass the returns and declare the results.

Sec. 453.154. RESULTS OF ELECTION. (a) If a majority of the votes received at the election favor the proposition, the board shall:

(1) record the result in its minutes; and

(2) adopt an order requiring implementation of the mass transit plan.

(b) If a majority of the votes received at the election do not favor the proposition, the board shall:

(1) record in its minutes an order declaring the result; and
(2) dissolve the transit department as soon as practicable.

(c) The board shall file a certified copy of an order under this section with the Texas Department of Transportation, with the comptroller, and in the deed records of the county. (V.A.C.S. Art. 1118z, Secs. 5(e) (part), (f).)

Source Law

(e) If a majority of the votes cast at the election is in favor of the levy of the proposed tax, the board shall enter the results in its minutes and adopt an order requiring implementation of the mass transit plan. If a majority of the votes cast at the election is opposed to the levy of the proposed tax, the board shall enter in its minutes an order so declaring and shall dissolve the department as soon as is practicable. ...

(f) The board shall file a certified copy of an order under Subsection (e) of this section with the State Department of Highways and Public Transportation, with the comptroller, and in the deed records of the county.

[Sections 453.155-453.200 reserved for expansion]

SUBCHAPTER E. SPECIAL TRANSPORTATION PROGRAMS

Revised Law

Sec. 453.201. TRANSPORTATION FOR JOBS PROGRAM PARTICIPANTS.

(a) A transit department shall contract with the Texas Department of Human Services to provide, in accordance with federal law, transportation services to a person who:

(1) resides in the area served by the transit department;

(2) is receiving financial assistance under Chapter 31, Human Resources Code; and

(3) is registered in the jobs opportunities and basic skills training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682).

(b) The contract must include provisions to ensure that:

(1) the transit department is required to provide transportation services only to a location:

(A) to which the person travels in connection
with participation in the jobs opportunities and basic skills training program; and

(B) that the transit department serves under the transit department's authorized rate structure and existing services;

(2) the transit department is to provide directly to the Texas Department of Human Services trip vouchers for distribution by the Texas Department of Human Services to a person who is eligible under this section to receive transportation services;

(3) the Texas Department of Human Services reimburses the transit department for allowable costs, at the applicable federal matching rate; and

(4) the Texas Department of Human Services may return undistributed trip vouchers to the transit department.

(c) A transit department shall certify the amount of public funds spent by the transit department under this section for the purpose of obtaining federal funds under the jobs opportunities and basic skills training program. (V.A.C.S. Art. 1118z, Sec. 6A.)

Source Law

Sec. 6A. (a) A department shall, in accordance with federal law, provide transportation services to a person who:

(1) is receiving financial assistance under Chapter 31, Human Resources Code;

(2) is registered in the jobs opportunities and basic skills (JOBS) program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682); and

(3) resides in an area served by the department.

(b) A department shall enter into a contract with the Texas Department of Human Services to provide the transportation services required under this section. The terms of the contract must ensure that:

(1) the department is required to provide transportation services only to a location that relates to the person's participation in the JOBS program and that is in the area served by the department's authorized rate structure and existing services;

(2) the department is required to provide directly to the Texas Department of Human Services trip vouchers for distribution by the Texas Department of Human Services to a person who is eligible to receive transportation services under this section;

(3) the Texas Department of Human Services reimburses the department at the applicable federal...
match rate for allowable costs; and
(4) the Texas Department of Human Services
may return to the department for reimbursement any
undistributed trip vouchers.
(c) A department shall certify the amount of
public funds expended by the department under this
section for the purpose of obtaining federal funds
under the JOBS program.

Revised Law
Sec. 453.202. WAIVER OF FEDERAL REQUIREMENTS. If, before
implementing Section 453.201, the Texas Department of Human
Services determines that a waiver or authorization from a federal
agency is necessary for implementation, the Texas Department of
Human Services shall request the waiver or authorization, and the
Texas Department of Human Services and a transit department may
delay implementing Section 453.201 until the waiver or
authorization is granted. (Sec. 4 (part), Ch. 1030, Acts 73rd
Leg., R.S., 1993.)

Source Law
Sec. 4. If, before implementing the requirements
of Sections ... and 3 of this Act, the Texas
Department of Human Services determines that a waiver
or authorization from a federal agency is necessary for
implementation, the Texas Department of Human Services
shall request the waiver or authorization, and the
department and each mass transit authority or
department may delay implementing those provisions
until the waiver or authorization is granted.

[Sections 453.203-453.250 reserved for expansion]

SUBCHAPTER F. ALTERNATIVE FUELS USE PROGRAM

Revised Law
Sec. 453.251. PURCHASE AND PERCENT OF VEHICLES USING
ALTERNATIVE FUELS. (a) A transit department may not purchase or
lease a motor vehicle that is not capable of using compressed
natural gas or another alternative fuel the use of which results in
comparably lower emissions of oxides of nitrogen, volatile organic
compounds, carbon monoxide, or particulates or combinations of
those materials.

(b) After August 31, 1996, at least 50 percent of the fleet
vehicles operated by a transit department must be capable of using
compressed natural gas or another alternative fuel.

(b-1) At least 30 percent of the fleet vehicles operated by
a transit department must be capable of using compressed natural
gas or another alternative fuel. This subsection expires September
1, 1996.

(c) The Texas Natural Resource Conservation Commission,
before 1997, shall review the alternative fuels use program under
this section. If the commission determines that the program has
been effective in reducing total annual emissions from motor
vehicles in the area, the transit department shall achieve a
percentage of fleet vehicles capable of using compressed natural
gas or other alternative fuels of at least 90 percent of the number
of fleet vehicles operated after August 31, 1998. (V.A.C.S.
Art. 1118z, Secs. 6(k)(1), (l)(1), (2).)

Source Law

(k)(1) The department may not purchase or lease
after September 1, 1991, any motor vehicle unless that
vehicle is capable of using compressed natural gas or
other alternative fuel which results in comparably
lower emissions of oxides of nitrogen, volatile organic
compounds, carbon monoxide, or particulates or any
combination thereof.

(l)(1) A department shall achieve the following
percentages of vehicles capable of using compressed
natural gas or other alternative fuels by the times
specified:
(A) the percentage shall be equal to
or greater than 30 percent of the number of fleet
vehicles operated by September 1, 1994; and
(B) equal to or greater than 50
percent of the number of fleet vehicles operated by
September 1, 1996.

(2) The Texas Air Control Board must
review this alternative fuel use program by December
31, 1996, and, if the Texas Air Control Board
determines that the program has been effective in
reducing total annual emissions from motor vehicles in
the area, departments shall achieve a percentage of
fleet vehicles capable of using compressed natural gas
or other alternative fuels equal to or greater than 90
percent of the number of fleet vehicles operated by
September 1, 1998, and thereafter.

Revisor's Note

Section 6(l), V.A.C.S. Article 1118z, refers to
the "Texas Air Control Board." The name of the agency was changed and the functions of the agency were transferred to the Texas Natural Resource Conservation Commission by Section 1.086, Chapter 3, Acts of the 72nd Legislature, 1st Called Session, 1991. The revised law conforms to that change.

Revised Law

Sec. 453.252. ALTERNATIVE FUELS USE PROGRAM: EXCEPTIONS.

(a) A transit department may make exceptions to the requirements of Section 453.251(a) if the transit department certifies the facts described by Subsection (b).

(b) A certification under this section must state that:

(1) the transit department's vehicles will be operating primarily in an area in which neither the transit department nor a supplier has or can reasonably be expected to establish a central refueling station for compressed natural gas or other alternative fuels; or

(2) the transit department is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using compressed natural gas or other alternative fuels at a project cost that is reasonably expected to result in no greater net cost than the continued use of traditional gasoline or diesel fuel measured over the expected useful life of the equipment or facilities supplied. (V.A.C.S. Art. 1118z, Sec. 6(k)(4).)

Source Law

(4) A department may make exceptions to the requirements of this subsection if the department certifies that:

(A) the department's vehicles will be operating primarily in an area in which neither the department nor a supplier has or can reasonably be expected to establish a central refueling station for compressed natural gas or other alternative fuels; or

(B) the department is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using compressed natural gas or other alternative fuels at a projected cost that is reasonably expected to result in no greater net costs than the continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities.
supplied.

**Revised Law**

Sec. 453.253. ALTERNATIVE FUELS EQUIPMENT AND FACILITIES.

(a) In addition to other methods authorized by law, a transit department may acquire or be provided equipment or refueling facilities by an arrangement, including a gift or a loan, under a service contract for the supply of compressed natural gas or other alternative fuels.

(b) If a transit department acquires or is provided equipment or facilities as authorized by Subsection (a), the supplier is entitled, under the supply contract, to recover the cost of giving, loaning, or providing the equipment or facilities through the fuel charges. (V.A.C.S. Art. 1118z, Secs. 6(k)(2), (3).)

**Source Law**

(2) The department may acquire or be provided equipment or refueling facilities necessary to operate such vehicles using compressed natural gas or other alternative fuels:

(A) by purchase or lease as authorized by law;

(B) by gift or loan of the equipment or facilities; or

(C) by gift or loan of the equipment or facilities or other arrangement pursuant to a service contract for the supply of compressed natural gas or other alternative fuel.

(3) If such equipment or facilities are donated, loaned, or provided through other arrangement with the supplier of compressed natural gas or other alternative fuels, the supplier shall be entitled to recoup its actual cost of donating, loaning, or providing the equipment or facilities through its fuel charges under the supply contract.

**Revisor's Note**

The specific authorization in Sections 6(k)(2)(A) and (B), V.A.C.S. Article 1118z, for a transit department to purchase or lease, or acquire by gift or loan, alternative fuel equipment and facilities is omitted from the revised law in this section because that authority is granted generally by Section 6(b),
Sec. 453.254. ALTERNATIVE FUELS USE PROGRAM: VEHICLES COVERED AND SAFETY. (a) In developing a compressed natural gas or other alternative fuels use program, a transit department should work with vehicle manufacturers and converters, fuel distributors, and others to specify the vehicles to be covered considering relevant factors, including vehicle range, specialty vehicle uses, fuel availability, vehicle manufacturing and conversion capability, safety, and resale value.

(b) The transit department may meet the percentage requirements of Section 453.251 by:

(1) purchasing new vehicles; or

(2) converting existing vehicles, in conformity with federal and state requirements and applicable safety laws, to alternative fuels use.

(c) In purchasing, leasing, maintaining, or converting a vehicle for alternative fuels use, the transit department shall comply with all applicable safety standards adopted by the United States Department of Transportation or the Railroad Commission of Texas or their successor agencies. (V.A.C.S. Art. 1118z, Secs. 6(m), (n).)

(m) A department in the development of the compressed natural gas or other alternative fuel use program should work with vehicle manufacturers and converters, fuel distributors, and others to delineate the vehicles to be covered, taking into consideration range, specialty uses, fuel availability, vehicle manufacturing and conversion capability, safety, resale values, and other relevant factors. Such department may meet the percentage requirements of this section through the purchase of new vehicles or the conversion of existing vehicles, in accordance with federal and state requirements and applicable safety laws, to use the alternative fuels.

(n) A department in purchasing, leasing, maintaining, or converting vehicles for alternative fuels use shall comply with all applicable safety standards promulgated by the United States Department of Transportation and the Railroad Commission of Texas.
or their successor agencies.

Revised Law

Sec. 453.255. ALTERNATIVE FUELS USE PROGRAM: REPORTS. (a) Not later than December 31 of each year, a transit department shall file an annual report with the Texas Natural Resource Conservation Commission showing:

(1) purchases, leases, and conversions of motor vehicles;
(2) the amount of compressed natural gas and other alternative fuels used; and
(3) any other information required by the commission relevant to the alternative fuels use program.

(b) The commission may require reporting from a transit department to document air quality benefits from an alternative fuels use program. (V.A.C.S. Art. 1118z, Secs. 6(1)(3), (o).)

Source Law

(1) ... The department must submit to the Texas Air Control Board an annual report by December 31 of each year showing purchases, leases, and conversions of motor vehicles and usage of compressed natural gas or other alternative fuels and any other relevant information the Texas Air Control Board may require.

(o) The Texas Air Control Board may require reasonable reporting from any department to document the air quality benefits from alternative fuel use programs.

Revisor's Note

Sections 6(1)(3) and (o), V.A.C.S. Article 1118z, refer to the "Texas Air Control Board." The name of the agency was changed and the functions of the agency were transferred to the Texas Natural Resource Conservation Commission by Section 1.086, Chapter 3, Acts of the 72nd Legislature, 1st Called Session, 1991. The revised law conforms to that change.

[Sections 453.256-453.300 reserved for expansion]
SUBCHAPTER G. BONDS

Revised Law
Sec. 453.301. DEFINITION. In this subchapter, "bond" includes a note. (New.)

Revisor's Note
Section 7, V.A.C.S. Article 1118z, uses "bonds and notes" throughout the section. As a drafting convenience, the revised law adds a definition of "bond" so that a bond includes a note.

Revised Law
Sec. 453.302. POWER TO ISSUE BONDS. (a) A transit department may issue revenue bonds at any time and for any amounts it considers necessary or appropriate for:
(1) the acquisition, construction, repair, equipping, improvement, or extension of its transit system; or
(2) the construction or general maintenance of streets of the creating municipality.
(b) Bonds payable solely from revenues may be issued by resolution of the board.
(c) Bonds, other than refunding bonds, any portion of which is payable from tax revenue, may not be issued until authorized by a majority vote of the voters of the municipality voting in an election. (V.A.C.S. Art. 1118z, Secs. 7(a) (part), (g.).

Source Law
Sec. 7. (a) A department may issue revenue bonds and notes from time to time and in such amounts as the board considers necessary or appropriate for the acquisition, purchase, construction, reconstruction, repair, equipping, improvement, or extension of the system, including but not limited to the construction, reconstruction, or general maintenance of municipal streets of the city or town....
(g) Bonds payable solely from revenues may be issued by resolution of the board. Bonds, except refunding bonds, payable wholly or partially from taxes, may not be issued until authorized by a majority vote of the qualified voters of the city or town voting in an election.

74C263 JD-D 2007
1 Revisor's Note

Section 7(a), V.A.C.S. Article 1118z, refers to "including but not limited to." "[B]ut not limited to" is omitted as unnecessary because Section 311.005(13), Government Code (Code Construction Act), and Section 312.011(19), Government Code, provide that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

Revised Law

Sec. 453.303. BOND TERMS. (a) A transit department's bonds are fully negotiable.

(b) The transit department may make the bonds redeemable before maturity at the price and subject to the terms and conditions that are provided in the resolution authorizing the bonds.

(c) A revenue bond indenture may limit a power of the transit department provided by Sections 453.101-453.108 or 453.109(b) as long as the bond containing the indenture is outstanding and unpaid. (V.A.C.S. Art. 1118z, Secs. 6(g) (part), 7(a) (part), (c) (part).)

Source Law

[Sec. 6] (g) . . . Any revenue bond indenture may provide limitations on the exercise of the powers granted by this section, and the limitations apply so long as any of the revenue bonds issued pursuant to the indenture are outstanding and unpaid.

[Sec. 7] (a) . . . All bonds and notes are fully negotiable and may be made redeemable before maturity, at the option of the issuing department, at such price or prices and under such terms and conditions as may be fixed by the issuing department in the resolution authorizing the bonds or notes, and . . . .

(c) . . . may prescribe the terms and provisions of the bonds and notes in any manner not inconsistent with this article. . . .
Revisor's Note

Section 6(g), V.A.C.S. Article 1118z, refers to "powers granted by this section." The revised law substitutes cross-references to the sections in this chapter that correspond to the powers contained in Section 6.

Revised Law

Sec. 453.304. SALE. Bonds may be sold at a public or private sale as determined by the board. (V.A.C.S. Art. 1118z, Sec. 7(a) (part).)

Source Law

(a) ... and may be sold at public or private sale, as the board determines.

Revised Law

Sec. 453.305. APPROVAL; REGISTRATION. (a) A transit department's bonds and the records relating to their issuance shall be submitted to the attorney general for examination before the bonds may be delivered.

(b) If the attorney general finds that the bonds have been issued in conformity with the constitution and this chapter and that the bonds will be a binding obligation of the issuing transit department, the attorney general shall approve the bonds.

(c) After the bonds are approved by the attorney general, the comptroller shall register the bonds. (V.A.C.S. Art. 1118z, Sec. 7(b) (part).)

Source Law

(b) Before delivery, all bonds and notes authorized to be issued and the records relating to their issuance must be submitted to the attorney general for examination. If the attorney general finds that they have been issued in accordance with the constitution and this article and that they will be binding obligations of the department issuing them, the attorney general shall approve them, and the comptroller shall register them. . . .

74C263 JD-D 2009
Revised Law

Sec. 453.306. INCONTESTABILITY. Bonds are incontestable after they are:

(1) approved by the attorney general;
(2) registered by the comptroller; and
(3) sold and delivered to the purchaser. (V.A.C.S. Art. 1118z, Sec. 7(b) (part).)

Source Law

(b) ... After approval, registration, and sale and delivery of the bonds to the purchaser, they are incontestable.

Revised Law

Sec. 453.307. SECURITY PLEDGED. (a) To secure the payment of a transit department's bonds, the transit department may:

(1) pledge all or part of revenue received from any tax that the transit department may impose;
(2) pledge all or part of the revenue of the transit department system; and
(3) mortgage all or part of the transit department system, including any part of the system subsequently acquired.

(b) Under Subsection (a)(3), the transit department may, subject to the terms of the bond indenture or resolution authorizing the issuance of the bonds, encumber a separate item of the transit department system and acquire, use, hold, or contract for any property by lease, chattel mortgage, or other conditional sale, including an equipment trust transaction. (V.A.C.S. Art. 1118z, Sec. 7(c) (part).)

Source Law

(c) In order to secure the payment of the bonds or notes, the department may encumber and pledge all or any part of the revenue realized from any tax the department is authorized to levy, and all or any part of the revenues of the system, may mortgage and encumber all or any part of the properties of the system, and everything pertaining to them acquired or to be acquired, and .... If not prohibited by the resolution or indenture relating to outstanding bonds or notes, a department may encumber separately any item or items of real estate or personalty, including motor
buses, transit cars, other vehicles, machinery, and other equipment of any nature, and acquire, use, hold, or contract for any property under any lease arrangement, chattel mortgage, or conditional sale, including but not limited to transactions commonly known as equipment trust transactions.

Reviser's Note
(1) Section 7(c), V.A.C.S. Article 1118z, refers to a department's "system." The revised law refers to the "transit department system" to conform to the definitions contained in Section 453.001 of this code.

(2) Section 7(c), V.A.C.S. Article 1118z, contains a list of specific properties that may be encumbered and refers to the system properties and "everything pertaining to them." The list of specific items and the references to "everything pertaining to them" are omitted from the revised law as unnecessary because all of those properties are included under the definition of "transit department system."

Revised Law
Sec. 453.308. PLEDGE OF REVENUE LIMITED. The expenses of operation and maintenance of a transit department system, including salaries, labor, materials, and repairs necessary to provide efficient service and every other proper item of expense, are a first lien and charge against any revenue of a transit department that is encumbered under this chapter. (V.A.C.S. Art. 1118z, Sec. 7(e).)

Source Law
(e) Whenever the revenues of any system are encumbered under this article, the expenses of operation and maintenance, including all salaries, labor, materials, and repairs necessary to render efficient service, and every proper item of expense are a first lien and charge against the revenues.

Reviser's Note
Section 7(e), V.A.C.S. Article 1118z, refers to a "system." The revised law refers to the "transit
1 department system" to conform to the definitions
2 contained in Section 453.001 of this code.

Revised Law

Sec. 453.309. REFUNDING BONDS. A transit department may
issue refunding bonds for the purposes and in the manner authorized
by Chapter 503, Acts of the 54th Legislature, Regular Session, 1955
(Article 717k, Vernon's Texas Civil Statutes), Chapter 784, Acts of
the 61st Legislature, Regular Session, 1969 (Article 717k-3,
Vernon's Texas Civil Statutes), or other law. (V.A.C.S.
Art. 1118z, Sec. 7(d).)

Source Law

(d) Refunding bonds or notes may be issued for
the purposes and in the manner provided by Chapter 503,
Acts of the 54th Legislature, Regular Session, 1955
(Article 717k, Vernon's Texas Civil Statutes), Chapter
784, Acts of the 61st Legislature, Regular Session,
1969 (Article 717k-3, Vernon's Texas Civil Statutes),
or other law.

Revised Law

Sec. 453.310. BONDS AS AUTHORIZED INVESTMENTS. (a) A
transit department's bonds are authorized investments for:
(1) a bank;
(2) a trust company;
(3) a savings and loan association; and
(4) an insurance company.

(b) The bonds, when accompanied by all appurtenant,
unmatured coupons and to the extent of the lesser of their face
value or market value, are eligible to secure the deposit of public
funds of this state, a political subdivision of this state, and any
other political corporation of this state. (V.A.C.S. Art. 1118z,
Sec. 7(f).)

Source Law

(f) All bonds and notes are legal and authorized
investments for banks, trust companies, savings and
loan associations, and insurance companies. The bonds
and notes are eligible to secure the deposit of public
funds of the state, cities, towns, villages, counties,
school districts, or other political corporations or
subdivisions of the state. The bonds and notes are lawful and sufficient security for the deposits to the extent of the bonds' principal amount or market value, whichever is less, when accompanied by all unmatured coupons appurtenant to them.

Revisor's Note
Section 7(f), V.A.C.S. Article 1118z, refers to "cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the state." The revised law omits the references to "cities," "towns," "villages," "counties," and "school districts" as unnecessary because these entities are included in the meaning of "political subdivision."

Revised Law
Sec. 453.311. INTEREST EXEMPTION. Interest on bonds issued by a transit department is exempt from any tax of the state or a state taxing authority. (V.A.C.S. Art. 1118z, Sec. 12 (part).)

Source Law
Sec. 12. ... and the interest on bonds and notes issued by a department are exempt from all taxes levied by the state or by any taxing authority of the state.

[Sections 453.312-453.400 reserved for expansion]

SUBCHAPTER H. TAXES

Revised Law
Sec. 453.401. SALES AND USE TAX. (a) The board may impose for the transit department a sales and use tax at a permissible rate that does not exceed the rate approved by the voters at an election under this chapter.

(b) The board by order may:
(1) decrease the rate of the sales and use tax for the transit department to a permissible rate; or
(2) call an election for the increase or decrease of the sales and use tax to a permissible rate.

(c) The permissible rates for a sales and use tax imposed
under this chapter are:

(1) one-quarter of one percent; and

(2) one-half of one percent.

(d) Chapter 322, Tax Code, applies to a transit department's sales and use tax. (V.A.C.S. Art. 1118z, Secs. 8(a) (part), (b), (c).)

**Source Law**

Sec. 8. (a) Subject to approval at a tax election in accordance with this article, the board may levy and collect a local sales and use tax for financing of the system . . . . The permissible rates for a local sales and use tax levied under this article are:

(1) one-quarter of one percent; and

(2) one-half of one percent.

(b) Chapter 322, Tax Code, applies to the application and collection of the tax imposed under this article.

(c) The board by order may decrease the local sales and use tax rate or may call an election to increase or decrease the local sales and use tax rate.

**Revisor's Note**

Section 8(a), V.A.C.S. Article 1118z, contains a statement describing the application of the sales tax to certain receipts. This statement is omitted as unnecessary because Chapter 322, Tax Code, applicable to the tax, contains the technical information concerning the imposition of the tax. The omitted provision reads:

(a) . . . the sales tax portion of which applies to receipts from the sale of all taxable items within the city or town that are subject to taxation under the Limited Sales, Excise, and Use Tax Act, Chapter 151, Tax Code. . . .

**Revised Law**

Sec. 453.402. MAXIMUM TAX RATE. (a) A board may not adopt a sales and use tax rate, including a rate increase, that when combined with the rates of all sales and use taxes imposed by all political subdivisions of this state having territory in the municipality exceeds two percent in any location in the
municipality.

(b) An election by a transit department to approve a sales and use tax or increase the rate of the transit department's sales and use tax has no effect if:

(1) the voters of the transit department approve the department's sales and use tax rate or rate increase at an election held on the same day on which the municipality or county having territory in the jurisdiction of the transit department adopts a sales and use tax or an additional sales and use tax; and

(2) the combined rates of all sales and use taxes imposed by the transit department and all political subdivisions of this state would exceed two percent in any part of the territory in the jurisdiction of the transit department. (V.A.C.S. Art. 1118z, Secs. 8(g), (h).)

Source Law

(g) The board may not adopt a sales and use tax or increase the rate of its sales and use tax under this section if as a result of the adoption of the tax or the tax increase the combined rate of all sales and use taxes imposed by the department, the city or town, and other political subdivisions of this state having territory in the city or town would exceed two percent at any location in the city or town.

(h) If the voters of a city or town approve the adoption of a sales and use tax or the increase in the sales and use tax rate of the department at an election held on the same election date on which the city or town or a county having territory in the city or town adopts a sales and use tax or an additional sales and use tax and as a result the combined rate of all sales and use taxes imposed by the department, the city or town, and other political subdivisions of this state having territory in the city or town would exceed two percent at any location in the city or town, the election to adopt a sales and use tax or to increase the rate of the sales and use tax under this section has no effect.

Revised Law

Sec. 453.403. ELECTION TO CHANGE TAX RATE. (a) At an election ordered under Section 453.401(b)(2), the ballots shall be prepared to permit voting for or against the proposition: "The increase (decrease) of the local sales and use tax rate of (name of transit department) to (percentage)."
(b) The increase or decrease in the tax rate becomes effective if it is approved by a majority of the votes cast.

(c) A notice of the election and a certified copy of the order canvassing the election results shall be:

(1) sent to the Texas Department of Transportation and the comptroller; and

(2) filed in the deed records of the county.

(V.A.C.S. Art. 1118z, Sec. 8(d).)

Source Law

(d) At the election, the ballots shall be prepared to permit voting for or against the proposition: "The increase (decrease) of the local sales and use tax rate of (name of department) to (percentage)." The increase or decrease in the tax rate is effective if it is approved by a majority of the votes cast. A notice of the election and a certified copy of the order canvassing the election results shall be sent to the State Department of Highways and Public Transportation and the comptroller and filed in the deed records of the county in the same manner as provided for a tax election by Section 5 of this article.

Reviser's Note

Section 8(d), V.A.C.S. Article 1118z, requires the results of the election to be sent "in the same manner as provided for a tax election by Section 5 of this article." The reference to the manner of filing is omitted because Section 5(f) of V.A.C.S. Article 1118z, codified as Section 453.154 of this code, provides no manner of filing but states the same requirements as stated in this section.

Revised Law

Sec. 453.404. SALES TAX: EFFECTIVE DATES. (a) A transit department's sales and use tax takes effect on the first day of the second calendar quarter that begins after the date the comptroller receives a copy of the order required to be sent under Section 453.154.

(b) An increase or decrease in the rate of a transit
department's sales and use tax takes effect on:

(1) the first day of the first calendar quarter that begins after the date the comptroller receives the notice provided under Section 453.403(c); or

(2) the first day of the second calendar quarter that begins after the date the comptroller receives the notice if within 10 days after the date of receipt of the notice the comptroller gives written notice to the presiding officer of the board that the comptroller requires more time to implement tax collection and reporting procedures.

(c) The presiding officer of the board of a transit department that imposes a sales and use tax under this chapter shall send to the comptroller by United States registered or certified mail a certified copy of each order of the municipality that created the transit department that adds territory to, or removes territory from, the municipality unless notice of the boundary change is given under Chapter 321, Tax Code. The order must give the effective date of the change and be accompanied by a map of the municipality clearly showing the territory added or removed. The tax is effective in the added territory or is excluded from the removed territory in the same manner as provided for a change of tax rate in Subsection (b).

(d) If the notice of a boundary change is given as provided by Chapter 321, Tax Code, the tax imposed under this chapter takes effect at the same time that the municipal tax takes effect under that notice. (V.A.C.S. Art. 1118z, Secs. 8(a) (part), (e), 9.)

Source Law

Sec. 8. (a) . . . The effective date of a local sales and use tax is the first day of the second calendar quarter that begins after the date the comptroller receives, under Subsection (f) of Section 5 of this article, notice of an order except as provided by Subsection (e) of this section. . . .

(e) An increase or decrease in the rate of a local sales and use tax already levied takes effect on the first day of the next calendar quarter after actual notification to the comptroller, except that if the comptroller notifies the presiding officer of the board in writing before the 11th day after the day of receipt
of the notification that he requires more time to implement collection and reporting procedures, the comptroller may delay implementation for one whole calendar quarter. Thereafter, the new tax rate takes effect on the first day of the next calendar quarter following the elapsed quarter.

Sec. 9. If a city in which a local sales and use tax has been imposed under this article changes or alters its boundaries, the presiding officer of the board shall forward to the comptroller by United States registered mail or certified mail a certified copy of the order adding territory to the city. The order shall reflect the effective date of the change and shall be accompanied by a map of the city clearly showing the territory added or detached. Upon receipt of the order and map, the tax imposed by Section 8 of this article shall be effective in the added territory on the first day of the next succeeding quarter. However, if the comptroller notifies the presiding officer of the board in writing within 10 days after receipt of the order and map that he requires more time, the comptroller shall be entitled to delay implementation one whole calendar quarter. Thereafter, the tax shall be effective in the added territory on the first day of the next calendar quarter following the elapsed quarter. If the comptroller is notified of a boundary change under the Local Sales and Use Tax Act, the notice required by this section need not be given and the tax takes effect at the time the tax under the Local Sales and Use Tax Act takes effect.

Revisor's Note
(1) Section 8(a), V.A.C.S. Article 1118z, refers to Section 5(f) of that article, which is codified as Section 453.154 of this code, and the revised law reflects that citation.

(2) Section 8(a), V.A.C.S. Article 1118z, refers to the Local Sales and Use Tax Act, which is now Chapter 321, Tax Code, and the revised law reflects that citation.

[Sections 453.405-453.450 reserved for expansion]

SUBCHAPTER I. DISSOLUTION OF TRANSIT DEPARTMENT

Revised Law
Sec. 453.451. ELECTION TO DISSOLVE TRANSIT DEPARTMENT. (a) A board may order an election on the question of dissolving the transit department.

(b) The board shall dissolve the transit department if the
dissolution is approved by a majority of the votes cast. (V.A.C.S. Art. 1118z, Secs. 11(a) (part), (b) (part).)

Source Law

Sec. 11. (a) The board may call an election on the question of dissolving the department. . . .

(b) . . . The board shall dissolve the department if the dissolution is approved by a majority of the votes cast. . . .

Revised Law

Sec. 453.452. ELECTION PROCEDURES. (a) The provisions of Subchapter D that relate to the notice and conduct of an election under that subchapter apply to an election to dissolve a transit department unless a different requirement is specified in this subchapter.

(b) The board shall send a notice of the election to the Texas Department of Transportation and the comptroller. (V.A.C.S. Art. 1118z, Sec. 11(a) (part).)

Source Law

(a) . . . Except as provided by this section, notice and conduct of an election under this section must comply with state election laws and, as appropriate, with Section 5 of this article. The board shall send copies of the notice of election to the State Department of Highways and Public Transportation and to the comptroller.

Revisor's Note

(1) Section 11(a), V.A.C.S. Article 1118z, requires an election under that section to comply with state election laws. This provision is omitted as unnecessary because the Election Code applies, according to its own terms, to all elections.

(2) Section 11(a), V.A.C.S. Article 1118z, refers to Section 5 of that article. Section 5 is codified in Subchapter D of this chapter, and the revised law reflects that citation.
Sec. 453.453. BALLOTS; NOTICE OF ELECTION RESULTS. (a) At the election, the ballots shall be prepared to provide for voting for or against the proposition: "Dissolution of (name of transit department)."

(b) The board shall send a certified copy of the order canvassing the election results to the Texas Department of Transportation and the comptroller and file a copy in the deed records of the county. (V.A.C.S. Art. 1118z, Sec. 11(b) (part).

Sec. 453.454. EFFECTIVE DATE OF DISSOLUTION. The repeal of a transit department's sales and use tax under this subchapter takes effect on:

(1) the first day of the first calendar quarter that begins after the date the comptroller receives the notice of the dissolution of the transit department; or

(2) the first day of the second calendar quarter that begins after the date the comptroller receives the notice, if within 10 days after the date of receipt of the notice the comptroller gives written notice to the presiding officer of the board that the comptroller requires more time to implement the repeal of the tax. (V.A.C.S. Art. 1118z, Sec. 11(c)).
for one whole calendar quarter. Thereafter, the
cessation of tax takes effect on the first day of the
next calendar quarter following the elapsed quarter.

CHAPTER 454. MUNICIPAL MASS TRANSPORTATION SYSTEMS

SUBCHAPTER A. GENERAL PROVISIONS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Revised Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>454.001</td>
<td>AUTHORITY</td>
<td>2021</td>
</tr>
<tr>
<td>454.002</td>
<td>ESSENTIAL GOVERNMENTAL FUNCTIONS</td>
<td>2023</td>
</tr>
<tr>
<td>454.003</td>
<td>FEDERAL GRANTS AND LOANS</td>
<td>2024</td>
</tr>
<tr>
<td>454.004</td>
<td>MANAGEMENT</td>
<td>2026</td>
</tr>
<tr>
<td>454.005</td>
<td>LEASE OF SYSTEM</td>
<td>2028</td>
</tr>
<tr>
<td>454.006</td>
<td>FARES</td>
<td>2029</td>
</tr>
<tr>
<td>454.007</td>
<td>USE OF REVENUE TO PAY OTHER MUNICIPAL DEBS PROHIBITED</td>
<td>2930</td>
</tr>
<tr>
<td>454.008</td>
<td>RECORDS AND ACCOUNTS</td>
<td>2030</td>
</tr>
<tr>
<td>454.009</td>
<td>ANNUAL REPORT</td>
<td>2031</td>
</tr>
<tr>
<td>454.010</td>
<td>ENFORCEMENT</td>
<td>2032</td>
</tr>
<tr>
<td>454.011-454.020</td>
<td>Reserved for expansion</td>
<td></td>
</tr>
</tbody>
</table>

SUBCHAPTER B. REVENUE BONDS AND NOTES

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Revised Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>454.021</td>
<td>AUTHORITY TO ISSUE</td>
<td>2032</td>
</tr>
<tr>
<td>454.022</td>
<td>NOTICE OF ORDINANCE AUTHORIZING ISSUANCE</td>
<td>2034</td>
</tr>
<tr>
<td>454.023</td>
<td>PETITION FOR ELECTION</td>
<td>2034</td>
</tr>
<tr>
<td>454.024</td>
<td>ELECTION</td>
<td>2035</td>
</tr>
<tr>
<td>454.025</td>
<td>ENCUMBRANCE OF TRANSPORTATION SYSTEM</td>
<td>2036</td>
</tr>
<tr>
<td>454.026</td>
<td>TRANSPORTATION SYSTEM FRANCHISE</td>
<td>2038</td>
</tr>
<tr>
<td>454.027</td>
<td>OPERATING EXPENSES AS LIEN ON REVENUE</td>
<td>2038</td>
</tr>
<tr>
<td>454.028</td>
<td>OBLIGATION OF TRANSPORTATION SYSTEM NOT MUNICIPAL DEBT</td>
<td>2039</td>
</tr>
<tr>
<td>454.029</td>
<td>ADDITIONAL BONDS OR NOTES</td>
<td>2040</td>
</tr>
<tr>
<td>454.030</td>
<td>REFUNDING BONDS OR NOTES</td>
<td>2041</td>
</tr>
</tbody>
</table>

CHAPTER 454. MUNICIPAL MASS TRANSPORTATION SYSTEMS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 454.001. AUTHORITY. (a) A municipality may own, purchase, construct, improve, extend, and operate a mass
transportation system to carry passengers for hire within the
municipality, its suburbs, and adjacent areas.

(b) A municipality, individually or in cooperation with the
United States, may:

(1) undertake research, development, and demonstration
projects for a mass transportation system in the municipality, its
suburbs, and adjacent areas; and

(2) acquire, construct, and improve a facility or
equipment for use, by operation, lease, or otherwise, in mass
transportation service in those areas on, under, over, along, or
across a public street or highway and on real property, an
easement, or a right-of-way acquired for that purpose. (V.A.C.S.
Art. 1118w, Secs. 1, 1a (part).)

Source Law

Art. 1118w
Sec. 1. Any city or town, including any Home
Rule City operating under Title 28, Revised Civil
Statutes of the State of Texas of 1925, as amended
(hereinafter referred to as "city" or "such city")
shall have power to own, hold, purchase, construct,
 improve, extend and operate street transportation
systems for the carrying of passengers for hire within
such city, its suburbs and adjacent areas.

Sec. 1a. ... Any such city or town shall be
authorized, either individually or in cooperation with
agencies of the United States of America, to undertake
research, development and demonstration projects for
mass transportation systems in such areas and to
 acquire, construct and reconstruct and improve
facilities and equipment for use, by operation or lease
or otherwise, in mass transportation service in such
areas, on, under, over, along or across public streets
and highways and on lands, easements and rights-of-way
acquired for such purpose. . . .

Revisor's Note

(1) Section 1, V.A.C.S. Article 1118w, refers to
"[a]ny city or town, including any Home Rule City
operating under Title 28, Revised Civil Statutes of the
State of Texas of 1925." The reference to a home rule
city is omitted from the revised law because the term
"city" includes a home rule city. Additionally, the
revised law also substitutes the term "municipality"
for "city or town" throughout this revision because
that is the term used in the Local Government Code.

(2) Section 1, V.A.C.S. Article 1118w, refers to
a municipality's power to "own" and "hold" a mass
transportation system. The reference to "hold" is
omitted from the revised law because "hold" is included
within the meaning of "own."

(3) Section 1a, V.A.C.S. Article 1118w, refers
to the "agencies of the United States of America." The
reference to "agencies" is omitted from the revised law
because under Section 311.005(9), Government Code (Code
Construction Act), "United States" includes an agency
of the United States. The definition applies to the
revised law.

(4) Section 1a, V.A.C.S. Article 1118w, refers
to a municipality's authority to "construct" and
"reconstruct" facilities. The revised law omits as
unnecessary "reconstruct" because it is within the
meaning of "construct."

Revised Law
Sec. 454.002. ESSENTIAL GOVERNMENTAL FUNCTIONS. (a) Mass
transportation service provided by a municipality directly or
through another entity by lease, contract, or other manner is an
essential governmental function and not a proprietary function for
all purposes, including the application of Chapter 101, Civil
Practice and Remedies Code, if the service is provided:

(1) on a fixed rail or other designated and dedicated
route;

(2) over a distance of less than 20 miles; and

(3) primarily for travel through or to an area of
historical, architectural, recreational, or cultural interest.

(b) An independent contractor that on behalf of a
municipality provides mass transportation service that is an
essential governmental function under Subsection (a) is liable for
damages only to the extent that the municipality would be liable if
the municipality were performing the function.

(c) This section does not apply to taxicab transportation
service. (V.A.C.S. Art. 1118w, Sec. 1b.)

Source Law

Sec. 1b. (a) Mass transportation services
provided by a city directly or through another entity
by lease, contract, or any other manner are essential
governmental functions and not proprietary functions
for all purposes, including the application of the
Texas Tort Claims Act (Chapter 101, Civil Practice and
Remedies Code), if the services are provided:
(1) on a fixed rail or other designated
and dedicated route;
(2) over a distance of less than 20 miles;
and
(3) primarily for travel through or to an
area of historical, architectural, recreational, or
cultural interest.
(b) If on behalf of a city an independent
contractor of a city provides mass transportation
services that are essential governmental functions
under Subsection (a) of this section, the contractor is
liable for damages only to the extent that the city
would be liable if the city itself were performing the
function. This section does not apply to taxicab
transportation services.

Revised Law

Sec. 454.003. FEDERAL GRANTS AND LOANS. (a) A municipality
may accept a grant or loan from the United States to finance all or
part of the cost of acquiring, constructing, or improving a
facility or equipment for use, by operation, lease, or otherwise,
in mass transportation service in the municipality, its suburbs,
and adjacent areas and in coordinating mass transportation service
with highway and other transportation in those areas.

(b) Ratification by referendum of a regional authority under
Chapter 451 by less than all municipalities in the metropolitan
area as defined in that chapter does not affect the eligibility of
an excepted municipality to receive federal transit grants under
the National Mass Transportation Assistance Act of 1974 or
subsequent federal statute.

(c) Ratification by referendum of an authority under Chapter
452 by less than all municipalities in the metropolitan area as defined in that chapter does not affect the eligibility of an excepted municipality to receive federal transit grants under the Surface Transportation Assistance Act of 1978 or subsequent federal statute. (V.A.C.S. Arts. 1118w, Sec. 1a (part); 1118x, Sec. 17A; 1118y, Sec. 25.)

**Source Law**

Art. 1118w
Sec. 1a. Any such city or town shall be authorized to accept grants and loans from the United States of America to finance all or a portion of the cost of the acquisition, construction, reconstruction, and improvement of facilities and equipment for use, by operation or lease or otherwise, in mass transportation service in such city, its suburbs and adjacent areas and in coordinating such service with highway and other transportation in such areas. . . .

Art. 1118x
Sec. 17A. Ratification by referendum of a regional authority under the terms of this Act by less than all incorporated cities within the metropolitan area as defined herein shall not affect in any way the eligibility of such excepted incorporated cities to receive federal transit grants under the National Mass Transportation Assistance Act of 1974, or any subsequent federal statutes.

Art. 1118y
Sec. 25. Ratification by referendum of an authority under the terms of this Act by less than all incorporated cities within the metropolitan area as defined herein shall not affect in any way the eligibility of such excepted incorporated cities to receive federal transit grants under the Surface Transportation Assistance Act of 1978 or any subsequent federal statutes.

**Revisor's Note**

(1) Section 17A, V.A.C.S. Article 1118x, and Section 25, V.A.C.S. Article 1118y, both refer to "incorporated cities." The revised law omits "incorporated" because under the Local Government Code all municipalities must be incorporated.

(2) Section 1a, V.A.C.S. Article 1118w, refers to the "construction" and "reconstruction" of facilities. The revised law omits as unnecessary "reconstruction" because it is included within the
meaning of "construction."

Revised Law

Sec. 454.004. MANAGEMENT. (a) By the terms of an instrument evidencing an encumbrance of a mass transportation system or the terms of an ordinance, a municipality may place the management of a mass transportation system with the governing body of the municipality or a board of trustees named in the instrument or ordinance.

(b) A board of trustees of a mass transportation system must consist of three to nine members, one of whom must be the mayor of the municipality. The instrument or ordinance must set the trustees' compensation, which may not exceed two percent of the gross annual receipts of the system. The instrument or ordinance may specify:

(1) the term of office of the board of trustees;
(2) the board's powers and duties;
(3) the manner in which the board may exercise its powers and duties;
(4) the election of the trustees' successors; and
(5) any matter relating to the board's organization.

(c) On any matter not covered by the instrument or ordinance, the board is governed by the laws and rules controlling the governing body of the municipality to the extent applicable. (V.A.C.S. Art. 1118w, Sec. 11 (part).)

Source Law

Sec. 11. During the time any such system is encumbered either as to its revenues or as to both its physical properties and revenues, or whether or not such system is encumbered during any period established by ordinance of the governing body of such city, the management and control of such system may be by the terms of the instrument evidencing such encumbrance or by the terms of such ordinance, be placed with the governing body of such city, or may be placed with a board of trustees to be named in such instrument or such ordinance, consisting of not less than three (3) nor more than nine (9) members, one (1) of whom shall be the mayor of such city. The compensation of such trustees shall be fixed by such instrument or such ordinance, but shall never exceed two per cent (2%) of the gross receipts of such system in any one (1) year.
The terms of office of such board of trustees, their powers and duties, the manner of exercising same, the election of their successors, and all matters pertaining to their organization and duties may be specified in such instrument or such ordinance. In all matters where such instrument or such ordinance is silent, the laws and rules controlling the governing body, of such city shall govern said board of trustees so far as applicable. . . .

Revisor's Note

(1) Section 11, V.A.C.S. Article 1118w, provides that the management of a mass transportation system may be placed in a board of trustees or the governing body of the municipality "[d]uring the time any such system is encumbered either as to its revenues or as to both its physical properties and revenues, or whether or not such system is encumbered during any period established by ordinance of the governing body of such city . . . ." The revised law omits the quoted language as unnecessary because while a mass transportation system must either be encumbered or unencumbered, the source law makes no distinction between the management of an encumbered system and the management of an unencumbered system.

(2) Section 11, V.A.C.S. Article 1118w, refers to the "management and control" of a mass transportation system. The reference to "control" is omitted from the revised law because "control" is included within the meaning of "management."

(3) The series of numbers in Section 11, V.A.C.S. Article 1118w, is revised to conform to Section 311.015, Government Code (Code Construction Act), applicable to the revised law. That code construction provision states that the first and last numbers of a series of numbers are included in the series.
Sec. 454.005. LEASE OF SYSTEM. (a) In lieu of operating a mass transportation system, the governing body of a municipality or a board of trustees managing the system, with the approval of the municipality's governing body by resolution, may enter into a lease or other contractual arrangement for the operation of the system by a privately owned and operated corporation.

(b) The guaranteed or contingent payment of rentals, computed on revenue or gross or net profits or determined by any other method of compensation the governing body or board of trustees determines to be reasonable, may be the consideration for a lease or other contract under this section.

(c) The municipality must give public notice and make a request for the submission of bids in the manner required by law for the taking of bids for a public construction contract before entering into a lease or other contract under this section. The municipality shall accept the best bid submitted, considering the rentals to be paid and the experience and financial responsibility of the corporations submitting the bids. (V.A.C.S. Art. 1118w, Sec. 11 (part).)
Reviser's Note

Section 111, V.A.C.S. Article 1118w, refers to the "management and control" of a mass transportation system. The reference to "control" is omitted from the revised law because "control" is included within the meaning of "management."

Revised Law

Sec. 454.006. FARES. (a) Fares charged by a mass transportation system may be set according to a zone system or other classification that the municipality determines to be reasonable.

(b) Unless otherwise considered necessary by the governing body of the municipality to maintain the level and quality of service desired, a mass transportation system shall charge and collect fares that are sufficient to:

(1) pay all operating, maintenance, depreciation, and replacement charges;

(2) provide for extensions to the extent permitted by this chapter; and

(3) provide and maintain in the time and manner prescribed by the applicable ordinances, deeds of trust, and indentures money sufficient to pay for debt service and reserves for the security and orderly payment of bonds or notes. (V.A.C.S. Art. 1118w, Sec. 8 (part).)

Source Law

Sec. 8. . . . The fares charged for transportation of passengers by any transportation system may be based on a zone system of determining fares or other fare classification determined by such city to be reasonable. There shall be charged and collected for such service a sufficient rate to pay all operating, maintenance, depreciation, replacement charges (and to provide for extensions to the extent permitted and limited hereby) and to provide and maintain in the manner and at the times prescribed in such ordinances, deeds of trust and indentures, money sufficient for debt service and reserves for the security and orderly payment of such bonds or notes, unless otherwise deemed necessary by the governing body of the city in order to maintain the level and quality of service desired. . . .
Revisor's Note

Section 8, V.A.C.S. Article 1118w, refers to "fares charged for transportation of passengers." The revised law omits the phrase "charged for transportation of passengers" as unnecessary because under Section 1, V.A.C.S. Article 1118w (codified as Section 454.001 of this code), that is the purpose for which a municipality may establish a mass transportation system.

Revised Law

Sec. 454.007. USE OF REVENUE TO PAY OTHER MUNICIPAL DEBTS PROHIBITED. (a) Except as permitted by the ordinance authorizing the bonds or notes or the deed of trust or indenture securing the bonds or notes or as provided by Subsection (b), the revenue of a mass transportation system may not be used to pay any other debt, expense, or obligation of the municipality.

(b) An acquired mass transportation system may pay the municipality that acquired the system for the loss of ad valorem taxes previously paid by the owners of the system until the indebtedness secured by the taxes is paid. (V.A.C.S. Art. 1118w, Sec. 8 (part).)

Source Law

Sec. 8. . . . Except as may be otherwise permitted under the ordinance authorizing or the deed of trust or indenture securing the bonds or notes, no part of the revenues of any such system shall ever be used to pay any other debt, expense, or obligation of such city, except that any such city may receive payments from any such system in lieu of ad valorem taxes previously paid by the owners of an acquired system until the indebtedness so secured shall have been finally paid.

Revised Law

Sec. 454.008. RECORDS AND ACCOUNTS. (a) The mayor of a municipality shall install and maintain a complete system of records and accounts showing the revenue collected and showing separately the amount spent or set aside for operation, salaries,
labor, materials, repairs, maintenance, depreciation, replacements, extensions, and debt service on bonds or notes issued under this chapter.

(b) A mayor commits an offense if the mayor fails to install and maintain a system of records and accounts as required by Subsection (a) on or before the 90th day after the date the mass transportation system is completed. An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $1,000. (V.A.C.S. Art. 1118w, Sec. 10 (part).)

Source Law

Sec. 10. It shall be the duty of the mayor of such city to install and maintain, or cause to be installed and maintained, a complete system of records and accounts showing the revenues collected and showing separately the amount either expended or set aside for operation, salaries, labor, materials, repairs, maintenance, depreciation, replacements, extensions, and for debt service as to such bonds or notes. . . . Failure or refusal on the part of the mayor to install and maintain, or cause to be installed and maintained, such system or records and accounts within ninety (90) days after the completion of such system . . . shall constitute a misdemeanor and, on conviction thereof, such mayor . . . shall be subject to a fine of not less than One Hundred Dollars ($100) nor more than One Thousand Dollars ($1,000) . . .

Revised Law

Sec. 454.009. ANNUAL REPORT. (a) Not later than February 1 of each year, the superintendent or manager of a mass transportation system shall file with the mayor of the municipality a detailed report of the operations for the year ending the preceding January 1, showing the total sums collected, the balance due, the total disbursements made, and amounts remaining unpaid as a result of the operation of the system during the year.

(b) A superintendent or manager commits an offense if the superintendent or manager fails to file as required by Subsection (a). An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $1,000. (V.A.C.S. Art. 1118w, Sec. 10 (part).)
Source Law

Sec. 10. . . . It shall likewise be the duty of the superintendent or manager of such system to file with the mayor of such city, not later than February 1st, a detailed report of the operations for the year ending January 1st preceding, showing the total sums of money collected and the balance due, as well as the total disbursements made and the amounts remaining unpaid as the result of operation of such system during such calendar year. Failure or refusal . . . . on the part of such superintendent or manager, to file or cause to be filed such report, shall constitute a misdemeanor and, on conviction thereof, such . . . superintendent or manager shall be subject to a fine of not less than One Hundred Dollars ($100) nor more than One Thousand Dollars ($1,000) . . . .

Revised Law

Sec. 454.010. ENFORCEMENT. A taxpayer or holder of indebtedness of a mass transportation system residing within the municipality may enforce this chapter by appropriate civil action in a district court of the county in which the municipality is located. (V.A.C.S. Art. 1118w, Sec. 10 (part).)

Source Law

Sec. 10. . . . and any taxpayer or holder of such indebtedness residing within such city shall have the right, by appropriate civil action in the District Court of the County in which such city is located, to enforce the provisions of this Act.

[Sections 454.011-454.020 reserved for expansion]

SUBCHAPTER B. REVENUE BONDS AND NOTES

Revised Law

Sec. 454.021. AUTHORITY TO ISSUE. (a) A municipality may issue bonds and notes from time to time and in the amounts it considers necessary or appropriate for acquiring, constructing, improving, or extending a mass transportation system. (b) Bonds or notes issued under this chapter are fully negotiable and may be made redeemable before maturity, at the option of the issuing municipality, at the price and under the terms fixed by the issuing municipality in the ordinance authorizing the bonds or notes. (c) Bonds or notes issued under this chapter shall be sold
for the price the governing body of the municipality determines to be in the best interest of the municipality.

(d) Subject to the restrictions in this chapter, the governing body of a municipality may fix the form, conditions, and details of bonds and notes issued under this chapter. (V.A.C.S. Art. 1118w, Secs. 1a (part), 2.)

Source Law

Sec. 1a. . . . Any such city or town shall be authorized to issue revenue bonds for such purposes and all of the provisions of the Act amended hereby shall apply to the additional powers and functions herein authorized.

Sec. 2. Any such city shall have full power to issue bonds and notes from time to time and in such amounts as it shall consider necessary or appropriate for the acquisition, purchase, construction, improvement or extension of such street transportation systems. All such bonds and notes shall be fully negotiable and may be made redeemable before maturity, at the option of the issuing city, at such price or prices and under such terms and conditions as may be fixed by the issuing city in the ordinance authorizing such bonds or notes. Such bonds and notes shall be sold for such price as the governing body of the city shall consider to be for the best interest of such city, provided that no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at a rate of more than six per cent (6%) per annum, computed with relation to the absolute maturity of the bonds or notes in accordance with standard tables of bond values, excluding however, from such computations the amount of any premium to be paid on redemption of any bonds or notes prior to maturity. Subject to the restrictions contained in this Act each such governing board is given complete discretion in fixing the form, conditions and details of such bonds and notes.

Reviser's Note

(1) Section 2, V.A.C.S. Article 1118w, refers to the "acquisition" and "purchase" of mass transportation systems. The reference to "purchase" is omitted from the revised law because "purchase" is included within the meaning of "acquisition."

(2) Section 2, V.A.C.S. Article 1118w, refers to the "terms and conditions" of an ordinance. The reference to "conditions" is omitted from the revised law because "condition" is included within the meaning
of "term."

(3) The provisions in Section 2, V.A.C.S. Article 1118w, relating to the interest rate applying to bonds and notes are omitted as having been superseded by V.A.C.S. Article 717k-2, which establishes a maximum interest rate for public securities issued by public agencies.

Revised Law

Sec. 454.022. NOTICE OF ORDINANCE AUTHORIZING ISSUANCE. Before adopting an ordinance authorizing the issuance of bonds or notes under this chapter, the governing body of a municipality shall give notice of the time when the ordinance is to be adopted. The notice shall be published in a newspaper of general circulation in the municipality, in at least two issues, with the first publication occurring at least 14 days before the date on which the ordinance is to be adopted. (V.A.C.S. Art. 1118w, Sec. 4 (part).)

Source Law

Sec. 4. Before passage of an ordinance authorizing the issuance of bonds or notes under this Act, the governing body of such city shall give notice of the time when such ordinance is to be passed. Such notice shall be published in a newspaper of general circulation in such city, in at least two (2) issues thereof, the date of the first publication to be not less than fourteen (14) days prior to the date so fixed for passage of the ordinance.

Revised Law

Sec. 454.023. PETITION FOR ELECTION. (a) The governing body of a municipality may issue bonds or notes under this chapter without an election unless a petition requesting an election on the question is filed with the municipal secretary before the scheduled time for adopting the ordinance authorizing the issuance of the bonds or notes.

(b) A petition under this section must be signed by at least 10 percent of the registered voters of the municipality who have rendered their property for taxation. (V.A.C.S. Art. 1118w, Sec. 4
Sec. 4. . . . Unless prior to the scheduled time for passing the ordinance a petition is filed with the City Secretary, signed by not less than ten percent (10%) of the qualified voters of the city who have duly rendered their property for taxation, requesting that an election be held on the question of issuing such bonds or notes, the governing body may proceed in the issuance thereof without an election.

Reviser's Note

Section 4, V.A.C.S. Article 1118w, requires the petition to be signed by "qualified voters" of the city. The revised law uses "registered voters" instead because Section 277.0021, Election Code, provides that "qualified voter" means "registered voter" in determining eligibility to sign an election petition.

Revised Law

Sec. 454.024. ELECTION. (a) If a petition meeting the requirements of Section 454.023 is filed:

(1) the governing body of the municipality shall hold an election on the question as provided by Chapter 1, Title 22, Revised Statutes; and

(2) the bonds or notes may not be issued unless a majority of the votes received at the election favor the question.

(b) The governing body of a municipality may call an election for the issuance of bonds or notes under this chapter without a petition under Section 454.023. (V.A.C.S. Art. 1118w, Sec. 4 (part).)

Source Law

Sec. 4. . . . If such petition is duly filed, it shall be the duty of the governing body to proceed in the manner prescribed in Chapter I of Title 22 of the Revised Civil Statutes of Texas of 1925, with an election on the question, and such bonds or notes shall not be issued unless a majority of the voters, voting at such election, vote favorably on the question. The governing body within its discretion may call an election for the issuance of the bonds or notes without awaiting the filing of a petition requesting a referendum election.
Sec. 454.025. ENCUMBRANCE OF TRANSPORTATION SYSTEM. (a) To secure the payment of bonds or notes issued under this chapter, a municipality may encumber:

(1) all or any part of the mass transportation system;
(2) the property of the system, including a bus or other vehicle, machinery, and equipment of any kind used in the operation of the system;
(3) the revenue of the system;
(4) the franchise of the system; or
(5) any other thing relating to the system that is acquired or is to be acquired.

(b) A municipality may:

(1) encumber separately any property, including a bus or other vehicle, machinery, or equipment of any kind; or
(2) acquire, hold, use, or contract for any property, including a bus or other vehicle, machinery, or equipment of any kind, under a lease arrangement, chattel mortgage, or conditional sale, including an equipment trust transaction.

(c) This chapter does not prohibit a municipality from encumbering a transportation system for the purposes of purchasing, building, mortgaging, extending, or repairing, or reconstructing another system and purchasing necessary property in connection with the system. (V.A.C.S. Art. 1118w, Sec. 5 (part).)
commonly known as equipment trust transactions. Nothing herein shall be construed as prohibiting any such city from encumbering any one or more transportation systems for the purpose of purchasing, building, constructing, mortgaging, enlarging, extending, repairing, or reconstructing another one or more of said systems and purchasing necessary property, both real and personal in connection therewith.

Revisor's Note

(1) Section 5, V.A.C.S. Article 1118w, 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 5, V.A.C.S. Article 1118w, refers to "properties, both real and personal," and to "any item of real estate or personalty." The references to "real and personal" property are omitted from the revised law as unnecessary because under Section 311.005(4), Government Code (Code Construction Act), "property" means real and personal property. The definition applies to the revised law.

(3) Section 5, V.A.C.S. Article 1118w, refers to "building," "constructing," and "reconstructing" a mass transportation system. The references to "constructing" and "reconstructing" are omitted from the revised law because "constructing" and "reconstructing" are included within the meaning of "building."

(4) Section 5, V.A.C.S. Article 1118w, refers to the "enlarging" and "extending" of a mass transportation system. The reference to "enlarging" is omitted from the revised law because "enlarging" is included within the meaning of "extending."
Sec. 454.026. TRANSPORTATION SYSTEM FRANCHISE. In addition to encumbering the property of a mass transportation system under Section 454.025, a municipality, by the terms of an instrument evidencing that encumbrance, may grant to the purchaser under the power of sale in the instrument a franchise to operate the system and the system's property. A franchise under this section may not exceed 25 years. (V.A.C.S. Art. 1118w, Sec. 5 (part).)

Source Law
Sec. 5. . . . As additional security for the payment of any such bonds or notes, any such city may, by the terms of the instrument evidencing such encumbrance, grant to the purchaser under the power of sale in such instrument, a franchise to operate any such transportation system, and the properties thereof so purchased, for a term of not over twenty-five (25) years after purchase, subject to all laws regulating same then in force. . . .

Revisor's Note
Section 5, V.A.C.S. Article 1118w, says in part that a franchise to operate a municipal mass transportation system is "subject to all laws regulating same then in force." The revised law omits the quoted language as unnecessary because a franchise would be subject to all applicable laws in the absence of a specific statement to that effect.

Revised Law
Sec. 454.027. OPERATING EXPENSES AS LIEN ON REVENUE. If the revenue of a mass transportation system is encumbered under this chapter, the expenses of operation and maintenance, including all salaries, labor, materials, interest, repairs, and extensions necessary to render efficient service and each proper item of expense, are a first lien against the revenues. The expense of an extension may be a lien prior to an existing lien only if:
(1) the governing body of the municipality considers the extension necessary to keep the system in operation and render
adequate service to the municipality and its inhabitants; or

(2) the extension is necessary to meet a condition

that would otherwise impair the original securities. (V.A.C.S.
Art. 1118w, Sec. 8 (part).)

Source Law

Sec. 8. Whenever the revenues of any street transportation system shall be encumbered under this law, the expense of operation and maintenance, including all salaries, labor, materials, interest, repairs, and extensions necessary to render efficient service and every proper item of expense shall always be a first lien and charge against such revenues. Provided, that only such extensions, as in the judgment of the governing body of such city, are necessary to keep the system in operation and render adequate service to such city and the inhabitants thereof, or such as might be necessary to meet some condition which would otherwise impair the original securities shall be a charge prior to any existing lien. . . .

Revised Law

Sec. 454.028. OBLIGATION OF TRANSPORTATION SYSTEM NOT MUNICIPAL DEBT. (a) An obligation of a mass transportation system:

(1) is not a debt of the municipality;

(2) is solely a charge on the property, including the pledged revenue, of the encumbered system; and

(3) may not be included in determining the power of the municipality to issue any bonds or notes for any purpose authorized by law.

(b) A municipality may make payments on bonds or notes issued under this chapter out of any other funds that lawfully may be used for that purpose. (V.A.C.S. Art. 1118w, Sec. 5 (part).)

Source Law

Sec. 5. . . . No such obligation of any such system shall ever be a debt of such city, but solely a charge upon the properties, including the pledged revenues, of the system so encumbered and shall never be reckoned in determining the power of any such city to issue any bonds or notes for any purpose authorized by law. But no such city shall be prohibited from making payment of such bonds or notes out of any other funds which may be lawfully used for the purpose. . . .
Sec. 454.029. ADDITIONAL BONDS OR NOTES. (a) While bonds or notes that are payable from and secured by a pledge of the revenue of a mass transportation system are outstanding, the municipality that issued the bonds or notes may from time to time issue other bonds or notes for the purpose of:

(1) extending, improving, or both extending and improving the system; or

(2) acquiring another mass transportation system.

(b) Bonds or notes issued under Subsection (a) constitute a lien on the revenue, in the order of their issuance, inferior to the liens securing all issues and series of bonds or notes previously issued.

(c) Notwithstanding Subsection (b), a municipality may:

(1) adopt an ordinance or execute and issue a deed of trust, trust indenture, or similar instrument that provides for the subsequent issuance of additional bonds or notes on a parity with the previously issued bonds or notes; and

(2) authorize, issue, and sell additional bonds or notes, from time to time and in different series, payable from the revenue of the mass transportation system and the revenue of any additional sources, on a parity with the bonds or notes previously issued and secured by liens on the transportation system that are on a parity with the lien securing the previously issued bonds or notes, subject to the conditions of the ordinance or instrument described by Subdivision (1). (V.A.C.S. Art. 1118w, Sec. 6.)
the foregoing provisions shall not be construed to prevent the passage of an ordinance or execution and
issuance of any deed of trust, trust indenture, or
similar instrument, providing therein for the
subsequent issuance of additional bonds or notes on a
parity with or of equal dignity with the previously
issued revenue bonds or notes, and where any such
ordinance, deed of trust, trust indenture or similar
instrument may so provide, any such city shall have the
power to authorize, issue, and sell additional bonds or
notes, from time to time and in different series,
payable from the revenues of such transportation
system, and the revenues to be derived from such added
sources, on a parity with bonds or notes previously
issued and secured by liens on such transportation
system, on a parity with and of equal dignity with the
lien securing bonds or notes previously issued, subject
to such conditions as may be contained in the
ordinance, deed of trust or trust indenture providing
for or securing such issue of original bonds or notes.

Revisor's Note
Section 6, V.A.C.S. Article 1118w, refers to the
bonds or notes that are "on a parity with" and "of
equal dignity with" previously issued bonds or notes.
The reference to "of equal dignity with" is omitted
from the revised law because "of equal dignity with" is
included within the meaning of "on a parity with."

Revised Law
Sec. 454.030. REFUNDING BONDS OR NOTES. (a) A municipality
may issue refunding bonds or notes to refund one or more series or
issues of bonds or notes.

(b) Refunding bonds or notes have the same priority of lien
on the revenue pledged to their payment that the bonds or notes
being refunded have, except that if all the outstanding bonds or
notes of two or more series or issues of bonds or notes are
refunded in a single issue of refunding bonds or notes, the lien of
all refunding bonds or notes is equal. A refunding bond or note
may not have a priority of lien greater than the highest priority
of lien of the bonds or notes being refunded.

(c) Refunding bonds or notes must bear interest at the same
or lower rate than that borne by the bonds or notes being refunded
unless it is shown mathematically that:
(1) a saving will result in the total amount of interest to be paid; and
(2) the annual principal and interest burden will not be increased so as to impair the rights of the holders of any bonds or notes, if any, having a prior or inferior lien.

(d) Bonds or notes may be refunded by issuing refunding bonds or notes to be:

(1) exchanged for the bonds or notes being refunded or cancelled; or
(2) sold, with the proceeds of the sale being used to redeem and cancel the bonds or notes being refunded.

(e) A municipality may provide in a refunding bond or note issue money necessary for paying:

(1) any call premium; and
(2) interest to the date set for calling for redemption the outstanding bonds or notes. (V.A.C.S. Art. 1118w, Sec. 7.)

Source Law

Sec. 7. Refunding bonds or notes may be issued for the purpose of refunding the bonds or notes of a single series or issue or two (2) or more issues or series of bonds or notes and such refunding bonds or notes shall enjoy the same priority of lien on the revenues pledged to their payment as pledged to the bonds or notes refunded, provided that when two (2) or more series or issues of bonds or notes are refunded in a single issue of refunding bonds or notes the lien of all such refunding bonds or notes shall be equal if all of the outstanding bonds or notes of the several series or issues of bonds or notes to be refunded are thus refunded. No refunding bonds or notes shall attain any degree or priority of lien greater than that enjoyed by the series or issues then to be refunded having the highest priority of lien. Such refunding bonds or notes shall bear interest at the same or lower rate than borne by the bonds or notes refunded, unless it is shown mathematically that a saving will result in the total amount of interest to be paid and that the annual principal and interest burden will not be increased so as to infringe upon or impair the rights of the holders of any bonds or notes, if any, enjoying a prior or inferior lien. Any such bonds or notes may be so refunded by the issuance of refunding bonds or notes, either to be exchanged for the bonds or notes being refunded and cancelled, or to be sold, with the proceeds thereof to be used for the redemption and cancellation of the bonds or notes being refunded. Such city may provide in any refunding bond or note issue such money as may be needed for paying any call.
premium and for payment of interest to the date fixed for calling for redemption the outstanding bonds or notes.

Reviser's Note
(1) Section 7, V.A.C.S. Article 1118w, refers to the "degree or priority" of a lien. The reference to "degree" is omitted from the revised law because "degree" is included within the meaning of "priority."

(2) Section 7, V.A.C.S. Article 1118w, refers to "infringing[ing] upon and impair[ing]" the rights of holders of bonds or notes. The reference to "infringing upon" is omitted from the revised law because "infringing upon" is included within the meaning of "impairing."

Reviser's Note
(End of Subchapter)
(1) The revised law omits as unnecessary Section 3, V.A.C.S. Article 1118w. The first clause of Section 3, which requires the authority to deliver bonds to the attorney general for examination and approval, is superseded by Section 3.002(a), Chapter 53, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 717k-8, Vernon's Texas Civil Statutes). The second clause of Section 3, which requires the attorney general to approve the bonds if they were authorized under law and constitute binding obligations of the city, is superseded by Section 3.002(b), Article 717k-8. The third clause of Section 3, which provides that after approval the bonds shall be registered with the comptroller of public accounts, is superseded by Section 3.002(c), Article 717k-8. The fourth and final clause of Section 3, which provides that after approval and registration the bonds shall be incontestable, is superseded by Section 3.002(d), Article 717k-8.
Article 717k-8 by its terms applies to bonds issued under this chapter. The omitted law reads:

Sec. 3. Prior to delivery thereof, all bonds and notes authorized to be issued hereunder and the records relating to their issuance shall be submitted to the Attorney General of Texas for examination and if he finds that they have been issued in accordance with the Constitution and this Act, and that they will be binding special obligations of the city issuing same, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, and after such approval and registration they shall be incontestable.

(2) Section 9, V.A.C.S. Article 1118w, provides that bonds and notes issued under Article 1118w are authorized investments for certain entities and are eligible to secure deposits of public funds. The revised law omits Section 9 as unnecessary because it duplicates provisions of Section 9, Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), which applies to all bonds and notes issued by a municipality. Section 9 reads:

Sec. 9. All such bonds and notes shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, saving and loan associations and insurance companies. Such bonds and notes shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas, and such bonds and notes shall be lawful and sufficient security for said deposits to the extent of the principal amount thereof, or their value on the market, whichever is the lesser, when accompanied by all unmatured coupons appurtenant thereto.

CHAPTER 455. GENERAL POWERS AND DUTIES OF DEPARTMENT OF TRANSPORTATION REGARDING MASS TRANSPORTATION

Sec. 455.001. DEPARTMENT DUTIES REGARDING MASS TRANSPORTATION ......................................................... 2045

Sec. 455.002. DEPARTMENT POWERS REGARDING MASS TRANSPORTATION
Sec. 455.001. DEPARTMENT DUTIES REGARDING MASS TRANSPORTATION. The Texas Department of Transportation shall:

(1) encourage, foster, and assist in developing intracity and intercity public and mass transportation;
(2) encourage the establishment of rapid transit and other transportation media;
(3) assist any political subdivision of this state to obtain federal aid to establish or maintain a public or mass transportation system;
(4) develop and maintain a comprehensive master plan for public and mass transportation development; and
(5) conduct hearings and make investigations to determine the location, type of construction, and cost to the state or its political subdivisions of a public mass transportation system owned, operated, or wholly or partly directly financed by the state. (V.A.C.S. Art. 6663b, Secs. 1(a)(2), (3), (4), (5), (6).)

Art. 6663b
Sec. 1. (a) The State Department of Highways and Public Transportation:
(2) shall encourage, foster, and assist in the development of public and mass transportation, both intracity and intercity, in this state;
(3) shall encourage the establishment of rapid transit and other transportation media;
(4) shall develop and maintain a comprehensive master plan for public and mass transportation development in this state;
(5) shall assist any political subdivision of the state in procuring aid offered by the federal government for the purpose of establishing or maintaining public and mass transportation systems;
(6) shall conduct hearings and make
investigations it considers necessary to determine the location, type of construction, and cost to the state or its political subdivisions of public mass transportation systems owned, operated, or directly financed in whole or in part by the state; . . .

Revisor's Note

(1) Section 1(a), V.A.C.S. Article 6663b, refers to the "State Department of Highways and Public Transportation." The revised law substitutes "Texas Department of Transportation" for "State Department of Highways and Public Transportation" for the reason stated in the revisor's note to Section 201.003 of this code.

(2) Section 1(a), V.A.C.S. Article 6663b, refers to development of public and mass transportation "in this state." The revised law omits "in this state" as unnecessary because the department is a state agency having jurisdiction that is generally limited to and consistent with the boundaries of the state.

Revised Law

Sec. 455.002. DEPARTMENT POWERS REGARDING MASS TRANSPORTATION. The Texas Department of Transportation may:

(1) purchase, construct, lease, and contract for public transportation systems;

(2) use the expertise of recognized private authorities or consultants to plan and design public and mass transportation systems;

(3) represent this state in each public and mass transportation matter before a state or federal agency;

(4) apply for and receive a gift or grant from a governmental or private source for use in performing the department's functions under this chapter;

(5) contract as necessary to perform a function under this chapter; and
(6) recommend legislation necessary to advance this state's interest in public and mass transportation. (V.A.C.S. Art. 6663b, Secs. 1(a)(1), (7), (8), (9), (10), (12).)

Source Law

(a) The State Department of Highways and Public Transportation:
   (1) may purchase, construct, lease, and contract for public transportation systems in the state;
   (7) may enter into any contracts necessary to exercise any functions under this Act;
   (8) may apply for and receive gifts and grants from governmental and private sources to be used in carrying out its function under this Act;
   (9) may represent the state in public and mass transportation matters before federal and state agencies;
   (10) may recommend necessary legislation to advance the interests of the state in public and mass transportation;
   (12) may utilize the expertise of recognized authorities and consultants in the private sector, both for the planning and design of public and mass transportation systems.

Revised Law

Sec. 455.003. RESTRICTION ON USE OF EMINENT DOMAIN. The Texas Department of Transportation may not use eminent domain for a purpose under this chapter in a way that:

(1) unduly interferes with interstate commerce; or
(2) establishes a right to operate a vehicle on a railroad track used to transport property. (V.A.C.S. Art. 6663b, Sec. 1(b).)

Source Law

(b) In the exercise of the power of eminent domain under the provisions of this Act which relate to public and mass transportation, the department shall be prohibited from any action which would unduly interfere with interstate commerce or which would establish any right to operate any vehicle on railroad tracks used to transport freight or other property.

Revised Law

Sec. 455.004. PUBLIC TRANSPORTATION ADVISORY COMMITTEE. (a) A public transportation advisory committee consisting of nine
members shall:

(1) advise the commission on the needs and problems of the state's public transportation providers, including the methods for allocating state public transportation money;

(2) comment on rules involving public transportation during development of the rules and before the commission finally adopts the rules unless an emergency requires immediate commission action; and

(3) perform any other duty determined by the commission.

(b) The governor, the lieutenant governor, and the speaker of the house of representatives each shall appoint three members of the committee. The appointing officers shall allocate among themselves the authority for appointment of members with different types of qualifications. The committee must include:

(1) one member to represent public transportation providers in rural areas;

(2) one member to represent municipal transit systems in urban areas with populations of less than 200,000;

(3) one member to represent metropolitan transit authorities in urban areas with populations of 200,000 or more;

(4) one member to represent transportation providers for persons with disabilities and the elderly; and

(5) five members who have a knowledge of and interest in public transportation to represent the general public.

(c) A member serves at the pleasure of the officer appointing the member. A member is not entitled to compensation for service on the committee but is entitled to reimbursement for reasonable expenses the member incurs in performing committee duties.

(d) The public transportation advisory committee shall meet quarterly or as requested by the commission.

(e) The commission may adopt rules to govern the operation of the advisory committee. (V.A.C.S. Art. 6663b, Sec. 2A.)
Sec. 2A. (a) The governor, lieutenant governor, and speaker of the house of representatives shall appoint a public transportation advisory committee consisting of nine members. Each officer shall make three appointments. The appointing officers shall allocate among themselves the authority for appointment of members with various qualifications. The committee shall include:

1. one member to represent public transportation providers in rural areas;
2. one member to represent municipal transit systems in urban areas with populations of less than 200,000;
3. one member to represent metropolitan transit authorities in urban areas with populations of 200,000 or more;
4. one member to represent transportation providers for the elderly and handicapped; and
5. five members to represent the general public who have a knowledge of and interest in the area of public transportation.

(b) A member serves at the pleasure of the officer appointing the member. A member of the advisory committee is not entitled to receive compensation for serving as a member. A member is entitled to reimbursement for reasonable expenses incurred in performing duties as a member of the advisory committee.

(c) The advisory committee shall:
1. advise the Commission on the needs and problems of the state's public transportation providers, including the methods for allocating state public transportation funds;
2. comment on rules changes involving public transportation during their development and before their final adoption unless an emergency requires immediate action by the Commission; and
3. perform other duties as determined by the Commission.

(d) The public transportation advisory committee shall meet quarterly or as requested by the Commission.

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

Revisor's Note
Section 2A, V.A.C.S. Article 6663b, creates an advisory committee to the "Commission." V.A.C.S. Article 6664 defines "commission" in Title 116, Revised Statutes, of which V.A.C.S. Article 6663b is a part, to mean the Texas Transportation Commission. The revised law retains the reference to the term because "commission" is defined in Section 201.003 of this code, which applies to this chapter, as the Texas Transportation Commission.
(1) Section 1(a)(11), V.A.C.S. Article 6663b, prohibits the Texas Department of Transportation from issuing certification of convenience and necessity. The revised law omits this provision as unnecessary because an agency has only those powers specifically granted or necessarily implied by law, and no statute authorizes or implies the power. The omitted provision reads:

(a) [The State Department of Highways and Public Transportation:]  
(11) may not issue certification of convenience and necessity;  

(2) Section 2, V.A.C.S. Article 6663b, transferred property and personnel of the former Texas Mass Transportation Commission to the State Department of Highways and Public Transportation on June 20, 1975. The revised law omits the provision because it has been executed. The omitted provision reads:

Sec. 2. On the effective date of this Act, all programs, contracts, assets, and personnel of the Texas Mass Transportation Commission are transferred to the State Department of Highways and Public Transportation. The comptroller of public accounts and the State Board of Control shall assist in the orderly implementation of this transfer.

CHAPTER 456. STATE FINANCING OF PUBLIC TRANSPORTATION  
SUBCHAPTER A. GENERAL PROVISIONS  
Sec. 456.001. DEFINITIONS 2051  
Sec. 456.002. ADMINISTRATION AND PURPOSE 2054  
Sec. 456.003. PARTICIPATION INELIGIBILITY 2055  
Sec. 456.004. GENERAL FINANCING APPLICATION REQUIREMENTS 2056  
Sec. 456.005. EVALUATION OF PROJECT 2057  
Sec. 456.006. USE OF FINANCING 2057  
Sec. 456.007. APPROPRIATIONS AND GRANTS 2059  
Sec. 456.008. COMMISSION REPORT ON PUBLIC TRANSPORTATION 2059
Chapter 456. State Financing of Public Transportation

Subchapter A. General Provisions

Sec. 456.001. Definitions. In this chapter:

1. "Capital improvement" means the acquisition, construction, or improvement of a facility, equipment, or real property for use in public transportation service. The term includes designing, engineering, supervising, inspecting, surveying, mapping, relocation, right-of-way acquisition, housing replacement, and other expenses incidental to the acquisition, construction, or improvement.

2. "Designated recipient" means an entity that receives money from the United States for public transportation through the department or the Urban Mass Transportation Administration or the administration's successor and is a transit authority, a municipality not included in a transit authority, a local governmental body, or a nonprofit entity providing rural public transportation service.

3. "Federal-Aid Highway Act" means the Federal-Aid


(5) "Federally financed project" means a public transportation project that is partially financed under a program of the United States for financing public transportation.

(6) "Local share requirement" means the amount of money required of and available to a public transportation provider in this state to match the amount available from the United States for a federally financed project.

(7) "Operating expense" means an expense, including an administrative expense, incurred in the daily operation of a public transportation system.

(8) "Public transportation" means transportation by bus, rail, watercraft, or other means that provides general or specialized regular or continuing service to the public.

(9) "Ride-sharing activity" means transportation provided by a vehicle equipped with rubber tires that carries 10 to 15 passengers.

(10) "State-financed project" means a project for which this state provides partial financing under this chapter.

(11) "Transit authority" means a metropolitan or regional authority created under Chapter 451 or 452; Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973; or Chapter 683, Acts of the 66th Legislature, 1979; or a municipal department created under Chapter 453 or former Article 1118z, Revised Statutes.

(12) "Urbanized area" means an area so designated by the United States Bureau of the Census or by general state law.

V.A.C.S. Art. 6663c, Secs. 2(1), (4), (5), (6), (7), (8), (9) (part), (10), (11); New.)

Source Law
Sec. 2. In this Act:
74C263 JD-D 2052
(1) "Capital improvement" means the acquisition, construction, reconstruction, or improvement of facilities, equipment, or land for use by operation, lease, or otherwise in public transportation service, and all expenses incidental to the acquisition, construction, reconstruction, or improvement including designing, engineering, supervising, inspecting, surveying, mapping, relocation assistance, acquisition of rights-of-way, and replacement of housing sites.

(4) "Federally funded project" means a public transportation project proposed for funding under this Act which is being funded in part under the provisions of the Urban Mass Transportation Act of 1964, as amended, the Federal-Aid Highway Act of 1973, as amended, or other federal program for funding public transportation.

(5) "Local share requirement" means the amount of funds which are required and are eligible to match federally funded projects for the improvement of public transportation in this state.

(6) "Public transportation" means transportation by bus, rail, watercraft, or other means which provides general or specialized service to the public on a regular or continuing basis.

(7) "Urbanized area" means an area so designated by the United States Bureau of the Census or by general state law.

(8) "Ridesharing activities" means transportation provided by rubber-tired vehicles that carry no fewer than 10 nor more than 15 passengers and that are operated on a nonprofit basis.

(9) "Authority" means a metropolitan or regional authority created under Chapter 141, Acts of the 63rd Legislature, Regular Session 1973 (Article 1118x, Vernon's Texas Civil Statutes), or Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), or a city transit department created under Article 1118z, Revised Statutes . . . .

(10) "Designated recipient" means an authority, a municipality that is not included in an authority, a local governmental body, or a nonprofit entity providing rural public transportation services, that receives federal public transportation money through the State Department of Highways and Public Transportation or the federal Urban Mass Transportation Administration, or its successor.

(11) "Operating expenses" means any expense incurred in the daily operation of a public transportation system, including administrative expenses.

Revisor's Note

(1) Section 2(1), V.A.C.S. Article 6663c, refers to "acquisition, construction, reconstruction, or improvement" of facilities, equipment, or land. The reference to "reconstruction" is omitted from the revised law because "reconstruction" is included within
the meaning of "construction."

(2) Sections 2(2) and (3), V.A.C.S. Article 6663c, define the State Highway and Public Transportation Commission and the State Department of Highways and Public Transportation, respectively. The revised law omits these definitions because Section 201.001 of this code defines "commission" to mean the Texas Transportation Commission (the successor to the State Highway and Public Transportation Commission) and "department" to mean the Texas Department of Transportation (the successor to the State Department of Highways and Public Transportation). Those definitions apply to this chapter. The omitted definitions read:

(2) "Commission" means the State Highway and Public Transportation Commission.
(3) "Department" means the State Department of Highways and Public Transportation.

(3) Section 2(8), V.A.C.S. Article 6663c, defines "ridesharing activities" as being operated "on a nonprofit basis." The revised law omits the reference to nonprofit from the definition because it is substantive, and the revised law regarding ride-sharing activities (Section 456.042 of this code) clearly requires ride-sharing activities financed under this chapter to be nonprofit.

(4) The definitions of "Federal-Aid Highway Act," "Federal Transit Act," and "state-financed project" are added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetitions of the substance of the definitions.

Revised Law
Sec. 456.002. ADMINISTRATION AND PURPOSE. (a) The commission shall administer the formula and discretionary programs...
(b) Each public transportation program provided by this chapter is a matching grant program for public transportation projects. Approval by the United States of a proposed public transportation project means that the project is consistent with the purposes of this chapter and with the continuing, cooperative, and comprehensive regional transportation planning implemented in accordance with the Federal Transit Act and the Federal-Aid Highway Act. (V.A.C.S. Art. 6663c, Secs. 3(a) (part), 4(a), 5A(d).)

**Source Law**

Sec. 3. (a) The commission shall administer the formula program.

Sec. 4. (a) The commission shall administer the discretionary program.

[Sec. 5A]

(d) The state public transportation program provided by this Act is a matching grant program for public transportation projects. Federal approval of a proposed public transportation project means that the project is consistent with the purposes of this Act and with the continuing, cooperative, and comprehensive regional transportation planning implemented in accordance with the federal Urban Mass Transportation Act of 1964 (49 U.S.C. Section 1601 et seq.) and the Federal-Aid Highway Act of 1973 (49 U.S.C. Section 1602a).

**Revised Law**

Sec. 456.003. PARTICIPATION INELIGIBILITY. A transit authority is ineligible to participate in the formula or discretionary program provided by this chapter unless the authority was created under Chapter 453 or former Article 1118z, Revised Statutes, by a municipality having a population of less than 200,000. (V.A.C.S. Art. 6663c, Secs. 2(9) (part), 4(b), 5A(b).)

**Source Law**

[Sec. 2]

(9) "Authority" means ... or a city transit department created under Article 1118z, Revised Statutes, by a municipality having a population of not less than 200,000 according to the most recent federal census.

[Sec. 4]

(b) All designated recipients except authorities are eligible to participate in the discretionary
program authorized by this section.

[Sec. 5A]

(b) An authority may not receive money from the formula or discretionary program.

Revisor's Note

Section 2(9), V.A.C.S. Article 6663c, 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, Government Code (Code Construction Act), defines "population" as population according to the most recent federal decennial census. That definition applies to the revised law.

Revised Law

Sec. 456.004. GENERAL FINANCING APPLICATION REQUIREMENTS.

An application for project financing under this chapter must be certified and contain a statement by the applicant that:

(1) the proposed public transportation project is consistent with the continuing, cooperative, and comprehensive regional transportation planning implemented in accordance with the Federal Transit Act and the Federal-Aid Highway Act; and

(2) money is available to provide:

(A) 35 percent of the local share requirement, if the project is a federally financed capital improvement or planning project, or 50 percent of the local share requirement, if the project is a federally financed project for operating expenses; or

(B) 50 percent of the total cost of the public transportation capital improvement project, if the project is not described in Paragraph (A). (V.A.C.S. Art. 6663c, Sec. 5A(c).)

Source Law

(c) An application for money under this Act must be certified and contain a statement by the applicant that:
(1) money is available to provide:
(A) 35 percent of the local share requirement of federally assisted capital improvements or planning projects and 50 percent of the local share requirement of federally financed projects for operating expenses and administrative costs to be financed under this Act; or
(B) 50 percent of the total cost of other public transportation capital improvement projects; and
(2) the proposed public transportation project is consistent with continuing, cooperative, and comprehensive regional transportation planning implemented in accordance with the federal Urban Mass Transportation Act of 1964 (49 U.S.C. Section 1601 et seq.) and the Federal-Aid Highway Act of 1973 (49 U.S.C. Section 1602a).

Revisor's Note
Section 5A(c)(1)(A), V.A.C.S. Article 6663c, refers to "operating expenses and administrative costs." The reference to "administrative costs" is omitted from the revised law because the term is included in the definition of "operating expenses."

Revised Law
Sec. 456.005. EVALUATION OF PROJECT. In evaluating a project under the formula or discretionary program, the commission shall consider the need for fast, safe, efficient, and economical public transportation and the approval of the Urban Mass Transportation Administration, or its successor. (V.A.C.S. Art. 6663c, Secs. 3(k), 4(e).)

Source Law
[Sec. 3]
(k) In evaluating a project under this section, the commission shall consider the need for fast, safe, efficient, and economical public transportation and the approval of the federal Urban Mass Transportation Administration, or its successor.

Revised Law
Sec. 456.006. USE OF FINANCING. A designated recipient may
use money from the formula or discretionary program to provide:

(1) 65 percent of the local share requirement for a federally financed capital improvement project;

(2) 50 percent of the local share requirement for a federally financed project for operating expenses;

(3) 65 percent of the local share requirement for federally financed planning activities; and

(4) 50 percent of the total cost of a public transportation capital improvement project, if the designated recipient certifies that money from the United States is unavailable for the project and the commission determines that the project is vitally important to the development of public transportation in this state. (V.A.C.S. Art. 6663c, Sec. 5A(a).)

Source Law
Sec. 5A. (a) Except as provided by Subsection (b) of this section, designated recipients may use money from the formula and discretionary programs to provide:

(1) 65 percent of the local share requirement for federally financed projects for capital improvements;

(2) 50 percent of the local share requirement for projects for operating expenses and administrative costs;

(3) 50 percent of the total cost of a public transportation capital improvement project, if the designated recipient certifies that federal money is unavailable for the proposed project and the commission finds that the proposed project is vitally important to the development of public transportation in the state; and

(4) 65 percent of the local share requirement for federally financed planning activities.

Reviser's Note
(1) Section 5A(a), V.A.C.S. Article 6663c, states that Subsection (b) of that section is an exception to its requirements. Subsection (b) is revised as Section 456.003 of this code. The revised law omits the cross-reference because Section 456.003 clearly states an exception to the application of the entire chapter.

(2) Section 5A(a)(2), V.A.C.S. Article 6663c,
1 refers to "operating expenses and administrative costs." The revised law omits the reference to "administrative costs" for the reason stated in the reviser's note under Section 456.004 of this code.

Revised Law

Sec. 456.007. APPROPRIATIONS AND GRANTS. (a) The legislature may appropriate money for public transportation purposes from the portion of the state highway fund that is not dedicated by the constitution.

(b) The state may receive a grant for public transportation purposes from a public or private source. (V.A.C.S. Art. 6663c, Sec. 5.)

Source Law

Sec. 5. The Public Transportation Fund is established as a special fund in the State Treasury. The Public Transportation Fund may only be used by the State Department of Highways and Public Transportation in carrying out the responsibilities and duties of the commission and the department for public transportation purposes as established under this state law. The legislature may appropriate money for the Public Transportation Fund each biennium from the portion of the State Highway Fund that is not dedicated by the Texas Constitution. Grants of money to the state from public and private sources for public transportation shall be deposited in the Public Transportation Fund.

Reviser's Note

Section 5, V.A.C.S. Article 6663c, establishes the "Public Transportation Fund" in the state treasury and dedicates amounts in the fund for use in carrying out responsibilities and duties under that law. Reference to that fund is omitted from the revised law. Acting under authority of Section 403.094(a), Government Code, the comptroller abolished the public transportation fund, effective August 31, 1993. The revised law omits the reference to the dedication of the money deposited in the fund. Section 403.094(h), Government Code, provides that all statutory
dedications of revenue enacted before August 31, 1995, are void unless reenacted after September 1, 1991. The dedication in Section 5, V.A.C.S. Article 6663c, was enacted in 1975 and was not reenacted after September 1, 1991. The revised law is drafted accordingly.

Revised Law

Sec. 456.008. COMMISSION REPORT ON PUBLIC TRANSPORTATION PROVIDERS. (a) The commission shall prepare and issue a report on the performance of public transportation providers in this state during the previous 12-month period. The commission shall issue a report under this section at least once each state fiscal year.

(b) A report must include for each provider an examination of the following performance indicators, as defined by the commission:

1. operating cost per passenger and per revenue mile;
2. fare recovery rate;
3. average vehicle occupancy;
4. on-time performance;
5. number of accidents per 100,000 vehicle miles; and
6. number of total miles between mechanical road calls.

(c) The commission shall submit copies of each report issued under this section to the budget and planning division of the governor's office and the Legislative Budget Board not later than November 1 of the year following the period covered in the report.

(V.A.C.S. Art. 6663c, Sec. 5A(e) (part).)

Source Law

... At least once each fiscal year of the state, the commission shall issue a report on the performance of public transportation providers in this state for the preceding 12-month period. Not later than November 1 of the succeeding fiscal year, the commission shall submit copies of the report to the budget and planning division of the governor's office and to the Legislative Budget Board. The report must include for each provider an examination of the following performance indicators, as defined by the commission:

1. operating cost per passenger;
2. operating cost per revenue mile;
(3) fare recovery rate;
(4) average vehicle occupancy;
(5) on-time performance;
(6) the number of accidents per 100,000 vehicle miles; and
(7) the number of total miles between mechanical road calls.

[Sections 456.009-456.020 reserved for expansion]

SUBCHAPTER B. FORMULA PROGRAM

Revised Law

Sec. 456.021. BIENNIAL ALLOCATION. (a) The commission shall allocate to urban, urbanized, and rural areas under the formula program provided by this subchapter the amount appropriated from all sources to the commission each state fiscal biennium for public transportation, other than money from the United States and amounts specifically appropriated for coordination, technical support, or other administrative costs.

(b) The commission shall make the allocation at the beginning of each state fiscal biennium. (V.A.C.S. Art. 6663c, Sec. 3(a) (part).)

Source Law

... Except as provided by Subsection (j) of this section, at the beginning of each fiscal biennium of the state, the commission shall allocate to urban, urbanized, and rural areas on the basis of a formula program, an amount equal to the amount appropriated from all sources to the commission by the legislature for that biennium for public transportation, other than federal funds and amounts specifically appropriated for coordination, technical support, or other costs of administration. Amounts that are appropriated and that are required to be allocated as described by this section are, to the extent that they remain unexpended and unobligated at the end of the period for which they were appropriated, dedicated for subsequent use in the formula and discretionary programs as provided by this Act.

Revisor's Note

(1) Section 3(a), V.A.C.S. Article 6663c, requires a biennial allocation "[e]xcept as provided by Subsection (j)." The revised law omits the reference because Subsection (j), transferring money in the
second year of a biennium to the discretionary program
and revised as Section 456.023(b) of this code, is not
an exception to the original allocation.

(2) Section 3(a), V.A.C.S. Article 6663c,
dedicates unexpended and unobligated appropriations for
future use in the formula and discretionary programs.
The revised law omits the reference for the reason
stated in the revisor's note to Section 456.007 of this
code.

Revised Law
Sec. 456.022. ALLOCATION BY CATEGORIES. Under the formula
program the commission shall allocate:
(1) 50 percent of the money:
   (A) to urbanized areas that have populations of
       not less than 50,000 and that are not served by a transit
       authority; and
   (B) to areas not served by a transit authority
       but located in urbanized areas that have populations of not less
       than 50,000 and that include one or more transit authorities; and
(2) 50 percent of the money:
   (A) to urban areas that have populations of less
       than 50,000; or
   (B) to rural areas. (V.A.C.S. Art. 6663c, Sec.
3(b).)

Source Law
(b) The commission shall allocate the money to
two categories, as follows:
(1) 50 percent of the money must be
allocated in urbanized areas that have a population of
not less than 50,000 according to the most recent
federal census and that are not served by an authority
and to areas not served by an authority but located in
urbanized areas that have a population of not less than
50,000, according to the most recent federal census, and
that include one or more authorities; and
(2) 50 percent of the money must be
allocated in urban areas with a population of less than
50,000, according to the most recent federal census, or
in rural areas.
Revisor's Note

Section 3(b), V.A.C.S. Article 6663c, describes population numbers that are to be determined according to the most recent federal census. The revised law omits the references to the federal census for the reason stated in the revisor's note under Section 456.003 of this code.

Revised Law

Sec. 456.023. APPLICATION; USE OF MONEY NOT APPLIED FOR.

(a) A designated recipient may submit an application to the commission for financing of a project under the formula program.

(b) The commission shall administer under the discretionary program provided by Subchapter C any money that a designated recipient under the formula program has not applied for before the November commission meeting in the second year of a biennium.

(V.A.C.S. Art. 6663c, Secs. 3(g), (j).)

Source Law

(g) Designated recipients may submit project applications to the commission for consideration of funding through the formula program.

(j) Any money under this section that the designated recipient has not applied for before the November commission meeting in the second year of a state fiscal biennium shall be administered by the commission under the discretionary program described by Section 4 of this Act.

Revised Law

Sec. 456.024. DISTRIBUTION OF ALLOCATIONS. (a) Of the money allocated under Section 456.022(1), the commission shall distribute:

(1) 90 percent of the total amount to all designated recipients described by Section 456.022(1) that operate public transportation services; and

(2) 10 percent of the total amount to designated recipients described by Section 456.022(1) for federally financed projects selected by the commission.
The distribution required by Subsection (a)(1) is to each operating public transportation system that receives money in accordance with Section 1607a of the Federal Transit Act and is computed, except as provided by Section 456.025, as the sum of:

1. one-half of the total amount required by Subsection (a)(1) multiplied by the ratio that the population of the urbanized area bears to the total population of all urbanized areas in this state that are described by Section 456.022(1); and

2. one-half of the total amount required by Subsection (a)(1) multiplied by the ratio that the number of inhabitants per square mile of the urbanized area bears to the combined number of inhabitants per square mile of all urbanized areas in this state that are described by Section 456.022(1).

Of the money allocated under Section 456.022(2), the commission shall distribute:

1. 90 percent of the total amount to all designated recipients described by Section 456.022(2) that operate public transportation services in urban or rural areas; and

2. 10 percent of the total amount to designated recipients for federally financed rural public transportation projects selected by the commission.

The distribution required by Subsection (c)(1) must be under the formula $D = T \times \frac{F}{A}$, in which:

1. "$D$" is the amount distributed to a designated recipient;

2. "$T$" is the total amount to be distributed under Subsection (c)(1) for a state fiscal year;

3. "$F$" is the amount of public transportation money from the United States that is available to the state through the formula grant program for areas other than urbanized areas in accordance with Section 1614 of the Federal Transit Act, including money that was transferred for that purpose in accordance with Section 1607a of that Act, and that was approved for the designated recipient during the preceding state fiscal year; and
(4) "A" is the total amount of public transportation money described by Subdivision (3) for all designated recipients under Subsection (c)(1). (V.A.C.S. Art. 6663c, Secs. 3(d), (e), (h), (i).)

Source Law

(d) Of the money allocated under Subsection (b)(1) of this section, the commission shall distribute an amount equal to the sum of:

1. 90 percent of the total amount to designated recipients operating public transportation services in urbanized areas, each with a population of not less than 50,000, according to the most recent federal census; and
2. 10 percent of the total amount to designated recipients for federally assisted public transportation projects in urbanized areas, each with a population of not less than 50,000, according to the most recent federal census, selected by the commission.

(e) The commission shall distribute the money apportioned under Subsection (d)(1) of this section to each operating transit system that is receiving funds in accordance with Section 1607a of the Federal Transit Act (49 U.S.C. Section 1607a(a)(1)) in an amount equal to the sum of:

1. one-half of the total amount allocated to that category multiplied by the ratio that the population of the urbanized area bears to the total population of all urbanized areas in the state in that category operating transit systems and receiving funds in accordance with Section 1607a of the Federal Transit Act (49 U.S.C. Section 1607a(a)(1)); and
2. one-half of the total amount allocated to that category multiplied by the ratio that the number of inhabitants per square mile of the urbanized area bears to the combined number of inhabitants per square mile of all urbanized areas in the state in that category operating transit systems and receiving funds in accordance with Section 1607a of the Federal Transit Act (49 U.S.C. Section 1607a(a)(1)).

(h) Of the money allocated under Subsection (b)(2) of this section, the commission shall distribute:

1. 90 percent of the total amount to designated recipients operating public transportation services in urban areas, each with a population of less than 50,000, according to the most recent federal census, or in rural areas; and
2. 10 percent of the total amount to designated recipients for federally assisted rural public transportation projects, selected by the commission.

(i) The commission shall distribute the money apportioned under Subsection (h)(1) of this section in accordance with the following formula:

\[ D = T \times \frac{F}{A} \]

where:
- \( D \) = the amount distributed to a designated recipient;
- \( T \) = the total amount apportioned under Subsection (h)(1) of this section for a fiscal year of the state;
"P" = the amount of federal public transportation money available to the state through the federal formula grant program for areas other than urbanized areas in accordance with Section 1614 of the federal Urban Mass Transportation Act (49 U.S.C. Section 1614), including money transferred for that purpose in accordance with Section 1607a of that Act (49 U.S.C. Section 1607a), that was approved during the state's preceding fiscal year for the designated recipient; and

"A" = the amount of federal public transportation money available to the state through the federal formula grant program for areas other than urbanized areas in accordance with Section 1614 of the federal Urban Mass Transportation Act (49 U.S.C. Section 1614), including money transferred for that purpose in accordance with Section 1607a of that Act (49 U.S.C. Section 1607a), that was approved during the state's preceding fiscal year for all designated recipients eligible to receive money under Subsection (h)(1) of this section.

Reviser's Note
Sections 3(d) and (h), V.A.C.S. Article 6663c, describe population numbers that are to be determined according to the most recent federal census. The revised law omits the references to the federal census for the reason stated in the reviser's note under Section 456.003 of this code.

Revised Law
Sec. 456.025. EXCLUSIONS FROM DISTRIBUTION COMPUTATIONS.
(a) The computation required by Section 456.024(b)(1) shall exclude:

(1) the population residing in the area of a transit authority ineligible under Section 456.003 to participate in the formula program; and

(2) for an urbanized area that has a population of 250,000 or more, the population residing outside the territory of a municipality served by a public transportation system.

(b) The computation required by Section 456.024(b)(2) shall exclude:

(1) the number of inhabitants per square mile in the area of a transit authority ineligible under Section 456.003 to participate in the formula program; and
(2) for an urbanized area that has a population of 250,000 or more, the number of inhabitants per square mile attributable to areas outside the territory of a municipality served by a public transportation system. (V.A.C.S. Art. 6663c, Sec. 3(f).)

Source Law

(f)(1) The calculation required by Subsection (e)(1) of this section shall not include:
(A) the population residing within
the area of an authority; or
(B) for urbanized areas of 250,000 or more, the population residing outside of the corporate limits of a municipality served by a transit system.

(2) The calculation required by Subsection (e)(2) of this section shall not include:
(A) the number of inhabitants per
square mile attributable to an authority; or
(B) for urbanized areas of 250,000 or more, the inhabitants per square mile attributable to areas outside the corporate limits of a municipality served by a transit system.

Revisor's Note

Section 3(f), V.A.C.S. Article 6663c, excludes from computations areas in an "authority." Section 2(9) of that article defines "authority" to exclude authorities created under a certain law by a municipality having a certain range of population. That exclusion is revised as Section 456.003 of this code, and the revised law for this section is drafted accordingly.

Revised Law

Sec. 456.026. REPORTING BY DESIGNATED RECIPIENTS. The commission by rule shall establish a performance-based reporting system for all designated recipients eligible for financing under the formula program. (V.A.C.S. Art. 6663c, Sec. 5A(e) (part).)

Source Law

(e) The commission shall adopt rules establishing a performance-based reporting system for all designated recipients eligible for funding under the formula program. . . .
SUBCHAPTER C. DISCRETIONARY PROGRAM

Sec. 456.041. PROJECT FINANCING APPLICATION BY DESIGNATED RECIPIENT. (a) To participate in the discretionary program provided by this subchapter, a designated recipient must submit to the commission an application for project financing. The application must contain:

(1) a description of the project, including an estimate of the population that the project would benefit and the anticipated completion date of the project;

(2) a statement of the estimated cost of the project, including an estimate of the portion of the cost of the project financed by the United States; and

(3) the certification required by Section 456.004.

(b) After the commission receives an application under this section, the commission shall approve or deny the application and notify the applicant in writing of its decision. (V.A.C.S. Art. 6663c, Secs. 4(c), (d).)
(1) Section 4(c), V.A.C.S. Article 6663c, refers to participation in the discretionary program "for a state fiscal biennium." The revised law omits the phrase as unnecessary because the text of the chapter clearly provides for biennial financing and project approvals under the program.

(2) Section 4(c)(3), V.A.C.S. Article 6663c, provides for a certification "as required by Section 5A(c) of this Act, that local funds are available for local share requirements and that proposed projects are consistent with comprehensive regional transportation plans." Section 5A(c) of Article 6663c is revised as Section 456.004 of this code, and the revised law is drafted accordingly. The revised law omits the statement of the contents of the certification as unnecessary.

Revised Law

Sec. 456.042. RIDE-SHARING ACTIVITIES. (a) A designated recipient or a local government that has the power to operate a public transportation system, directly or by contract, in an urbanized or rural area may apply to the commission and receive money from the discretionary program for a capital expenditure to operate a ride-sharing activity.

(b) The commission shall provide 80 percent of the cost of capital expenditures for a ride-sharing activity of a project it approves under this section.

(c) An applicant for financing of a ride-sharing activity must certify that:

(1) money is available to provide 20 percent of the cost of the capital expenditure;

(2) the equipment the applicant provides for the ride-sharing activity will be used primarily for commuting...
purposes;

(3) the ride-sharing activity will be operated without state operating subsidies and under procedures required by Subsection (d); and

(4) any financing available from the United States Department of Transportation to supplement state and locally financed capital expenditures for ride-sharing activities will be applied for and used for the replacement of van pool equipment in the manner required by Subsections (e) and (f).

(d) A recipient of money under this section must establish procedures to purchase van pool equipment that are satisfactory to the state and ensure that the equipment is operated for commuter purposes as a nonprofit activity in the manner required by Subsection (e).

(e) A recipient of money under this section must deposit all revenue in excess of operating expenses that is derived from the use of state-financed van pool equipment in a contingency reserve account designated for use in the replacement of state-financed van pool equipment at the end of the useful life of the equipment.

(f) The state financial interest in the purchase of replacement van pool equipment is based:

(1) on the ratio that money from the contingency reserve account that is used in the purchase of replacement equipment bears to the total price of the equipment; and

(2) on the ratio that state money bears to the total price of the equipment being replaced.

(g) A recipient of money under this section shall return to the state the portion of any remaining money in the contingency reserve account when ride-sharing activities using state-financed van pool equipment cease that represents the ratio of state-to-local financing under the activities. (V.A.C.S. Art. 6663c, Secs. 4(f), (h), (i), (j).)
(f) Designated recipients and any local government having the power to operate or maintain a public transportation system, directly or by contract, within an urbanized or rural area may apply for and receive money from the discretionary program for capital expenditures to carry out ridesharing activities. If the commission approves an application to finance ridesharing activities, the commission shall provide 80 percent of the cost of the capital expenditures. An applicant for financing for ridesharing activities must certify that:

1. money is available to provide the remaining 20 percent of the cost of the expenditures;
2. equipment furnished by the applicant in connection with ridesharing activities will be used primarily for commuting purposes;
3. ridesharing activities will be operated on a nonprofit basis, without state operating subsidies, and with accountability in operating the van pool equipment; and
4. any funding available through the U.S. Department of Transportation to participate in the capitalized portion of state and locally supported ridesharing activities may be applied for and utilized to supplement the availability of local resources for the recapitalization of van pool equipment.

(h) "Nonprofit basis" means that all revenues derived in excess of operating expense, related to use of state assisted van equipment, shall be deposited into a designated account (contingency reserve) and earmarked for recapitalization of van equipment. Should any money remain unexpended at the cessation of ridesharing activities using state assisted equipment, such money shall be distributed back to the state and local funding entity on a pro rata basis.

(i) "Recapitalization of van equipment" means the use of contingency reserve financing derived from the operation of state assisted vans, not required to support other eligible operating costs, to replace state assisted van equipment at the end of its useful life. The state financial interest in the purchase of replacement van equipment shall be based upon the percentage of contingency reserve financing used to purchase the replacement vans and the proportionate state financial interest in the purchase of the original van equipment.

(j) "Accountability" means that procedures satisfactory to the state will be established by recipients of state assistance to purchase van equipment which ensures the use of such van equipment for commuter purposes and that such equipment is operated on a nonprofit basis.

Revisor's Note

Section 1, V.A.C.S. Article 6663c, makes legislative findings and states the purposes of Article 6663c. The revised law omits the findings because they have been executed and omits the purposes because they
are nonsubstantive. The omitted section reads:

Art. 6663c
Sec. 1. (a) The legislature finds that:

(1) transportation is the lifeblood of an urbanized society, and the health and welfare of that society depend on the provision of efficient, economical, and convenient transportation within and between urban areas;

(2) public transportation is an essential component of the state's transportation system;

(3) energy consumption and economic growth are vitally influenced by the availability of public transportation;

(4) providing public transportation has become so financially burdensome that private industry can no longer provide service in many areas in the state and that the continuation of this essential service on a private or proprietary basis is threatened; and

(5) providing public transportation is a public, governmental responsibility and a matter of direct concern to state government and to all the citizens of the state.

(b) The purposes of this Act are to provide:

(1) improved public transportation for the state through local governments acting as agents and instrumentalities of the state;

(2) state assistance to local governments and their instrumentalities in financing public transportation systems to be operated by local governments as determined by local needs; and

(3) coordinated direction by a single state agency of both highway development and public transportation improvement.

[Chapters 457-470 reserved for expansion]

SUBTITLE Z. MISCELLANEOUS ROADWAY PROVISIONS

CHAPTER 471. RAILROAD AND ROADWAY CROSSINGS

Sec. 471.001. DUTY TO MAINTAIN CROSSINGS .......................... 2073
Sec. 471.002. SIGNS AT CROSSINGS .......................... 2074
Sec. 471.003. TELEPHONE SERVICE TO REPORT MALFUNCTIONS OF MECHANICAL SAFETY DEVICES AT CROSSINGS ...... 2075
Sec. 471.004. WARNING SIGN VISIBILITY AT RAILROAD GRADE CROSSINGS .......................... 2077
Sec. 471.005. DISMANTLING OF WARNING SIGNALS AT RAILROAD GRADE CROSSINGS; OFFENSE .......................... 2081
Sec. 471.001. DUTY TO MAINTAIN CROSSINGS. (a) A railway company shall maintain the part of its roadbed and right-of-way that is crossed by a public street of a Type B general-law municipality in proper condition for use by travelers. (b) A railway company that does not make needed repairs before the 31st day after the date the municipal marshal gives written notice to the section boss of the section where repairs are needed is liable to the municipality for a penalty of $25 for each week the railway company does not make needed repairs. The municipality may sue to recover the penalty. (V.A.C.S. Art. 1151.)

Source Law

Art. 1151. Every railroad company in this State shall place and keep that portion of its roadbed and right of way over or across which any public street of any incorporated town or village may run, in proper condition for the use of the traveling public; and in case of its failure to do so for thirty days after written notice given to the section boss of the section where such work or repairs are needed, by the town marshal of such town or village, it shall be liable to a penalty of twenty-five dollars for each week such railroad may fail or neglect to comply with the requirements of this article, recoverable in any court having jurisdiction of the amount involved, in a suit in the name of such town or village.

Revisor's Note

(1) V.A.C.S. Article 1151 refers to a railway company "in this State." The revised law omits as unnecessary "in this State" because the state does not have the power to regulate railway companies in other states.
(2) V.A.C.S. Article 1151 refers to "place and keep." The revised law substitutes "maintain" for "place and keep" for purposes of brevity.

(3) V.A.C.S. Article 1151 refers to an "incorporated town or village" and "town marshal." The revised law substitutes the appropriate form of "municipality" for the other quoted terms because "municipality" is the term used in the Local Government Code. In addition, the legislative history of this reference reveals that it applies only to a Type B general-law municipality, as defined by the Local Government Code. The revised law is written to clarify this issue.

(4) V.A.C.S. Article 1151 provides that the penalty is recoverable by suit brought "in any court having jurisdiction of the amount involved." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 471.002. SIGNS AT CROSSINGS. (a) A railway company shall place at each place where its railroad crosses a first or second class public road a sign with large and distinct letters giving notice that the railroad is near and warning persons to watch for railroad cars. The sign must be high enough above the road to permit the free passage of vehicles.

(b) A railway company that does not erect a sign required by Subsection (a) is liable for a resulting injury to a person or resulting damage to property. (V.A.C.S. Art. 6370.)
Art. 6370. Such corporation shall erect at all points where its road shall cross any first or second class public road, at a sufficient elevation from such public road to admit of the free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railroad and warn persons of the necessity of looking out for the cars; and any company neglecting or refusing to erect such signs shall be liable in damages for all injuries occurring to persons or property from such neglect or refusal.

Sec. 471.003. TELEPHONE SERVICE TO REPORT MALFUNCTIONS OF MECHANICAL SAFETY DEVICES AT CROSSINGS. (a) The Department of Public Safety shall maintain a statewide toll-free telephone service to receive a report of a malfunction of a device, including a signal or crossbar, placed at an intersection of a railroad track and a public road to promote safety.

(b) At each intersection of a railroad track and a public road that is maintained by the state or a municipality and at which a mechanical safety device is placed, the Texas Department of Transportation shall affix on the crossbars of the device the telephone number, an explanation of its purpose, and the crossing number. At each intersection of a railroad track and a public road that is maintained by a political subdivision other than a municipality and at which a mechanical safety device is placed, the political subdivision shall affix on the crossbars of the device the telephone number, an explanation of its purpose, and the crossing number. The Texas Department of Transportation shall provide to the political subdivision the sign or label displaying the telephone number. A railway company shall permit personnel to affix the telephone number on the company's property as required by this subsection.

(c) The Department of Public Safety shall notify the identified railway company of each report of a malfunction received under Subsection (a).

(d) The Department of Public Safety shall maintain a
computerized list of each intersection of a railroad track and a public road and of the railroad crossing safety equipment located at each intersection, using crossing numbers compiled by the Texas Department of Transportation.

(e) Not later than the fifth day after the date it places railroad crossing safety equipment in operation at an intersection subject to this section, a state agency or a political subdivision of the state other than a municipality shall notify the Department of Public Safety of:

(1) the location and type of the equipment installed;

and

(2) the date it was placed in operation.

(f) The state, an agency or political subdivision of the state, or a railway company is not liable for damages caused by an action taken under this section or failure to perform a duty imposed by this section. Evidence may not be introduced in a judicial proceeding that the telephone service required by this section exists or that the state or railway company relies on the service.

(g) Except as provided by Subsection (d), a state agency is not required to make or retain a permanent record of information obtained in implementing this section. (V.A.C.S. Art. 6370a.)

Source Law

Art. 6370a
Sec. 1. (a) The Texas Department of Public Safety shall establish throughout the state an incoming toll-free telephone service to receive calls about malfunctions of signals, crossbars, and other mechanical devices erected to promote safety at intersections of railroad tracks and public roads. The Texas Department of Transportation shall affix the telephone number, an explanation of its purposes, and the crossing number on the crossbars of each intersection, at which a mechanical safety device is erected, of railroad tracks and a state-maintained public road or a public road that is maintained by a municipality. A political subdivision of the state, other than a municipality, responsible for maintaining a public road shall affix the telephone number, an explanation of its purposes, and the crossing number at each intersection, at which a mechanical safety device is erected, of railroad tracks and the public road. The sign or label displaying the telephone number shall be provided by the Texas Department of Transportation.
to the political subdivision responsible for affixing
the telephone number. Each railroad company shall
permit personnel to affix the telephone number on their
private property as provided by this section. The
Texas Department of Public Safety shall maintain the
operation of a statewide toll-free inward WATS service.
The Department of Public Safety will notify the
identified railroad company of the report.

(b) The Texas Department of Public Safety shall
maintain a computerized listing of all intersections of
railroad tracks and public roads and the railroad
crossing safety equipment located at those
intersections, using crossing numbers compiled by the
Texas Department of Transportation.

(c) An agency of the state, including the Texas
Department of Transportation, or a political
subdivision of the state other than a municipality
shall, not later than five days after the placement in
operation of any railroad crossing safety equipment at
an intersection subject to this section, notify the
Texas Department of Public Safety of the location and
type of the equipment installed and the date it was
placed in operation.

Sec. 2. A court may not hold the state, an
agency or subdivision of the state, or a railroad
company liable for damages caused by an action taken
under this Act or failure to perform a duty imposed by
this Act. No evidence may be introduced in a trial or
judicial proceeding that such service exists or is
relied upon by the state or railroad company.

Sec. 3. Except as provided by Section 1(b) of
this Act, a state agency is not required to make or
retain permanent records of information obtained in
implementation of this Act.

Revisor's Note

(1) V.A.C.S. Article 6370a refers to the "Texas
Department of Public Safety." The revised law
substitutes "Department of Public Safety" for "Texas
Department of Public Safety" for the reason stated in
the revisor's note to Section 1.005 of this code.

(2) Section 2, V.A.C.S. Article 6370a, refers to
a "trial or judicial proceeding." The reference to
"trial" is omitted from the revised law because "trial"
is included within the meaning of "judicial
proceeding."

Revised Law

Sec. 471.004. WARNING SIGN VISIBILITY AT RAILROAD GRADE
CROSSINGS. (a) The department shall develop guidelines and
specifications for the installation and maintenance of reflecting
material at each unsignaled crossing. The material shall be affixed to the back and support post of each crossbuck in a manner that reflects light from vehicle headlights to focus attention on the presence of the unsignaled crossing.

(b) The department shall pay the cost of initial installation of reflecting material from money appropriated to the department to maintain grade crossing warning devices. The department or the local jurisdiction responsible for maintaining the roadway at each grade crossing shall pay the maintenance costs of the material.

(c) The state, an agency or political subdivision of the state, or a railway company is not liable for damages caused by an action taken under this section or failure to perform a duty imposed by this section. Evidence may not be introduced in a judicial proceeding that reflecting material exists or that the state or railway company relies on the material.

(d) The department shall adopt rules governing the installation and maintenance of reflecting material at grade crossings.

(e) A railway company shall permit department personnel to affix the reflecting material on the company's property.

(f) In this section:

(1) "Active warning device" means an automatically activated warning device, including a bell, flashing light, gate, or wigwag.

(2) "Crossbuck" means a standard grade crossing warning sign designated as Number R 15-1 and described in the Manual of Uniform Traffic Control Devices issued by the United States Department of Transportation, Federal Highway Administration.

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

(4) "Grade crossing" means the intersection at grade of a railroad and a roadway constructed and maintained with public
money.

(5) "Reflecting material" means material that reflects light so that the paths of the reflected light rays are parallel to those of the incident rays.

(6) "Unsignaled crossing" means a grade crossing not protected by active warning devices.

(7) "Warning device" means a traffic control sign, including an active warning device or crossbuck, the purpose of which is to alert motorists of a grade crossing. (V.A.C.S. Art. 6370b, Secs. 1, 2, 3, 4, 5 {part}.)

Source Law

Art. 6370b
Sec. 1. In this Act:
(1) "Active warning device" means a bell, flashing light, gate, wigwag, or other automatically activated warning device.
(2) "Crossbuck" means a standard railroad/highway crossing warning sign designated as Number R 15-1, and described in the Manual of Uniform Traffic Control Devices, issued by the United States Department of Transportation, Federal Highway Administration.
(3) "Grade crossing" means the intersection of a railroad and a public roadway at grade.
(4) "Nonsignalized crossing" means a grade crossing not protected by active warning devices.
(5) "Public roadway" means a roadway built and maintained with public funds.
(6) "Retroreflectorized material" means material that reflects light so that the paths of the reflected light rays are parallel to those of the incident rays.
(7) "SDHPT" means the State Department of Highways and Public Transportation.
(8) "Warning device" means an active warning device, crossbuck, or other traffic control sign, the purpose of which is to alert motorists of a grade crossing.

Sec. 2. The SDHPT shall develop guidelines and specifications for the installation and maintenance of retroreflectorized material at all public grade crossings not protected by active warning devices. The retroreflectorized material shall be affixed to the backs of crossbucks and their support posts in a manner that retroreflects light from vehicle headlights to focus attention to the presence of a nonsignalized crossing.

Sec. 3. The cost of initial installation of retroreflectorized material shall be paid from money appropriated to the SDHPT for the purpose of maintaining grade crossing warning devices. Subsequent maintenance costs of the retroreflectorized material shall be paid by the SDHPT or the local jurisdiction responsible for maintaining the roadway at each grade crossing.
Sec. 4. A court may not hold the state, an agency or subdivision of the state, or a railroad company liable for damages caused by an action taken under this Act or failure to perform a duty imposed by this Act. No evidence may be introduced in a trial or judicial proceeding that retroreflectorized material exists or is relied upon by the state or railroad company.

Sec. 5. The SDHPT shall adopt rules governing the installation and maintenance of retroreflectorized material at public grade crossings. Each railroad company shall permit SDHPT personnel to affix the retroreflectorized material on their private property.

Revisor's Note

(1) Section 1(7), V.A.C.S. Article 6370b, refers to the "State Department of Highways and Public Transportation." The revised law substitutes "Texas Department of Transportation" for "State Department of Highways and Public Transportation" for the reason stated in the revisor's note to Section 201.003 of this code.

(2) Section 4, V.A.C.S. Article 6370b, refers to a "trial or judicial proceeding." The reference to "trial" is omitted from the revised law for the reason stated in Revisor's Note (2) to Section 471.003 of this code.

(3) The revised law omits the requirements in Section 5, V.A.C.S. Article 6370b, that the department adopt rules governing the installation and maintenance of reflecting material at grade crossings within six months of the effective date of V.A.C.S. Article 6370b and that installation of the material be completed within two years after the effective date of that article because those provisions are executed. The omitted law reads:

[Sec. 5. The SDHPT shall adopt rules governing the installation and maintenance of retroreflectorized material at public grade crossings] within six months of the effective date of this Act. Installation of the material shall be completed within two years of the effective date of this Act. . . .
Sec. 471.005. DISMANTLING OF WARNING SIGNALS AT RAILROAD GRADE CROSSINGS; OFFENSE. (a) A person may not dismantle a warning signal at a grade crossing on an active rail line, as defined by rule of the Texas Department of Transportation, if the cost of the warning signal was originally paid entirely or partly from public money unless the person:

(1) obtains a permit from the governmental entity that maintains the road or highway that intersects the rail line at the grade crossing; and

(2) pays that governmental entity an amount equal to the present salvage value of the warning signal, as determined by the governmental entity.

(b) The governmental entity shall grant the permit if:

(1) payment is received; and

(2) the entity finds that removal of the warning signal will not adversely affect public safety.

(c) Money received under Subsection (a)(2) shall be deposited in the state treasury.

(d) This section does not apply to a Class I or Class II railroad, as defined by Interstate Commerce Commission regulations.

(e) A person commits an offense if the person violates this section. An offense under this section is a Class C misdemeanor.

(f) The Texas Department of Transportation may adopt rules necessary to administer this section.

(g) In this section:

(1) "Grade crossing" has the meaning assigned by Section 472.004(f).

(2) "Warning signal" means a traffic control device that is activated by the approach or presence of a train, including a flashing light signal, an automatic gate, or a similar device that displays to motorists a warning of the approach or presence of a train. (V.A.C.S. Art. 637od.)
Source Law

Art. 6370d

Sec. 1. In this Act:

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

(2) "Grade crossing" has the meaning assigned by Section 1, Chapter 269, Acts of the 71st Legislature, Regular Session, 1989 (Article 6370b, Vernon's Texas Civil Statutes).

(3) "Warning signal" means a traffic control device that is activated by the approach or presence of a train, including a flashing light signal, an automatic gate, or a similar device that displays to motorists a warning of the approach or presence of a train.

Sec. 2. (a) A person may not dismantle a warning signal at a grade crossing on an active rail line, as defined by the department by rule, if the cost of the warning signal was originally paid either entirely or partly from public funds unless the person:

(1) obtains a permit from the governmental entity that maintains the road or highway that intersects the rail line at the grade crossing; and

(2) pays to the governmental entity that maintains the road or highway that intersects the rail line at the grade crossing an amount equal to the present salvage value of the warning signal, as determined by the governmental entity under applicable law.

(b) The governmental entity shall grant the permit if:

(1) proper payment is received; and

(2) the entity finds that removal of the warning signal will not adversely affect public safety.

(c) The amounts received under Subsection (a)(2) of this section shall be deposited in a special fund in the state treasury to be known as the railroad crossing warning signal fund, which may be appropriated only to the department for the maintenance and improvement of warning signals at grade crossings.

(d) The provisions of this Act shall not apply to Class I or Class II railroads as defined by Interstate Commerce Commission rules and regulations.

Sec. 3. A person who violates any provision of this Act commits an offense. An offense under this Act is a Class C misdemeanor.

Sec. 4. The department may adopt any rules necessary to administer this Act.

Revisor's Note

(1) Section 1(2), V.A.C.S. Article 6370d, refers to Section 1, Chapter 269, Acts of the 71st Legislature, Regular Session, 1989 (Article 6370b, Vernon's Texas Civil Statutes). That statute is codified in this code as Section 472.004(f), and the revised law is drafted accordingly.

(2) Section 2(a)(2), V.A.C.S. Article 6370d,
refers to a determination by a governmental entity "under applicable law." The revised law omits "under applicable law" as unnecessary because it is implied that a governmental entity is subject to applicable law.

(3) Section 2(b)(1), V.A.C.S. Article 6370d, refers to "proper" payment. The revised law omits "proper" because payment that is improper is not payment.

(4) Section 2(c), V.A.C.S. Article 6370d, requires that money received by a governmental entity under Section 2(a)(2), V.A.C.S. Article 6370d, be deposited in a special fund in the state treasury to be known as the railroad crossing warning signal fund and provides that money in the fund may be appropriated only to the department for the maintenance and improvement of warning signals at grade crossings. The references to the fund and the dedication of money in the fund are omitted from the revised law. Under Section 403.094(h), Government Code, all funds or special accounts in the state treasury in existence on August 31, 1995, established by state statute dedicating state revenue for a particular purpose or entity are abolished on that date, and all statutory dedications of state revenue, other than statutory dedications enacted to comply with state constitutional or requirements of the United States enacted before that date are null and void as of that date.

Revised Law
Sec. 471.006. USE OF BELL AND WHISTLE OR SIREN AT CROSSINGS; OFFENSE. (a) A railway company shall place on each locomotive:
(1) a bell weighing at least 30 pounds; and
(2) a steam whistle, air whistle, or air siren.
(b) The engineer in charge of the locomotive shall ring the bell and blow the whistle or siren at least one-quarter mile from the place where the railroad crosses a public road or street. The engineer shall continue to ring the bell until the locomotive has crossed the road or stopped.

(c) The railway company is liable for any damages sustained by a person because of a violation of Subsection (a) or (b).

(d) The engineer in charge of the locomotive commits an offense if the engineer violates Subsection (b). An offense under this subsection is a misdemeanor punishable by a fine of not less than $5 or more than $100.

(e) Notwithstanding Subsections (a) and (b), the governing body of a municipality having a population of at least 5,000 may regulate by ordinance the ringing of bells and blowing of whistles and sirens within its limits. Compliance with the ordinance is compliance with those subsections and a sufficient warning to the public at a crossing the ordinance affects. (V.A.C.S. Arts. 6371 (part), 6559h-11 (part).)

Source Law

Art. 6371. A bell of at least thirty (30) pounds weight and a steam whistle, air whistle or air siren shall be placed on such locomotive engine, and the steam whistle, the air whistle or air siren shall be sounded and the bell rung at a distance of at least eighty (80) rods from the place where the railroad shall cross any public road or street, and such bell shall be kept ringing until it shall have crossed such public road, or stopped; . . . and the corporation operating such railways shall be liable for all damages which shall be sustained by any person by reason of any such neglect . . . .

Art. 6559h-11. Any engineer having charge of a locomotive engine . . . who shall fail to blow the whistle and ring the bell on such engine at the distance of at least eighty (80) rods from the place where the railroad shall cross any public road or streets, or who shall fail to keep said bell ringing until such engine shall have crossed said road or street or stopped, shall be fined not less than Five ($5.00) Dollars nor more than One Hundred ($100.00) Dollars . . . ; provided, however, that the governing bodies of every city or town having a population of five thousand (5,000) or more inhabitants according to the last Federal Census may regulate by ordinance the ringing of bells and blowing of whistles within their corporate limits, and a compliance with said ordinance, will be full compliance with the terms and provisions
of this Act and a sufficient warning to the public at such crossings as such ordinance may affect.

Revisor's Note

(1) V.A.C.S. Article 6559h-11 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) V.A.C.S. Articles 6371 and 6559h-11 refer to the measurement "eighty (80) rods." The revised law substitutes "one-quarter mile," an equivalent measurement, because distances on roads, streets, and railroads are more commonly measured in miles than in rods.

(3) That part of V.A.C.S. Article 6559h-11 that is not codified in this code is amended in a conforming amendment to this code.

Revised Law

Sec. 471.007. OBSTRUCTING RAILROAD CROSSINGS; OFFENSE. (a) An officer, agent, servant, or receiver of a railway company commits an offense if the person wilfully obstructs for more than five minutes a street, railroad crossing, or public highway by permitting a train to stand on the crossing.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $5 or more than $100.

(c) An officer making an arrest for an offense under this section shall prepare in duplicate a citation to appear in court showing:
(1) the name and address of the person;
(2) the offense charged; and
(3) the time and place the person is to appear in court.

(d) The conductor of the train is an agent for service of the citation. The person served the citation gives a written promise to appear in court by signing the citation in duplicate. The arresting officer shall keep the original, and the person signing shall keep the copy. The officer shall release the person from custody after the person signs the citation.

(e) The hearing must be before a magistrate who has jurisdiction of the offense in the municipality or county in which the offense is alleged to have been committed.

(f) An appearance by counsel complies with the written promise to appear in court. (V.A.C.S. Art. 6701d-5.)

Source Law

Art. 6701d-5
Sec. (1). Any officer, agent, servant or receiver of any railway corporation who wilfully obstructs for more than five minutes at any one time any street, railway crossing or public highway by permitting their train to stand on or across such crossing, shall be fined not less than five nor more than one hundred dollars.

Sec. (2). An officer making an arrest for an offense under this article shall prepare in duplicate a citation to appear in court showing the name and address of the individual, the offense charged, and the time and place when and where the individual shall appear in court. The conductor of the train is an agent for the service of the citation. The person served the citation gives a written promise to appear in court by signing the citation in duplicate. The arresting officer shall keep the original, and the person signing shall keep the copy. The officer shall release the person from custody after the person signs the citation.

Sec. (3). The hearing must be before a magistrate within the city or county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense.

Sec. (4). A written promise to appear in court may be complied with by an appearance by counsel.

Reviser's Note

(1) Section 1, V.A.C.S. Article 6701d-5, refers to permitting a train to stand "on or across" a
crossing. The reference to "across" is omitted from the revised law because "across" is included within the meaning of "on."

(2) Section 3, V.A.C.S. Article 6701d-5, refers to a "city." The revised law substitutes the term "municipality" for "city" because that is the term used in the Local Government Code.

Revised Law

Sec. 471.008. FRANCHISE TO OBSTRUCT STREET CROSSING. (a) The governing body of a municipality by ordinance may grant a franchise to a railway company to obstruct a street crossing, other than a crossing of a designated state highway, by a passenger train for the purpose of receiving or discharging passengers, mail, express, or freight for a longer period than specified by Section 472.007.

(b) Section 471.007 does not apply to a street crossing named in an ordinance granting a franchise under this section.

(c) This section does not apply to a municipality having a special charter unless it amends its charter to adopt this section.

(V.A.C.S. Art. 6701d-6.)

Source Law

Art. 6701d-6. The city council of any incorporated city may by ordinance grant a franchise to a railway company to obstruct a street crossing, not a part of a "Designated State Highway," by railway passenger trains for the purpose of receiving and discharging passengers, mail, express or freight, for a longer time than specified herein, and may enact and enforce reasonable ordinances in the premises. When any such franchise has been granted under the provisions of this law, the street crossing named therein shall be excepted from the preceding article. The provisions hereof shall not apply to a city having a special charter unless it shall first be amended so as to adopt the provisions hereof.

Revisor's Note

(1) V.A.C.S. Article 6701d-6 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" for the reason stated in Revisor's Note (2) under Section 471.007 of this code.

(2) V.A.C.S. Article 6701d-6 refers to "the preceding article," meaning V.A.C.S. Article 6701d-5. That statute is codified in this code as Section 471.007, and the revised law is drafted accordingly.

CHAPTER 472. MISCELLANEOUS PROVISIONS

SUBCHAPTER A. GOVERNMENT CONTRACTS FOR JOINT PAYMENT OF CERTAIN HIGHWAY COSTS

Sec. 472.001. CONTRACTS BETWEEN CERTAIN GOVERNMENTAL ENTITIES TO ENGAGE IN JOINT PROJECT

Sec. 472.002. CONTRACTS INVOLVING POLITICAL SUBDIVISION OR ROAD DISTRICT TO CONSTRUCT AND MAINTAIN HIGHWAY

Sec. 472.003. COUNTY PAYMENTS FOR JOINT HIGHWAY PROJECTS

[Sections 472.004-472.010 reserved for expansion]

SUBCHAPTER B. DEPARTMENT AUTHORITY TO REMOVE PROPERTY FROM STATE HIGHWAYS

Sec. 472.011. DEFINITION

Sec. 472.012. DEPARTMENT AUTHORITY GENERALLY

Sec. 472.013. OWNER AND CARRIER RESPONSIBLE FOR COSTS OF REMOVAL AND DISPOSITION

Sec. 472.014. DEPARTMENT NOT LIABLE FOR DAMAGES

[Sections 472.015-472.020 reserved for expansion]

SUBCHAPTER C. CRIMINAL OFFENSES AND PENALTIES REGARDING WARNING SIGNS AND BARRICADES

Sec. 472.021. TAMPERING WITH WARNING DEVICES

Sec. 472.022. OBEYING WARNING SIGNS
CHAPTER 472. MISCELLANEOUS PROVISIONS

SUBCHAPTER A. GOVERNMENT CONTRACTS FOR JOINT PAYMENT OF CERTAIN HIGHWAY COSTS

Revised Law

Sec. 472.001. CONTRACTS BETWEEN CERTAIN GOVERNMENTAL ENTITIES TO ENGAGE IN JOINT PROJECT. (a) A state agency, political subdivision, or road district of a county may contract with a transportation corporation created by the commission under Chapter 431 or with another state agency, political subdivision, or road district to jointly pay all or part of the cost of:

(1) acquiring, designing, constructing, improving, or beautifying a state or local highway, turnpike, road, or street project;

(2) acquiring an interest in any real property required for or beneficial to the project; and

(3) adjusting utilities for the project.

(b) Costs of a project or payments required under a contract may be met out of bond proceeds, taxes, or other funds available for that purpose.

(c) A road district of a county or a political subdivision may:

(1) issue bonds to pay costs of a project if it determines the project will benefit it; or

(2) impose taxes in an amount necessary to create a sinking fund for payments required by a contract that provides for payment over a term of years. (V.A.C.S. Art. 6702-3, Subsec. (a), as added by Ch. 1241, Acts 71st Leg., R.S., 1989.)

Source Law

Art. 6702-3. (a) A state agency, county, municipality, political subdivision, or road district of a county 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 other state agencies, counties, municipalities, political subdivisions, or road districts for purposes of jointly paying all or part of the costs of the
acquisition, design, construction, improvement, or
beautification of a state or local highway, turnpike,
road, or street project, including the cost of an
easement or interest in land required for or beneficial
to the project. A transportation corporation, state
agency, county, municipality, political subdivision, or
road district may acquire, inside or outside the
right-of-way of a project, an easement, land, or an
interest in land required for or beneficial to a
project, adjust utilities for a project, or design,
construct, improve, or beautify a project. If a
contract provides for payment over a term of years, a
county, municipality, political subdivision, or road
district of a county may levy taxes in an amount
necessary to create a sinking fund for payments
required by the contract and to make the payments when
due. Costs of a project or payments required to be
made under a contract may be made out of bond proceeds,
taxes, or any other funds available for that purpose.
A county, municipality, political subdivision, or road
district of a county may issue bonds for the purpose of
paying all or any part of the costs of a particular
project if the county, municipality, political
subdivision, or road district finds that the project
will benefit the county, municipality, political
subdivision, or road district, as appropriate.

Revisor's Note

(1) Subsection (a), V.A.C.S. Article 6702-3,
refers to a "state agency, county, municipality,
political subdivision, or road district." The revised
law omits the references to "county" and "municipality"
because those terms are included within the meaning of
"political subdivision."

(2) Subsection (a), V.A.C.S. Article 6702-3,
refers to a transportation corporation "created by the
State Highway and Public Transportation Commission
under authority of the Texas Transportation Corporation
Act (Article 15281, Vernon's Texas Civil Statutes)."
The revised law substitutes "commission" for "State
Highway and Public Transportation Commission" because,
as stated in the revisor's note to Section 201.003 of
this code, the "State Highway and Public Transportation
Commission" has been renamed the "Texas Transportation
Commission," and Section 201.001 of this code defines
"commission" to mean the Texas Transportation
Commission.

74C263 JD-D 2090
The Texas Transportation Corporation Act (Article 15281, Vernon's Texas Civil Statutes) is codified in this code as Chapter 431, and the revised law also is drafted accordingly.

(3) Subsection (a), V.A.C.S. Article 6702-3, refers to "an easement, land, or an interest in land."
The revised law omits the references to "easement" and "land" as included within the meaning of "interest in real property."

Revised Law
Sec. 472.002. CONTRACTS INVOLVING POLITICAL SUBDIVISION OR ROAD DISTRICT TO CONSTRUCT AND MAINTAIN HIGHWAY. The governing body of a political subdivision or road district that determines an improvement is reasonable, necessary, and beneficial to the subdivision or district may contract with another governmental entity to:

(1) acquire with bond proceeds necessary rights-of-way for the road or highway; and

(2) construct and maintain the road or highway in cooperation with the entity. (V.A.C.S. Art. 6702-3, Subsec. (b), as added by Ch. 1241, Acts 71st Leg., R.S., 1989.)

Source Law
(b) Any county, municipality, political subdivision, or road district may enter into a contract with another governmental entity or agency to acquire with bond proceeds necessary rights-of-way for any road or highway facility and to construct and maintain said roads in cooperation with that entity or agency if the governing body finds that such improvements are reasonable, necessary, and beneficial to the county, municipality, political subdivision, or road district.

Revisor's Note
Subsection (b), V.A.C.S. Article 6702-3, refers to a "county, municipality, political subdivision, or road district." The revised law omits the references to "county" and "municipality" for the reason stated in
Revisor's Note (1) to Section 472.001.

Revised Law

Sec. 472.003. COUNTY PAYMENTS FOR JOINT HIGHWAY PROJECTS.

(a) The commissioners court of a county may issue bonds and contract with a road district, road utility district, state agency, or other governmental entity in the manner, for the term, and to the extent it may contract under Chapter 362, on determining that a road project, including a toll road project authorized under Chapter 441, is reasonable, necessary, and beneficial to the county.

(b) To pay the cost of a road project that serves the county and a road district of a county or road utility district, the commissioners court may:

(1) dedicate ad valorem taxes paid by owners of property in the county or district; or

(2) use other county money. (V.A.C.S. Art. 6702-3, Subsec. (c), as added by Ch. 1241, Acts 71st Leg., R.S., 1989.)

Source Law

(c) Upon findings that such a project, including a toll road project authorized under Chapter 13, Acts of the 68th Legislature, 2nd Called Session, 1984 (Article 6674r-1, Vernon's Texas Civil Statutes), is reasonable, necessary, and beneficial to the county, the commissioners court of a county may issue bonds and contract with a road district, road utility district, a state agency, or a governmental entity in the manner, for the term, and to the extent it may contract under the provisions of Chapter 402, Acts of the 70th Legislature, Regular Session, 1987 (Article 6674v.1, Vernon's Texas Civil Statutes), and may contract and dedicate tax revenues paid by and collected from taxpayers owning property within the county or within any road district of a county or road utility district or may use any other county funds to pay the cost of a road project that serves the county and such district.

Revisor's Note

(1) Subsection (c), V.A.C.S. Article 6702-3, refers to "Chapter 13, Acts of the 68th Legislature, 2nd Called Session, 1984 (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.

(2) Subsection (c), V.A.C.S. Article 6702-3,
refers to "Chapter 402, Acts of the 70th Legislature,
Regular Session, 1987 (Article 6674v.1, Vernon's Texas
Civil Statutes)." That statute is codified in this
code as Chapter 362, and the revised law is drafted
accordingly.

(3) Subsection (c), V.A.C.S. Article 6702-3,
authorizes the commissioners court to "contract and
dedicate tax revenues." The revised law omits the
reference to "contract" because a delegation of
authority to dedicate tax revenues includes a
delegation of authority to dedicate those revenues by
way of contract.

[Sections 472.004-472.010 reserved for expansion]

SUBCHAPTER B. DEPARTMENT AUTHORITY TO REMOVE
PROPERTY FROM STATE HIGHWAYS

Revised Law

Sec. 472.011. DEFINITION. In this subchapter, "personal
property" includes spilled cargo, a hazardous material as defined
by 49 U.S.C. App. Section 1802, and a hazardous substance as
defined by Section 26.263, Water Code. (V.A.C.S. Art. 6673g,
Subsecs. (a) (part), (b) (part), as added by Ch. 146, Acts 72nd
Leg., R.S., 1991.)

Source Law

Art. 6673g. (a) [The department may remove] spilled cargo or other personal property . . .
(b) [The department may remove] cargo or personal property that the department has reason to
believe is a hazardous material, as defined by the Hazardous Materials Transportation Act (49 U.S.C. Sec.
1801 et seq.) or a hazardous substance, as defined by the Texas Hazardous Substances Spill Prevention and
Control Act (Subchapter G, Chapter 26, Water Code) . . . .

74C263 JD-D 2093
Reviser's Note

The definition of "personal property" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 472.012. DEPARTMENT AUTHORITY GENERALLY. (a) The department may remove personal property from the right-of-way or roadway of the state highway system if the department determines the property blocks the roadway or endangers public safety. 

(b) The department may remove the personal property without the consent of the owner or carrier of the property. (V.A.C.S. Art. 6673g, Subsecs. (a), (b) (part), as added by Ch. 146, Acts 72nd Leg., R.S., 1991.)

Source Law

(a) The State Department of Highways and Public Transportation may, without the consent of the owner or carrier of [spilled cargo or other personal property] on the right-of-way or any portion of roadway of the state highway system, remove the cargo or property from the right-of-way or portion of roadway of the state highway system in circumstances in which, as determined by the department, the cargo or property is blocking the roadway or may otherwise be endangering public safety.

(b) The department may, pursuant to Section (a) of this article, remove [cargo or personal property] . . . .

Reviser's Note

Subsection (a), V.A.C.S. Article 6673g, refers to the "State Department of Highways and Public Transportation." The revised law substitutes "department" because, as stated in the reviser's note to Section 201.003 of this code, the "State Department of Highways and Public Transportation" has been renamed the "Texas Department of Transportation," and Section 201.001 of the code defines "department" to mean the Texas Department of Transportation.
Revised Law

Sec. 472.013. OWNER AND CARRIER RESPONSIBLE FOR COSTS OF REMOVAL AND DISPOSITION. The owner and the carrier of personal property removed under this subchapter shall reimburse the department for the costs of removal and disposition. (V.A.C.S. Art. 6673g, Subsec. (e), as added by Ch. 146, Acts 72nd Leg., R.S., 1991.)

Source Law

(e) The owner and, if any, the carrier of cargo or personal property removed under the authority of this article shall reimburse the department for the costs of the removal and subsequent disposition.

Revised Law

Sec. 472.014. DEPARTMENT NOT LIABLE FOR DAMAGES. The department and its officers and employees are not liable for:

(1) any damage to personal property resulting from its removal or disposal by the department unless the removal or disposal is carried out recklessly or in a grossly negligent manner; or

(2) any damage resulting from the failure to exercise authority granted under this subchapter. (V.A.C.S. Art. 6673g, Subsecs. (c), (d), as added by Ch. 146, Acts 72nd Leg., R.S., 1991.)

Source Law

(c) The department and its officers and employees are not liable for any damages or claims of damages to removed cargo or personal property that resulted from removal or disposal by the department unless the removal or disposal was carried out recklessly or in a grossly negligent manner.

(d) The department and its officers and employees are not liable for any damages or claims of damages that may result from the failure to exercise any authority granted under this article.

Revisor's Note

Subsections (c) and (d), V.A.C.S. Article 6673g, refer to "damages or claims of damages." The revised law omits the references to "claims of damages" because
immunity from liability for damages necessarily
includes immunity from a claim of damages.
[Sections 472.015-472.020 reserved for expansion]

SUBCHAPTER C. CRIMINAL OFFENSES AND PENALTIES REGARDING
WARNING SIGNS AND BARRICADES

Revised Law

Sec. 472.021. TAMPERING WITH WARNING DEVICES. (a) A person
commits an offense if the person tampers with, damages, or removes
a barricade, flare pot, sign, flasher signal, or other device
warning of construction, repair, or detour on or adjacent to a
highway set out by the state, a political subdivision, a
contractor, or a public utility.

(b) This section does not apply to a person acting within
the scope and duty of employment if the person is:
(1) an officer, agent, independent contractor,
employee, or trustee of the state or a political subdivision;
(2) a contractor; or
(3) a public utility.

(c) An offense under this section is a misdemeanor
punishable by:
(1) a fine of not less than $25 or more than $1,000;
(2) confinement in a county jail for a term not to
exceed two years; or
(3) both the fine and the confinement.

(d) In this section:
(1) "Contractor" means a person engaged in highway
construction or repair under contract with this state or a
political subdivision of this state.
(2) "Highway" means the entire width between the
boundary lines of a publicly maintained way, any part of which is
open to the public for vehicular travel or any part of which is
under construction or repair and intended for public vehicular
travel on completion. The term includes the space above or below
the highway surface.

(3) "Person" means an individual, firm, association, or corporation and includes an officer, agent, independent contractor, employee, or trustee of that individual or entity.

(4) "Political subdivision" includes a county, municipality, local board, or other body of this state having authority to authorize highway construction or repair.

(5) "Public utility" means:

(A) a telegraph, telephone, water, gas, light, or sewage company or cooperative;

(B) a contractor of a company or cooperative described by Subdivision (A); or

(C) another business recognized by the legislature as a public utility. (V.A.C.S. Art. 6674u-1.)

Source Law

Art. 6674u-1
Sec. 1. In this Act,

(1) "Street or highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open for public use for purposes of vehicular travel or when under construction or repair and intended for public use for purposes of vehicular travel upon completion, and includes the space above and below the surface of a street used for all proper street purposes or under construction for use;

(2) "Person" means every natural person, firm, copartnership, association, or corporation and/or any officer, agent, independent contractor, employee, servant or trustee thereof;

(3) "Political subdivision" includes every county, municipality, local board, or other body of this State having authority to authorize the construction or repair of streets, highways or roads under the constitution and laws of this State;

(4) "Contractor" means every person engaged in the construction or repair of any street, highway or road of this State under contract with the state or any political subdivision of the State;

(5) "Public utility" means all telegraph, telephone, water, gas, light and sewage companies or cooperatives, or their contractors, and any other business presently or hereinafter recognized by the Legislature as a public utility.

Sec. 2. (a) No person may damage, remove, deface, carry away, or interfere or tamper with a barricade, flare pot, sign, flasher signal or any other device warning of construction, repair or detour on or adjacent to streets or highways of this State, after the device has been set out by a contractor or by the State or a political subdivision of the State or by a public utility.
(b) Subsection (a) of this section does not apply to any of the following persons acting within the scope and duty of their employment:

(1) an officer, agent, independent contractor, employee, servant, or trustee of the State;

(2) an officer, agent, independent contractor, employee, servant, or trustee of a political subdivision of the State;

(3) a contractor or a public utility.

Sec. 3. A person who violates a provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $25 nor more than $1000, or by imprisonment in the county jail for not more than two years or both.

Revisor's Note

(1) The revised law omits part of Section 2, V.A.C.S. Article 6674u, as added by Chapter 270, Acts of the 53rd Legislature, Regular Session, 1953, because it was impliedly repealed by the subsequent enactment by Chapter 65, Acts of the 59th Legislature, Regular Session, 1965, of Section 2(a), V.A.C.S. Article 6674u-1, which is codified in this section. The omitted law reads:

[Sec. 2. It shall be unlawful] for any person to in any way tamper with, move, damage or destroy any barricade placed upon any road, street or highway by the State Highway Department or any political subdivision of the State, or by any contractor or sub-contractor doing road, street or highway construction or repair work under or by authority of the State Highway Department or any political subdivision of the State; or . . .

(2) Section 1(1), V.A.C.S. Article 6674u-1, defines "street or highway." The revised law omits the reference to "street" as unnecessary because "street" is included within the meaning of "highway" as defined.

(3) Section 1(1), V.A.C.S. Article 6674u-1, in defining "street or highway," includes the space above and below the surface "used for all proper street purposes or under construction for use." The revised law omits the quoted language as unnecessary.

(4) Section 1(2), V.A.C.S. Article 6674u-1, refers to a "firm" and a "copartnership." The revised
law omits the reference to "copartnership" as included within the meaning of "firm."

(5) Section 1(3), V.A.C.S. Article 6674u-1, refers to "streets, highways or roads." The revised law omits the reference to "streets" or "roads" as included within the meaning of "highway" as defined.

(6) Section 2, V.A.C.S. Article 6674u-1, makes it an offense to "damage, remove, deface, carry away, or interfere or tamper with" certain warning signs. "Deface" is omitted from the revised law because the term is included within the meaning of "damage"; "carry away" is omitted because it is included within the meaning of "remove"; and "interfere" is omitted because it is included within the meaning of "tamper with."

(7) Sections 1 and 2, V.A.C.S. Article 6674u-1, refer to "an officer, agent, independent contractor, employee, servant, or trustee." The revised law omits the reference to "servant" because the term is included within the meaning of "employee" and "agent."

Revised Law
Sec. 472.022. OBEYING WARNING SIGNS. (a) A person commits an offense if the person disobeys the instructions, signals, warnings, or markings of a warning sign.

(b) This section does not apply to:

(1) a person who is following the directions of a police officer; or

(2) a person, including an employee of the department, a political subdivision of this state, or a contractor or subcontractor, whose duties require the person to go beyond or around a barricade.

(c) Each violation of this section is a separate offense.

(d) An offense under this section is a misdemeanor punishable by a fine of not less than $1 or more than $200.
(e) In this section:

(1) "Barricade" means an obstruction:

(A) placed on or across a road, street, or highway of this state by the department, a political subdivision of this state, or a contractor or subcontractor constructing or repairing the road, street, or highway under authorization of the department or a political subdivision of this state; and

(B) placed to prevent the passage of motor vehicles over the road, street, or highway during construction or repair.

(2) "Warning sign" means a signal, marking, or device placed on a barricade or on a road, street, or highway under construction or repair by the department, a political subdivision of this state, or a contractor or subcontractor to warn or regulate motor vehicular traffic. The term includes a flagger deployed on a road, street, or highway by the department, a political subdivision of this state, or a contractor or subcontractor to direct traffic around or on the road, street, or highway under construction or repair. (V.A.C.S. Art. 6674u, Secs. 1, 2 (part), 3.)

Source Law

Art. 6674u Sec. 1. The following words when used in this Act shall for the purpose of this Act have the meanings respectively ascribed to them in this section as follows:

"Barricade." Every barrier, obstruction, or block placed upon or across any road, street or highway of this State by the State Highway Department, or any political subdivision of the State, or by any contractor or sub-contractor doing road, street or highway construction or repair work on said road, street or highway under or by authority of the State Highway Department or any political subdivision of the State, for the purpose of obstructing and preventing the passage of motor vehicles over such street, road or highway during the period of construction or repair to said street, road or highway.

"Warning Sign." Every sign, signal, marking, and device erected or placed upon any street, road or highway barricade, or erected or placed upon any street, road or highway which is under construction or being repaired in any way by the State Highway Department or any political subdivision of the State, or any contractor or sub-contractor doing road, street or highway construction or repair work, for the purpose of regulating, warning or guiding motor vehicular traffic or otherwise stating the conditions under which
traffic by motor vehicle may be had upon such street, road or highway. A warning sign shall include, but shall not be limited to, a flagman placed upon any street, road or highway by the State Highway Department or any political subdivision of the State or by any contractor or sub-contractor for the purpose of directing traffic around or upon such street, road or highway as is under construction or in the process of being repaired.

Sec. 2. It shall be unlawful . . . for any person to disobey the instructions, signals, warnings or markings of any warning sign placed upon any street, road or highway barricade or placed upon any street, road or highway under construction or being repaired under the provisions and authority of this Act, unless at the time otherwise directed by a police officer. Provided, however, the provisions of this Act shall not apply to employees of the State Highway Department or any political subdivision of the State, or any contractor or sub-contractor or other person whose proper and lawful duties make it necessary for them to go beyond or around any barricade and to enter upon any portion of a street, road or highway which is under construction or in the process of being repaired.

Sec. 3. Any person who shall violate any provision of this Act shall, upon conviction, be fined not less than One ($1.00) Dollar nor more than Two Hundred ($200.00) Dollars, and each and every violation shall constitute and be a separate offense.

Revisor's Note

(1) Section 1, V.A.C.S. Article 6674u, defines a "barricade" to include a "barrier, obstruction, or block." The revised law omits the references to "barrier" and "block" as included within the meaning of "obstruction."

(2) Section 1, V.A.C.S. Article 6674u, in defining "barricade," refers to "obstructing and preventing the passage of motor vehicles." The revised law omits the reference to "obstructing" because "obstructing" is included within the meaning of "preventing the passage."

(3) Section 1, V.A.C.S. Article 6674u, defines "warning sign" as a "sign, signal, marking, and device." The revised law omits the reference to "sign" as unnecessary because it is included within the meaning of "signal, marking, and device."

(4) Section 1, V.A.C.S. Article 6674u, refers to
a warning sign "erected or placed upon any street, road
or highway barricade." The revised law omits the
reference to "erected" as included within the meaning
of "placed."

(5) Section 1, V.A.C.S. Article 6674u, describes
a warning sign as "regulating, warning or guiding motor
vehicular traffic or otherwise stating the conditions
under which traffic by motor vehicle may be had." The
revised law omits the reference to "guiding . . . or
otherwise stating the conditions under which
traffic . . . may be had" as unnecessary because the
quoted language is included within the meaning of
"regulating."

(6) Section 2, V.A.C.S. Article 6674u, refers to
a warning sign placed "under the provisions and
authority of this Act," meaning Chapter 270, Acts of
the 53rd Legislature, Regular Session, 1953. The
quoted language is omitted as unnecessary.

(7) Section 2, V.A.C.S. Article 6674u, refers to
"proper and lawful duties." The revised law omits
"proper and lawful" because it may be presumed that a
person's duties are proper and lawful.

Revisor's Note
(End of Chapter)

(1) The revised law omits the part of Subsection
(b), V.A.C.S. Article 6673g, as added by Chapter 146,
Acts of the 72nd Legislature, Regular Session, 1991,
limiting the department's authority by requiring the
department to comply with other laws as an unnecessary
restatement of terms contained within those other laws.
The omitted law reads:

(b) . . . provided that in doing so,
the department must comply with applicable
provisions of Section 411.018, Government
Code, and the Texas Hazardous Substances
(2) The revised law omits Section 4, V.A.C.S. Article 6674u, providing that the article is severable, because that provision duplicates Section 311.032, Government Code (Code Construction Act), applicable to the revised law, and Section 312.013, Government Code. These provisions state that a provision of a statute is severable from each other provision of the statute that can be given effect. The omitted law reads:

Sec. 4. In case any section, sentence or clause of this Act shall be declared unconstitutional, invalid, null, void or inoperative, the other sections, sentences, and clauses shall nevertheless remain in full force and effect just as though the section, sentence or clause so declared unconstitutional, invalid, void, null or inoperative was not originally a part hereof.

[Chapters 473-500 reserved for expansion]